



International
Labour
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► Temporary labour migration: The business community experience



Temporary labour migration: The business community experience

Scott Leeb, Nancy Morowitz, Sandrine Krasnopolski

FRAGOMEN

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Temporary labour migration: The business community experience

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► Preface

The following study on employers' perspectives and experiences with temporary labour migration is part of a larger ILO project to gather knowledge on temporary labour migration.

The June 2017 International Labour Conference (ILC) tasked the International Labour Office with new knowledge development regarding temporary labour migration; the Office should conduct a global comparative analysis. Constituents debated the issue, of great concern to them, and underscored the importance of the topic for the future of work. (106th Session of the International Labour Conference (2017), Resolution concerning fair and effective labour migration governance). As a follow up to this ILC request, the Office undertook a mapping of existing knowledge concerning the scope, use and effects of circular and temporary migration schemes and will prepare a synthesis report for submission to the Governing Body in 2022. (GB.331/INS/4/1(Rev.)

Temporary labour migration programmes can be set up unilaterally by migrant destination countries but often they are based on some kind of agreement (bilateral treaty, MOU, or similar) between an origin and a destination country. Much of today's temporary migration also occurs under regional integration schemes and their free movement provisions.

The views on temporary labour migration vary greatly, including among ILO constituents. In light of the various concerns that the complex dynamics of temporary labour migration raise, it will be crucial for the Office to capture constituents' perspectives to enrich the debate. This document is an input from the Employers' side to this process.

Manuela Tomei

Director
Conditions of Work and Equality
Department (WORKQUALITY)
ILO - Geneva

Deborah France-Massin

Director
Bureau for Employers' Activities
(ACT/EMP)
ILO - Geneva

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► Introduction

Temporary labour migration programs are receiving increasing attention from policy makers and development practitioners worldwide as a way to address geographic labour imbalances, and to provide workers with skills, better wages, a career path and other opportunities not previously available. The business community's heavy use of temporary labour migration programs¹ around the globe provides a unique opportunity to capture targeted perspectives on the currently available – what supports and promotes business development, what hinders operational imperatives, what could better meet modern business demands. As the world is still grappling with a devastating pandemic, these programs will no doubt remain in the spotlight – albeit one that is focused on economic recovery, essential skills development and business continuity.

Fragomen, Del Rey, Bernsen & Loewy, LLP and Fragomen Global LLP (collectively known as Fragomen) is recognized as the world's leading corporate immigration services provider and adviser. The firm employs more than 4,100 immigration professionals and support staff located in more than 50 offices in 30 countries across the Americas, Asia Pacific and EMEA. For more than 65 years, Fragomen has represented a broad range of companies, organizations and individuals, working in partnership with clients to facilitate the transfer of employees worldwide. Fragomen offers support in more than 170 countries. Our client engagement teams work closely with clients across a variety of industries and countries to support their priorities and tackle their challenges.

About the authors of this paper

Scott Leeb, Senior Knowledge Management Director

As the head of Knowledge Management, Scott leads Fragomen's Knowledge Group, fully dedicated to the creation, curation, and management of the firm's knowledge. Scott is responsible for making Fragomen's worldwide immigration knowledge readily available to keep Fragomen teams informed so they can provide optimal services to clients and keep clients apprised of the latest developments in immigration and potential impacts on their program. He is also responsible for leveraging the firm's knowledge to drive new business.

Over the past two decades, Scott has created, managed and grown the business intelligence and knowledge management functions at four *Fortune 500* companies and a leading international philanthropy. In previous positions, he advised the U.S. Department of Army, the International Monetary Fund and the World Bank on how to maximize their knowledge management capabilities.

Nancy Morowitz, Of Counsel, Director of U.S. Knowledge

As the Director of U.S. Knowledge and Legal Strategy in the firm's Knowledge Group, Nancy oversees a team responsible for monitoring and analyzing U.S. federal, state and international immigration law developments; providing guidance on complex legal issues; and liaising with government agencies on complex cases and policy matters. Nancy also directs the firm's U.S. legal training program and is executive editor of the *Fragomen Global Business Immigration Handbook*, an analysis of the immigration laws and procedures of the world's major business destinations.

