

THE CORPORATE
IMMIGRATION
REVIEW

TWELFTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

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PREFACE

This book is a guide to the systems, processes, policies and constraints that apply to the lawful movement of people for work purposes into key business destinations around the world. Leading practitioners from across the globe kindly donate their time and energy to updating their chapters every year and we are, as ever, very grateful to them for their considerable contributions to this year's edition.

It has, yet again, been a very challenging year for business immigration professionals, whether private practice immigration lawyers or in-house global mobility specialists. The pandemic that started in early 2020 and imposed a seismic shock on the international movement of people throughout 2020 and 2021 continues to reverberate. Governments took exceptional and unprecedented measures to control the spread of the virus and, in so doing, interfered in the freedoms of businesspeople to travel in ways that are unprecedented in peacetime. Much has been written about the appropriateness and legality of such state intervention in long-accepted freedoms. The impact on the global economy has been deleterious.

Fortunately, two years after the start of the first national 'lockdowns', borders have begun to open again, and travel normalcy is starting to return. The United States of America, the world-leading liberal economy, opened its borders to transatlantic travel in November 2021. Various constraints, including mask wearing, testing and endless 'passenger locator' forms continue to burden international travellers around the world, but the trend, thankfully, is towards a return to pre-pandemic activity. Even Singapore, a country guided by caution, rules and acquiescence in state authority, has begun to lift travel restrictions. We all hope that the worst of the coronavirus crisis is behind us and that immigration practitioners will be able to focus on legal mechanisms for attracting international talent and investment rather than the regulations that prevent movement.

Of course, as soon as one crisis subsides, another one develops. The war in Ukraine is an extraordinary shock to world order and the international economy. It has been described by some leading economists as 'the end of globalisation'. This may turn out to be an over-statement, but the fact remains that sanctions imposed on Russia, combined with the withdrawal of some international businesses from the Russian economy, will have impacts far beyond the geographical boundaries of the conflict. In addition to the war, general inflation, the energy crisis and political tensions all contribute towards an unsettled global environment.

More significant, and urgent, is the global community's response to the refugee crisis on Ukraine's border. Many countries have responded with generosity to the extraordinary situation that displaced Ukraine citizens find themselves in. Of note is the EU's adoption of the EU Temporary Protection Directive. This enables Member States to move rapidly to offer shelter and rights to people in need of immediate protection and to avoid overwhelming

national asylum systems in cases of mass arrivals of displaced persons. Although invoked in the past, the directive has never been activated before. Russia's military aggression prompted a unanimous decision in the European Council to grant temporary protection (for an initial period of one year) to people fleeing war in Ukraine. This temporary protection may be extended automatically by two six-monthly periods, for a maximum of one further year.

In the UK (no longer a member state of the EU), alternative measures have been put in place including the Homes for Ukraine scheme and the Ukraine Family Scheme. Critics argue, with some justification, that these schemes are less generous than the EU Temporary Protection Directive. At the time of writing, about 4 million people have been displaced by war. Most, inevitably, find themselves seeking humanitarian relief in the countries that border Ukraine. Sadly, it seems that this tragic scenario has a long way to run.

What, you may ask, has all this to do with Corporate Immigration? First, geopolitical events have a major impact on the global economy and, in turn, international investment and the movement of investors, executives and entrepreneurs. Immigration laws adapt accordingly. Second, and more importantly, we have been struck this year by the response of immigration specialists, including many of the contributors to this book, to the humanitarian crisis. Many immigration law firms have been agile in expanding their pro-bono offering in response to these appalling events. We commend them for it.

Despite the many global challenges, immigration reforms continue apace. Of note is the introduction of new routes of entry to the United Kingdom – many of which will have come into force by the time this new edition of *The Corporate Immigration Review* is published. The Global Mobility Route is described as 'a new route for overseas businesses seeking to establish a presence here or transfer staff to the UK under the existing sponsorship system'. On closer analysis, it appears that much of the scheme is a repackaging of existing routes of entry (such as the Intra-Company Transfer) under new branding. There are some innovations that may cause for optimism for practitioners seeking solutions for private clients, such as the High Potential Individual scheme and the Scale-Up arrangements. Alterations to the Sole Representative category (renamed the UK Expansion Worker) are welcome and overdue. We can report next year on the success, or otherwise, of the various schemes.

