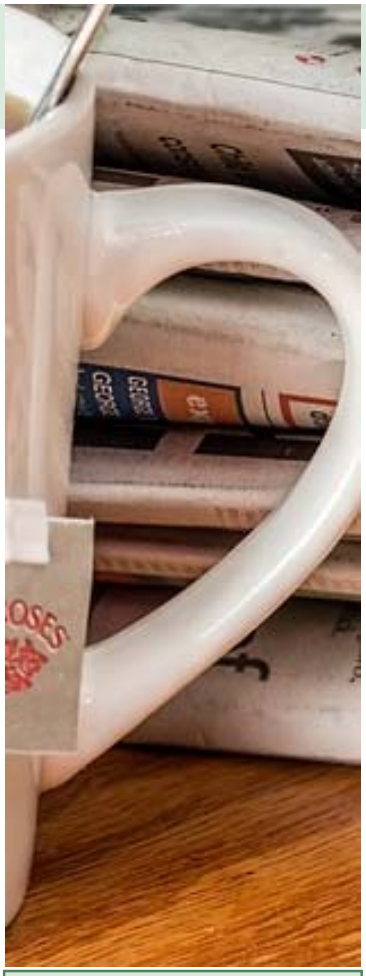
Global Migration Section

AILA Global Migration Section Digest



WELCOME

By Noriko Kurotsu – Noriko is a Global Immigration Attorney at McCown & Evans LLP in San Francisco, California

Happy Holidays from the GMS Publications Committee! We would like to thank everyone who has contributed to this Winter 2016 AILA GMS Digest. We hope that you will enjoy our new Consular Spotlight series; our interview with an AILA International Associate based in Croatia; and the articles that were authored by various GMS members. This Digest edition includes articles on investment-based immigration options in India; an overview of immigration to Luxembourg; DUI-based bars to Canada; Brazilian immigration; and changes to Residence applications in New Zealand. Special thanks also go out to Publications Committee Members Esther Dressler, Poonam Gupta, Helen Smith, and Susanne Turner. Cheers, and see you in 2017!

SPOTLIGHT INTERVIEW WITH AILA INTERNATIONAL ASSOCIATE MEMBER, TOMISLAV PEDICI, ESQ.

Tomislav is an attorney at Vukmir & Associates in Zagreb, Croatia

1. How is the practice of immigration is regulated in your country?

In Croatia, immigration is primarily regulated by *Aliens Act (Official Gazette No. 130/11, 74/13)*, as well as several regulations adopted based on the Aliens Act. There are also several international treaties applicable to immigration including the *Marrakesh Agreement establishing the World Trade Organization*. The Ministry of Interior oversees the immigration process and administers the issuance all residence and work permits. The Ministry of Foreign Affairs is also involved with residence and work permit adjudication in situations that work and/or residence permit applications are filed through Croatian diplomatic missions and consular offices.

As far as restrictions on the practice of Croatian immigration law is concerned, it is limited to members of the Croatian Bar Association.

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Call for Articles:
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2. Does Croatia have any quotas or other general requirements, such as the registration of a company, that it must satisfy before sponsoring foreigners for work and residence permits?

Depending on current migration strategies and trends of the Croatian labor market, the Croatian government, in collaboration with other relevant institutions, implements an annual quota for the employment of alien workers. For 2016, the quota has been set at 3,115 foreign workers. The quota primarily concerns work authorization for *blue collar* work. There are certain categories of alien workers who are exempt from this quota. These are mainly foreign workers who hold key or senior positions within a company and foreign workers who possess a high level of education or specialized knowledge. Quota exemptions also exist for foreign employees who have been sent by their foreign employers to work at an affiliated company in Croatia or *posted workers* who provide services in Croatia on behalf of their foreign employers.

A local establishment in Croatia such as a branch or representative office is usually required to serve as a work and residence permit application sponsor.

3. Please provide a description of the basic immigration process for a business wanting to send an employee on an intracompany transfer to Croatia.

There are three (3) legal grounds regarding the quota-exempt employment of foreign workers in Croatia: work authorization pursuant to the Marrakesh Agreement; working permission for service providers; and the allowance of work by posted workers.