¹ In addition to 5.1 million new temporary migrants entering OECD countries in 2018, there is a significant number of temporary workers in Australia and New Zealand and temporary labour migrants constitute a large percentage of the population in half of the GCC countries – 88% of the population in UAE, 79% in Qatar and 72% in Kuwait. (source: <https://www.oecd-ilibrary.org/sites/ec98f531-en/index.html?itemId=/content/publication/ec98f531-en>).

Sandrine Krasnopolski, Knowledge Management Director

As the Knowledge Management Director, Sandrine develops and implements Knowledge Management (KM) priorities and oversees the firm's global country content maintenance and development processes at Fragomen. Prior to joining Fragomen, Sandrine worked for the Australian Department of Immigration and Citizenship (now part of the Department of Home Affairs) at the Embassy of Australia in Washington where she oversaw the immigration service operations and provided local input on national policy initiatives.

► Methodology

For this study, we interviewed our client team leads across various regions who also serve as subject matter experts (SMEs) on local immigration law and/or specific business industries. Through a series of interviews, we collected perspectives on temporary migration programs used by our clients –ranging from small and medium enterprises to multinational corporations – and their views on shortcomings or challenges. Notably, we raised the following questions:

- What are the most commonly used short- and long-term programs in your jurisdiction?
- How are these programs used by clients?
- What do clients see as successful in these programs and what are the limitations that impact the business?
- Any recommendations on improvements or alternate programs that would better suit their business needs?

We also considered a Fragomen client survey conducted to collect information on the use of short-term work migration programs and perceived success and/or limitations. With a total of 140 respondents, most organizations were based in the Americas (56%), with 21% located in Europe and Central Asia, 12% in Asia Pacific region, 9% in Africa and 2% in the Arab States. They represented the following industries:

- Professional, Scientific and Technical Services
- Manufacturing/Construction
- Health Care and Social Assistance
- Educational Services
- Finance & Insurance
- Mining, Quarrying, and Oil and Gas Extraction
- Retail Trade
- Trade/Employers' organization & Chamber of Commerce

Based on our findings, we outlined the main challenges raised by the business community and listed specific findings by regions. To conclude, we listed our recommendations based on client feedback, along with our experienced view of what constitutes a successful comprehensive migration program.

► Challenges

Temporary labour migration is a natural offshoot of globalization. It enables skill shortages to be addressed efficiently, contributes to local economic growth and promotes the transfer of new knowledge and experience to local workforces. In fact, some governments feature knowledge transfer as a condition to sponsorship, recognizing its potential to advance its local workforce – and by extension, grow its economy. This is the case in Indonesia, where the transferred foreign employee must be paired with a local worker for the specific purpose of transferring knowledge. In Brunei, companies sponsoring foreign nationals on an Employment Pass may also need to submit a two-year succession plan² requiring that one local worker is assigned for every foreign national for knowledge transfer purposes. Succession plans also a growing trend in Africa where the governments of Ghana, Nigeria, and Zambia see labour migration as a means to develop its local workers' skills through programs like the Employment Act (Zambia)³. However, despite efforts by governments to carefully manage these programs, a host of common concerns has threatened to derail temporary migration schemes:

1. **Border management and security** continues to challenge countries that receive numerous migrants. Key problems include the overload of processing systems and the overburden of safety and security mechanisms. When border and security systems are strained, process steps that ensure human rights protection are often skirted in favour of efficiency. This is particularly true during periods of increased forced migration – where a people are forced by an event or local conditions to leave their home in large numbers, rather than by an individual aspiration for better opportunity and/or change. A lack of effective multinational cooperation contributes significantly to these challenges.
2. **While temporary migration programs address short-term labour needs, they do not address systemic issues related to developing a sustainable local workforce** and improving salaries and working conditions. Worldwide institutions and processes struggle to respond to contemporary risks and realities and fail to provide pragmatic solutions to effectively address migration issues and the protection of human rights. This is frequently the result of conflicts between politics and policymaking. Fundamental limitations include structures that are inflexible and maladaptive to change, often with excessive bureaucracy that is further burdened by excessive politicization.
3. **Temporary labour migration programs are often seen as a threat to residents** who fear they are missing out on opportunities made available to temporary migrants. No matter how beneficial to the local economy, these programs become a tangible target in countries where anti-immigrant sentiment is widespread. They fuel the perception that employers are using these programs to undercut local employment terms and conditions, thereby favouring foreign workers over locals.
4. **A general lack of overall transparency in the temporary migration programs** creates uncertainty and distrust. Where national labour standards enforcement agencies in some countries are committed to protecting guest workers and ensuring the fairness of programs, various realities hinder their efforts. Labour recruiter practices, verification of the veracity of job opportunities, governance of for-profit recruiters and a general lack of reliable data make it challenging to ensure the fairness of programs.

