

1. Foreign Experts in Israel

1.1. Employment of foreign experts in Israel – Background

The employment of foreign experts in Israel is a new phenomenon. For years, migrant workers endowed with high levels of knowledge, experience, skill, and education have been employed in Israel in various fields. Recently, there has been a steady increase in the employment of foreign experts in Israel, as well as an increase in this population's ethnic diversity. This phenomenon is closely correlated with recent globalization in general, as well as with Israel's increased involvement in the global market.

As a result of events such as the rapid growth of the IT Industry in the 1990's, acquisition of Israeli companies by foreign multinationals, the opening of new branches of multinational companies in Israel, and Israeli companies becoming multinationals in their own right, there has been increased demand for professionals such as foreign engineers, software developers, managers, and financial specialists in Israel. Likewise, the national.

Makeup of the foreign expert population has been becoming more and more diversified. Whereas the majority of foreign experts used to originate from the United States, with some coming from Europe, today they come from a variety of countries, such as India, China, Japan, and Latin American Countries. This trend is likely to continue and, consequently, create an even greater need for employing foreign experts in Israel in the coming years.

According to statistics by the Israeli Ministry of Industry, Trade, and Labor (hereafter, "MOITAL"), foreign experts

working in Israel in recent years have never numbered more than 1,500. This small figure notwithstanding, their beneficial impact on the Israeli economy has been considerable. The presence of foreign experts in Israel facilitates the ongoing involvement of foreign companies in Israel and contributes to the growth in foreign investments. Foreign experts offer specialized knowledge otherwise unavailable in Israel, contributing to both R&D and production. Unlike semi- or non-professional migrant workers, these individuals help *create* jobs in Israel at the rate of dozens of new positions per one expert. Finally, their high standard of living and tendency to leave Israel upon ending their assignment mean that such employees do not cause socioeconomic or demographic problems comparable to those caused by non-expert migrant workers.

Today, the prevailing rule is that every sovereign nation has full discretion pertaining to its rules on granting work and entry visas to foreigners. Currently, a migrant worker has no vested right to enter Israel for the purpose of employment, and an employer has no vested right to employ a foreigner in Israel, regardless of whether the employer is an Israeli company or happens to be a local branch of a multinational corporation. Nevertheless, Israeli authorities treat the employment of foreign experts differently than that of other migrant workers. This difference is expressed, among other things, in the absence of quota restrictions on the entry of foreign experts, as well as in the relatively expedited procedure of issuing employment permits for them.

As a member of the World Trade Organization (WTO), as well as a partner in the General Agreement on Trade in Services (GATS), Israel is committed to allow managers and executives (as defined by GATS) of foreign multinational corporations to enter in order to take part in foreign-invested projects in Israel. These managers and executives generally meet the criteria

defined for foreign experts, which will be specified below. In addition, Israel is party to several bilateral agreements¹ with numerous countries; these include a mutual commitment to facilitate employee relocation from one country to another. These commitments are of a general nature and are usually tied to more expansive commitments related to the liberalization of trade in services.

Because of the lack of specification in these commitments, some degree of legal uncertainty exists regarding the scope and exact nature of the obligation imposed on the parties to allow foreign experts into their territory.

1.2. Foreign Experts as Migrant Workers

A foreign expert employed in Israel is, first and foremost, a migrant worker. This has several implications. First of all, employment of a foreign expert is subject to the same legal restrictions as employment of any migrant worker: first, the Entry to Israel Law, regulating entry and residence of migrant workers in Israel, and second, the Foreign Workers Law, regulating their employment in Israel. According to these laws and their regulations, in order for a migrant worker to work legally in Israel, he must be issued an employment permit by Ministry of Trade, Industry and Labor's (hereinafter "**MOITAL**") *Semech* Unit, and, in order to enter Israel, he must obtain an Employment Permit and a B-1 Entry and Residence Visa. This same visa is required of any type of migrant worker

¹ For examples, see Sections 2 and 3 of the Trade and Services Declaration between Israel and the United States; Section 6 of the Trade Agreement between Israel and China; Sections 29-30 and 64 of the Organizing Agreement between Israel and the European Union; Sections 6, 11, 18 of the Agreement for Trade and Economic Cooperation between Israel and the Kingdom of Jordan; and Section 27(5) of the Free Trade Agreement between Israel and Bulgaria.

wishing to enter Israel – from a simple agricultural worker to a guest lecturer at a university, or an R&D expert in the semiconductor industry.

In practice, the procedure for employing a foreign expert differs from that of employing an ordinary, non-professional migrant worker. For non-professional migrant workers, the government normally sets annual restriction quotas for each sector; these are then divided between the various employers in that sector. On the other hand, the employment of foreign experts is not restricted by quotas, and, accordingly, there is no limitation on the number of foreign experts who may be working in Israel at any given time. Israel's policy on this matter is similar to that of European Union members, and to some degree, also to that of the United States, which permits the employment of migrant workers without quota restrictions in several types of employment permits, such as O-1, L-1, and E-1. Applications for employing foreign experts are adjudicated in a special procedure, which is relatively expedited compared to that applied to non-professional migrant workers.

Under the law, a foreign expert is "a worker who is not a citizen or resident of Israel". Two fundamentals can be derived from the above: (1) the expert is "foreign," and (2) the expert is a "worker" – that is, an individual performing work of any kind, as opposed to one merely visiting Israel, even for business purposes. Consequently, the expert is required to obtain the following two documents: (1) a B-1 Entry and Residence Visa required of migrant workers and (2) an Israeli Employment Permit. The procedure for obtaining this type of visa is lengthier and more complex than that required to obtain an ordinary tourist visa. As a migrant worker, the expert is liable to be deported if he works without an employment permit, and/or with a B-2 Tourist Visa, instead of the required B-1 Visa. In addition, it is a criminal offense for an Israeli employer to

employ a foreigner staying in Israel under a tourist visa; the said employer will be subject to fines and possible imprisonment.