I. Internal transfer of personnel between affiliated companies per the *Marrakesh Agreement Establishing the World Trade Organization* This category of work authorization is primarily envisaged for foreign employers who are seated outside of the EU/EEA and wish to send their employees to work at a Croatian affiliate office. It also applies to nationals of EU/EEA countries that still apply work and residence restrictions to Croatian nationals in their countries. Qualifying foreign employees must hold a senior level (i.e. managing or similar) position and fill a similar position at a Croatian affiliate office. In general, these employees maintain an employment relationship with their foreign employers and remain on foreign payroll. This is however not a requirement; other employment and payroll arrangements are also permitted. Work and residence authorization is initially granted to qualifying individuals for the duration of his/her transfer but no longer than 2 years. Extensions of stay are possible.

II. Work Authorization for Service Providers Non-EU/EEA nationals (as well as citizens of EU/EEA countries that impose working restrictions on Croatians) who will be executing service agreements with Croatian clients are eligible for work and residence authorization as service providers. Qualifying individuals must be providing services that can be characterized as:

    i. Services in the field of high technology; and
    ii. Services are in the interest for the Republic of Croatia.

The Ministry of Interior has the discretion to determine whether the applicants satisfy these two (2) conditions.

Beneficiaries of this status must remain employed by his/her foreign employer and remain on foreign payroll while they work in Croatia. This type of work and residence authorization is issued for a period of one (1) year. It is possible to extend work and residence authorization for an additional period of one (1) year.

III. Work Authorization for Posted Workers EU/EEA employers may send its employees to a Croatian affiliate offices as Posted Workers. Posted Workers may work in Croatia for up two (2) years. Employers based in EU/EEA countries that still impose work restrictions on Croatian nationals are ineligible to pursue the Posted Worker status for its employees. Beneficiaries of this status must maintain employment contracts and social security in his/her home country but are entitled by law to a set of core rights in force in Croatia. They are specifically protected by minimum wage laws; laws pertaining to maximum work periods and minimum rest periods; working hour laws; minimum paid annual leave rules; health and safety regulations; laws regarding conditions for pregnant women and young people; and rules prohibiting child labour.

4. Does Croatia allow a company to send newly hired employees?

Generally speaking, yes.

5. What advice would you give a client thinking about sending employee to your jurisdiction? Are there any tips you might want to share (e.g. select employees with a university degree if possible, etc.)?

Legal requirements make it much easier to send *white collar* employees with high education and specific skills/expertise than *blue collar* employees.

We strongly recommend that work and residence permit applicants file their applications with the competent department of the Ministry of interior instead of the Croatian diplomatic mission/consular office. In doing so they will be able to take advantage of faster processing times.

We also recommend that non-EU/EEA employers who need to send employees to Croatia to execute after-sales service agreements do so with just Confirmations on Work Without Work Permit instead of one of the quota-exempt work and residence permit options. Employers may pursue these work permit exemptions so long as its employees limit their stays in Croatia to ninety (90) days within a calendar year. The procedure for obtaining the Confirmation requires far less documentation and is much faster to secure. The processing time is just a couple of days, far less than the average one (1) month processing time for standard Work and Residence Permits.

6. Do partners or same sex spouses qualify for dependent status in your jurisdiction?

Yes. Partners or same sex spouses are eligible for dependent status in Croatia under the Same-Sex Life Partnership Act. The Act explicitly states that individuals who have a registered life partnership or marriages in the jurisdiction where the partnership or marriage was concluded as well as same sex partners who have

cohabited for a minimum of three (3) years have the right to file family-reunification based residence permit applications.

7. Are there any hot topics or trends you wish to share?

In recent years, we have received a marked increase in queries from people who wish to acquire real estate in Croatia and/or retire in Croatia. Citizens of EU member states with sufficient funds can acquire both real estate and residence authorization relatively easily, but this is not so easy for non-EU citizens.

Non-EU citizens may only acquire real estate in Croatia with the prior permission of the Ministry of Justice. The Ministry can only grant this permission if there a reciprocity agreement in place between Croatia and the non-EU citizen's home country. While the Croatian Aliens Act provides a path for non-EU citizens who own real estate in Croatia to acquire residence authorization, the authorization is only issued for a period of up to one (1) year. Unfortunately, the residence permit holder must reside outside of Croatia for a minimum of six (6) months after the date that his/her residence authorization expires before s/he may apply for a new residence permit. This requirement creates serious difficulties in practice.

One way to address this obstacle is to establish a Croatian company and acquire a real estate through such company. A non-EU citizen can secure residence authorization through this route by satisfying rules regarding investment in the company and the employment of Croatian citizens by the company.

