

Bolivarian Republic of Venezuela

Executive Summary

Venezuelan immigration laws are an increasingly important and sensitive consideration when planning an investment in the country. Careful planning of employees' transfer to Venezuela is a key factor to achieve a successful business venture in Venezuela.

Compliance with Venezuelan immigration laws will safeguard companies from sanctions and penalties. While other applicable provisions exist, immigration laws are primarily in the Law on Alien Citizens and Migration which became effective in November, 2004 (the "Migration Law"). The Migration Law regulates all matters related to the admission, entry and permanence of alien citizens, as well as their rights and obligations in Venezuela, and it applies to all alien citizens, regardless of whether they are in Venezuelan territory legally or illegally. In addition to the Migration Law, the Joint Resolution (the "Resolution") issued by the Ministry of the People's Power for Internal Relations and Justice (the "Ministry of Internal Relations and Justice"), the Ministry of the People's Power for Foreign Affairs (the "Ministry of Foreign Affairs") and the Ministry of the People's Power for Labor and Social Security (the "Ministry of Labor"), have set forth the rules and procedures for the issuance of visas (Official Gazette dated January 2000). Although this Resolution was enacted and became effective in 2000, it remains in force and effect for all matters not specifically abrogated by the Migration Law. Finally, it is very important to consider as part of the immigration laws the current administrative policies, rulings and interpretations given from time to time by the officials and other authorities in charge of the relevant governmental agencies responsible for immigration matters, particularly the Ministry of Labor and the Ministry of Internal Relations and Justice.

The Venezuelan legislation provides many solutions to help employers of foreign nationals. Requirements, processing times and employment eligibility vary by visa classification.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for certain visa processing at Venezuelan consular posts abroad. The Ministry of Labor, with the purpose of protecting Venezuelan workers, is involved in the process when a work visa (TR-L) is applied for. Inspection and admission of travelers is conducted by the Ministry of Internal Relations and Justice agency at Venezuelan ports of entry.

Current Trends

Under the Migration Law, employers of foreign nationals unauthorized for such employment are currently subject to administrative and criminal penalties. Employers should therefore not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, *etc.*, must evaluate 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 a result of the risks of penalties provided for in the Migration Law.

Business Travel

Business Visitor Visa (“TR-N”)

This type of visa is granted to foreign business executives or corporate representatives that wish to enter Venezuela in order to perform financial, commercial or business activities, or any other profitable and legal activity related to their business. The TR-N is valid for 1

year and confers the right to enter and depart from Venezuela without limitation, although one may only remain in Venezuela for a continuous term of 180 days. Once such term has elapsed, the person must depart from Venezuela; otherwise, the visa will not be renewed. Notwithstanding the foregoing, the person may enter and remain for less than 180 days, as many times as needed.

The TR-N is currently granted by the Ministry of Foreign Affairs through the Venezuelan consulates in the country where the person who wishes to obtain this visa resides. Generally, each of the Venezuelan consulates is autonomous in terms of determining the procedure for the issuance of the TR-N, as well as additional documentation required for such purposes. Additionally, such consulate will analyze the purposes for which the company wishes to invite the person requiring the TR-N visa to come to Venezuela, as well as the nature of the activities to be performed by such person in Venezuela. Once the consulate has reviewed the documents listed below, it will authorize the issuance of the TR-N to the person requesting it. Once the TR-N has expired, it may be extended for an equal period, as many times as the relevant consulate may decide.

Please note that since the TR-N is not granted by the Ministry of Labor, a work permit is not required and it is not necessary to establish a corporate entity in Venezuela as an in-country sponsor, though an invitation letter from an established Venezuelan company usually is required. Furthermore, since the TR-N is a business visa, the person to whom it is granted cannot be an employee of the company for which services will be carried out in Venezuela. In this respect, the person cannot be included on the payroll of or receive benefits from such company.

Training

There is no type of visa designed exclusively for training. For on-the-job training that involves productive work, the same visa used for

most employment assignments that authorizes employment is the most likely solution.

Employment Assignments

Work Visa (“TR-L”)

This type of visa is granted to any employee, business executive or corporate representative that may be performing his/her services in Venezuela for a period of at least 1 year, under an employment agreement executed with a company in Venezuela, as explained below. It is valid for 1 year and confers the right to enter and depart from Venezuela without limitation. If the applicant will be accompanied by family (*i.e.*, husband or wife, children, parents, and father or mother-in-law), the TR-L will extend to each family members. It is important to note that even though the Resolution refers to a working period of at least 1 year, the TR-L is necessary to legally work in Venezuela even for periods of less than 1 year.

The procedure to obtain a TR-L is divided into 3 stages:

- The first stage is before the Ministry of Labor, where the purposes for which the company in Venezuela wishes to hire a foreign employee, as well as the nature of the services to be performed in Venezuela, are analyzed. At this stage, an offer of employment is made by the company before a Notary Public (the “Employment Offer”). Such document will then be considered as an employment agreement between the applicant and the company. The Ministry of Labor will review whether or not the company that will employ the services of the foreign employee will be in compliance with the restrictions for the hiring of foreign employees set forth in Article 27 of the Venezuelan Organic Labor Law (the “OLL”). According to this OLL provision, at least ninety percent of the company’s workers, both laborers and

employees, must be Venezuelans. Consequently, though certain exceptions could be obtained in a few cases, no more than ten percent of the company's workforce may be composed by foreign nationals. If the Ministry of Labor finds that all requirements are met, this first stage finalizes with the issuance of the work permit by the Ministry of Labor.

- The second stage is carried out before the Identification, Migration and Foreign Administrative Service (“SAIME”) (“Servicio Administrativo Identificación, Migración y Extranjería”), where the aforementioned work permit and some additional documents are analyzed. This stage finalizes with the issuance of the authorization to the Venezuelan consulate to grant the TR-L or work visa.
- During the third stage, the applicant must appear before the Venezuelan consulate of his/her country of origin or residence. Such consulate shall issue and stamp the TR-L in the applicant's passport. Please note that each Venezuelan consulate is autonomous in determining its own procedure for stamping the visa, as well as in terms of the documentation that must be submitted for such purposes. Generally, the applicant and his/her family will be subject to medical tests and examinations at the consulate, and also a certification of police records and a cash deposit may be required.

The TR-L may be extended for an equal period once it has expired. In addition, please note that the foreign national could start validly working in Venezuela once the corresponding TR-L has been issued.

Other Comments

Other types of visas for entry into Venezuela, which were not the focus of this article, could be applied for and obtained (for example,

resident's visa). If you would like to obtain information about those, please contact us at the information provided below.

According to Article 10 of the OLL, the OLL applies to services performed or agreed upon in Venezuela, irrespective of the nationality of the employee. Consequently, when a foreign employee is transferred to work in Venezuela, especially if the work will be performed on a habitual basis in Venezuela, the provisions of the OLL and the Venezuelan labor legislation apply.

In this respect, the OLL and the Venezuelan labor and social legislation in general contain a set of mandatory conditions, contributions, obligations and labor and severance benefits that must generally be provided, complied with and paid by the employer in the benefit of his/her/its employees. The employer's failure to do so would subject the employer to potential liabilities, and it is important to obtain legal advice in connection therewith, preferably well in advance of transferring or hiring the employee to work in Venezuela. Based on recent rulings from the Venezuelan Supreme Court of Justice, there might be other legal options for companies to comply or deal with the Venezuelan labor and social security provisions while reducing the implied risks, and we encourage you to contact your Venezuelan legal counsel in order to obtain legal advice on this matter well in advance of transferring or hiring the employee to work in Venezuela.