

Republic of Turkey

Executive Summary

Foreigners entering the Republic of Turkey (“Turkey”) for the purposes of employment, regardless of the length of stay, are required to obtain a Work Permit. The Work Permit is granted by the Turkish Ministry of Labor and Social Security. The Work Permit application should be initiated by the employee upon visiting his or her nearest Turkish Consulate/Embassy in person with the requisite supporting documents in the event that such employee does not have a Residence Permit in Turkey with a validity period of at least six months which is a prerequisite for making a direct application to the Ministry for a Work Permit.

The Republic of Turkey permits the citizens of certain countries to make a direct application in Turkey for a Residence Permit; and therefore those who have accordingly been granted a Residence Permit with a validity period of at least six months (for any reason, except education and training) can directly apply to the Ministry of Labor and Social Security for a Work Permit within this period.

Key Government Agencies

Turkish Consulates/Embassies are responsible for visa processing and Work Permit applications abroad.

The Ministry of Labor and Social Security is responsible for granting Work Permits.

The Foreigners’ Branches of the Local Police Departments are responsible for granting Residence Permits.

The Local Border Police Authorities are responsible for visa processing for the citizens of certain countries.

Current Trends

According to the Law on Work Permits for Foreigners (“Law”) and the Regulation on the Implementation of the Law on Work Permits for Foreigners (“Regulation”); the business inspectors of the Ministry of Labor and Social Security and the insurance inspectors of the Social Security Institution make audits in accordance with the provisions of the Labor Law to determine as to whether or not the liabilities attributed to foreigners and their employers in the Law and the Regulation are fulfilled.

The inspection and audit members of the departments included in the general budget and the administrations with added budget also make inspections to determine as to whether or not the employers that employ foreigners and the foreigners fulfill their obligations arising from the Law, during any kind of audit and inspections performed by such inspection and audit members in the workplaces. The inspection results are also notified to the Ministry of Labor and Social Security.

If a foreigner works unregistered and without a Work Permit, the situation is determined with an official report. In order to implement the administrative penalty in the Law for the foreigner and the employer or the employer’s representative, the said official report is sent to the District Offices of the Ministry of Labor and Social Security. Since the foreigner can be notified about the penalty abroad as well, within the framework of Law of Notice, the foreigner’s address abroad is also mentioned in the official report. During the inspections, the unregistered foreigner’s entry to Turkey, visa, passport and residence permit issues are investigated and the illegal foreigner’s deportation procedure is initiated.

Upon implementation of the Law the above stated administrative fine process comes into force for the foreigners who work without a Work Permit and for their employers. If the said action is repeated, the administrative fines are doubled.

As per the Law, the employer has to pay not only the fines imposed against the employer and the foreigner, but also the accommodation costs, travel costs for returning to their countries and the costs of treatment, if necessary, for foreigner's spouses and children (if any).

If the deported foreigners do not pay the administrative fines, the foreigners are made subject to a program named "Ç" in order to collect the fines at the time of entry into Turkey and foreigners will not be accepted without payment.

Business Travel

A foreigner can enter into Turkey with a Tourist Visa for business travels for the purposes of meetings, negotiations, etc. provided that the foreigner does not do any business in Turkey (*i.e.* the foreigner does not engage in commercial activity) and that the foreigner does not work in Turkey.

As a general rule, the foreigners desiring to travel to Turkey for tourism purpose should apply to his/her nearest Turkish Consulate/Embassy for a Tourist Visa in person with supportive documents particularly when the visa application is lodged for the first time. Visa applications may also be received by mail in exceptional cases, especially in geographically large countries and when the applicant is well known by the Turkish Embassy/Consulate where the application is lodged.

The citizens of certain countries have the possibility to obtain their visas at the Turkish border gates (sticker visa) upon submission of (i) a valid travel document (passport) (It should be valid at least three months longer than the expiry date of the visa requested.) and (ii) Non-refundable visa processing fee (the amount differs depending on the nationality and visa type). Any other documents which are relevant to the applicant's visit/stay in Turkey can be requested by the

Turkish border officials and also note that only tourist visas may be issued at the Turkish border gates.

Single Entry Tourist Visa is valid for a period of one year and allows its holder, depending on the nationality and passport type, to stay in Turkey up to three months and to visit the country only once.

Multiple Entry Tourist Visa is valid for a period of up to five years and allows its holder to make multiple visits and, depending on the nationality and passport type he/she can stay one to three months each time he/she enters into Turkey.

Residence Permits

An entry visa enables the bearer to stay in Turkey for the duration stated on the visa sticker. However, if the person intends or is obliged to stay in Turkey longer than the permitted duration, this extension is subject to the approval of the Ministry of Interior. In this case, the person has to obtain a Residence Permit.

Applications for Residence Permits should be made to the Foreigners' Branch of Local Police Departments within 30 days upon arrival at Turkey. Applicants are generally required to submit Work Permit, Work Visa, Education Visa or Research Visa and a letter describing his/her circumstances (*i.e.* employment, education, marriage to a Turkish citizen).

Once the person is granted with the Residence Permit, he/she can enter into Turkey multiple times as long as his/her Residence Permit is valid and thus he/she does not need a visa for entry into Turkey. If the extension of the Residence Permit is required, the extension or renewal should be made timely before the expiry date. The person is recommended to have the validity of the Residence Permit extended before leaving Turkey, if the validity of the Residence Permit is due to expire or has already expired.

Training

There is no type of visa in Turkey designed exclusively for training. For classroom-type training, a foreigner can enter into Turkey with a Tourist Visa and for on-the-job training, the same procedure for employment assignments which are subject to Work Permit applies.