CONSULAR SPOTLIGHT: RUSSIA

By Audrey Lustgarten, Lustgarten Global LLC
Audrey is the Founder of Lustgarten Global LLC in Harbor Springs, Michigan

AILA members recently toured the Consulate General of the Russian Federation in New York and met with Aleksandr Burdin (Consul), Andrey Pugaev (Senior Consul), and their staff. The consular officials gave a very detailed presentation on the history and current state of Russian immigration. The current work visa system for Russia is relatively young as it began in 2000. There is a dual-track system with regular work permits and highly qualified specialist (HQS) work permits. Work permits in Russia are subject to a regional quota system. HQS work permit holders enjoy many benefits as compared to regular work permit holders, including streamlined processing and the ability to port employers in some circumstances. The Consulate issues work visas but is not tasked with adjudicating the work and residence permits; adjudication of these items falls to the authorities in Russia. Work permit applicants are required to undergo medical examinations as part of the visa application process.

Business visa applications are lodged with the Consulate via their outsourced provider, ILS. Applicants and third parties may file applications in person or via post, and there are options for expediting for an additional fee.

The consular officials reviewed some of the business visa requirements and also responded to a number of audience questions on challenges faced with the process.

Helpful Tips:

- An official government-issued invitation is required for Russian business visas other than the three (3) year business visa available to U.S. nationals due to a bilateral treaty. The government-issued invitation is required for shorter term business visas for U.S. nationals, and non-U.S. nationals.
- The three (3) year business visa may require an in-person interview at the Russian consulate, and is more document intensive than the short-term visas.
- Short-term business visas must be sponsored by a specific company in Russia and, strictly speaking, are not portable to allow visits to other companies. However, it is possible to list up to three destinations in one invitation letter.
- The three (3) year business visa does allow return visits to companies and regions other than those specified in the initial invitation.
- Although common practice, it is not advisable for Russian companies to have travel agents procure the official invitations from the Ministry of Foreign (MFA) affairs for them rather than registering with the MFA and applying on their own. The Russian business that the traveler is visiting should sponsor the business visa by procuring the invitation letter directly.
- Business visa holders must register within seven (7) days of arrival in Russia. If a traveler is staying at a hotel this is normally handled automatically but those in private lodging must ensure they register or they may face denial of future visa applications.

CONSULAR SPOTLIGHT: BRAZIL

By Audrey Lustgarten, Lustgarten Global LLC

AILA members also toured the Consulate General of Brazil in New York and met with Nestor Forster Jr., Deputy Consul General. The Consulate has jurisdiction over New York, New Jersey, Pennsylvania and Bermuda. The consular officials gave a comprehensive presentation on the various categories of visas that are available, including tourist, business, and various types of employment and family-based visas. All U.S. citizens require visas to enter Brazil.

Recent Changes:

The Brazilian government has revamped the investor visa category with the aim of attracting immigrant investors.

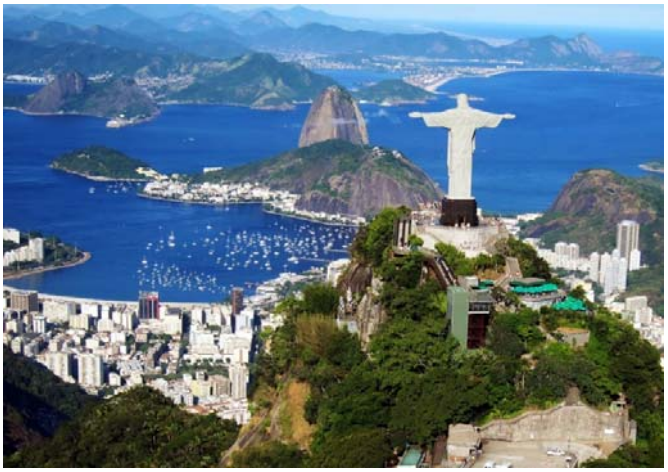
Helpful Tips:

- The Consulate prioritizes visa applications filed by individual applicants in person versus those filed by third parties. The Consulate does not accept applications via mail or courier.
- Third parties authorized to file with the consulate are subject to quotas and given limited days/times when they may file applications. For large group visa filings the Consulate encourages representatives to get in touch with them and make group filing arrangements.

