



IMMIGRATION NEWSFLASH – NOVEMBER 2009

As many maybe aware, Indian immigration is in a state of flux. Recent changes instituted by various Indian Consulates and High Commissions around the globe have raised many questions for clients and professional advisors in relation to appropriate visa categories and related formalities.

Finally, a few clarifications have been forthcoming from the Union Government in respect of the confusion surrounding the visa status of foreign nationals. These relate to the issue of undertaking activities which technically and specifically are in the nature of 'employment' but are often undertaken in India by foreigners visiting the country on a business visa. These clarifications came in the form of frequently asked questions (FAQs) released by the Ministry of Home Affairs last week and appear to provide a fairly comprehensive delineation of the regulatory position in respect of business visas and employment visas in India. However, these very clarifications have also raised few fresh doubts, queries and problems to face. Fresh concerns have emerged relating to the correct visa categories for visitors such as independent consultants like lawyers, accountants, medical professionals etc. who may be deemed to be undertaking 'employment type work' whilst on a business visit in India. Further, the distinction drawn between the legal employer and the sponsor as mentioned in the FAQs also raise some concerns of compliance in respect of Indian laws.

The controversy started with several foreign nationals who were in India on business visas being summoned by their respective FRROs in August and September and being asked to leave the country by the end of September. The deadline was subsequently extended till October 31, 2009. Apparently, these business visa holders were carrying on project/execution of contracts in India which was in breach of their business visa conditions. Although it was widely believed that the sudden enforcement of the authorities was aimed at the mass scale abuse of the business visa category by some Chinese nationals who came to India to execute projects/contract work and included both high and low skilled workers, the consequence of the stricter enforcement applies to all foreigners in India on business visas who may have been wholly or partially in breach of the regulations.

Despite the fact that the latest FAQs released by the Ministry of Home Affairs are significantly helpful in shedding light on the relevant issues, greater clarity is needed in what constitutes a business visa and what activities must be undertaken on an employment visa. Equally importantly, it remains to be seen, as to how the respective Indian High Commissions and the Indian Consulates in different parts of the world that work under the aegis of the Ministry of External Affairs (a separate government ministry)

put into effect the spirit of the FAQs as these agencies are responsible for the assessment of the correct visa category and the issuance of such visas.

Our recommendation pending further clarity is to review each potential application on a case by case basis, particularly reviewing the activities to be undertaken by an assignee in India and where in doubt, liaising with the local consulates to determine the correct applicable visa category required for the applicant.

Please find attached the FAQs released by the Ministry of Home Affairs. In case you require any clarification or further information, please do not hesitate to contact Shalini Agarwal, Partner, ALMT Legal at sagarwal@almtlegal.com (London) or Ravi Chandan at ravichandanrk@almtlegal.com (Bangalore) or Mahrukh Umrigar at mumrigar@almtlegal.com (London)

Disclaimer: Please note the information provided is for guidance and background information only and no action should be taken on the basis of the above or the attached FAQs without seeking proper legal advice.