IMMIGRATION POLICY GUIDELINES FOR
GLOBAL MOBILITY PROFESSIONALS
With the growth of global travel and international relocation, Global Mobility leaders should consider developing written policies that cover the legal and practical issues of moving employees across borders. This backgrounder provides high-level suggestions on some key issues related to mobility and immigration that should be part of every global company’s policy manual.
What should my company’s policies consider regarding the topic of immigration—both for the U.S. and the rest of the world?

Although every company will have its unique needs when moving and relocating employees around the world, all employers who send employees across international borders—whether to engage in business activities, carry out short-term assignments, or for long-term relocation—benefit from having a written immigration policy. A written policy helps companies meet duty-of-care obligations, prevent border issues and detentions, and ensure that employees have the right to work when they arrive in their destination country. A written policy also sets uniform expectations and guidelines to prevent managers and employees from running afoul of local labor laws or other sponsorship requirements.

There are a host of issues that companies may want to consider, and BAL has assembled a list of topics that clients have found most concerning. It is hoped that this backgrounder will encourage Global Mobility professionals to think about how to create a best-in-class internal policy around immigration and international travel that promotes business needs while mitigating the many immigration risks that follow international travel assignments and long-term relocation.
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Many countries are liberalizing rules for business travelers to encourage investment and stimulate economic and cultural exchanges. At the same time, countries are also becoming increasingly protective of their labor markets in an effort to stop travelers from conducting work activities without proper work authorization. This dynamic has resulted in a complex mix of rules that are more relaxed for business travelers but also impose stricter limits and penalties for those who abuse business visas. International business travel presents risks for employees traveling on short-term assignments or performing business activities. The rules surrounding business travel can seem deceptively simple. Many companies incorrectly assume that employees staying in a country for only a short visit, e.g., less than 90 days, are in compliance with the host country’s business visitor rules. In fact, most countries define a business visit according to the activities performed, rather than the length of stay, and the list of permissible activities is usually strictly prescribed.

In a recent survey, BAL learned that 52 percent of companies interviewed have a written policy regarding business travel. Many companies provide employees guidance on managing international travel costs. BAL recommends that companies go further by providing tools and information to help employees understand what types of activities are permitted for business travelers; guidance on how to assess business travel compliance; directions on permitted client-billing; and expectations for vendors and consultants that may be traveling on business visas and working on company premises.

BUSINESS TRAVEL

39%

OF COMPANIES ASSUME THAT ANY TRIP UNDER 30 DAYS IS CATEGORIZED AS A BUSINESS TRIP*

WHILE CLOSE TO 23% OF COMPANIES USE A LAW FIRM TO ASSESS LAWFUL BUSINESS TRAVEL, 44% OF COMPANIES USE A VISA PROCESSING SERVICE TO ASSESS BUSINESS-TRAVEL COMPLIANCE*

In a recent survey, BAL learned that 90 percent of companies interviewed recently experienced issues at international border crossings, and 37 percent of companies experienced stops at the border.

Canadian border statistics are highly illustrative of this recent trend: according to the Canadian Border Services Agency, 30,233 U.S. citizens were denied entry into Canada in 2016, and 23,052 were turned away in 2015, compared to only 7,509 in 2014. Employees need to know what to do if they are questioned, detained or turned away by immigration authorities during an international assignment or business trip. Standard policies should indicate procedures and emergency contacts for immigration issues, but they may also need to address more complicated issues, such as the search and seizure of business computers and phones.

### U.S. Nationals Denied Entry into Canada

<table>
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<tr>
<th>Year</th>
<th>Number Denied</th>
<th>Percent Increase from Prior Year</th>
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<tr>
<td>2016</td>
<td>30,233</td>
<td>31%</td>
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<tr>
<td>2015</td>
<td>23,052</td>
<td>207%</td>
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<tr>
<td>2014</td>
<td>7,509</td>
<td>Unknown</td>
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Data provided recently by U.S. Customs and Border Protection show that searches of electronic devices by border agents more than doubled from fiscal 2015 to fiscal 2016, with 8,503 arriving international travelers searched in fiscal 2015 and 19,033 in 2016.