- For group filings, it is possible that representative members of the group may file rather than the entire group needing to appear. But for the fastest treatment possible the best route is still in-person filing by the applicant(s).
- Those traveling to Brazil for business to conduct technical or training activities may require a Vitem V Work Visa rather than a Vitem II Business Visa. A ninety (9)0-day technical work visa is available without a contract with a Brazilian employer and is adjudicated directly at the Consulate. Longer-term work visa applications must first be approved by the authorities in Brazil before the Consulate is authorized to issue a work visa stamp.

BRAZILIAN IMMIGRATION TRENDS AND REGULATION

By Guilherme Dias
Guilherme is a Partner at EMDOC in Sao Paulo, Brazil



Immigration in Brazil is an area that has always been topical. Whether inbound or outbound immigration, the topic is frequently discussed among the government, citizens and expatriates.

In order to keep up with global issues and follow national and international trends, Brazil's immigration rules are currently undergoing changes and discussions.

The 90-day Technical Visa:

One visa that has always been widely used is the short-term ninety (90) day technical visa. This may be issued to qualified professionals requested to perform short term technical assistance or technology transfer, whose employer has an agreement with a Brazilian company.

Technical assistance and technology transfer work visas can only be issued to the same applicant once every six (6) months. They are valid for up to ninety (90) days and cannot be extended. This visa is granted by a Brazilian Consulate abroad and does not go through the Brazilian Ministry of Labor.

Investment Visas:

Following the latest trends and the *investment boom* in start-ups, the National Immigration Council published Normative Resolution no. 118/2015, which regulates investment visas.

This visa may be obtained with a minimum investment of R$500,000 made by a foreign national, as a private individual. This amount needs to come from the foreign national's personal account to the Brazilian company's account.

However, the required amount may be reduced to R$150,000 if the company receiving the investment:

(i) received investment, financial aid or resources for the support of innovation from a governmental institution;

(ii) is situated on a technological park;

(iii) is an incubated or graduated project;

(iv) was in the finals of a governmental program of support to start-ups; or

(v) received benefits from a start-up accelerator in Brazil.

Note that all of these possibilities are directly linked to the company's field of work being technology.

Research and Development Visas:

Decree no. 8.757 was published in 2016, which brought significant modifications to Brazilian immigration law. As the global job market in today's world has evolved, this law created a new type of visa for foreign nationals who receive income from a research, development or innovation project.

Dependents' Work Rights:

One of the other main innovations brought in by Decree 8.757/2016 was the possibility of visas for dependents older than sixteen (16) years in their own names. This means they can work in Brazil when they are the dependents of a main visa holder.

Process Improvements:

Another very important subject that the Decree regulated was the possibility of flexibility on the need for at least one (1) year's residence to activate the jurisdiction of the Brazilian Consulate for visa issuance purposes. This flexibility was already applied in practice, however with Decree 8.757/2016 it is now formalized.

Another important modification has made the Ministry of Labor responsible for analyzing processes for visa extensions under local labor contract (Normative Resolution no. 99). This will eventually result in the expedition of these processes.

The Brazilian government's concern with being up-to-date with the latest immigration issues is an effort to follow global development in this area and to promote investment in Brazil, especially in the tech area. This immigration reform brings even more credibility and solidity to Brazilian immigration policy.

INDIA… A GLOBAL INVESTMENT MAGNET?

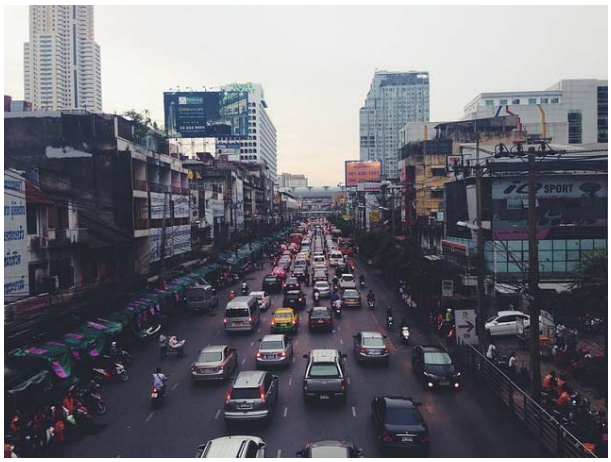
By Satyendra Shrivastava and Mahrukh Umrigar
Satyendra is a Partner and Mahrukh is the Head of Global Mobility at Khaitan Legal Associates in London, United Kingdom

In its endeavor to showcase India as a business-friendly destination, the Indian Government has decided to introduce 'investor visas' for a select category of foreign investors. This move is a significant departure from the past approach of policymakers that had for a long time confined foreign nationals mainly into business and employment visa categories.