Singapore also has changes afoot. The Ministry of Manpower will use a new points-based evaluation framework called the Complementarity Assessment Framework (COMPASS) for new Employment Pass (EP) applications starting in September 2023 and EP renewals starting in 2024. Under COMPASS, applicants will need to score at least 40 points under core criteria, such as salary and qualifications. There will be employer-generated points for levels of national diversity and support for local employment. The trend towards points-based methodologies for determining entry to labour markets appears to be growing.

We recommend this 12th edition of *The Corporate Immigration Review* to our readers, and we thank our contributors for their valuable insights.

Ben Sheldrick

Magrath Sheldrick LLP
London
April 2022

PANAMA

*Vivian Holness*¹

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Over the past 11 years, Panama has been one of the fastest-growing economies in Latin America. Its economy is centred on a highly developed service sector, which represents more than 75 per cent of the country's gross domestic product. The construction of infrastructure works of major importance, such as the Metro, the expansion of major avenues and the future construction of a fourth bridge over the Panama Canal has helped to mitigate the negative side effects of the recent economic global crisis. The banking and financial services sector has also played an important part in this economic development. All these investments and projects have brought a massive influx of citizens from all over the world, looking for a better economy and a more stable political environment.

In recent years, the government has adopted special economic regimes promoting the establishment of regional offices for major economic groups and new immigration policies, resulting in the creation of new immigration categories broadening the options for foreign investors and professionals coming to Panama to establish their residency and the main base for their investments.

Under Panamanian immigration law, different kinds of visas and permits are available, according to the nationality, activity or investment to be undertaken by the person or the length of time the person will spend in the country.

i Non-resident visa

A non-resident status will be used by those entering Panama for pleasure or recreation and can be granted for a maximum of 180 days, depending on citizenship.

These short-stay visas are designed to be granted to visitors who enter the country with a specific purpose, but without the intention of residing in the country for a longer period. Whereas an ordinary tourist visa is granted for a maximum of six months, short-stay visas can be granted for a non-extendable period of up to nine months.

ii Temporary residence permit

This permit may be used by people entering Panama for employment reasons, under particular government policies, for educational, cultural, humanitarian or family unification purposes, and by those who intend to stay in the country for longer periods of time. This permit is authorised for a one-year period and may be renewed annually for a maximum of six years.

¹ Vivian Holness is a senior associate at Arias, Fábrega & Fábrega.

iii Permanent residence permit

This permit is granted to three types of foreign nationals: those who enter the country with the intention of settling permanently for economic and investment reasons, those who enter under particular government programmes and those who enter for demographic and family unification purposes. After a permanent residence status is requested, a two-year provisional residence permit and identification document is granted. After this provisional period, if the soliciting party fulfils the requirements, permanent residence is granted.

iv Legislation and policy

Law Decree No. 3 of 22 February 2008 regulates the immigration authority and immigration policies in Panama.

With regards to entering the territory, Panamanian immigration law has different requirements based on the citizenship of the traveller.

Citizens of certain countries (i.e., China, Cuba, Venezuela, India) must request a special tourist visa at a Panamanian consulate before travelling, which is valid for one month. Nationals from other countries that do not require this special tourist visa may enter the country without any previous process or permit but must obtain a tourist card at the airline counter before they enter Panama.

A tourist visa is valid for three months and allows the holder to partake in tourism, business or investment activities in the country.

If a foreign national wishes to apply for a non-resident visa or a residence permit, immigration laws set different requirements based on different situations.