What is "Work?"

There is no clear definition for the term "work" in either the Entry to Israel Law, or in the Foreign Workers Law. In practice, MOITAL regards work as any productive activity performed in Israel which presents an economic value. It is irrelevant who pays the employee's salary, and where the payment is received – in Israel or abroad. Moreover, the setting – factory, office, or home, is also unimportant. Merely working in Israel requires an Employment Permit and B-1 Entry Visa. The requirement also includes work performed gratis, or voluntarily.

1.3 "Work" vs. "Training"

Often, a foreign citizen who could be regarded as a foreign expert, had he been employed in Israel, instead comes to Israel to participate in some form of a training program. In such cases, a question arises as to whether the foreign national would be required to obtain an Employment Permit and B-1 Entry Visa, or whether a B-2 Visa (obtained more quickly and easily) will be sufficient for the purpose of his visit.

It may be assumed that a foreign national participating in a long-term training program in Israel is in fact performing work – for instance, when a foreign national is partaking in a training program under a B-2 Visa requests to extend the visa. In such cases, the foreign national will need to prove that he is indeed not performing work.

In such a case, one may logically assume that the migrant worker's employer is attempting to abuse the law in order to

save time and resources, by declaring that the employee is "training" and not "working." Such abuse can lead to major inconvenience for both employer and employee, and, if proven, both parties will be subjected to severe sanctions.

In cases involving a long-term training program of a foreign national from a country whose citizens are required to obtain a pre-entry B-2 Visa, the Ministry of the Interior (hereafter, MOI) will likely require a B-1 Entry Visa, an Employment Permit, or a written consent from the *Semech* Unit, stating that the foreign national is not expected to work in Israel.

To obtain this written approval, the Israeli sponsor must file a detailed application to be submitted at the *Semech* Unit's Legal Advisor. The request must state the purpose of the foreign national's proposed stay in Israel, the length and contents of the training program, and any other detail clarifying that the foreigner will be merely undergoing training in Israel, rather than working. Notwithstanding, the authorities recognize the fact that a foreign citizen undergoing training in Israel will continue to receive his usual salary from abroad, and that this fact alone does not indicate that he is working. The situation becomes more complicated in cases where the training program takes the form of actual work. In such cases, it is customary for the authorities to demand the required work visas.

Generally, whenever a training program is involved, the main issue is determining whether or not the training program is of a "work nature" or not. In the event that a training program has even the slightest "work nature", regardless of its duration, the employer will need to apply for an Employment Permit, and the foreigner will be required to obtain a B-1 Visa, as required of every migrant worker in Israel. Realistically, there are many

cases in which the nature of the program is very difficult to determine.

1.4 Distinguishing between a Foreign Expert and a Migrant worker

Level of Specialization

In general, most migrant workers in Israel work in the labor-intensive industries, which normally require a low level of skills and specialization.

These represent the "blue collar" layer of migrant workers in Israel, and are usually employed in construction, agriculture, nursing, hotel services, or factories.

Conversely, foreign experts are generally employed in positions requiring a high level of skills and specialization or expertise, usually in science-based or capital-intensive industries. Typical job titles for foreign experts include R&D positions, management positions, installation of specialized equipment, or implementation of unique methods in Israel.

Knowledge and Expertise

In many cases, the foreign expert offers knowledge or expertise that are not widely available in Israel. A typical example would be an R&D expert working for a foreign multinational corporation, who comes to Israel to share her knowledge with the company's Israeli branch.

Employment of foreign experts in Israel can help create new job opportunities, benefiting Israeli citizens in the long run.

Wages

A foreign expert's wages are significantly higher than those of non-professional migrant workers. While the average wage of non-professional migrant workers is lower than that of Israeli workers, the average wage of foreign experts is significantly higher than the Israeli average. In fact, one of the conditions for obtaining an Employment Permit for a foreign expert is that her salary will be at least double the Israeli average.

Quality vs. Quantity

Another prominent difference between foreign experts and non-professional migrant workers is that of quality versus quantity; foreign experts' applications are processed individually, whereas those non-professional migrant workers are dealt with collectively. The value of foreign experts to the Israeli economy is great, and the added value of each individual is significant.

Profile of a Foreign Expert

When applying for an Employment Permit on behalf of a foreign expert, it must be demonstrated that she possesses the expertise or skills required for the proposed position, and that these cannot otherwise be found in Israel. Such proof may be given in the form of a résumé, documentation displaying the individual's academic background or experience, or by any other means.

Tie to a Specific Employer

The foreign expert will generally be tied to the specific employer who has sponsored the applications, whether employed by a foreign company with a local branch in Israel, or invited by an Israeli company in need of his services. Accordingly, the foreign expert may provide his services

exclusively to this specific sponsor. Moreover, since the foreign expert is obligated to the Israeli company that has invited him, there is normally no reason for him to work for other Israeli employers

Academic Achievements

The foreign expert generally possesses a higher level of education, at least at the level of a baccalaureate degree. Alternatively, she may possess special skills, knowledge or experience, or a high level of expertise.

The emphasis on "expertise" is generally expressed in the requirement for relevant academic education in order to fulfill a certain position.

As an exception to this rule, Israeli authorities are willing to recognize certain positions unrelated to traditional academic disciplines as justifying the need for a foreign expert; this, however, is done only after thorough examination of the skills and knowledge required for the position. These positions are generally those created as a result of rapid technological advances, so that relevant academic programs do not yet exist for them; still, Employees in these positions are usually required to possess a BA or a higher degree.

Nevertheless, an employee may still be regarded as one who possesses high expertise without any academic background. Therefore, it is sufficient to establish that she possesses the rare skills required for the position she is expected to take.