There was a compelling need for some fresh thinking and the Government has decisively demonstrated its openness to new ideas by making the Indian immigration regime more liberal and at par with several other

developed jurisdictions like United States and the United Kingdom that allow a path to residence and settlement through investment.

The Union Cabinet in August 2016 approved a scheme which would grant a Permanent Residency Status (PRS) to foreign investors subject to compliance of certain terms and conditions as specified in the Foreign Direct Investment Policy of the Government.



The scheme proposes to grant the foreign investor, their spouse and dependents, PRS for an initial period of ten (10) years with multiple entries. This initial period of stay will be without any restrictions on the duration of their stay in India and will include exemption from any Foreign Regional Registration Office (FRRO) registrations which normally are to be completed within fourteen (14) days of arrival in India for either employment or entry visas. This status can later be extended for a subsequent period of ten (10) years subject to the PRS holder not defaulting. To qualify the foreign investor will need to invest a minimum amount of Rupees 10 crores (approximately US$1.5 million) within the first eighteen (18) months or Rupees 25 crores (approximately US$3.6m) within thirty-six (36) months. In addition to the minimum amount of funds to be invested, the investment should yield the creation of employment for at least 20 Indian nationals during each financial year.

The PRS will also enable the foreign investor to purchase one residential dwelling. The PRS holder's dependent spouse will be permitted to engage in employment within the private sector with relaxed salary stipulations as required under the Indian employment visa regime and their children will be entitled to undertake education in India.

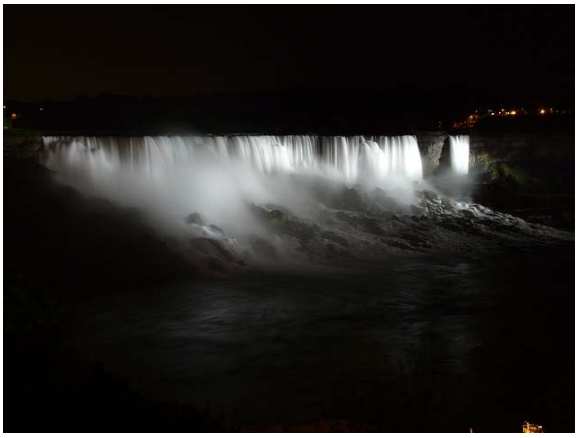
The proposed scheme is likely to attract further foreign direct investment into India and strengthen the 'Make in India' campaign.

While nobody denies that the Government has been serious about reforms, sceptics argue that the pace of their reforms has not been sufficient to lift India out of the policy paralysis of the previous regime and this bold decision in the immigration framework is only a small constituent within the broader reforms. The actual fine-print of the conditions and the manifestation of the scheme in the regulations will determine whether it has the potential to evince interest from foreign investors or it turns out to be a damp squib.

Disclaimer: This article has been written for the general interests of our readers. It is not intended to be exhaustive or a substitute for legal advice. We accept no legal liability for any errors or omissions.

QUID PRO QUO: BARRING U.S. CITIZENS FROM CANADA FOR DUI OFFENSES

By Henry J. Chang
Henry is a Partner with the Blaney McMurtry LLP firm in Toronto, Canada



Recently, the Canadian media reported on several instances of Canadian citizens being barred from the United States because they admitted to smoking marijuana, even if they had never been charged with or convicted of controlled substance possession. Canadian Public Safety Minister Ralph Goodale described the banning of Canadians as a "ridiculous situation" that needed to be addressed. However, in order to examine this issue in the proper context, we should consider how the Government of Canada treats U.S. citizens who seek entry into our country.

It is true that U.S. citizens (and other foreign nationals) who have a single conviction for (or who have committed the act of) simple possession of thirty (30) grams or less of cannabis (marijuana) or one (1) gram of cannabis resin will not be barred from Canada. This is because, under the current Canadian *Controlled Drugs and Substances Act*, such an offense may only be punished by summary conviction (roughly equivalent to a U.S. misdemeanor).

The Canadian *Immigration and Refugee Protection Act* (IRPA) instead bars foreign nationals if they have been convicted of (or have committed) an offense that would be considered an *indictable offense* (roughly equivalent to a U.S. felony) if it occurred in Canada. It is true that foreign nationals may also be barred if they are *convicted* of *two or more* offenses (not arising out of a single occurrence) that would be considered either summary or indictable offenses, if they occurred in Canada. However, a single summary conviction would not normally result in a bar.