During a customs inspection, travelers, including U.S. citizens, are subject to search, without the need for a warrant. The courts have upheld the permissibility of border searches of electronic devices as long as there is a reasonable suspicion. Companies should be aware that border officials are afforded discretion owing to their training and experience and that reasonable suspicion is a relatively low standard. BAL recommends that companies have policies in place so employees can cooperate with border officials without compromising confidential, sensitive or privileged data on company-issued electronic devices.

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BORDER ISSUES AND SEARCHES

Have your business travelers experienced any of the following in the past year? (check all that apply)*

90%
Increased scrutiny by immigration authorities at port of entry

37%
Denied entry into a country

40%
Delayed entry into a country

13%
Investigation or inquiry by government authorities regarding business travelers already in country

For U.S. companies, BAL recommends that all employers, regardless of whether they sponsor foreign workers or not, review their I-9 policies, especially in light of the Trump administration’s heavy focus on companies that hire unauthorized workers.

While the Obama administration began to target employers rather than undocumented workers, it mainly focused on I-9 paperwork violations, whereas the Trump administration has signaled its eagerness to pursue large-scale criminal prosecutions and throw a media spotlight on companies that hire unauthorized workers. In September 2017, ICE reached a $95 million settlement—the largest ever in an immigration case—with a national tree-expert company found to have repeatedly hired workers who were ineligible to work. Among the allegations, the company implemented “decentralized” I-9 procedures in which upper-level management turned a blind eye to line supervisors who hired and rehired workers known to be ineligible.

For companies with entities outside the U.S., BAL has observed increased scrutiny of foreign workers’ right to work around the world from the U.K., to Singapore, to Canada, to Kenya. Written policies should provide company employees with information about what constitutes a right to work as well as proper procedures for checking work authorization and best practices regarding document retention during employment and post-employment in case of an audit. As these rules vary significantly from country to country, companies may wish to consider drafting more detailed policies for high-volume destinations.
Around the world a number of countries have tightened immigration regulations and scrutiny of employer sponsors. In the U.K., Australia, France, Kenya, Israel, Mexico, Russia, South Africa, and numerous other destinations, companies are finding that authorities are increasing site visits and enforcement of rules, and Global Mobility leaders are on notice that their companies need to be prepared for such visits. In Singapore, the Ministry of Manpower is enforcing labor market protections under the Fair Consideration Framework, and over 500 companies have landed on the government watch list. Multinationals can no longer turn a blind eye and claim they didn’t know the rules—it’s imperative that they understand the financial and reputational impacts of non-compliance.

Do your company’s HR and Global Mobility teams understand their legal obligations regarding sponsorship obligations? Posted worker notifications across the EU for seconded workers? Local registration requirements? How to ensure consultants and third-party employees working on company premises are legally authorized to work? And how to confirm that trainees and interns have adequate work authorization? Multinational Global Mobility teams must understand what their company’s sponsorship obligations are and what types of documents to retain and for how long, so that their company is compliant and audit-ready.

In the U.S., under the Trump administration, several government initiatives are targeting fraud in the area of skilled immigration with a focus on issues such as Form I-9 violations, wages paid to H-1B workers, placing H-1B workers at third-party worksites, and displacement of American workers.

USCIS announced in April it would target certain employers with unannounced H-1B site visits, and the Labor Department soon followed, announcing it would more aggressively investigate employers for potential fraud and abuse of nonimmigrant visa programs and would propose a new Labor Condition Application that would better identify potential fraud. The agency is on track to quadruple the number of employer site visits in fiscal year 2018.

Employers are strongly encouraged to review their policies and make sure that key employees, including front desk receptionists, are prepared in the event of a site visit. Each government agency has its own procedures and scope of documents it may request and companies need to be able to differentiate what their rights and obligations are depending on which enforcement arm of each agency comes knocking at the door.

