

Israel

Executive Summary

Israeli law generally provides for only one type of legal status relating to the employment of foreign nationals: the B-1 visa category (hereinafter: “the B-1 work visa”).

Israeli work visa procedure is set forth in the regulations of the Ministry of Interior’s Population Immigration and Border Authority (“PIBA”). These regulations define the various sub-categories in which an Israeli employer may sponsor a foreign national for a B-1 work visa. These sub-categories include the following: Foreign Experts; Construction; Agriculture; Nursing Professionals; Industry; Hotel Workers and Ethnic Restaurant Experts. This article will focus primarily upon the options available to Foreign Experts relating to temporary work and residence in Israel.

Key Government Agencies

In July 2008, in accordance with Government Decision 3434, the government established a national immigration authority, the Population, Immigration and Border Authority (“PIBA”) which functions under the auspices of the Ministry of Interior. In an effort to centralize the immigration process, PIBA unified 16 different government agencies which had previously been involved in various aspects of immigration and border control. Under the new system, the Israel Police; the Israel Defense Forces; the Ministries of Internal Security, Justice, Labor, Trade and Industry, Housing and Construction and Absorption; and the Jewish Agency will all be able to share information and contribute to PIBA’s operations.

Most work visa applications first require the approval of a visa petition by the petitioning employer filed with PIBA. The Ministry of Foreign Affairs is responsible for visa processing at Israeli consular

posts abroad. Consular notification is requested at a local office of the Ministry of Interior (MOI) following PIBA approval of a visa petition.

Inspection and admission of travellers is conducted by PIBA at Israeli ports of entry.

Investigations and enforcement actions involving employers and foreign nationals are executed by PIBA, in cooperation with Israel's Immigration Police force.

Current Trends

The employment of foreign experts in Israel has risen significantly in recent years. The demand for foreign experts in Israel can be attributed largely to the rapid advancement of the country's high-technology sector beginning in the 1990s, combined with the steady progress of globalization in general. In response, Israel is seeking to revise its policies with regard to the employment of foreign experts, beginning with the establishment of PIBA discussed above.

As part of the changes implemented following the establishment of PIBA, a new system for obtaining work permits also took effect. On January 1, 2009, PIBA's "Permit Unit" became the authority responsible for the issuance of work permits to foreign nationals. Prior to that date, applications for the employment of foreign workers were handled solely by the Ministry of Industry, Trade and Labor's (MOITAL) "Semech Unit."

Under the new system, applications for foreign workers must be submitted to PIBA's Permit Unit for consideration. While all employees of MOITAL's Semech Unit are now employed directly by PIBA, PIBA will continue to work in conjunction with MOITAL to receive guidance on issues relating to the issuance of work permits to foreign experts and foreign workers in the industrial field.

In addition to the organizational changes discussed above, another government decision set forth a number of restrictions relating to foreign workers in the industrial field, such as numerical limitations and testing of the local labor market, in an effort to gradually reduce the number of foreign workers in Israel in this sector of the economy. As such the 2009 annual cap for workers in the industrial branch stood at 700 work permits.

The government decision also states that “by 2010, only foreign experts whose salary is at least double the prevailing wage will be permitted to work...”. The government decision specifically states that the numerical limitations do not apply to foreign experts, as special procedures apply to foreign workers in this field.

Business Travel

B-2 Business Visitor Visa

Israeli law generally provides for only one type of visa category for both tourists and business travelers: The B-2 visa.

The term “business trip” is not specifically defined in Israeli law. Nonetheless, it is clear that if the purpose of the proposed travel to Israel entails productive work of any kind, a work permit must be obtained. This, regardless of the expected duration of the individual’s stay in Israel.

Because “business trip” is not specifically defined in Israeli law, the proposed activities of some foreign nationals may fall into a “grey area.” Examples include:

- individuals seeking to participate in R&D groups;
- install hardware; or

- provide field service support.

In such cases, it is recommended that the company first consult immigration counsel with regard to appropriate visa options.

A valid passport, and an entry visa are generally necessary for entry into Israel for business. For business travelers, B-2 procedure normally includes three separate bureaucratic steps:

- Submission of a visa application with the (MOI;
- Issuance of the B-2 visa at the relevant Israeli consular post abroad, prior to entry into Israel; and
- Extension of the B-2 visa at the MOI after arrival in Israel, if necessary.

Visa Waiver Program

As a rule, nationals of the European Union, the United States, Canada, Japan and other nations are admitted to Israel without an entry visa for a period of up to 90 days. No employment of any kind is permitted during this period. Extensions of this initial 90 day period may be approved by the Ministry of the Interior; for a maximum stay of six months.

The list of qualified countries can be found at: <http://www.embajada-israel.es/docs/consulado/%D7%98%D7%91%D7%9C%D7%AA%D7%90%D7%A9%D7%A8%D7%95%D7%AA%D7%9B%D7%9C%D7%9C%D7%99Nations2.pdf>

Training

There are no dedicated training permits – a foreign employee seeking to attend mid to long-term training in Israel will likely require a B-1 work visa.