1.5 Foreign Experts and Israeli Authorities

The legislation regarding entry and residence in Israel does not include special provisions for foreign experts. Legal entry and employment of both foreign experts and non-

professional migrant workers are secured by means of the same Employment Permit and the same B-1 Entry and Residence Visa. The absence of specific legislation for foreign experts compels government agencies which adjudicate applications to create rules defining employment criteria.

In fact, conventional standards regarding the employment of foreign experts in Israel are *not* regulated by law and their status is thus merely that of directives and regulations. These conventions are based on the recommendations of the Buchris Committee, a professional committee established in March 2001 with the express aim of examining the extent of employment of migrant workers in Israel.

1.6 The Buchris Committee – Criteria for Defining a Foreign Expert

The Buchris Committee Report includes recommendations related to the various aspects of the employment of migrant workers in Israel as a whole. The six criteria for defining a foreign expert, recommended by the Buchris Committee, are based on international experience and concepts commonly applied worldwide. All the criteria concern the characteristics of a foreign expert.

The Buchris Committee suggests that, as a minimum condition for the worker to be recognized as a foreign expert, he must be paid a salary at least double that of the prevailing wage in Israel – or approximately \$3500 a month. For certain types of work or certain industries, the Israeli authorities may set an even higher minimum. This, however, seldom occurs.

As already stated, besides the salary requirement, the Buchris Committee set five additional criteria:

1. A foreign expert possesses unique qualities and skills. The employer must show that the expert will pass the knowledge

he possesses on to an Israeli employee, who will ultimately be able to replace him.

2. A foreign expert creates job opportunities in the Israeli market, at a ratio of at least 1:10; in other words, each foreign expert creates at least 10 Israeli jobs.
3. A foreign expert offers knowledge and experience not readily available in the Israeli market.
4. A foreign expert possesses a high level of specialization and education.
5. A foreign expert is an individual engaged in managerial or R&D positions.

The Committee recommended that in addition to the salary requirement, the candidate must meet *at least two* of the aforementioned criteria in order to be recognized as a foreign expert.

1.7 Acquiring a Foreign Expert Employment Permit

Legal employment of a foreign expert in Israel is possible only after completing a three-step process. The first step involves acquiring an Employment Permit from MOITAL. The second step includes the issuing of a B-1 Entry and Residence Visa. This process is carried out by MOI. The third step involves having the B-1 Visa stamped in the employee's passport. This is carried out by an Israeli Consulate located abroad. Without a valid Employment Permit stamped in the employee's passport, she cannot enter Israel for the purpose of work. In addition, a fee must be paid with the submission of each request.

First Step

An Employment Permit granted to a foreign expert will restrict her to working exclusively for the company that sponsored the application, and in the position indicated in the application. Any employment by a different

Employer will require the submission of a new application by the new employer. Employment of a foreign expert in Israel without a valid Employment Permit constitutes as a criminal offense.

In order to obtain a valid Employment Permit for a foreign expert, the employer must submit an application to MOITAL's *Semech* Unit. In the application, the employer must prove that the candidate meets the criteria of a foreign expert. The request is then discussed by a special committee headed by a judge. A well-prepared request is generally handled within 45 days. A poorly prepared application, however, may cause significant delays in the approval process, or may even be completely rejected, causing heavy damage to the employer.

Second Step

In addition to a valid Employment Permit, a B-1 Entry and Residence Visa is also required for a foreign expert to be legally employed in Israel. Parenthetically, it is important to note that in Israel, as opposed to other countries such as the United States, there exists only one Visa for migrant workers, both professional and non-professional (construction, agriculture, hotel maintenance, etc.)

The *Semech* Unit's decision to issue an Employment Permit is used as a recommendation to MOI to approve the B-1 Visa,

although MOI has complete discretion as to the final approval. At any rate, in most cases the B-1 Visa is indeed issued based on the unit's recommendation. Reviewing of a B-1 application may take up to 45 days. Since obtaining an Employment Permit takes up to 45 days as well, acquiring all the permits necessary for employing a foreign expert in Israel may take up to as much as 90 days. Moreover, in certain cases, an approval from security agencies is also required, which might mean a longer waiting period for an approval by MOI.

Third Step

After having obtained a B-1 Visa, the foreign expert must report to the Israeli consulate and have the visa stamped in his passport. If the expert happens to be residing in a country that is not her country of citizenship, under a valid Employment Permit, she may obtain the visa at the Israeli consulate in that country as well. For example, a Chinese citizen working under a valid Employment Permit in the United States may obtain the visa at the Israeli Consulate in either China or the United States.

Visa Conversion in Israel

According to MOI regulations, it is impossible to convert a B-2 Visa intended for tourists and business visitors to a B-1 Visa while the expert is still in Israel². Therefore, the expert is required to obtain the B-1 Visa *before* entering Israel. The visa given to the expert is valid for only one entry into Israel, and usually for a period of one month. After the expert has entered Israel, MOI extends it to the period approved by the *Semech* Unit. Afterwards, the expert must obtain a visa valid for multiple entries. This is done by submitting an application to the local MOI bureau.

² This procedure is known as an "upgrade" in the Ministry of Interior.

The foreign expert's visa is usually extended by no longer than a year. Afterwards, it may be further extended each year by an additional year. The total time extended may not exceed 5 years and 3 months from the expert's initial entry. Therefore, excluding special circumstances, it is forbidden for employers to employ a foreign expert for a total period longer than 5 years and 3 months. Still, in most cases, the average stay of a foreign expert is between 1 to 3 years, so that these restrictions do not represent a real obstacle for most.

Visa Extension Request

There is a common, albeit mistaken assumption that obtaining an extension for a visa is easier than obtaining the initial document. The contrary is actually the case – it is more difficult to attain an extension. Since the denial of extension can have great consequences, it is recommended to exercise special care when applying for it. Denial of extension will lead to the immediate termination of employment, until an appeal is granted. In addition, the employee and her family will be required to leave Israel immediately. This situation entails severe economic and social ramifications, due to the potentially great expenses on behalf of the company and the personal distress to the employee and her family.

