

Mexico

Executive Summary

This chapter outlines how foreign nationals may remain in Mexican territory under the proper immigration status and category, performing lucrative or non-lucrative activities, according to their purpose to remain in Mexico. Companies and foreign nationals need to know, in a clear and concise manner, the different type of visas and the activities that may be performed with them in Mexico, whether lucrative or not.

To determine the adequate authorization for each activity or business, the type of visa to be secured must be determined, as well as the activities to be performed and, moreover, to specify if the activities that are to be performed are on behalf of a Mexican entity or not. All of this is needed in order to avoid the imposition of fines that apply to the sponsoring company and to the foreign national, or in certain cases, the foreign national's deportation.

Key Government Agencies

The local, state and central offices of the National Immigration Institute (“Instituto Nacional de Migración” or INM), under the Ministry of the Interior (“Secretaría de Gobernación” or SEGOB), hold the power to authorize all kinds of immigration permits after the foreign national's first entry into Mexico, such as the change of immigration status, change of immigration category, renewals, change or extension of activity, and renewed permanence, among others.

The Ministry of Foreign Affairs (“Secretaría de Relaciones Exteriores”) is the authority responsible for granting citizenship through the naturalization process, as well as all communication between the INM and the Mexican Embassies and/or General Consulates. The Embassies and the General Consulates incorporate

them and are authorized exclusively to issue permits to enter the country.

Current Trends

Recently Mexico has been making important changes to the immigration policies in order to secure foreign investment and reduce bureaucratic tendencies in the immigration processes. The INM has issued a new Immigration Manual (“IM”) that came into effect on April 29, 2010. This new IM outlines all immigration processes. Although it was said to be a manual that would reduce bureaucratic tendencies, it has done quite the opposite in most local immigration offices.

The IM did reduce immigration processes and the requirements for processing visas, but also implemented a new system that operates as a national Intranet connection called SETRAM (Spanish acronym for Sistema Electrónico de Trámites Migratorios) which all immigration offices must use and follow. The SETRAM does pose multiple issues, most of them being that immigration officers are having trouble getting used to it.

Other changes have been made on the immigration forms themselves. Passport-type immigration forms have been now changed for card-type forms. This change has obviously been very well received by foreign nationals in Mexico.

These changes have not been validated by a change in Mexico’s Immigration Law (“MII”) or its Regulations (“MILR”). This has also created issues and confusion since some aspects of the IM directly contradict the law. Changes in the MII and MILR are expected for the first months of 2011. We believe these changes will be able to both support and validate the IM, which is very much needed.

Business Travel

There is a new business immigration form called the FMM (Multiple Immigration Form). This form has replaced the previous tourist and business forms. This form is also used for short term non immigrant visits.

As a business form, the FMM allows business travelers to perform the following non lucrative activities while in Mexico: Commercial exchanges of goods and services; establish, develop or administer a foreign capital investment; perform specialized services previously agreed to or contemplated in an agreement for transfer of technology, patents and brands, sale of machinery and equipment, of technical training of personnel, or of any other production process of a company established in Mexico; perform activities on a professional level as stated in the North American Free Trade Agreement; assist in the board or director or board of manager sessions in a company legally established in Mexico; perform managerial, executive or specialized knowledge activities in one of the subsidiaries or affiliates of a company established in Mexico.

The validity of this visa is up to 180 days. If the foreign national wishes to prolong presence in the country, then an application should be filed for an FM-3 card.

It is possible to request a new FMM each time the foreigner enters the country. It is important that the foreign national return the FMM to any immigration authority before its expiration date and upon their definitive exit of the country; otherwise, they may be subject to an administrative sanction.

Classification of Nationalities

Group I and II – Foreign Nationals that require a visa prior to traveling to Mexico

Citizens from the following countries must request a visa from the nearest Mexican Embassy or General Consulate before entering Mexico. Mexican Embassies and Consulates are allowed to issue certain visas to foreign nationals.

Afganistán	Albania	Angola	Antigua y Barbuda	Arabia Saudita	Argelia	Armenia
Azerbaiyán	Bahrein	Bangladesh	Belarús	Benin	Bolivia	Bosnia-Herzegovina
Botswana	Brasil	Brunei Darusalam	Burkina Faso	Burundi	Bután	Cabo Verde
Camboya	Camerú	Chad	China República Popular	Colombia	Comoras	Congo
Congo, Rep. Dem. (Zaire)	Corea del Norte	Costa de Marfil	Cuba	Djibuti	Dominicana República	Egipto
Emiratos Árabes Unidos	Eritrea	Etiopía	Federación Rusa	Fiji Islas	Filipinas	Gabón

