

Immigration to Malaysia

June 2008

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The law is stated as at June 2008.

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Types of Passes Relating to Employment

There are two passes issued for the purpose of employment, namely:

- Employment Pass; and
- Visit Pass (Professional).

There is no definition for “taking up employment” in Malaysia under the Immigration Act but this could include any activity conducted in Malaysia by a person as an employee, whether for a foreign employer or Malaysian employer.

A. Employment Pass

An Employment Pass is issued to a managerial or professional-level foreigner who is to be employed by a Malaysian employer (i.e., Malaysian incorporated subsidiary, Malaysian registered branch of a foreign corporation or a Malaysian representative office). Any employer applying for an Employment Pass must show why the foreigner must be employed rather than a Malaysian citizen or permanent resident. An acceptable reason is that there is no Malaysian citizen or permanent resident available who is suitable in terms of academic qualifications and relevant practical experience or technical skills. An Employment Pass will allow the holder to engage in a full range of employment activities.

Application for an Employment Pass should be made 3 months prior to the arrival of the foreigner. However, it is common, although not always advisable, for a foreigner to enter on a Social Visit Pass obtained by oral application at the point of entry (or at the relevant Malaysian Consulate prior to traveling) and for the employer to thereafter apply for an employment pass prior to the foreigner taking up employment. The Social Visit Pass encompasses the permissible business activities previously under the now-abolished Visit Pass (Business). If the foreigner intends to take up employment immediately, the employer could apply for a Visit Pass (Temporary Employment) simultaneously with the application for an Employment Pass.

A limited number of Employment Passes may be granted to foreigners employed by a Malaysian subsidiary. Generally, the Immigration Department is reluctant in granting employment passes to foreigner employees of a branch of a foreign company except with a letter of support from a Ministry or government body, such as where the branch is involved in a government project. However, it appears that this policy has been slightly relaxed just recently and it may be possible for the Immigration Department to grant up to 2 Employment Passes to foreigner employees of a branch office for key positions.

1. Application procedure

The application procedure for an Employment Pass is a two-stage process:

- 1.1 The applicant company applies for an expatriate post (an application “for the services of an expatriate”), by submitting a completed Form DP 10. This form must be submitted in 2 sets accompanied by a letter of justification in the Malaysian language from the employer justifying why the post must be held by a foreigner, whether there are any prerequisites, qualifications, and experience not available in Malaysia and whether steps (i.e., advertisements) have been taken to recruit a Malaysian to fill the post and provide evidence of such steps taken. The letter of justification should indicate the benefits the company could bring to the Malaysian economy and the labour force.

The following information and documents are to be furnished in support of the application:

- particulars of applicant company;
 - employment structure according to category;
 - copy of duly-stamped short-form employment contract;
 - copy of foreigner’s passport;
 - job description;
 - corporate documentation of the employer i.e., Memorandum and Articles of Association;
 - where required, copy of approval of relevant Malaysian governmental agencies;
 - information on the post and the foreign applicant;
 - organisation chart, indicating each post and the person designated for each post, including vacancies and the post being applied by the foreign applicant; and
 - resume and copies of the academic qualifications of the foreigner.
- 1.2 Following approval of the expatriate post, the application for the issue of the Employment Pass must be submitted together with:
- three recent passport-size photographs of the foreign applicant;
 - copy of the foreigner’s passport;
 - completed Form DP 11;
 - the original short-form employment contract between the company and the foreigner, duly stamped;

- cover letter from the employer making reference to the approval of the post and requesting issue of an Employment Pass to the relevant foreigner;
- resume and copies of the academic qualifications of the foreigner;
- if the employer is a Malaysian company, Forms 9, 13, 24, and 49, the Memorandum, and Articles of Association of the company;
- if the employer is a Malaysian branch, Forms 79 and 83, the Memorandum, and Articles of Association of the company;

An Employment Pass is generally issued for a period of 2 years, up to the maximum of three. An application for renewal before its expiry may be submitted but there is no guarantee of approval.

B. Temporary Employment Pass

If a Malaysian company requires the immediate services of the foreigner for whom an application for an expatriate post has been made, the company can apply for a Visit Pass (Temporary Employment) in the interim, usually valid for a period of 3 months, i.e., the approximate duration for the approval of the principal application. It may be possible to extend the Visit Pass (Temporary Employment) prior to its expiry but this is subject to the eventual decision on the principal application.

The procedure and the forms for application for a Visit Pass (Temporary Employment) are generally similar to that for the Employment Pass.

C. Visit Pass (Professional)

A Visit Pass (Professional) is for engaging in a professional occupation or work in Malaysia. In the application, the applicant must, with a letter of support from the local sponsor disclose the activities which the applicant intends to conduct in Malaysia. The local sponsor must agree to be responsible for the maintenance and repatriation of the foreigner from Malaysia should it become necessary. A pass holder may conduct the activities for which the pass has been approved. It is a condition of the Visit Pass (Professional) that any change in the business or professional purposes for which the Visit Pass (Professional) is issued must be made with the written consent of the Director-General of Immigration.