In order to extend a B-1 Visa, a detailed application must be submitted to the *Semech* Unit. The burden of proof in obtaining an extension is even greater than that in obtaining the initial visa. For instance, it may be necessary to explain why the expert has not managed to pass on his knowledge or skill to an Israeli worker during the initial period.

1.8 Family Members of the Foreign Expert

Generally, MOI does not grant family members of migrant workers permission to enter and stay in Israel, not even as visitors. However, in most cases, MOI will make an exception to this policy for foreign experts and their families. Currently, in most cases where a foreign expert is granted a B-1 Visa, his spouse (and children, if any) will be granted a B-2 Tourist Visa.

This is done within the discretion of the MOI official processing the application. The justification for this exception lies in the foreign experts' special qualities – their relatively small numbers compared to non-professional migrant workers, their significant contribution to Israeli economy, and the high wages they are paid – and, in addition, in Israel's obligations under international agreements.

The B-2 Visa granted to family members is tied to the expert visa, meaning it is only valid while the foreign expert is still employed in Israel. Furthermore, any family member staying in Israel under a B-2 Visa is strictly prohibited from being employed in any way during his stay. Accordingly, any family member performing work in Israel without permission will risk detainment or even deportation, and may not be allowed to return to Israel for several years.

A family member will only be allowed to be employed in Israel legally if his employer finds work on his behalf, and, in addition, he succeeds in converting his visa to a B-1 Visa. It should be noted that even if the Employment Permit has been approved, the B-1 Work Visa cannot be stamped in his passport as long as the family member is staying in Israel. As previously mentioned, in order to convert the visa, the family member

would be required to leave Israel and have the new visa issued in an Israeli consulate abroad. An expert's children are free to study in any school in Israel.

1.9 Employment of a Jewish Foreign Citizen

Any Jewish person who does not hold an Israeli citizenship and is interested in working in Israel may arrange for her legal employment by choosing one of four courses that will allow his employment in Israel. The first course is by means of employment as a foreign expert, requiring a B-1 Entry and Residence Visa and an Employment Permit. The second course is employment under a B-1 Visa which is granted based on recommendation by the Jewish Agency. The third course involves obtaining Israeli citizenship by way of the Law of Return, an *Oleh* (Jewish Immigrant) Visa and an *Oleh* Certificate. The fourth course is by settling in Israel with an A-1 Temporary Resident Visa.

Employment of a Jew as a Foreign Expert

A Jewish person employed in Israel as a foreign expert, under an Employment Permit and a B-1 Visa, will not be regarded as an Israeli resident and will be subject to the exact same laws and regulations which apply to all migrant workers. He will be subject to the same restrictions, such as being unable to work for any employer other than the original sponsor, and others. Moreover, whoever seeks to employ the foreign citizen must demonstrate that he meets the criteria of a foreign expert, and, in addition, must commit to pay the foreign citizen a wage at least double the Israeli average. As a non-resident, the foreign citizen is, by law, not entitled to national health insurance; his health insurance must be provided by the employer.

Employment by Recommendation from the Jewish Agency

There are other means for a Jewish Foreign citizen to legally work in Israel. She is entitled to contact the Jewish Agency and request a recommendation for a B-1 Visa. This visa will normally be issued by the MOI for up to one year. In this case, it is not necessary to prove that the foreign citizen meets the criteria of a foreign expert. Another notable difference in this approach, in contrast to the foreign expert approach, is that the individual is not bound to any specific employer, and is therefore entitled to work for any Israeli employer.

Employment as an *Oleh* (Jewish Immigrant)

The employment of a foreign citizen who's obtained Israeli citizenship by right of the Law of Return will not be restricted by any means, and will be regarded as the employment of any Israeli citizen. This means that any employer has the right to employ that foreigner immediately, once the individual has entered Israel and obtained an *Oleh* Certificate. Moreover, the employment will not be confined to salary limitations, other than the national minimum wage; notwithstanding that, all other laws pertaining to employment in Israel still apply. Clearly, there will be no need to prove that the new immigrant fits the criteria which define foreign experts, and there will be no need for an employment visa on her behalf. The individual will be free to move from one employer to the other as she pleases and may enjoy the benefits of the Law of National Health Insurance; her family will also be eligible for National Health Insurance.

If already in Israel, the individual must submit an application to the local MOI office or to MOI headquarters in Jerusalem. If abroad, the individual may submit the application to either the Israeli Consulate, or Israel's Diplomatic Delegation. If the

individual is proven eligible for Israeli citizenship by means of the Law of Return, she will be granted an *Oleh* Certificate.

Employment as a Temporary Resident

Another alternative for a Jewish Foreign Citizen interested in working in Israel is gaining the status of Temporary Resident in Israel. Immigration regulations state that any individual who qualifies under the Law of Return and wishes to experience the living conditions in Israel and possibly immigrate, may choose to apply for an A-1 Temporary Resident Visa first. This visa, known as considering *Aliyah* (immigration) is usually granted for a period of one year, and may be extended up to three years. A holder of an A-1 Visa is permitted to work in Israel, for any employer, without requiring a work visa and without any salary restrictions, but subject to all applicable labor laws.

1.10 Foreign Athletes

A foreign athlete needs to be confirmed as a foreign expert in order to stay and work in Israel. Ignoring this policy on behalf of athletes entering Israel to gain an impression on Israeli sports, to try out for Israeli teams, or join teams has frequently resulted in delays or detention upon arrival.

Employment Permits are granted to foreign athletes by MOITAL. The athletes are then supervised by the numerous sporting organizations and unions in Israel. Upon recommendation by MOITAL, a work visa will be issued by MOI.

