

# Spain

## Executive Summary

Unfortunately, Spanish immigration regulations are not fully adapted to the great immigration increase that has taken place in the country; it offers several alternatives to the different situations an employer of a foreign (non-EU) national may encounter. These range from temporary, nonimmigrant visas to temporary work and residence authorizations and permanent residence authorizations. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and procedures for accompanying family members vary depending on the situation.

## Key Government Agencies

There are several public institutions involved in the processing of visas and/or work and residence authorizations. The Ministry of External Affairs, Directorate of Consular Affairs (the “Ministry”) is responsible for visa processing at Spanish consular posts abroad. Spanish Consulates abroad have the capacity of directly granting temporary visas for business visitors, students and tourists. Such types of visas would not entail residence status for the foreigner.

All residence visas or labor related visas first require the approval of the Government Delegations, Sub-delegations or Autonomous Community Authority located at the province where the foreign national will live in Spain. Regarding non-lucrative or non-labor (i.e., that do not authorize to work) residence visas, the applicant must file the petition at the Spanish Consulate that will forward it for approval to Spain to the relevant Government Delegation/Sub-delegation/Autonomous Community Authority with jurisdiction over the applicant’s future domicile in Spain. With respect to work related visas, they require first the approval of a work and residence authorization petition by the prospective employer in Spain.

Depending on the characteristics of the Spanish company employing the foreign national, the petition must be filed either at the “large companies unit” of the State Secretariat of Immigration of the Labor Ministry or filed with the Government Delegation/Sub-delegation/Autonomous Community Authority.

Inspection and admission of travelers is conducted by the Customs and Border Protection agency at Spanish ports of entry and pre-flight inspection posts. Investigations and enforcement actions involving employers and foreign nationals is the focus of both the Labor Ministry Inspectorate and the Foreigner’s Brigade dependent of the National Police department.

### Current Trends

Border protection activity and enforcement of immigration-related laws that impact employers and foreign nationals have increased in Spain and in Europe. The Government is making bigger efforts in avoiding illegal immigration such as the significant increase in the amount of the fines for immigration sanctions. Employers of foreign nationals unauthorized for such employment are increasingly subjected to administrative and criminal penalties. Concerns about the impact of foreign workers on the Spanish labor market given the very high current unemployment rate in Spain and the lack of personnel to handle the procedures are frequently the reasons to justify longer processing times and an increase in refusals of petitions. Employers should evaluate alternatives prior to hiring foreigners as they should not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, etc., must also bear in mind the status of foreign employees and the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

Although the Spanish Law for Foreigners has been modified early this year, an amendment to its rules of implementation is still expected. The rules of implementation for the “old” Law for Foreigners are still valid in the aspects that do not contradict the “new” Law for Foreigners. The new rules of implementation may enter into force at the end of the year but at the time this issue of our Global Mobility Handbook is edited no project of the rules of implementation is in circulation or available to the public so as to be able to anticipate the changes that may be introduced in the Spanish immigration front. However, a reform of work permit renewals, access to the labor market of family dependants and facilitating administrative procedures may be an objective of the new rules of implementation.

## Business Travel

Foreign nationals coming to Spain on short-term business trips may use short term or multiple short term stay visas. In both cases, the purpose of the foreigner’s stay in Spain must be either business or tourism but under no circumstance should it be work.

Unfortunately, regulations do not clearly establish what activities are included in the term “business” as opposed to “work” although the line between one and another may be determined based on the duration of the foreigner’s stay in the country. A business visitor may very well carry out a commercial and professional activity in Spain such as business meetings, conferences, negotiations and general administration activities. Employment in Spain or work related activity is prohibited.

- Short term stay visas. Valid for a maximum three month stay within a six-month period in Spain. It may be issued for single, double or multiple entries.
- Multiple, short term stay visas. They authorize the foreigner to multiple stays in Spain but such stays may not exceed 90

days (continuous or cumulative) within a six month period. The visa is normally valid for a year but may exceptionally be issued to be valid for several years.

Visas may be extended in Spain but only if the visa authorizes a stay that does not exceed 90 days, for instance, when the visa granted to the individual is valid for one month only, the foreigner may try to obtain an extension prior to the visa's expiry but may only be granted an additional 60 days.

Unless the foreigner qualifies as a student, for stays over 90 days within a six-month period, the foreigner must obtain a residence visa.

To extend the visa, the foreigner must prove sufficient funds to cover expenses during the stay; medical insurance; accommodation; proof of intent to depart Spain (e.g., a departure ticket) and, finally, proof of the business purpose of the stay in Spain.

### *Visa Waiver*

The normal requirement of first applying to a Spanish consular post for the short term stay visa is waived for foreign nationals of certain countries. The permitted scope of activity is the same as short term stay or multiple short term stay visas. The length of stay is up to 90 days within a six-month period only, without the possibility of a stay extension or status change. A departure ticket is required together with proof of financial means during stay in Spain, medical insurance and accommodation.