Some Canadians may believe that this is unfair, since Canadian citizens who are convicted of (or who admit to) smoking marijuana on a single occasion may find themselves permanently banned from the United States. However, Canada also has its share of arguable unfair immigration outcomes.

Canadians may be surprised to learn that U.S. citizens who have been convicted of (or who have committed) a single instance of Driving under the Influence (DUI) will actually be barred from Canada. Some U.S. citizens may believe that this is unfair also, especially since Canadians who have DUI convictions are generally not barred from the United States.

Under the Canadian Criminal Code, many offenses are considered hybrid offenses. In such cases, the Crown (i.e. Prosecutor) has the option to prosecute the case as a summary conviction offense or an indictable offense. DUI offenses under the Criminal Code are considered hybrid offenses.

Unfortunately, IRPA states that an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily. In other words, hybrid

offenses are deemed to be indictable offenses for the purposes of determining inadmissibility to Canada. This is why a single DUI offense will bar U.S. citizens and other foreign nationals from Canada.

Fortunately, temporary and permanent waivers of inadmissibility are available for U.S. citizens and other foreign nationals who find themselves barred from Canada. Each type of waiver is briefly described below.

Temporary Resident Permits:

Temporary waivers of inadmissibility are known as temporary resident permits (TRP). Foreign nationals typically apply for TRPs at a Canadian consular post. However, U.S. citizens and other foreign nationals who are visa exempt to Canada may also apply for TRPs at the time of entry, at least in the case of minor offenses (including DUIs). This is a riskier option but if the foreign national is successful, he or she will be issued a TRP on the spot. TRPs can be issued for a single entry or for multiple entries; a multiple entry TRP is generally more difficult to obtain than a single-entry TRP.

Rehabilitations:

Permanent waivers of inadmissibility are known as rehabilitations. A foreign national who has been convicted of an offense outside of Canada that renders him or her inadmissible may seek a rehabilitation, in order to permanently waive the inadmissibility. However, rehabilitations do not apply to foreign nationals who have been convicted of offenses in Canada; in such cases, a Canadian Record Suspension (formerly known as a Pardon) will be required.

Deemed Rehabilitations:

In limited cases, rehabilitations will be automatically granted after ten (10) years; this is known as a deemed rehabilitation. To be eligible for a deemed rehabilitation, the foreign national must have been convicted of only one (1) foreign offense that would be considered an indictable offense if it occurred in Canada. In addition, the following must apply:

a) The offense must be punishable in Canada by a maximum term of imprisonment of less than ten (10) years;

b) At least ten (10) years must have elapsed since the completion of all terms and conditions of the sentence (including any period of probation or driver's license suspension);

c) The foreign national must not have been convicted of an indictable offense in Canada;

d) The foreign national must not have been convicted of a summary conviction offence in Canada within the last ten (10) years or of more than one summary conviction offence before the last ten (10) years;

e) The foreign national must not have been convicted outside Canada of an offence, which would be either a summary or indictable offense if it was committed in Canada, within the last ten (10) years;

f) The foreign national must not, prior to the last ten (10) years, have been convicted outside Canada of more than one foreign offence that, if committed in Canada, would be a summary conviction offence; and

g) The foreign national must not have committed an offense outside Canada that, if committed in Canada, would be an indictable offence.

If deemed rehabilitation does not apply, it is still possible for apply for an individual rehabilitation after at least five (5) years have elapsed since the completion of all terms and conditions of the foreign national's sentence. Ports of entry have the delegated authority to adjudicate rehabilitations but it is extremely rare for them to do so. As a result, individual rehabilitations are almost always adjudicated at a Canadian consular post.

Unfortunately, individual rehabilitations can take up to two (2) years to adjudicate. In most cases, even foreign nationals who are eligible to apply for an individual rehabilitation will still need to seek a TRP to facilitate their entries while their rehabilitation application is pending.

Imposing permanent bars on Canadian citizens who are convicted of (or who admit to) smoking marijuana may indeed be a "ridiculous situation". Some might also argue that barring U.S. citizens who have been convicted of (or who have committed) a single DUI offense is equally ridiculous. But these are simply different outcomes resulting from different immigration systems.