The procedure of obtaining an employment visa and suitable permit for a foreign athlete is usually initiated by the team or sports organization interested in bringing the athlete to Israel,

such as a basketball or soccer team. As with every foreign expert, the athlete's work visa is given to the Israeli employer, in most cases a sports organization, and therefore the athlete will only be permitted to work for or be sponsored by that specific employer.

Illegal employment of a foreign athlete, like illegal employment of any migrant worker, exposes the team or organization to harsh criminal sanctions, which may include heavy fines or criminal proceeding against the organization's managers. An athlete working illegally in Israel is also liable to arrest and deportation.

Quota restrictions on the number of foreign athletes allowed in Israel have compelled sports organizations and unions to try obtaining Israeli citizenship for the athletes, thus bypassing the quotas. According to the Citizenship Law, the Minister of Interior is authorized to grant Israeli citizenship to foreign individuals based on his discretion.

1.11 Foreign Artists and Entertainers

Foreign artists and entertainers performing in Israel may often be considered as migrant workers. Accordingly, it is necessary for them to obtain the proper visas prior to entering Israel.

The local party interested in inviting or hiring the artist or entertainer must contact MOITAL and request an Employment Permit on his behalf.

After having obtained an Employment Permit the local party must contact MOI and apply for a B-1 Visa for the foreign artist or entertainer. The request must include an Employment Permit

issued by MOITAL, as well as a detailed letter expressing the need for the artist or entertainer to enter Israel and all necessary forms and documents.

There are some special provisions regarding artists and entertainers. In the application, there is no need to show that the artist or entertainer will be paid a wage double the prevailing wage.

Occasionally, the inviting party may be unaware that visas are required for inviting foreign performers. For example, two Dutch disc jockeys were invited to perform at a New Year's event in Eilat, but the Israeli producer who invited them had not bothered to obtain proper visas for them. Accordingly, they were not allowed into Israel. Beyond the inconvenience faced by the artists, it may be assumed that the event's producers, as well as the partygoers, were damaged from this affair.

1.12 Foreign Academic Personnel

According to government regulations, the employment of foreign academic personnel and researchers is not restricted by quotas. In addition, there is no requirement for the workers to earn salaries that are at least double the prevailing wage.

In order for an Israeli academic institute to legally employ foreign academic personnel or researchers, a request must be submitted to MOITAL, and then to MOI. The applicant will be a recognized academic institute. The application must include a recommendation by the institute as well as a commitment signed by its authorized representative, to the effect that the employee is obligated to leave Israel at the end of her term.

1.13 Foreign Doctors and Medical Workers

The employment of medical workers performing internships in Israel is not restricted by quota. However, the employment of medical doctors (MDs) and medical workers not performing internships is limited to 50 permits a year.

The employment of MDs and other medical workers in Israel requires an Employment Permit by the Ministry of Health, which will then serve as a recommendation for MOI to issue a B-1 Work Visa (for permanent workers) or a B-2 Visitor Visa (for interns). The application for the appropriate visa must include a detailed letter explaining the need for the specific worker, as well as all the relevant forms and documents required by MOI. Finally, there is no requirement for the MD or medical worker to earn at least double the prevailing wage.

1.14 Foreign Press Workers

The employment of foreign photographers and reporters requires recommendation by the Government Press Bureau, a body affiliated with the Israeli Prime Minister's Office responsible for coordinating between the government and foreign journalists.

The Journalist License issued by the Government Press Bureau does not constitute a permit for the foreign press worker to live or work in Israel. The certificate is only granted after the foreign press worker has obtained the necessary visas. A foreign press worker who is not a citizen or resident of Israel and is interested in working in Israel temporarily or as a visitor will be eligible for a Temporary Journalist License if he meets the following two conditions:

- He is employed fulltime by a media organization in Israel as journalist, broadcast technician or press assistant. His main occupation is in the news field.
- It has been demonstrated to the Press Bureau that he will be temporarily employed in Israel by a broadcast company as journalist, broadcast technician or press assistant. This also applies to individuals in their first year of work.

These rules apply, *mutatis mutandis*, also to freelance journalists working in Israel.

2. Illegal Employment

Unauthorized employment of a foreign expert (or any migrant worker) constitutes a criminal offence and may lead to harsh sanctions on the foreign expert, the company at employing her, and its management. These sanctions may include heavy fines, or, in some cases, imprisonment. In recent years, an effort has been made to promote stricter legislation pertaining to illegal employment of migrant workers, as well as to better enforce these laws by MOITAL. The following applies to both foreign experts and to other migrant workers.

2.1 Fines and Imprisonment

The Foreign Workers Law states that any individual who employs an unauthorized migrant worker, in terms of the Entry to Israel Law, or employs a migrant worker without all the required permits, faces a fine of over \$10,000 for each worker (or a fixed administrative fine of over \$2,000 per worker). The employer is also liable to a fine of over \$1,000 for each day the migrant worker was illegally employed (or a fixed administrative fine equaling \$900 per day). Fines may well be higher and can also include one-year imprisonment of such an employer.

Employers convicted of employing large numbers of illegal migrant workers, or of repeated counts, will be indicted with a severe criminal offense. In recent years, illegal employers of migrant workers have been punished with growing severity, and indicted more often rather than being administratively fined.

2.2 Detention and Deportation of Migrant Workers

Foreign experts working illegally in Israel are in violation of the law. They may be detained and deported by the Immigration Police.

2.3 Additional Consequences

The detention or deportation of a foreign expert following illegal employment in Israel may also affect the relationship between the foreign expert and the employer. A foreign expert deported from Israel will be prohibited from entering the country for a number of years, for any purpose whatever (not just work). Furthermore, he may face substantial difficulties in obtaining visas to other countries, such as the United States, due to the fact that his record will be blemished with an immigration offense.