Gambia	Georgia	Ghana	Grenada	Guatemala	Guinea	Guinea Bisau
Guinea Ecuatorial	Guyana	Haití	Honduras	India	Indonesia	Irak
Irán	Jordania	Kazajistán	Kenia	Kirguistán	Kiribati	Kuwait
Laos	Lesotho	Libano	Liberia	Libia	Macedonia	Madagascar
Malawi	Maldivas	Mali	Marruecos	Mauricio	Mauritania	Mianmar
Moldova	Mongolia	Montenegro	Mozambique	Namibia	Nauru	Nepal
Nicaragua	Niger	Nigeria	Omán	Pakistán	Palestina	Papua Nueva Guinea
Perú	Qatar	República Centroafricana	República Árabe Saharaui Democrática	Ruanda	Salomon Islas	Samoa Occidental
San Cristobal y Nieves	San Vicente y Las Granadinas	Santa Lucía	Santo Tome y Príncipe	Senegal	Serbia	Seychelles Islas
Sierra	Siria	Somalia	Sri Lanka	Sudáfrica	Sudán	Surinam

Leona						
Swazilandia	Tailandia	Taiwán	Tanzania	Tayikistán	Timor Oriental	Togo
Tonga	Túnez	Turkmenistán	Turquía	Tuvalu	Ucrania	Uganda
Uzbekistán	Vanuatu	Vietnam	Yemen	Zambia	Zimbawe	

* Citizens from some of the aforementioned countries require that a Mexican sponsor request a previous entry permit before the INM prior to the foreign national entering Mexico. The INM does not publish the list of nationalities that require the previous entry permit, so information must be consulted case by case. No foreign national in this classification will be granted a visa and allowed entry into Mexico without this special permit.

Group III - Countries with visa waivers.

Citizens from the following countries do not require any visa or special documentation before entering Mexico.

Alemania	Andorra	Anguila	Antillas Holandesas	Argentina	Aruba	Australia
Austria	Bahamas	Barbados	Bélgica	Belice	Bulgaria	Canadá
Chile	Chipre	Corea del Sur	Costa Rica	Dinamarca	Eslovaquia	Eslovenia

España	Estados Unidos de América	Estonia	Finlandia	Francia	Gibraltar	Grecia
Groenlandia	Guadalupe	Guayana Francesa	Hong Kong (Rep. Popular de China)	Hungría	Irlanda	Islandia
Islas Azores	Islas Bermudas	Islas Caimán	Islas Cocos	Islas Cook	Islas Faroe	Islas Guam
Islas Malvinas	Islas Marianas	Islas Marshall	Islas Navidad	Islas Niue	Islas Norfolk	Islas Pitcairn
Islas Reunión	Islas Vírgenes de los EUA	Islas Wallis y Futura	Islas Vírgenes Británicas	Israel	Italia	Japón
Letonia	Liechtenstein	Lituania	Luxemburgo	Macao (Rep. Popular de China)	Mahore	Malta
Martinica	Micronesia	Mónaco	Montserrat	Noruega	Nueva Caledonia	Nueva Zelanda
Países Bajos (Holanda)	Palau	Panamá	Paraguay	Polinesia Francesa	Polonia	Portugal

Puerto Rico	Reino Unido de la Gran Bretaña	República Checa	Rumania	Samoa Americana	San Marino	Santa Helena
Singapur	Suecia	Suiza	Territorio Británico del Océano Índico	Tokelau	Trinidad y Tobago	Turcos y Caicos
Uruguay	Venezuela	El Salvador *	Jamaica *	Malasia *		

(*) Even though citizens from these three marked countries do not require visa before entering Mexico, they do need to obtain a Consular seal on the passport from the nearest Mexican Consulate prior to traveling to Mexico.

As described above, nationals of countries for groups I and II must request a visa before entering Mexico, either at any of the Consular offices abroad or directly at the INM through a sponsoring party. Nationals of these countries may be issued a Consular Visa attached to their passport. Upon entry into Mexico, foreign nationals will receive an FMM authorized for up to 180 days, or an FMM that will need to be changed at the INM for an FM-3 card within 30 days of entering Mexico, depending on the authorization granted on the Consular Visa.

Training

Although Mexico does not have a specific visa intended for training or training programs, an authorization may be issued for these purposes. Foreign nationals who wish to enter the country for training purposes must request an FM-3 nonimmigrant card.

This visa may be requested as a nonimmigrant student when the training program is a prerequisite at a university in order to formalize studies in the foreign national's country of origin, or it may be requested as a nonimmigrant visitor when a company wishes to transfer personnel from one related company to another for training.

This visa may be requested at Mexican consular offices abroad when required as a prerequisite for a university, or may be requested at the INM through a change of immigration status or a previous entry permit.

Employment Assignments

FM-3 for Nonimmigrants

FM-3 nonimmigrant status can be issued to a foreign national who, pursuant to a valid permit issued by the INM, is temporarily admitted to Mexico for any of the purposes listed below.

An FM-3 card may be obtained by processing a change of immigration status, a previous entry permit, or through an authorization issued by a Mexican Consulate.

An FM-3 may be authorized for up to 365 days, and may be renewed up to four times.

Technician or Scientist Visitor

Technicians and scientists can secure the FM-3 if coming to:

- Begin a specific investment project;
- Advise public and private institutions;
- Prepare and direct investigations;

- Hold conferences, courses or divulging some type of knowledge;
- Carry out technical activities in the elaboration of an investment project;
- End or start the operation of the construction of a plant;
- Assist other technicians having previously entered into a services agreement; or
- Carry out activities contemplated in an agreement of transference of technology, patents or labels.