Normally, a Visit Pass (Professional) is granted only for a period of three to six months, but may be extended to a maximum period of one year. Pursuant to recent regulatory changes, a Visit Pass (Professional) may be used only for secondments and the intended holder must register with the Malaysian Inland Revenue Board before submitting the application. Employers seeking to directly engage non-Malaysians must apply for an Employment Pass or a Visit Pass (Temporary Employment).

Other Passes

For a short stay in Malaysia, other than for employment, such as for social purposes or for business, a Social Visit Pass may be obtained at the point of entry into Malaysia. Depending on the nationality however, a visa issued by the Malaysian consulate may be required.

A. Social Visit Pass

A Social Visit Pass is solely for the purpose of a social, tourist, or business visits. For business purposes, a person who has been issued with the Social Visit Pass is permitted to carry out the following activities while in Malaysia:

- Attending meetings;
- Attending business discussions;
- Inspection of factory;
- Auditing company's accounts;
- Signing agreements;
- Conducting survey on investment opportunities/setting up factory; and
- Attending seminars.

Malaysia My Second Home Programme, Malaysian Permanent Residence, and Citizenship

A. Malaysia My Second Home Programme

1. Introduction

- 1.1 The Government of Malaysia introduced the Malaysia My Second Home Programme (“**MM2H**”) to encourage non-Malaysians to stay in Malaysia on a Social Visit Pass with multiple entry visa. The Social Visit Pass is valid for ten years with the possibility of an extension for another ten years. Under this programme, successful applicants are not allowed to work or to be employed while in Malaysia. This programme does not guarantee permanent resident status.
- 1.2 The MM2H is managed by the Ministry of Tourism, Malaysia (“**Ministry**”). The Ministry acts as a one-stop centre to facilitate applicants who wishes to

apply to stay in Malaysia pursuant to MM2H. MM2H is open to all citizens recognised by Malaysia regardless of race, age, gender, and religion. The applicant's dependants, who are under 18, as well as their domestic assistants, may stay in Malaysia with the applicant.

- 1.3 MM2H is not available to foreigners who are married to Malaysians. These foreigners may instead apply to stay in Malaysia under the Immigration Department's "Spouse Programme" with a Long Term Social Visit Pass. If they are employed in Malaysia, their employers will need to obtain the appropriate work permit for them.

2. Conditions

The conditions of approval are as follows:

2.1 Financial Requirement

2.1.1 Applicant above 50 years of age.

- Applicants must possess a fixed deposit account in any financial institution, including foreign ones with local branches, of not less than RM150,000. After one year, the successful applicant can withdraw up to RM90,000 for approved expenses relating to house purchase, education for children in Malaysia, and medical purposes. The successful applicant is required to maintain a minimum of RM60,000 from the second year onwards and throughout their stay in Malaysia under the programme; or
- Applicants must derive fixed monthly offshore income of not less than RM10,000, such as pension scheme, from abroad.

2.1.2 Applicant below 50 years of age.

- Applicants must possess a fixed deposit account in any financial institution, including foreign ones with local branches, of not less than RM300,000. Similarly, after a period of one year, the successful applicant can withdraw money for expenses relating to house purchase, education for children in Malaysia and medical purchases. The withdrawal is capped at RM240,000. From the second year onwards and throughout the applicant's stay in Malaysia under the programme, the applicant must maintain a minimum balance of RM60,000.

Applicants are expected to be financially capable of supporting themselves for ten years while in Malaysia under this programme, as they will not be allowed to work or be employed whilst in Malaysia. Besides fulfilling the basic financial

criteria as stated above, applicants should also furnish documentation on their financial position in support of their application.

In addition, successful applicants should not participate in activities that can be construed as sensitive to the local people and a threat to the security of the country.

2.2 *Medical Report and Insurance*

All applicants are required to submit a medical report from any private hospital or registered clinic in Malaysia. All applicants must also have valid medical insurance cover issued by a Malaysian or foreign insurer.

2.3 *Sponsor Requirement*

Sponsors for these applications must be Malaysian citizens or permanent residents. This is only required for an application submitted by a third party. There is no such requirement if the applicant submits the application personally.

3. **Application**

All applicants who wish to apply under the MM2H programme must submit the following documents through licensed MM2H agents only:

- Letter of application;
- One Social Visit Pass application forms (Form IM.12) (and spouse and children, where accompanied by spouse and children);
- One MM2H Application Form;
- Two passport-size photographs of applicant (and spouse and children, where accompanied by spouse and children);
- Certified true copy of passport/travel documents (all pages);
- Personal bond duly signed by the sponsor and stamped (where applicable);
- Certified true copy of the marriage certificate (if accompanied by spouse);
- Certified true copy of birth certificate (if accompanied by children);
- Certified true copy of latest three months bank statement/other related financial document to indicate the financial capability to support stay in Malaysia or at least three months certified copies of pay slip/pension slip/income statement etc;

- Certified true copy of the applicant's fixed deposit receipt (upon approval); and
- Any other relevant supporting documents as may be required.

The processing and approval process takes approximately 45 working days from the date of submission of application provided all documentations are complete.