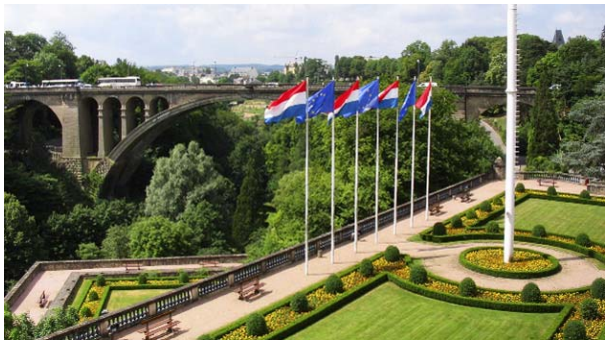
It is unlikely that either Canada or the United States will change their respective immigration laws in the foreseeable future. The statutory provisions that result in these outcomes cover a broad range of offenses and apply to all foreign nationals, not just U.S. and Canadian citizens. Therefore, significant amendments to the immigration laws of both countries would be required.

SHORT OVERVIEW OF IMMIGRATION TO LUXEMBOURG

By Joram Moyal
Joram is a Partner with the MMS Avocats firm in Luxembourg.

Business-related immigration is considered a national priority in Luxembourg, where immigration law is well adapted to business needs and reflects the ambition of the Luxembourg authorities to attract foreign talent and new business.

This pro-immigration policy is reflected in the latest official figures. Currently foreign nationals living in Luxembourg make up 45.9% of Luxembourg's total population. Connected to this, Luxembourg has three (3) official languages and commonly at least four (4) (French, German, Luxembourgish and English) are spoken. This makes Luxembourg a unique multicultural and multi-lingual society.



<u>EU and Non-EU Residents:</u>

As in all other EU countries, nationals of the European Union and affiliated countries (Norway, Iceland, Switzerland and Liechtenstein) can freely settle and work in Luxembourg. Third country nationals such as U.S. citizens must obtain a valid residence and work permit to settle and work in Luxembourg.

Business Visitors:

Business visitors who come to Luxembourg on a business trip do not generally have to request prior authorization. Third country nationals who do need visas and wish to stay in Luxembourg for less than ninety (90) days over a period of one-hundred-and-eighty (180) days for business, family or tourist visits must apply for a short-stay visa.

Transfer of Employees:

Third country national employees may be transferred from their home company to a Luxembourg company for a maximum of twenty-four (24) months. This applies if the home company and the host are part of the same economic and social entity and the employee has worked with the group for at least six (6) months.

Secondment of Employees:

Similar to the intra-company transfer above, third country nationals may also be seconded temporarily to a Luxembourg host company in the context of providing transnational services. The maximum duration of a secondment is also twenty-four (24) months.

EU Blue Card:

Highly qualified workers may alternatively apply for an EU blue card granting them a renewable residence and work permit for three (3) years.

Permit for Private Reasons:

Residence permits may also be obtained for private reasons not connected to employment in Luxembourg. The applicant must have sufficient funds to live on his own and prove some attachment to Luxembourg - usually business reasons such as owning a corporate structure or housing is sufficient.

Dependents:

Spouses, partners with whom the third country national is in a registered civil partnership and unmarried children of the third country national or their spouse or partner, so long as the children are under eighteen (18), can apply for entry to Luxembourg as dependents.

In addition, parents of the third country national or even of their spouse or partner may travel to Luxembourg if they require absolutely necessary family support. Adult unmarried children can also apply as dependents if they are objectively unable to meet their own needs for health or study reasons.

Citizenship:

A person who has legally resided in Luxembourg for five (5) years without interruption may obtain a permanent residence permit (long-term residence permit). Minor interruptions will have no impact on the eligibility to obtain a permanent resident permit, if the person remains registered with the Luxembourg authorities and has the center of his life in Luxembourg.

A person who has legally resided in Luxembourg for seven (7) years without interruption can apply for Luxembourg citizenship providing he has:

(1) sufficient active and passive knowledge of French, German and Luxembourgish,

(2) successfully passed an oral test in Luxembourgish,

(3) taken at least three courses of instruction on civic living in Luxembourg, and

(4) not been sentenced in Luxembourg or abroad for a criminal offence or imprisoned for more than a year.