Employment Assignments

Conduct of business in Turkey requires an establishment of a Turkish entity and a foreign employee requires a Work Permit to work for a Turkish entity. During the establishment period it may be argued that such foreigner is traveling back and forth from his/her country to Turkey (with a Tourist Visa) to assist the formation of the Turkish entity. If, however, the intention is for a foreign company to do business in Turkey prior to the establishment of its Turkish entity, such company may consider entering into Technical Service Agreement or Consultancy Agreement whereby the foreigner provides services to a third party Turkish entity.

Foreigners who have already been granted Residence Permits in Turkey which is valid for at least six months (for any reason, except education and training) may directly apply for Work Permits to the Ministry of Labor and Social Security with the supportive documents. Otherwise, the Work Permit application should be initiated by the employee upon visiting his or her nearest Turkish Consulate/Embassy in person with the requisite supporting documents.

The application for a Work Permit to be made from abroad through the Turkish Consulate will be for a Work Permit for a Definite Period of Time as detailed herein below.

Work Permit for a Definite Period of Time

Unless otherwise is provided in the bilateral or multi-lateral agreements to which Turkey is a party, Work Permit for a Definite Period of Time is granted for a period of at the most one year in order for the foreigner to work in a certain workplace or enterprise and in a certain job, taking into consideration the situation in the business market, developments in the labor life, sectorial and economic conjuncture changes regarding employment, the term of the Residence Permit of the foreigner and the term of the employment agreement or the work.

The Ministry of Labor and Social Security may extend or narrow down the area of validity of the Work Permit for a Definite Period of Time by taking the city, administrative border or geographical area as the basis. In this case, the Ministry of Labor and Social Security shall communicate this decision to the relevant authorities to whom the former advises the Work Permits.

After the legal working period of one year, the period of the Work Permit may be extended up to three years, provided that the foreigner works in the same workplace or enterprise and in the same job.

At the end of the working period of three years, the term of the Work Permit may be extended further for a maximum period of three years in order for the foreigner to work in the same job and with any employer of his/her discretion.

Work Permit for a Definite Period of Time may also be granted to the spouse of the foreigner, having come to Turkey to work, as well as the children under the foreigner's care, provided that they have legally resided with the foreigner without interruption for a period of at least five years.

Residing for at least 8 years or working for at least 6 years in Turkey is obligatory to obtain the Work Permit for an Indefinite Period of

Time. Furthermore, in order to obtain the Independent Work Permit the foreigner should reside in Turkey for at least 5 years.

In accordance with the Regulation, all the required documents need to be submitted to the Ministry of Labor and Social Security within 10 business days following the date on which such work permit application has actually been made through the Turkish Consulate.

The consulate office then submits the visa application to the Ministry of Labor and Social Security to prepare a decision. In most cases it could take 90 days for the Work Permit to be issued by the Ministry of Labor and Social Security. The employee will be informed by either phone or e-mail once his or her application has been approved.

When the Work Permit is approved and issued by the Ministry of Labor and Social Security, the next step in the process is that the employee takes his or her passport along with applicable visa fees to the Turkish Consulate where he or she initiated the Work Permit request in order to obtain a Work Visa (which is given to the Work Permit holders and is issued for a single entry) to enter into Turkey.

A person can only apply for a Work Visa after he/she has signed an employment agreement with a Turkish employer and has applied for a work permit to the Ministry of Labor and Social Security. Finally, when the transferee arrives in Turkey, Work Permit holders must apply to the Foreigner's Branch of the Local Police Department before the commencement of the employment and at the latest within 30 days after entering Turkey to obtain a Residence Permit.

The Ministry may require additional documents. All documents in a language other than Turkish should be translated into Turkish and notarized by a Turkish Notary Public prior to submission of such to the Ministry.

In order for a final assessment of the work permit and residence permit issues, the scope and objective of the Turkish entity and the details of education and profession of each and every employee to be employed by the Turkish entity need to be known since in applications within the scope of professional services (such as engineering) where the education of the foreigner falls within the scope and objective of the Turkish entity, diploma equivalency will also be required for the Work Permit application.

The payroll and social security obligations of the employer start as of the commencement date of the employment of the employee.

The concept of secondment does not exist in Turkey and that there is a requirement for the employees to be fully employed/paid by the Turkish entity to enable such Turkish entity to make the requisite payments to the authorities. It should be noted that “payroll agent” concept does not exist in Turkish legal system.

Following the obtaining of the Work Permit, the employee is under the obligation to make an application to the Foreigner’s Branch of the Local Police Department in order for the annotation of his Work Permit on his Residence Permit. Once such procedure is completed, the family members of the employee will be eligible to make an application to the Foreigner’s Branch of the Local Police Department in order for the issuance of a Residence Permit on their behalf based on the Work and Residence Permit issued in the name of the employee.

Other Comments

Exceptional Cases for and Exemptions from Work Permit

The Law provides for certain exceptional cases for granting Work Permits to foreigners without being subject to the periods stated in the

Law. For temporary employment assignments, out of the exceptional cases, the following may be of interest:

Foreigners featuring the Status of Key Personnel. If foreigners featuring the status of key personnel, who are supposed to be employed in the acquisition of goods and services, the performance of a task or the operation of a plant, besides, in construction and all kind of building works, by means of contracts or tenders by legally authorized ministries as well as public institutions and establishments, apply for Work Permits, their Work Permits may be exceptionally granted for the period stated in the contract or the tender.

The Law also provides for the circumstances where foreigners shall not be required to obtain Work Permits for a definite period of time stipulated in the Law depending on the circumstances concerned. A “Work Permit Exemption Certificate” is given to the foreigner under exemption upon request.