### COMPLIANCE AND AUDITS

**Projection for fiscal year Oct 2017 - Sept 2018**

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<td>worksite investigations</td>
<td>1,716</td>
<td>3,510</td>
<td>7,020</td>
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<tr>
<td>I-9 audits initiated</td>
<td>1,350</td>
<td>2,282</td>
<td>4,564</td>
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<tr>
<td>criminal worksite-related arrests</td>
<td>172</td>
<td>594</td>
<td>1,188</td>
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<tr>
<td>administrative worksite-related arrests</td>
<td>139</td>
<td>610</td>
<td>1,220</td>
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DEPENDENTS

The ability of an employee’s spouse and children to adapt to life in the destination country plays a major role in the employee’s satisfaction and can ultimately determine whether the assignment will be a success. As a Global Mobility professional responsible for supporting these employees, you want them to succeed and thrive. How can you and your company address employees’ concerns and best support the family unit?

The host country’s immigration laws will largely control the rights of your employees and their families in their new life. Your company’s effective planning and strategic exploration of the host country’s immigration laws can have a significant impact on family members—their status, their short-term and long-term rights in the country, whether a spouse can pursue a career, and whether children can study or work. These factors must all be carefully considered so that expectations are clear from the outset. Will your company cover routine and necessary fees associated with sponsoring an employee’s spouse and children? Will your company ensure that salaries paid to expatriate employees will meet the minimum so that they are eligible to sponsor dependents in countries like Singapore and the UAE? Will your company cover the costs of dependent levies in destinations such as Saudi Arabia?

Global Mobility policy on immigration should consider a company’s obligations during unexpected scenarios that may put a family’s immigration status in peril. Divorce during an overseas assignment is relatively common and usually jeopardizes the trailing spouse’s legal status, as well as that of the employee’s children and their ability to remain in school or in the host country. If an employee were to pass away during an assignment, do you know what your company’s responsibilities are toward surviving family members under your company’s employee mobility package? What are industry best practices? Does your company have a policy regarding dependent family members to ensure their safety? How far should your company go in assuming responsibility for an employee’s dependents during the assignment and in a time of crisis? Does your company’s duty of care toward its employees extend to employee dependents?
Short-term assignments are a critical, high-risk area where a robust written policy is essential. Companies often struggle to meet the needs of the business, while navigating the host country’s legal restrictions on short-stint work assignments.

While most companies have policies that kick in after 90 days, and provide legal assessment and immigration support as part of comprehensive relocation support, company support for under-90-day assignments varies significantly from company to company. These policies are premised on the incorrect assumption that an employee can travel as a business visitor without the need for work authorization for assignments of a limited duration. In fact, most countries require work authorization for professional activities, such as system installation, project planning, consulting, auditing and facilitating training.

For short-term assignments, company policy should guide business managers and employees on how to assess immigration requirements before travel and should provide instructions on how to obtain work authorization for assignments. Policies should address multiple entries, rotations and frequent repeat visits, and information to prevent noncompliance caused by overstays. Company policies should also include information on billing restrictions, work on client sites, registration requirements after arrival, re-entry visas, and exit requirements.

AROUND 45% OF COMPANIES LIMIT THE DURATION OF BUSINESS TRIPS; HOWEVER, THE CUTOFF FOR BUSINESS TRIPS VARIES SIGNIFICANTLY FROM COMPANY TO COMPANY*

Does your company limit the length of time that a business visa traveler may remain in the country on each trip? (choose the answer that is closest to your policy)

- 55% We do not limit the length of time an employee may remain in the country
- 4% Employee may not remain for more than 15 days
- 15.5% Employee may not remain for more than 30 days
- 5% Employee may not remain for more than 60 days
- 15.5% Employee may not remain for more than 90 days
- 5% Employee may not remain for more than 180 days
In working with different industries over the years, BAL has found that most companies have written policies for long-term employment of foreign nationals. Employing a foreign national overseas long-term and providing a relocation package is a substantial investment, which necessitates protocols and policies around cost and other duty-of-care obligations.

At a minimum, policies addressing the topics of long-term work and immigration should cover several important areas including how the employee’s immigration category will be assessed, experience and qualifications requirements for each type of immigration category in destination countries, whether the company has sole discretion to make a final determination of the best immigration category for the business, information on lead times, and a clear explanation of how immigration costs will be covered for the employee and dependents. Policy may also do well to indicate that a company’s payment for immigration costs is not a guarantee of employment.

