

Corporate Immigration

Contributing editor
Julia Onslow-Cole



2019

GETTING THE
DEAL THROUGH

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Contributing editor
Julia Onslow-Cole
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Preface

Corporate Immigration 2019

Eighth edition

Getting the Deal Through is delighted to publish the eighth edition of *Corporate Immigration*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Slovenia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Julia Onslow-Cole of PwC LLP, for her continued assistance with this volume.

GETTING THE
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London
August 2018

Mexico

David Puente-Tostado, Alfredo Kupfer-Domínguez and María Fernanda Castellanos-Balcazar
Sánchez Devanny

Overview

1 In broad terms what is your government's policy towards business immigration?

In general terms, Mexico is friendly and open to business immigration. To facilitate the entrance to foreign investors, business people, officials, professionals and technicians involved in any activity in Mexico, authorities in Mexican embassies and consulates abroad are empowered to issue visas for certain cases.

Article 7 of the Federal Labour Law establishes that in all companies, 90 per cent of the workforce must be Mexican nationals. Such percentage is not applicable in the case of directors, managers and general managers.

The government agency that manages and enforces the Immigration Law is the National Immigration Institute (the Institute), which sits within the Ministry of the Interior.

Short-term transfers

2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

All travellers must have an immigration visa; however, depending on their nationality, not all travellers require a previously authorised visa. Certain nationalities can obtain a multipurpose visa (FMM), directly from immigration personnel at any port of entry in Mexico, upon presentation of their passport. Nationals of certain countries are not permitted to obtain an FMM at the port of entry and must request this directly through a Mexican consulate abroad. The following can obtain an FMM at the Mexican port of entry:

- citizens holding a valid US visa (stamped in passport) or permanent US resident card (green card); and
- citizens who are permanent residents of Canada, Japan, the UK or any countries of the Schengen Area.

Tourist, business and transit visas are all comprised within the FMM, and these are granted for a maximum of 180 days.

3 What are the main restrictions on a business visitor?

A business visitor who has no intention of performing paid activities can stay in Mexico for a maximum of 180 days. Commonly, business visitors only engage in negotiations, meetings and in supervising the installation of machinery and equipment. The only restriction, other than nationality, is that their activities in Mexico cannot be remunerated.

4 Is work authorisation or immigration permission needed to give or receive short-term training?

A work permit is always associated with the payment of salary by a Mexican entity or branch. If the training is done by a visitor whose salary comes from abroad, then an FMM will suffice.

5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Yes, transit visas are required to travel through Mexico. The way in which they can be obtained depends on the traveller's nationality; however, in general terms, FMM visas can be obtained at the port of entry.

Certain nationals (restricted nationalities) will require to request such visa at any Mexican embassy or consulate abroad, in cases where they do not meet the requirements outlined in question 2.

Long-term transfers

6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main work permit used by companies to transfer skilled staff is the temporary resident visa, which can be used either for non-profit or paid activities.

7 What are the procedures for obtaining these permissions? At what stage can work begin?

Temporary resident visa, with no authorisation for paid activities

This visa is obtained directly at a Mexican embassy or consulate abroad. The foreign national must visit the embassy or consulate with certain personal documentation and information, as well as with an invitation letter issued by the Mexican sponsor to enter the country. The embassy or consulate stamps a provisional pre-approved visa in the foreign national's passport. The foreign national has up to six months to enter Mexico. Once in Mexico, the foreign national has 30 days to exchange the provisional pre-approved visa for a temporary resident visa (in the form of a photo credential) at the Institute. Once the foreign national obtains the temporary resident visa, he or she is legally authorised to work without remuneration.

Temporary resident visa, with authorisation for paid activities

The entity that is willing to hire the foreign national must request this visa directly at the Institute, which will issue an official permission so that the foreign national is allowed to visit any Mexican embassy or consulate abroad and obtain a provisional pre-approved visa stamped in his or her passport. The foreign national has up to six months to enter Mexico. Once in Mexico, the foreign national has 30 days to exchange the provisional pre-approved visa for a temporary resident visa (in the form of a photo credential) at the Institute. Once the foreign national obtains the temporary resident visa, he or she is legally authorised to work with remuneration.