All EU and EEE countries together with the following non-EU/EEE countries are presently qualified under this program: Andorra, Argentina, Australia, Brazil, Brunei, Da Russa Lam, Canada, Chile, Costa Rica, Croacia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, Nicaragua, New Zealand, Panama, San Marino, Singapore, South Korea; Switzerland, United States of

America; Uruguay Venezuela; special administrative region of Hong Kong (People's Republic of China) and special administrative region of Macao (People's Republic of China).

## Training

If the purpose of the foreign national's stay in Spain is studying, or carrying out scientific or medical investigation or training related activities that are not professionally remunerated, it is appropriate to obtain a student visa at the Spanish Consulate in the country of origin or country of legal residence abroad.

The student visa applicant must provide proof of enrollment in official studies or investigation centers, private or public, with an approved attendance schedule and studies/training or investigation plan. The foreigner qualifying as a student must show sufficient funds to for support during studies or investigation (scholarships or personal funds). Once the student is in Spain, an application for a student card must be submitted. The card is will be valid for the duration of the studies/training program, up to a maximum one year. The student card may be extended if the studies/training or investigation continue. The student's spouse and minor children may also obtain a student visa and a student card.

Holders of student cards may work in Spain under certain conditions:

- Medicine and Surgery students; Psychology students; Pharmacy; Chemistry or Biology students holding a degree officially authorized by the Ministry of Culture and Education in Spain and that are enrolled to study specialization studies in Spain may carry out remunerated work as required by such specialization studies. Such activity must be notified to labor authorities in Spain; and

- Holders of student cards may obtain a work authorization conditioned to the validity of the student card to work on a part-time basis or full-time but in this later case, the work authorization will be valid for a maximum three months, as long as the student card is valid for such time period.

Holders of student cards for, at least, three years may convert the student card into a work and residence authorization if the following conditions are met:

- The student must have finished his/her studies/investigation activities satisfactorily.
- The student mustn't have been granted a scholarship inherent to cooperation or country development programs (private or public).
- The conversion petition must be filed within the three months prior to the student card expiry date.

Family members of students who meet the above requirements to convert their student cards into a work and residence permit may also convert their student cards into non-lucrative residence permits.

## Employment Assignments

The options regarding the type of work permit to be obtained are the following:

### *Transnational Work and Residence Permits (formerly type "G" permits)*

Applicable to inter-company transfers, when a multinational decides to assign an employee temporarily from one of its work centers located outside of the European Union (EU) to Spain (excluding

transfers for training purposes); or for temporary assignments from a company located out of the EU to a company in Spain pursuant to service agreements entered into by both companies.

This type of permit has maximum one year duration and may be extended for an additional year. However, in practice if Social Security treaties between Spain and other countries enable maintenance of social security contributions for longer than two years, the transnational work permit may be extended in accordance to such social security treaty.

Certain conditions must be met as follows:

- The employee's length of services in the company must be of at least 9 months, and of at least 1 year within the same field of activity;
- During the employee's temporary transfer, his/her employment relationship (payroll and social security payments) must be maintained in the transferring entity; and
- The employee who is being transferred should hold legal and stable residence in the country from which the employee is transferred for the duration of the Spanish assignment.

Transnational work and residence authorizations are the only authorizations that allow maintenance of employment abroad, that is, the foreigner should not be hired locally in Spain and does not have to contribute to Spanish social security locally unless there is no Treaty between Spain and the country assigning the employee to Spain. In this later case, social security contributions must be made locally either by the Spanish subsidiary or by the company abroad that will have to register as an employer in Spain for social security purposes.

### *Fixed Term Duration Work and Residence Permits*

These permits authorize the performance of activities which by their nature are limited in time. Certain situations may fit into such type of permits:

- Seasonal activities, with a maximum duration of nine months within a period of twelve months;
- Installation of industrial or electric plants, maintenance of productive equipments, start up procedures, etc.;
- Fixed term activities performed by the top managers, professional athletes, performance artists, etc.; and
- Occupational training and professional practice.

With the exception of the permit for seasonal activities, which is limited to nine months as mentioned above, the general maximum initial duration of this permit is one year, although it may be extended for as long as the employee's fixed term employment contract is also extended.

Fixed term duration work and residence permits imply hiring the foreign employee locally by a company duly registered for employment and tax purposes in Spain.

### *Temporary Work and Residence Permit (formerly type B-initial permit)*

Such permit has an initial one year duration and may be extended annually until the employee obtains a permanent residence permit in Spain (after five years of legal residence). At present, the alternatives for obtaining this type of permit are quite restrictive because the approval of these work permits is subject to a labor market test unless the employee or position offered meet certain conditions as follows:

- Personal conditions: The individual must be an ascendant or descendant of a Spanish national or the spouse of a foreigner that holds a renewed residence permit in Spain or a national of Peru or Chile, or meet other specific personal requirements; and
- Special conditions related to the position in the Spanish company: The employee must be, for instance, a top management employee with ample power of attorney granted in the employee's favor to represent the Spanish company, or the employee must be a highly qualified employee whose position is directly related to the Spanish company's management or administration, or the employee must be a highly skilled specialist necessary to install or repair imported productive equipment, etc.