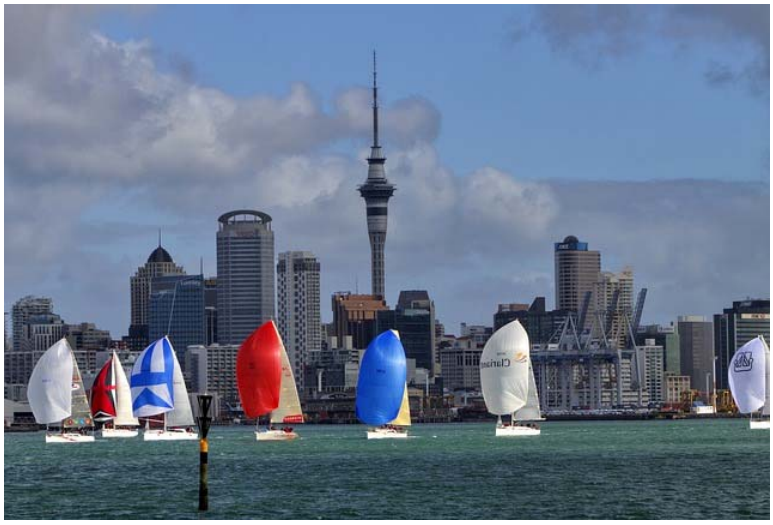
As acquiring Luxembourg citizenship poses difficulties for some applicants, a new law on citizenship is currently being discussed, with a view to reducing the time of residence to five (5) years and granting easier access to nationality without knowledge of all three (3) national languages.

SUDDEN CHANGES TO NEW ZEALAND RESIDENCE PROGRAMME

By Simon Laurent
Simon Laurent is the Principal of Laurent Law Barristers & Solicitors in Auckland, New Zealand

On 11 October 2016, the New Zealand government announced dramatic cuts to two (2) of its Residence Programme categories: the Skilled Migrant Category (SMC) and the Parent Residence Category. The changes came into effect the next day.

Skilled Migrant Category (SMC) Residence:



The SMC is an application-by-invitation Residence application system where applicants claim points for qualifications, work experience, age and (most importantly) an offer of employment in New Zealand. The New Zealand government raised the minimum points required to qualify for SMC Residence was raised from 100 to 160. This policy shift is thought to be a reaction to an increase in students with marginal qualifications who have been securing SMC Residence under previous rules. These lower skilled migrants have been filling substandard and underpaid positions in the country, leading to a ghettoization of the new migrant population in New Zealand. The new policy will however create the unwanted effect of preventing even well-qualified migrants from qualifying for Residence. For instance, corporate CEOs who have significant salaries and twenty (20) to thirty (30) years of work experience but no degree will be unable to apply, while their younger, less experienced middle managers would qualify.

Industry experts have proposed the following changes to the SMC stream in 2017:

- Increased weighing of work experience over qualifications.

- Greater incentives for the 30-39 age set. Currently the younger you are, the more points you get, but this ignores the value of career experience.
- Minimum income thresholds for New Zealand job offers. There is significant disparity in wage levels offered to new migrants as opposed to New Zealanders. This might be squeezing income levels in the local labour market, because a significant proportion of the work force is now made up of foreign hires.

Such policy trends may already be visible in comparable markets, or make themselves felt in the next few years. Because of its size, New Zealand needs to import a lot of its brightest and best, and the New Zealand government is very alive to getting this right for the economic and social health of the country.

Parent Residence Category Closed Indefinitely:

In 2012, the New Zealand government introduced a Residence stream allowing children in New Zealand to secure Residence for their parents if (in most cases) they show that they earn enough to support them. Hopeful migrants were periodically selected from a pool of potential applicants. Even in a short space of time, the waiting list has run out beyond two (2) years.

Alongside the SMC announcement, the Minister declared that no further selections would be made from the pool until further notice. The reason for closing the door was the large number of parents who claimed state welfare assistance soon after getting Residence.

In theory, the sponsor children are obligated to provide for their parents for the first five (5) years after they secure Residence; however, many sponsors have walked away from their duties. Further, some sponsor children have even relocated to other countries and left their parents behind in New Zealand. The unanswered question is why the government has not acted to enforce sponsorship obligations.

This change will have flow-on effects. Longitudinal studies have established that being able to sponsor parents is a strong incentive for skilled migrants to settle in New Zealand. For Chinese nationals, the old One Child Policy means that many individuals are the only support for their parents as they age. The duty to care for parents continues to be a cultural imperative for many. If their parents can no longer qualify for permanent residence under this scheme, it is likely that some talented younger people will look to make their homes in other countries.

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