8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

With an FMM, foreign nationals can stay for up to 180 days, which can be renewed for another 180 days. For such purpose, the foreign national should leave Mexico and return requesting another FMM. The temporary resident visa is initially valid for only one year, but can be renewed for up to three years. After such period, the foreign national can request a permanent resident visa, which is granted on a permanent basis.

9 How long does it typically take to process the main categories?

Given that for a temporary resident visa with authorisation for paid activities, there is a previous requirement that the employer is registered at the Institute, the full process can take as long as three months. For temporary resident visas without authorisation for paid activities, it can take up to two months.

10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

No, although it is advisable to insure the foreign national against occupational risks, especially those that visit without authorisation for paid activities (those with authorisation for paid activities should be enrolled at the Mexican Social Security Institute, which covers occupational risks).

11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

There should be objective criteria in each and all processes, except for certain nationalities that have unofficial priority (Canadian, EU, Japanese and US). However, from our experience, certain officers exercise discretion according to subjective criteria.

12 Is there a special route for high net worth individuals or investors?

No.

13 Is there a special route for highly skilled individuals?

No; however, the Institute requests that the invitation letter to the employee notes, and it can be proven, that the foreign national has the correct qualifications and skills for the position.

14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

No.

15 Is there a minimum salary requirement for the main categories for company transfers?

No, although salaries must comply with the minimum wage established by the Federal Labour Law (it is unlikely that a foreign national would have such level of salary).

16 Is there a quota system or resident labour market test?

No, under the immigration laws, it is not necessary to have a resident labour market test. However, the Federal Labour Law establishes that technical and professional activities should be done by Mexican employees; however, if there are no Mexican employees available, then those positions can temporarily be rendered by foreign nationals. The employer and the foreign nationals are obliged to train Mexican employees to fill such position.

17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

The employee must demonstrate his or her capacity to perform the job that he or she was hired to do.

18 What is the process for third-party contractors to obtain work permission?

Contractors act as employers of record. If those contractors pay the foreign national directly, they can obtain work permits for their employees.

19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

Yes; commonly, the request for an immigration procedure (temporary resident visa) is accompanied by a professional or academic qualification.

Extensions and variations**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

No. FMM visas are only granted for 180 days and do not allow foreign nationals to request or convert this to a work permit.

21 Can long-term immigration permission be extended?

Yes, visas can be renewed for up to four years. That is, a foreign national can have temporary resident status for four years and then apply for permanent residency. After obtaining temporary residency for one year (with or without permission to work), the foreign national will have the opportunity to renew this for one, two or three years. The above, owing to the maximum period that a foreigner can have temporary residency, is four years maximum. The only requirement that will change when the foreign national starts the renewal process is the amount of the fee for renewal.

22 What are the rules on and implications of exit and re-entry for work permits?

An exit permit is the document that allows a foreign national to leave Mexican territory while their renewal process is pending resolution. This document allows the process to continue in analysis on their return, rather than the Institute terminating the process (ie, without this permit, the authority would automatically deny a pending renewal request and the foreign national would have to leave Mexican territory). Holders of visas are able to enter and exit at will, if they have no renewal pending.

23 How can immigrants qualify for permanent residency or citizenship?

It is necessary to distinguish between permanent residency and citizenship.

Permanent residency

After four years of temporary residency, a foreign national can apply for permanent residency. To obtain the status of permanent resident, it is necessary to comply with the requirement of four years of legal domicile in Mexico as a temporary resident and comply with the documents and information requested by the Institute.

Citizenship and naturalisation letter

According to article 30 of the Mexican Constitution, Mexican nationality is granted by birth or naturalisation (naturalisation letter).

Section B of article 30 states that Mexicans by naturalisation are:

- foreign nationals who obtain a naturalisation letter from the Ministry of Relations; or
- foreign nationals who marry a Mexican, who have, or who establish their domicile within the national territory and comply with the other requirements established by law for that purpose.