² While varied in their definition across international jurisdictions, succession plans generally capture information about the foreign worker's job description and the name of the local employee who will be succeeding that role once the assignment ends. It may also include a training plan to describe the training sessions the local employee will undergo to ensure that his or her skills match those of the foreign national once the handover occurs. Finally, an organization may be asked to provide a recruitment and employment plan to outline its recruitment plans.

³ Succession plans are even a growing requirement in sub-Saharan African countries; currently, in addition to Ghana, they are required in [Nigeria](https://www.fragomen.com/insights/alerts/companies-must-submit-succession-and-training-plans-february-28), where the government frequently conducts audits to ensure that companies are complying with the requirements (source: <https://www.fragomen.com/insights/alerts/companies-must-submit-succession-and-training-plans-february-28>).

- 5. Temporary workers may be vulnerable to exploitation.** This is especially so among lower-skilled workers who may fall prey to rogue intermediaries and pay (and sometimes borrow to pay) relatively large sums of money to labour recruiters for access to temporary jobs in destination countries. Once in country, these workers become desperate to repay their debts and are often vulnerable to exploitation, including workplace abuses.

As many businesses interviewed for this study concur, the typical response by governments to these concerns is to undertake reviews, produce reports and announce policy changes that reflect short-term reaction to public sentiment rather than long-term thoughtful, strategic responses. Whereas in-depth analyses may reveal the source of a specific problem (which may in fact be unrelated to immigration), many opt to implement swift changes to address what appears to be the most prominent issue at hand, but not its cause. With immigration in the national public eye for some, the pressure to demonstrate immediate action outweighs a longer-term strategic approach. This sometimes leads to the frequent revision of program regulations which, when implemented, disrupts the business community's long-term planning ability and compromises business continuity.

► Findings

General Observations

After the business community's recovery from the economic downturn of the previous decade, its demand for skilled and high-skilled workers has significantly grown. Aging populations, lower birthrates and the general needs of growing economies have created a talent vacuum that can only be satisfied by tapping into a global talent pool. Along with this, dramatic evolutions in the modern workplace have occurred, where the need for flexibility – in the form of outsourcing, remote work and project-based, on-demand arrangements – is paramount. Exposed by the pandemic in 2020, the explosion of remote work technology developments furthered this need to bolster business continuity. Policymakers have generally been slow to respond to these workplace realities, leaving the business community frequently frustrated and excluded from the conversation. An IOE questionnaire of business leaders in Africa recently showed that over 40% of respondents believe there is no institutional consultative mechanism in place for the private sector – government dialogue in the formulation of labour migration policy, laws or regulations. A recent Business Advisory Group on Migration, IOE, research paper found similar conditions in South America.⁴

Though a few countries have eased curbs on immigration in the past year, tensions persist between restrictive labour migration policy and labour needs in most economies. Multinational enterprises continue to be frustrated by the difficulty of hiring much needed foreign labour and by their growing vulnerability to government enforcement as a result of increased compliance obligations. The eligibility standards for foreign employees remain generally high, with increasing wage minimums and the growing requirement that local labour opportunities remain protected. This is typically done through a number of requirements, notably:

⁴ Business Challenges and Opportunities in Light of The Immigration and Regulatory Framework in South America: Argentina, Chile, Ecuador, Paraguay and Uruguay, Business Advisory Group on Migration, IOE, January 2020.