This situation may expose the company which has employed the expert, as well as its management, to a suit for compensatory damages on behalf of the expert, whose career suffered damages. This is not a hypothetical scenario; there have been several such instances. Additionally, the employer's ability to employ foreign experts in the future will obviously suffer as a result.

3. Business Visitors

The Entry to Israel Law, which addresses the process of entering Israel and the required visas, does not refer specifically to the term business visitor. Also, the Foreign Workers Law does not define "work" either. At most, the definition may be inferred from the Foreign Workers Law that any individual coming to Israel for a business purpose, but not for performing work in Israel, should not be constrained by the rules which apply to migrant workers or foreign experts. This individual's activity in Israel does not require a permit from the *Semech* Unit, and her entry to Israel does not require a B-1 Entry Visa.

The appropriate authorities – mainly MOITAL's *Semech* Unit and MOI's Population Administration Department – do not acknowledge the term business visitor. The principal question asked by the authorities in this regard is whether the foreign national is entering Israel in order to perform productive work, or for some other purpose permitted by her visitor visa.

The absence of either a legal definition for business visitors or a separate visa category for them has several important consequences. These pertain to, among other things, the status of business visitors in Israel, the difficulty distinguishing them from foreign experts (and, as a result, the exposure of workers and their employers to criminal sanctions), the type of visa they need to enter Israel, and the authorities' unawareness of the business visitors' special needs (such as quick response times).

3.1 Business Visitors – Accepted Standards

According to accepted guidelines, a business visitor is a foreign national who comes to Israel for a short period of time –

usually only a few days or weeks – for a specific business purpose that does not include actual productive work. This *business purpose* may include, among other things, conducting business meetings, participating in board meetings, business negotiations, signing contracts, participating in conventions, exhibitions, or seminars, etc. In other words, the business visitor is neither a migrant worker nor a foreign expert. He is also not an ordinary tourist visiting Israel for cultural, historical, or religious reasons.

Although the business visitor's purpose in coming to Israel is normally business-related, he possesses a number of characteristics that set him apart from the foreign expert. These are the basis for criteria used to differentiate between a business visitor and a foreign expert, as follows:

- The purpose and nature of the visit to Israel;
- The duration of the visit;
- The location where the foreigner's salary is paid; and
- The nature of the business relationship.

Of the abovementioned criteria, only the first can be said to be conclusive. The others are used as possible indications – meaning, they merely *assist* in determining whether the foreigner is to be treated as a business visitor or a foreign expert (and whether or not he would require a work visa).

3.2 Purpose and Nature of Visit

The only conclusive criterion in distinguishing a business visitor from a foreign expert is, as stated, the *purpose and nature* of his visit to Israel. As opposed to the foreign expert, the business visitor is not expected to perform any productive activity in Israel. Typical activities of a business visitor include

participation in business meetings (even if on behalf of a foreign employer), exhibitions which do not have a sales or promotional element, seminars – as either participant or lecturer, conventions, board meetings, etc.

3.3 Duration of Visit

From the Israeli authorities' point of view, prolonged visits by foreigners can be a negative indication. The business visitor's stay in Israel is typically between several days and three weeks. However, a short stay alone does actually prove that the foreigner is either a business visitor or a foreign expert, due to the fact that foreign experts may also stay in Israel for only a few days or weeks.

A long stay in Israel, however, would likely lead authorities to presume that the foreign national is staying in Israel for the purpose of working. This presumption is certainly reasonable.

3.4 Nature of Stay

Generally, the stay of a business visitor in Israel is more temporary than that of a foreign expert working in Israel. This fact is due to the duration of the business visitor's visit in Israel, which is usually shorter than that of a foreign expert, as well as to characteristics of the business visitor's activity in Israel, which is usually more flexible than that of the foreign expert.

A temporary visit can mean several things. A business visitor generally does not bring his family along with him on trips to Israel, whereas a foreign expert does so on many occasions. In addition, a business visitor usually does not bring along many belongings as opposed to the foreign expert. A business visitor will generally not have permanent residence in Israel, and will usually travel by means of a rented car. In other words, a

business visitor shows no indications of relocating his life to Israel. Nonetheless, this rule is merely used as a guideline to help authorities identify individuals who are in fact coming to Israel for the purpose of working.

The decision on which visa would be required should only be made after carefully analyzing the previously mentioned criteria, with an emphasis on the purpose and nature of visit. A decision based on these criteria is an informed decision, serving, in most cases, to prevent consequences that are both inconvenient and damaging.

3.5 Submission of Application – at an Israeli Consulate or in Israel

Citizens of most countries are required to obtain their visas at an Israeli Consulate prior to entering Israel. Generally, foreigners belonging to this group are granted a visa for one month. The consulate is professionally guided by Ministry of Interior (hereinafter MOI and the Consular Department in the Foreign Ministry. In fact, the consulate has practically no independent discretion in issuing visas. It would be more correct to say that the consulate's decision-making privileges when it comes to visas are merely for preventative purposes, meaning the consulate is only authorized to decide *not* to issue a visa according to various indications.

One such indication is when the foreigner is sent by a foreign company that is either unknown or not particularly credible. Credibility can be assessed, among other things, based on the company's previous experience with sending business visitors to Israel, or a recommendation by the Israeli financial attaché in that country, who knows the company, its affairs, and ties with Israeli companies. Following refusal by the Israeli consulate,

the Israeli company sponsoring the visit may resubmit the application to MOI in Israel. Many Israeli companies submit the applications to the MOI to begin with, to save the visitor the hassle.

A Visitor Visa issued by the Israeli consulate or MOI for the first time is valid for only a single entry. Under certain circumstances, it is possible to exchange the one-time visa for a multi-use visa, which allows unlimited entries to Israel. For this, a detailed explanation is required, as well as a history of previous visits to Israel – usually at least three. If the request is approved, the visa would only be issued at the Israeli consulate abroad, while the applicant is outside of Israel.