Professional Visitor

The FM-3 is also used by foreign professionals coming in the exercise of a profession, either: in an independent manner; rendering a service to a corporation; or rendering services to public or private institution.

In order for a foreign national to carry out the profession in Mexico, registration is required before the Ministry of Education (“MOE”) of the certificates of showing professional studies and diplomas. These certificates must be dully legalized and translated into Spanish by a translator authorized by the Supreme Court. The MOE is authorized to grant the proper registration of the Professional Title and Professional ID card, so that the foreigner’s profession may be accredited and may be carried out in Mexico.

Director and Manager Visitor (Trustworthy Position)

The FM-3 can be issued to foreigners coming to perform directionary positions or as a sole administrator, or other positions that require the absolute confidence and trust of the company or institution established in Mexico, provided that, at its discretion, the SEGOB determines that

there is no duplication of jobs and that the managerial or executive position truly requires a foreigner.

Member of a Board of Directors

Foreign national coming to attend board of directors meetings and corporate shareholders assemblies may apply for the FM-3.

In order to gain authorization for this characteristic and category, foreign nationals must present evidence of their authorization as board members issued by a board member meeting. Status is authorized for up to 1 year and is renewable up to 4 times, with multiple entries and exits. The only condition for this document is that the foreign national's stay in Mexico cannot exceed thirty days for each entry.

FM-2 for Immigrants

The FM-2 is appropriate for foreigners coming to Mexico for the purpose of remaining in the country for long periods of time and who seek permanent residency. Further, foreigners who hold FM-2 status for 5 consecutive years may apply for permanent resident status. FM-2 status is also required in order to apply for Mexican citizenship.

FM-2 status is granted for 365 days, and may be renewed up to 4 times. Foreigners maintaining FM-2 status must prove that they are in full compliance with the conditions imposed upon their admission to the country, and in compliance with the conditions established by the applicable laws, in order to request the renewal of the immigration document annually, if approved.

FM-2 cards may be obtained through a change of immigration status, or through a previous entry permit.

The FM-2 is available to investors, professionals, directors and managers (trustworthy positions), scientists, artists and athletes, and technicians categories.

Immigrants may also enter the country as “Assimilated Immigrants,” which refers to foreign nationals who enter the country to perform any allowed and honest activity, when they have been assimilated to the average national or have or had a Mexican spouse, son or daughter, so long as they are not included in the previous characteristics in the terms that the MIL or the MILR establishes.

Other Comments

Mexican Entities Receiving Services from Foreign Employees

Federal Labor Law protects the economic development of the country and the Mexican workers. For that purpose, all companies or businesses are obligated to at least employ 90% of Mexican workers.

In the technical and professional categories, the employees must be Mexican citizens with the exceptions when there are no specialized employees in that field; in such case, the employer could temporarily hire foreign employees, provided that they do not exceed 10% of the total workforce. The employer and foreign employees in the technical and professional categories have the joint liability of training the Mexican employees in their specialty. In addition, company physicians must be Mexican citizens.

Note that these rules are not applicable in the case of foreign general managers and corporate officers.

Basic File

A company or institution that has foreign nationals rendering services may request the INM to open a “Basic File,” which shall be

incorporated with the information of the company or institution and the Mexican and foreign employees that work for it. This information must be updated periodically. In some cases, local INM offices may request that a Basic File be incorporated in order to process authorizations for foreign nationals, as a prerequisite.

Special Considerations

The law provides that companies or institutions that have foreign employees rendering services are obligated to confirm that they have all the immigration documentation that certifies their legal stay in the country and that they are authorized to perform their activities in national territory. Otherwise, the company and the foreign national may be subject to a sanction.

Any changes of activities or employers must be previously authorized by the INM, otherwise, companies and foreign nationals are also subject to administrative sanctions, or even deportation.

Additionally, the Mexican company or institution that has foreigners rendering services, whether they are its employees or not, have a joint liability toward them, and in its case, the company will be obligated to cover all expenses and sanctions that apply, even the deportation expenses.

When a foreign company employs a foreign national to render services in Mexican territory, it's recommended to request that all documentation specifies the relationship between the foreign national and the foreign company, with the purpose of avoiding a labor relationship tie between the foreign employee and the Mexican company or institution, and thus avoid any further contingency.

Cancellation or Discharge of Immigration Authorization

The law provides that any company or person having a foreign national at their service or under its economic dependency, are obliged to inform the INM, when the conditions to which the foreign national is subject are to cease, or are not satisfied or complied with, within fifteen days of such event.

It is very important for companies or persons to which the foreign national provides a service to notify the INM when such state of affairs has ended. In this form, they will properly fulfill their obligation established by law; and also, they will cease to stand as jointly liable regarding the foreign national's immigration status.

Further Information

Baker & McKenzie's *Mexico Immigration Manual* provides further information about Mexican business visas, including a broader range of nonimmigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.