If none of these conditions are met, the approval of the work permit will depend on the unemployment rate in Spain, in which case the approval would only be issued if: the position offered in Spain is included in the "Difficult Coverage Job Position Catalog" ("C atlogo de Ocupaciones de Dif cil Cobertura"); or the Spanish company obtains a labor market test certificate issued by the Employment Office indicating that there are no unemployed people registered that meet the conditions required for the position.

### Processing Stages

Stage 1. Submitting work and residence authorization at the Government Delegation/Sub-delegation/ Autonomous Community Authority or Large Companies' Unit of the State Secretariat of Immigration of the Labor Ministry.

Stage 2. Approving work and residence authorization. The immigration authorities may take from 1 - 3 months to adjudicate the work and residence authorization application. A notification of

approval will be issued and, normally, sent by mail to the Spanish company sponsoring the work permit application. Such notification must be given to the employee.

Stage 3. Applying for work/residence visa. The employee will have thirty days as from the notification of approval is received to apply for and obtain the work and residence visa at the Spanish Consulate in the country of origin or country of legal residence with jurisdiction over the employee's residence.

Stage 4. Issuing visa. Once the application for the visa has been filed, the Consulate may take from 48 hours to 30 days to approve and issue it. Once the visa approval has been notified to the employee, he or she will have 30 days to retrieve it at the Spanish Consulate's premises. Regulations establish that the retrieval should be made personally by the foreign employee. The ordinary work/residence visa is valid for 90 days and authorizes one entry into Spain/Schengen territory. The employee must enter Spain within the visa's validity.

Stage 5. Working in Spain and obtaining Foreigner's ID Card. Once the foreign employee enters Spain with the visa, employment is authorized. The foreign employee will have 30 days as from entry to attend the relevant immigration office (e.g., police station for foreigners) with jurisdiction over his/her residence in Spain to apply for the foreigner's ID card that is the final document that will serve for purposes of identification in Spain together with the individual's passport.

## Family Members

Family members (spouse, children under 18 years of age or dependant ascendants when there are justified reasons to approve their residence in Spain) may obtain a residence permit that, in principle, does not authorize to work in Spain following the below procedures:

- Via the Large Companies' Unit of the State Secretariat of Immigration of the Labor Ministry ("Unidad de Grandes Empresas"). This unit processes work and residence authorizations for companies that have either: (i) more than 1000 employees in Spain; (ii) a volume on investments in Spain over 200 million euros; or, finally (iii) if the company has declared a gross investment (funds from abroad) of, at least 20 Million Euros. This said, if the foreign employee holds a top management position, the residence permits of the family members must be applied for and processed together with the work and residence authorization of such foreign employee. Therefore, when the employee's work authorization is approved, the family members' non-lucrative residence authorizations are also approved.
- Via family reunion. The foreign employee who has applied for the renewal of the residence permit may apply for the family's residence authorizations at the Government Delegation/Sub-delegation with jurisdiction over the residence in Spain. If the residence authorizations are approved, family members will have 30 days to submit their residence visa applications at the Spanish Consulate located in their country of origin or country of legal residence. Once the visas have been issued on the applicants' passports they may travel to Spain and apply for their foreigner's ID cards.
- Via ordinary non-lucrative residence authorizations. Family members of top management employees may submit their visa applications at the same time the employee does (please see Stage 3 of the procedure to obtain a work and residence authorization in Spain). However, their residence visas will be approved 3-4 months after filing the applications. The reason for the delay is that their applications are forwarded to Spain so that the Government Delegation/Sub-delegation/Autonomous Community Authority approves the

Of all three cases, only if the family members obtain their residence permits via family reunion would they be able to work in Spain directly without having to previously obtain a work permit. With respect to the other two procedures to obtain a family residence permit, they do not authorize to work but family members (in the case of children, they must be of legal age, sixteen, to do so) may obtain work and residence authorizations if they are offered a position by a company established in Spain. The new rules of implementation may change this aspect of Spanish regulations and establish that the residence permit of family dependants authorizes to work in Spain regardless the procedure followed to obtain it.

### Other Comments

There are additional authorizations that may apply to the specific cases such as work permit exception and residence authorizations that apply to Directors or professors of foreign or local Universities. Also, Spanish immigration regulations establish a way to obtain a work and residence authorization based on the years a foreigner has remained in Spain and on his/her insertion in Spanish society. In effect, work and residence authorizations based on exceptional circumstances, “*arraigo social*,” may be obtained if a foreigner has remained in Spain for more than three years and has been offered employment for more than a year.

Immigrants to Spain are often interested to later become Spanish citizens. Naturalization to citizenship generally requires ten years of continuous residence after immigrating, however, this general period is shorter for nationals of countries such as: Morocco or Philippines

(to five years); nationals of all South and Central American countries (to two years); and for the spouse of a Spanish national or the son or grandchild of a Spanish national (to one year). The processing of a Spanish citizenship petition via previous years of residence in the country may take up to three years.