As a general rule, all employers must hire Panamanian employees, or foreign nationals married to Panamanian citizens or who have resided in the country for at least 10 years, in a proportion of at least 90 per cent of the ordinary personnel of the organisation, while 10 per cent of the ordinary personnel may be foreign nationals; however, employers may engage foreign personnel who are considered experts or technicians up to a proportion of 15 per cent of the total number of workers. In any event, the proportion of wages or remuneration together, and the category of foreign staff, cannot exceed those limits of 10 and 15 per cent, respectively. In some limited circumstances, a larger proportion of foreign experts or a technician is permitted for a defined period to work in a regulated sector of the economy, such as energy; however, this requires the recommendation of the relevant authorities and approval by the Ministry of Labour. An exception to this general rule came into effect in 2012 when a new immigration category was created to allow nationals of certain countries that hold friendly and commercial relations with Panama to apply for permanent residency and work permits without observing the 10 per cent or 15 per cent restriction referred to before.

v The immigration authorities

Law Decree No. 3 of 22 February 2008 established the National Immigration Service as a public security institution under the Ministry of Public Security, with the task of coordinating, supervising and applying the immigration policies of the Republic of Panama.

The Ministry of Labour regulates the requirements and procedures to apply for a work permit. This Ministry is also in charge of the approval of employment contracts. The Ministry has the task of supervising the application of the general rule of proportions between foreign and national employees, as discussed above (90 per cent).

The Ministry of Public Security's Security Council investigates specific cases and authorises the issuance of visas for the nationals of restricted countries.

vi Exemptions and favoured industries

There are several exemptions to the general rule of a 10 per cent limit on foreign workers.

Multinational headquarters

Multinational headquarters (MHQs) are regional or global headquarters of a multinational company that, while based in Panama, carry out operations or services to their main office, subsidiaries or affiliates in other countries. An MHQ can operate as a foreign company registered in Panama or as a Panamanian company owned by the foreign multinational company. Residence permits are issued to employees at the administrative or executive level for the duration of the employment contract, up to a maximum of five years, which may be renewed for an unlimited number of five-year terms. After completing at least one five-year employment term at the MHQ, the employee has the option to become a permanent resident.

Recent amendments to the MHQ regulations have allowed for spouses of MHQ visa holders to legally work in Panama, even under a dependent's visa.

Friendly nations visa

Under Executive Decree 416 of 2012 and its later amendments, citizens from a particular list of nations, including North America, most countries in South America, Western Europe and certain countries in Central America, Asia and Africa, may request permanent residence after a two-year provisional residency permit is granted on the basis of the friendly or commercial relationships between these countries and Panama. However, this residence status requires that the applicant provide evidence of ties to Panama. These ties may be established through either economic or professional activities, such as real estate or time deposit investments for a minimum of US\$200,000, or an employment offer. In addition, the applicant must demonstrate economic solvency through a bank statement from the previous month showing a balance of at least US\$5,000. For labour purposes, this permit is exempted from the percentage limitations, but it is mandatory to comply with tax and social security obligations if the applicant has a work permit.

Temporary residence permit for those hired as executives for international companies whose duties have effects abroad

This permit is issued by the National Immigration Service to foreign executives whose salaries are paid from foreign sources and who are entering the country temporarily as executives or managerial-level representatives of foreign companies operating international subsidiary offices in Panama. The company must be registered in Panama's Public Registry. Applicants who obtain this permit may not represent the international company for local activities. This permit grants the right to temporary residence in Panama for one year, renewable annually. Holders of a temporary residence permit hired as executives of international companies whose duties have effects abroad are not required to pay social security fees. Likewise, foreign workers are exempt from income tax payment if all their activities are perfected, accomplished or produce their effects abroad, and if their salaries are paid from the company headquarters. The holder of this permit is required to pay for education insurance tax. For this permit, the immigration authority also requires that the headquarters or the subsidiary have been incorporated for more than 10 years, updated financial statements are filed and the applicant has a minimum monthly salary of US\$2,000.

Panama Pacifico special economic area

In 2004, the government established the Panama Pacifico special economic area (SEA) to attract direct foreign investment, to provide Panamanians with better-paying jobs and to attract new growth industries to the country. Inspired by SEAs with similar characteristics around the globe, the Panama Pacifico SEA is the most comprehensive and advantageous to date in the region (and similar in nature to a special economic zone).