4. Incentives

Participants are provided with various incentives during their stay in Malaysia under the MM2H programme. These include, inter alia, acquisition of residential units, car purchase, domestic assistants, education, and tax exemptions.

4.1 Acquisition of residential unit

Participants can purchase unlimited units of residential units at a minimum price without the need for Foreign Investment Committee ("FIC") approval. Participants can purchase all categories of residential units except the following:

- Low-costs and medium low-costs units as determined by relevant state authorities;
- Units built on Malay reserve land;
- Units reserved for Bumiputra quotas; and
- Agricultural land developed on the basis of homestead concept.

Generally, the minimum price for the purchase of residential houses is above RM 250,000 each for all states except certain areas in the state of Sarawak (Kuching and Miri) where the minimum price is above RM 300,000 each.

4.2 Car purchase

Each participant has one car purchase option:

- to bring in their personal car; or
- to purchase a Malaysian assembled car without import duty, excise duty, and sales tax.

4.3 Domestic assistants

Participants are allowed to bring foreign domestic assistants subject to approval from the Immigration Department. Otherwise, participants can apply for one domestic assistant subject to the prevailing immigration guidelines.

4.4 *Education*

Children of the successful applicants may continue their schooling in Malaysia, but are required to apply for a Student Pass if they are between the ages of seven to 18 years old, and should be insured throughout their stay under the MM2H programme.

4.5 *Tax exemption*

Tax exemptions are only granted to pension monies remitted into Malaysia. To be eligible, the participant must submit confirmation from the authorities in their country of origin as to the total amount of yearly pension received.

B. Malaysian Permanent Residence

The Malaysian Government has full discretion in deciding whether or not to grant permanent resident and citizenship status, even to eligible persons. It is difficult to obtain Malaysian permanent residence or citizenship.

The following categories of persons are eligible for permanent residence in Malaysia:

- (i) Wives of Malaysian citizens who have lived in Malaysia continuously for at least five years preceding their applications;
- (ii) Children below six years of age whose parents or at least one of them is a citizen or permanent resident of Malaysia; or
- (iii) Spouse and children of Malaysian citizen who possess expertise/skills as well as overseas working experience who are planning to return and work in Malaysia (under the programme to encourage Malaysian citizens residing overseas, who have expertise to return to Malaysia).

Applications submitted under items (i) to (iii) above will be approved by the Director-General of Immigration. Applicants not within either of the above categories (e.g., expatriates or investors) will have to submit their applications to the Ministry of Home Affairs via the Immigration Department. The approval for permanent residence for this category of applicant falls under the discretion of the Minister of Home Affairs. Generally, at least five-year residence in Malaysia is required before an appeal will be considered.

The application form for permanent residence may be obtained from any Malaysian Immigration Department office. The form contains the rules, regulations, and procedures relating to applications for permanent residence in Malaysia.

C. Malaysian Citizenship

Malaysian citizenship may be obtained in any of these four ways:

- operation of law;
- registration;
- naturalisation; or
- incorporation of territory.

However, in practice, citizenship is obtained by way of registration or naturalisation.

1. Citizenship by registration

The following categories of persons are eligible to obtain Malaysian citizenship by registration:

- wives and children of Malaysian citizens;
- any person under the age of 21, one of whose parents is (or was at death) a citizen;
- persons born in the Federation of Malaya before Independence Day; and
- persons residing in Sabah and Sarawak on Malaysia Day by making an application to the Federal Government before September 1971.

2. Citizenship by naturalisation

As the eligibility criteria for citizenship by registration are restrictive, it will be more likely that an application for citizenship will be by way of naturalisation. An applicant for citizenship by naturalisation must show that he or she:

- has resided in Malaysia for at least ten out of the 12 years (including the immediately preceding 12 months) preceding the application for citizenship and intends to live permanently in Malaysia;
- is possessed of good character; and
- has an adequate knowledge of the Malay Language.

In practice, an applicant for citizenship by naturalisation must first obtain permanent residence and only after 12 years of residence in Malaysia thereafter, may the applicant apply for citizenship by naturalisation.

The application forms for citizenship may be obtained from any National Registration Department (“**NRD**”) office. The relevant form must be submitted with such documents as are applicable, such as the spouse’s birth certificate and identification card (“**MyKad**”), marriage certificate, children’s birth certificates (if any), and the applicant’s

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travel document as well as entry permit to enter and remain in Malaysia. If the application is not rejected by the NRD, a MyKad will be issued to the applicant.

Upon obtaining the MyKad, the applicant will then approach the Immigration Department for the issuance of a letter certifying that the applicant is a citizen of Malaysia. At this juncture, the applicant will be required to surrender the existing original passport and entry permit. Please note that the Immigration Department will require the applicant to attend an interview in order to test amongst other things, in the case of an application for citizenship by naturalisation, the applicant's knowledge of the Malay language and generally of Malaysia. Upon obtaining the certification letter from the Immigration Department, the applicant will then be able to apply for an international passport. This process may take years.

Successful applicants for citizenship must renounce citizenship of any other country and take an oath of allegiance and loyalty.

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