When it comes to visits with business purposes, there are cases in which it is necessary to apply for a B-2 Visitor Visa at the MOI in Israel. In these cases, the application must be submitted by the party inviting the business visitor. A request for a B-2 Visitor Visa at the Israeli Consulate or at MOI in Israel entails an application fee.

3.6 Invitation of Visitor or Foreign Expert from a Hostile Nation

Citizens of countries defined by Israel as "hostile nations", as well as citizens of Sudan and Pakistan, are currently not permitted to enter Israel and therefore may not be employed in Israel as foreign experts, unless special authorization is granted. Other nations whose citizens may not enter Israel without special authorization from security officials are Morocco, Malaysia, Indonesia, and Muslim countries that were once part of the Soviet Union.

3.7 Entry into Israel

An entry visa means permission to board a plane that is bound for Israel, or permission to arrive at a port of entry into Israel. The visa itself does not guarantee entry, and does not override the power of Border Inspection officials to deny any individual entry into Israel, regardless of whether she has the proper visa, or belongs to one of the countries that are exempt from entry visas. The Border Inspection officials are also authorized, at their own discretion, to shorten the allowed duration of an individual's visit on the spot, or to limit the permitted stay to less than three months for citizens of countries exempt from entry visas.

There are a number of typical cases in which the Border Inspection officials will deny a business visitor entry to Israel. One such case is when the foreigner arouses suspicions that he intends to settle or work Israel, or is motivated by any other purpose not indicated in his visa. These suspicions can be based on what the foreigner says, his behavior, or any other circumstance.

It is best for visitors with "suspicious" features or citizens of nations that may cause suspicion not to arrive in Israel at night or on weekends, or through overland/naval ports, which are not accustomed to the entrance of business visitors. Furthermore, it is recommended that, if the visitor does hail from a "problematic" country, the Israeli sponsor provide him with a detailed visit schedule and a letter of invitation containing contacts which may be reached by Border Inspection Authorities, if necessary.

3.8 Extending a Visitor Visa

Occasionally, the need arises to extend a visitor visa beyond the original date. The visa is extended by MOI, such that the total period of stay – that is, from the date of the foreigner's entry into Israel – generally does not exceed six months.

A request to extend a visitor visa arouses a certain suspicion in MOI, to the effect that the foreigner may be working, or be interested in working in Israel. These suspicions are based on experience and commonsense, and, in each case, Population Administration officials look into all aspects of the situation. These circumstances are similar to those that prompt Border Inspection officials to deny foreign visitors entry into Israel, or to shorten their stay. Notably, this is less likely to happen if the inviting party is a well-known and credible corporation.

An individual applying for a B-2 Visa extension will be required to report to the Population Administration Bureau, where she will be interviewed. The purpose of the interview is to confirm the details of the application, and for the Population Administration official in charge to receive a direct impression of the applicant's reputability. Obviously, interpreting whether or not an applicant is in fact untruthful and seeks to work in Israel is a completely subjective matter, and depends completely on the official's professional reasoning and the impression made by the applicant. Adequate preparation for the interview will aid the applicant in presenting her case in the clearest and most convincing manner.

Naturally, it is more difficult for a Business Visitor originating from a country whose citizens must obtain a B-2 Visa before entering Israel (non-exempt countries) to convince the

Population Administration official that her request for an extension is honest, and that she does not intend to work in Israel. This stems from the same logic that requires citizens of these countries to obtain their visas prior to entering Israel, and more so from the assessment that citizens of certain countries, especially those with poor economies, would tend to work in Israel more than citizens of other, usually Western, countries.

If the business visitor believes that her visit to Israel will take longer than one month, and if she belongs to one of the "non-exempt" countries, it is recommended that she apply for a three-month visa at the Israeli consulate prior to arriving in Israel. This way, even if the application is denied and she is only granted a one-month visa, she would have a reasonable explanation for having applied for an extension while in Israel. This may play an important part in whether or not the extension would be granted. It is also recommended to keep a copy of the original visa application at the consulate, as it will support the case for extending the visa in Israel, should that be necessary.

4. Protection under Israeli Labor Laws

The Israeli labor legal code contains extensive protective legislation, providing minimal rights for every worker in Israel, local or foreign. In addition, the legal code contains several other components. The first is collective agreements signed between employers and labor organizations in various industries. The second is extension mandates by the Labor Minister, applying to certain collective agreements encompassing the entire labor force. The third component deals with personal contracts between employees and their employers.

As stated in the Foreign Workers Law, the protective legislation in Israel applies equally to migrant and local workers. This includes the collective agreements and extension mandates. It is forbidden by law for an employer to discriminate against a migrant worker and deny him these rights. Still, there are several difficulties in enforcing the labor laws pertaining to migrant workers.

The Israeli labor legal code applies equally to the employment of foreign experts, due to their classification as migrant workers.

5. Acquisition of Israeli Citizenship

According to the Citizenship Law, Israeli citizenship is acquired in one of the following seven ways.

5.1 Citizenship by way of the Law of Return

As a rule, citizenship by means of Return (i.e., immigration by Jews intending to settle in Israel) is given to any individual who is granted an *Oleh* (Jewish Immigrant) Certificate, subject to Section 3 of the Law of Return (1950), as well as any individual who immigrated to Israel or was born in Israel and is a resident. There are certain exceptions to this rule, such as individuals who ceased to be Israeli residents before the promulgation of the Citizenship Law, individuals born in Israel after Independence to diplomatic or consular representatives, and individuals who renounced gaining citizenship via the Law of Return.

Eligibility for immigration is given to any Jew; a "Jew," for this purpose is any individual born to a Jewish mother or converted to Judaism who does not belong to any other religion. Other forms of eligibility for non-Jews are also available: a child or grandchild of a Jew, a spouse of a Jew, and a spouse of an individual who is a child or grandchild of a Jew (with the exception of Jews who've willingly converted to another religion).