**LONG-TERM WORK (OVER 1 YEAR)**

Business units are responsible for legal and filing fee costs associated with U.S. immigration filings*

Which department has principal budgetary responsibility for legal and filing fee costs associated with U.S. immigration filings?*

For many foreign employees, working internationally is not merely a temporary venture, but the opportunity to start a new life. Options for permanent residency can be an important inducement for recruitment. While many countries have clear pathways to permanent residency, others have stringent restrictions that make it very difficult to obtain, if not impossible.

Company policies should instruct business managers on appropriate steps and protocols to ensure that sponsoring permanent residency is in the interest of the business before any representations are made to the employee. Furthermore, once the decision has been made to sponsor an employee, policies should set employee expectations regarding timeframes and costs for the process, which may be long and expensive, depending on the country. The company may also want to consider outlining a repayment agreement should the employee decide to depart the company before a set time.

ALL COMPANIES SURVEYED SPONSOR GREEN CARD APPLICATIONS IN SOME WAY BUT GREEN CARD POLICIES VARY CONSIDERABLY FROM COMPANY TO COMPANY*

How long does your company require an employee to work for the company before starting the green card process?

Which green card costs does your company require the foreign national to pay for up front?

- **60%**: Medical examination or other ancillary costs
- **42%**: Travel/Work authorization (I-131/I-765) for family members
- **33%**: I-485 adjustment of status for family members
- **25%**: Travel/Work authorization (I-131/I-765) for employee
- **25%**: I-485 adjustment of status for employee
- **22%**: I-140 immigrant petition

**55%** of companies require some form of reimbursement for green card-related costs if the employee being sponsored departs the company.

Does your company require an employee to reimburse the company for any green card-related costs if the employee departs the company within a certain period of time?

- **55%**: Yes
- **38%**: No
- **5%**: Decision is made on a case-by-case basis
Termination of employment often raises a number of immigration obligations when the employee is a foreign national who has been sponsored for immigration purposes by the employer. This is an area that is often overlooked by written policies. BAL strongly encourages employers to review policy documents and ensure that they set out clear guidelines regarding termination of employment, loss of immigration status, notification of immigration and labor authorities, and exit procedures.

Global Mobility and HR staff should be instructed on how to cancel work permits, immigration sponsorship and or withdraw or cease processing any immigration cases on behalf of the employee. Policies may want to include checklists for staff to ensure all required cancelation steps are completed and all appropriate documentation is filed. Requirements will vary significantly from country to country.
Mergers and acquisitions have important immigration consequences for employers and foreign employees, and thoughtful planning is essential for avoiding penalties and other complicated ramifications. During a merger, acquisition, or divestiture, employers must have a comprehensive plan to ensure that a former entity’s nonimmigrant and immigrant employees do not fall out of status. Further, because a new entity may inherit the employment eligibility verification liabilities of the former company or companies, it is important to analyze any potential “Right to Work” violations. A written company policy can be critical in ensuring that plans are clearly conceived and implemented regarding immigration obligations during a high-stakes, high-pressure merger.

For most countries, a company seeking to acquire another company or assets and or stocks of another company should look into job details and current immigration status of all foreign national employees. The purchasing company should understand the selling company’s policy and any obligations regarding consistency of adhering to that policy. Additionally, companies should examine changes in payroll, relocations, and other changes to employment structure.

For the U.S., BAL encourages companies to draft and review policies regarding the maintenance of I-9 Forms and E-Verify enrollment and carefully outline right-to-work audits.

This list is by no means exhaustive, and companies will want to consult with counsel before making any immigration-related decisions impacted by merger and acquisition activity; however, having a formal policy in place can establish protocols so that company obligations do not go overlooked during a fast-moving process.
CONCLUSION

Just as written policies on topics ranging from vacation calculations to sexual harassment have become commonplace, Global Mobility managers should consider immigration and international travel as essential components of any policy guidelines. Employees who travel for business or relocate internationally will benefit from having clear expectations from the outset, and Global Mobility staff will have uniform policies to inform their management of compliance with the company’s legal obligations.
CORPORATE IMMIGRATION IS COMPLEX

Today’s global enterprises face a particularly daunting challenge: getting the right people to the right global locations at the right time in full compliance. This challenge requires up-to-the-minute understanding of the world’s legal complexities and the capabilities to deliver truly meaningful solutions.