In the Panama Pacifico SEA, companies are permitted to hire a higher percentage of foreign workers (up to 20 per cent of their payroll).

City of Knowledge

The City of Knowledge is a government-sponsored cluster of academic organisations, technology companies and non-governmental organisations managed by a foundation of the same name.

Today, the institution provides facilities and support to programmes in education, research, technological development and innovation while promoting integration of institutions, business and programmes.

There are five immigration categories for this special area: researcher, teacher or professor, entrepreneur or executive, technician and student. With the exception of the student category, all the permits give the option of a work permit. None of these categories are included in the percentage limitations for foreign personnel.

Panama Canal administration

There are special immigration permits for foreign workers hired by the Panama Canal Authority or its subcontractors. The process is filed at a special office at the National Immigration Service office, which offers an expedited service. The percentage limitation is not mandatory.

Colón Free Zone

Companies established in the Colón Free Zone may carry out any activity related to the import, storage, packaging, manufacturing, assembly and general handling of all kinds of merchandise, products, raw materials and containers.

However, companies that operate within this zone must re-export at least 60 per cent of all imported goods and merchandise in any given year and must employ more than five local workers.

There is a minimum of five Panamanian employees that must be hired in a company in this special area, which allows the hiring of foreign workers over the percentage limits.

II INTERNATIONAL TREATY OBLIGATIONS

In general, Panama does not have any international treaties that provide immigration benefits. However, Panama is a signatory of the Marrakesh Agreement, which allows foreign nationals entering the country to work for a company with fewer than 10 Panamanian workers. The company must have fewer than 10 full-time employees on the payroll earning at least the minimum wage and may have one foreign national who will reside and work temporarily in Panama. This temporary residence permit is granted for a one-year term and may be

renewed for up to six consecutive years. Obtaining a prior work permit is required for the approval of this residence permit. The foreign national must earn a minimum monthly salary of US\$1,000.

III THE YEAR IN REVIEW

According to the statistics of the National Immigration Service,² in 2021, 21,691 permits were processed, of which 20,919 were approved and 772 were denied.

Most of the approved permits were for temporary and permanent residence.

IV EMPLOYER SPONSORSHIP

Residence permits for labour reasons are the most common way to obtain an immigration status in Panama. The residence permit often depends on a work permit being granted.

i Work permits

Eventual worker

An eventual worker visa and work permit entitles visitors to perform technical works in Panama after obtaining a work permit. This permit allows the Panama-based company to hire foreign nationals or visitors who will perform, on a temporary basis, technical work for the company, or will engage in a cultural, artistic or musical show, or will participate in sport events, professional, educational or scientific activities for a specific work or project, provided both the company and the visitor meet all requirements and responsibilities regulated by the National Immigration Service and the Panamanian Ministry of Labour and Workforce Development. The visitor must earn a minimum wage of US\$850 monthly. This visa category is granted for a one-year period. The work permit is valid for three months and is renewable for up to a year.

Foreign employees numbering up to 10 per cent of ordinary workers and 15 per cent of technicians and executives in positions of trust

This residence permit allows a company domiciled in Panama to hire foreign nationals within 10 per cent of the ordinary staff of the company or 15 per cent of the technical or executive personnel. The permit is subject to a previously approved work permit subject to the percentage restrictions described above and the applicant must earn a minimum monthly salary of US\$850. The applicant will be granted a two-year provisional residency permit prior to being granted permanent residency.

Marrakesh Agreement

This permit allows foreign nationals entering the country to work for a company with fewer than 10 Panamanian workers. The company must have fewer than 10 full-time employees on the payroll earning at least the minimum wage and may have one foreign national who will reside and work temporarily in Panama. This temporary residence permit is granted for

² <http://migracion.gob.pa/index.php/inicio/estadisticas>.

a one-year term and may be renewed for up to six consecutive years. Obtaining a prior work permit is required for approval of this residence permit. The foreign national must earn a minimum monthly salary of US\$1,000.

ii Labour market regulation

The Panamanian Labour Code regulates all labour relationships in Panama, establishing the state's protection of employees, both local and foreign. Foreign workers have the same rights as Panamanian workers, and any discrimination is a violation of the Constitution of the Republic of Panama; however, foreign workers must have a work permit to work legally.