The naturalisation letter is issued to foreign nationals who prove their residence in Mexican territory with a card that certifies their status of temporary resident, or with a card that proves their permanent resident status, at least during the five years prior to the date of the request.

To obtain naturalisation, it is important that the foreign national proves that he or she speaks Spanish, knows the history of the country and is integrated into the national culture. In order to prove the above, the foreign national interested in obtaining Mexican nationality by naturalisation will be given a questionnaire on the culture and general history of Mexico.

In addition to the above, those interested in obtaining Mexican nationality must comply with the documents and information requested by the authorities, as follows:

- original and copy of the DNN-3 application form;
- original and copy of the temporary resident card or permanent resident card;
- submit a letter, under oath, indicating the number of exits and entries made to and from the country in the two years prior to the submission of the application;
- original and copy of their foreign passport;
- original and copy of a certificate of non-criminal record issued by the competent authority;
- two colour photographs (passport size with white background);
- original fee payment receipt; and
- certified copy and photocopies of their foreign birth certificate, duly legalised by the Mexican diplomatic or consular representative of the place of issuance or, if applicable, apostilled by the competent authority, and translated into Spanish by an expert translator authorised by the judicial power of Mexico.

24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

No, there is no obligation to cancel the permission granted by the immigration authority. In a scenario where the foreign national decides to change his or her work, he or she is obliged to notify the change of employer to the Institute.

25 Are there any specific restrictions on a holder of employment permission?

No, there are no restrictions for a holder of employment permission. Once they obtain their employment permission (work visa), they can be promoted, their salary can change and they can even work for another employer once they leave the original sponsor. If the foreign national decides to work in another company, he or she is obliged to report the change of employer within 90 days of the date that they start working for the new company.

Dependants**26 Who qualifies as a dependant?**

The following qualify as dependants:

- children of the resident and of the partner of the resident, as long as they are under 18 years and not married;
- spouse or cohabitation partner of the resident as long as it fits with the Mexican legal requirements for that status; and
- parents of the foreign holder of a resident card.

In the case of a holder of a permanent residency card, his or her siblings can qualify as dependants as long as they are under 18 years of age and are not married.

27 Are dependants automatically allowed to work or attend school?

If a dependant wants to work, he or she must receive a job offer from a registered employer and request a work permit from the Institute.

Dependants (children under 18 years) that will attend school must have a resident card issued by the Institute. This document validates the legal stay of children in Mexico and proves that they are dependants of their mother or father. This is the only case in which a tourist visa can be exchanged for a dependant's visa.

28 What social benefits are dependants entitled to?

Dependants are entitled to public education and medical and health services, through the Mexican Social Security Institute, as the foreign national will be enrolled through his or her employment.

Other matters**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Yes. As mentioned in the Immigration Law, Mexican immigration authorities can deny a visa to a foreign national with a criminal conviction. If the foreign national is in criminal proceedings or has been convicted of a serious crime under national criminal laws or the provisions contained in international treaties and conventions to which the Mexican state is a party, or if his or her background in Mexico or abroad could compromise national security or public safety, he or she may be denied immigrant status.

30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

The Immigration Law states several penalties for non-compliance, for example:

- if the foreign national does not notify the Institute of his or her change of marital status, address, nationality or workplace, or if they delay notification, they will be subject to a fine of 20 to 100 measurement and update units (UMA). One UMA is currently equal to 80.60 Mexican pesos; or
- a foreign national that requests the regularisation of his or her immigration status, because he or she failed to notify the authorities of his or her marriage to, or becoming a cohabitant of, a Mexican national or a foreign national with a residence card, will be subject to a fine of 20 to 40 UMAs.

31 Are there any minimum language requirements for migrants?

No level of language proficiency is required, except in situations where a foreign national requests naturalisation, in which case he or she must prove that he or she can speak Spanish.

32 Is medical screening required to obtain immigration permission?

No, medical screening is not required.

33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?

No. The Immigration Law does not state a procedure for this situation. In cases of secondment, the employer is obliged to have the employer certificate duly renewed in order to comply with immigration law and enable them to hire foreign nationals.

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