Employment Assignments

Unlike many countries in North America and Europe that offer a wide range of work permits with varying eligibility criteria, Israel offers only one type of work permit, the B-1 visa. Under the B-1 “umbrella,” foreign experts, unskilled workers, foreign spouses of Israeli citizens and potential Jewish immigrants may apply for work authorization.

In distinguishing between an expert and an unskilled foreign worker, the Israeli government applies various directives and regulations on handling applications for foreign experts, which are based on internationally accepted concepts commonly applied in other countries.

The following six defining criteria are typical characteristics of foreign experts:

- First, the expert will receive a monthly salary and benefits which equal at least double that of the prevailing wage in Israel. This salary requirement is a minimum condition for consideration as a foreign expert, since individuals possessing special skills and expertise are typically paid higher wages than lower skilled or average employees.
- In addition to this minimum requirement, an employee must meet at least two out of the next five criteria to be recognized as an expert:

1. The Expert possesses special qualities and skills. “Special qualities and skills” can be acquired through years of experience in a certain field of endeavor or knowledge of certain work processes and procedures not generally found in the Israeli labor market. In order for an employee to meet this criterion, the Israeli employer must prove that the prospective foreign worker will transfer such qualities and skills to a local employee. This criterion underlies the temporary nature of the employment of the foreign expert, as he/she will ultimately be replaced by an Israeli employee upon completion of “skills transfer”.
2. The Expert will create jobs for Israelis at a ratio of 1:10 (*i.e.*, 10 job opportunities created for each foreign expert hired).
3. The Expert possesses a high level of education (academic credentials) and professional background.
4. The Expert will transfer to Israel specialized knowledge which is not commonly found in the local job market.
5. The Expert will be employed in a managerial or specialized capacity.

As a member of the World Trade Organization (WTO) and a partner in the General Agreement on Trade in Services (GATS), Israel has committed to allowing managers and executives of foreign multinational companies to enter the country for the purpose of participating in foreign-invested projects operating in Israel. GATS sets forth the criteria for both “managerial” and “executive” capacity that are used to determine whether a foreign worker is eligible for a B-1 visa in this regard.

According to the Regulations, the following categories of workers are considered foreign experts:

- **Expert earning “an expert wage”** – This category is intended for an individual who possesses a high level of expertise or specialized and essential skills that are required for the service provided by the employer, and which cannot be found in the Israeli labor market. For this category, the Israeli employer must pay the expert a monthly wage at least twice the average monthly wage paid to salaried employees in the Israeli job market.
- **Manager, Senior Representative, or Employee of a foreign or multi-national corporation in a position requiring a great deal of personal trust** – A foreign corporation (with no corporate presence in Israel) or a multinational corporation (with an Israeli subsidiary, affiliate or branch office) may apply for a work permit for a foreign expert who will function as a Manager, Senior Representative, or other Employee in a position requiring a great deal of personal trust. A “Manager” is defined by the Regulations as “a person who guides or establishes the goals and policies of an organization or a department of an organization, and who functions at a senior level, and maintains responsibility for company operations through supervision, control and authority to hire and fire employees or to recommend other personnel related actions”. The criteria for a “Senior Representative or Employee in a position requiring a great deal of personal trust” are not specifically defined by the regulations. However, the Regulations do emphasize that a foreign corporation or multinational corporation is not be permitted to employ more than two foreign workers in this category.
- **Senior Staff Member in a foreign airline or foreign shipping company.**

- **Lecturer or Researcher in an Institution of Higher Learning.**
- **Medical trainee or expert in a hospital.**
- **Foreign Artist or Foreign Athlete.**
- **Foreign national coming to Israel to perform a temporary task which does not exceed a period of three months.**

The Regulations also set forth special procedures for foreign employees in the diamond industry, foreign journalists and photographers, and family members of foreign diplomats.

The accompanying family members of a foreign expert are issued B-2 tourist visas that are generally valid for the same duration as the foreign expert's B-1 visa. Accompanying family members holding B-2 visas are permitted to remain in Israel and attend school, but they are not authorized to work.

Other Comments – Israel's Underlying Immigration Policy

In order to understand Israel's policy towards foreign experts, it is imperative to first consider the country's attitude towards non-Jewish foreigners in general. Israeli immigration policy has been a topic of debate since the establishment of the State in 1948.

Founded as the Jewish State, Israel's underlying immigration policy is that it is not a "nation of immigrants" but rather a "nation of olim" (Jewish immigrants)." As such, Israel encourages immigration of Jewish people under the Law of Return, which provides that every Jew has the right to enter Israel as a new immigrant and enjoy a plethora of social and health benefits.

In parallel, Israeli law makes it extremely difficult for non-Jewish persons to reside temporarily or permanently in the country. Indeed, the ethnic-religious nature of nationalism in Israel, the absence of an egalitarian conception of citizenship for non-Jews, and the highly restrictive nature of the country's naturalization policy significantly impact upon the ability of foreign workers to obtain work authorization. Even if a foreign expert B-1 visa is obtained, the concept of "employment based legal permanent residence" does not exist.