The Ministry of Labour is the authority responsible for ensuring compliance with the labour law. This Ministry carries out inspections of work sites and fines companies that hire foreign workers without permits.

iii Rights and duties of sponsored employees

All employees, including both locals and foreign nationals, have to pay taxes and social security contributions. There are some exemptions to these obligations, such as the MHQ visa.

Some permits allow foreign national workers to apply for permanent residence, such as the 10 or 15 per cent permits, but these workers must renew their work permit annually for 10 years after they have received their permanent residence, at which time they can apply for a permanent work permit.

The only permit that grants a permanent work permit for the first application is the friendly nations visa.

Other special permits, such as the MHQ permit, grant a permanent work permit after five years of residence, after the employment relationship is terminated.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

There are a few immigration options for those who want to invest in Panama but do not have a sponsor company as a support. These options do not have to follow the general rule of the percentage limitation.

i Qualified investor visa

Recently, a new immigration category was created to attract foreign investments, which will grant permanent residency through an expedited process of 30 business days. Nationals of all countries are eligible for this permit which requires one of the following investments: (1) real estate investment for a minimum of US\$500,000; (2) investment in registered stock with a local stock exchange for a minimum of US\$500,000; or (3) time deposit investment of a minimum of US\$750,000 with a licensed bank in Panama. Either of these investments must be kept for a minimum of five years to maintain permanent residency.

ii Friendly nations visa

As mentioned above, this visa allows nationals from a list of countries to apply for permanent residency after two years of provisional residence. This immigration category will allow the foreign national, once residency is granted, to apply for three-year work permits renewable indefinitely. The main requirement is to have a job offer (from a sponsor company) or to invest a minimum of US\$200,000 either in real estate property in Panama or a time deposit with a

licensed bank in Panama. Applicants are also required to prove economic solvency through a bank statement from a bank account in Panama with a balance of at least US\$5,000. Permits obtained for labour purposes require the approval of a work permit. To apply for this permit, the applicant must have received a job offer and have registered with the Social Security Administration for the payment of income tax and social security contributions.

iii Foreign professional visa

Foreign nationals with an undergraduate, master or doctoral degree may apply for this permit, as long as the degree is not granted in a field which exercise is limited, by the Constitution or the law, only to Panamanians. These restricted fields include medicine, law, architecture, engineering, nursing and accounting, among others. In case the degree is granted by a foreign university, prior to applying for the immigration permit, the graduate diploma must be revalidated by the University of Panama. A temporary permit is granted initially for a period of two years, after which the foreign national may apply for permanent residency. The work permit is valid for three-year periods.

VI OUTLOOK AND CONCLUSIONS

Since its overhaul in 2008, Panamanian immigration law has been updated and adapted to facilitate and contribute to the economic growth of the country. There are now more options for investors and professionals who seek to establish themselves in the country, be it as entrepreneurs or as independent professionals.

There have also been improvements to the permits with percentage limits, as it is now possible to apply for permanent residence after two years as a temporary permit holder instead of after six years, as was previously the case.

The National Immigration Service has also improved its services and is now faster, with a better technological platform and with greater transparency.

ABOUT THE AUTHORS

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Vivian D Holness joined ARIFA in 2006. Ms Holness is a highly effective immigration and labour lawyer with extensive experience advising local and international companies doing business in Panama. Ms Holness stands out for her remarkable and vast understanding of the many labour and immigration benefits granted under the different Panamanian free zones and special economic zone regimes designed to attract and promote investments and logistics services, to identify the most tax-efficient special regime options for her clients. She is fluent in Spanish, English, and Portuguese.

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