5.2 Citizenship through Settlement in Israel

Citizenship by way of settlement in Israel is granted to those who were citizens of the British Mandate Government in Israel (prior to Israel's establishment in 1948), were not granted citizenship by way of the Law of Return, and meet certain

requirements specified by law. Children of such individuals are also eligible for citizenship. Naturally, this naturalization pathway was already used and exhausted during the first years of Israel's existence and is scarcely used nowadays, but is still legally applicable.

5.3 Citizenship through Birth

According to Section 4 of the Citizenship Law, citizenship through birth is granted in several different ways, with the most prominent being when an individual is born in Israel whilst at least one of her parents is an Israeli citizen, or an individual born abroad when at least one of her parents was an Israeli citizen – by way of the Law of Return, settlement in Israel, naturalization, or birth. Additionally, if an individual was born abroad but granted Israeli citizenship as a result of at least one of her parents being an Israeli citizen, the citizenship will not "pass on" to her children. Of course, if her children are eligible under the Law of Return, they will be permitted to immigrate to Israel and obtain Israeli citizenship this way.

5.4 Citizenship through Birth and Settlement in Israel

Citizenship by way of birth and settlement in Israel is granted, in accordance with Section 4A of the Citizenship Law, to whoever was born in Israel after its establishment – on any territory that at that time was considered part of Israel – and was never a citizen of any other country. A condition for citizenship through birth and settlement in Israel is that the individual requested Israeli citizenship between his 18th and 21st birthday, and that he had been an Israeli resident for at least five consecutive years before applying.

5.5 Citizenship through Adoption

Citizenship through adoption is granted in several situations, the most common being when a juvenile is adopted in accordance with the Adoption Law (1981) by at least one parent who is an Israeli citizen, as well when a child is adopted *outside Israel* and at least one parent is an Israeli citizen by way of Return, settlement in Israel, naturalization, or birth. Nevertheless, if an individual was born outside of Israel and is an Israeli citizen only because one of his parents was an Israeli citizen, any child he adopts will not be granted Israeli citizenship if the child was adopted abroad.

5.6 Citizenship through Naturalization – General

According to the Citizenship Law, the Minister of Interior is authorized to grant Israeli citizenship, under certain conditions, to individuals who cannot become Israeli citizens by any of the previously mentioned ways. The citizenship is granted from the day the individual pledges allegiance to the State of Israel.

Naturalization also grants citizenship to any of the individual's non-adult children, as long as the child/children were residents of Israel (or territories held by the Israeli Defense Force) on the day of the naturalization, and the parent had full custody of the child. If only one of the parents is naturalized, and the child is a foreign citizen, the other parent may declare that he or she is opposed to giving the child Israeli citizenship, and thus citizenship will not be granted.

5.7 Citizenship through Naturalization – Graded Process

The Minister of Interior is authorized to grant citizenship to the partner of an Israeli citizen, even if legal requirements have not been met. The foreign partner may earn Israeli citizenship after undergoing a process nicknamed the "graded

process," which usually takes at least four and a half years to complete. This process is designed to test the authenticity of the relationship between the Israeli citizen and the foreign partner on a long-term basis, and to prevent cases of fictitious marriages to Israeli citizens for the sole purpose of gaining Israeli citizenship. Note that, in some cases, the Ministry of Interior will also recognize non-marital relationships for the purpose of this process.

The so-called graded process is relevant in cases where an Israeli citizen marries a foreign partner, in Israel or abroad, regardless of if the couple met each other in Israel (e.g. a migrant worker working in Israel, legally or illegally) or abroad.

The graded process is deemed complete only if the Population Administration is convinced that the marriage is authentic, and that no other interferences exist, which may include delivery of false or insufficient facts, concealment of important information, or concerns that the foreigner would endanger public health and safety, or national security.

5.8 "Hidden Citizenship"

"Hidden citizenship" can be described as a state in which an individual is a citizen of Israel, but is unaware of that. Hidden citizenship may exist in cases where an individual was granted Israeli citizenship through birth, as explained in Section 5.4. Therefore, it is possible for someone who has never set foot in Israel and has no ties or affinities towards Israel to be an Israeli citizen without his knowledge.

Since Israeli law allows Israeli citizens to hold dual citizenships, and since such nationals are still considered ordinary Israeli citizens (with all related rights and duties), holding hidden citizenship entails several serious implications, both positive and negative.

An Israeli citizen with hidden citizenship may be obligated to serve in the military in accordance with the Law of Security Services. When the child was born outside of Israel, he is entitled to contact the IDF authorities and request a service postponement. A postponed status will permit the Israeli citizen with hidden citizenship to stay in Israel for a maximum of three months every year, or for a period of one year (but only once) – without being drafted. Any longer stay may require military service. These rules also apply to individuals who were born in Israel and immigrated before the age of 16.5.

5.9 Dual Citizenship

The Citizenship Law states that if an Israeli citizen holds an additional citizenship, she will still be considered an ordinary Israeli citizen. The significance of this is that an Israeli citizen who holds another citizenship will be considered a *bona fide* Israeli citizen.

For example, an Israeli citizen with dual citizenship is still considered an Israeli citizen by the Law of Security Services, and therefore must serve; she will be considered an Israeli citizen in terms of law-abiding responsibilities; she will be considered an Israeli citizen when it comes to changing personal status, and, if Jewish, she will be subject to the laws of the Rabbinate Court of Law when engaging in marriage or divorce.

As for as entering, staying, and working in Israel, an Israeli citizen with dual citizenship is considered an ordinary Israeli citizen for any purpose, and may enter Israel without a visa, stay for as long as she wishes, and work in any occupation for any employer.

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