- that foreign workers provide training opportunities for local employees or demonstrate a succession plan that favours local workers;
- that there be an imposed break period between two immigration statuses – commonly referred to as a “cooling off period” – where foreign employees who have completed an assignment must wait a certain period of time before they can apply for another visa (12 months for the UK’s new Intra-company Transfer (ICT) visa holders looking to apply for a new ICT visa);
- that hiring companies adhere to strict recruitment requirements, such as labour market testing to ensure there is no local worker who is qualified and available to do the work that a foreign national is being sent to do and prescribed advertising parameters, such as method, platform, and posting time, as seen in Australia.

Overall, companies continue to seek **predictability of processes and outcomes, along with flexible programs that can adapt to their changing business needs.**

Companies have identified the following as policies that modern employment-based immigration systems should incorporate:

- Transparent, coherent processes for visas and work permits
- Work authorization programs that are adaptable to the lifecycle of the employee with a clear path from student/cultural exchange status through to permanent residence
- Digital processes and documents for efficiency and better records keeping
- Predictable processing timeframes for immigration applications
- Fee-based expedited processing options to ensure quicker outcomes within a guaranteed timeframe
- Trusted employer programs⁵ that allow for the pre-screening of employers intending to sponsor foreign national employees. As a one-time assessment, employer screening is not application-specific, thereby simplifying and expediting government migration processes for employers with an established record of compliance
- Safe harbor programs, such as the U.S.’s eVerify, Australia’s VEVO system or the UK’s Right to Work Checks, where employers opt into a compliance system to ensure their employees are authorized to work in the country and provide protections from liability for errors made in the course of a good faith attempt to comply with immigration laws
- Systems and/or processes for stakeholder feedback/engagement to ensure robust engagement at various stages of policy making. Stakeholders include not only businesses, but also interested organizations (e.g., labour organizations, etc.). Stakeholder consultation process includes seeking feedback from the business community on current use of existing programs and shortfalls before mapping out policy changes; engaging with stakeholders on proposed policy and implementation timelines; and establishing a post-implementation feedback system to quickly address unforeseen issues or inefficiencies.

⁵ Trusted employer programs allow for the pre-screening of employers intending to sponsor foreign national employees. While the pre-screening entails in depth review of company records, it is a one-time assessment that then no longer needs to be undertaken in support of individual immigration applications, thereby streamlining the visa assessment process and allowing government adjudicators to focus their assessment on the merits of the case. Such programs exist in Australia and the United Kingdom, among others.

Observations by region

Asia-Pacific

► Key observations		
► Continuing re-evaluation and policy changes around labour migration programs make it difficult for businesses to plan over several years and/or change business priorities.	► The shift of immigration compliance to employers compels the business community to invest in reliable internal compliance mechanisms.	► Companies that have engaged with government in dialogue on restrictive practices have found some success in promoting more favorable policies.

Generally, companies hiring or sending foreign talent in the region are encouraged by the enhancement of immigration application systems and, for some categories, the easing of work authorization criteria. Nonetheless, businesses continue to adapt to recent changes in immigration policies and processes, like in Australia, and to some extent in Malaysia, and prepare for upcoming immigration reforms, like in New Zealand.

In Australia, the business community continues to adjust to the 2018-2019 seismic shift in employment-based migration and the Australian government's reform agenda that replaced the Subclass 457 Temporary Work (Skilled) Visa with the Subclass 482 Temporary Skills Shortage (TSS) Visa. Most notable among the challenges are the following – some of which the business community addressed through government engagement:

- **Labour market testing requirement:** The implementation of universal, mandatory labour market testing is perceived as onerous and unnecessary. Companies question the need for an additional layer of labour market testing given that the occupation shortage list (which was most recently updated in October 2020) is widely known and regularly updated by the government. Additionally, they question the occupation list method which is retrospective in nature; it does not account for future skills shortages or occupations that do not yet exist. The labour market testing layer does not appear to fill this gap either, restricts employees whose occupation is not included on the list from being hired or transferred, and adds to the overall application processing time.
- **Reduction in age limits for permanent employer-linked visas:** Reducing the age limit to 45 means that highly skilled executives have been squeezed out of the eligibility criteria and, while the age exemption remains in place for highly skilled employees, the added level of uncertainty and additional application steps are perceived as unnecessary especially among talented applicants who would benefit the Australian economy. While not an immediate concern for temporary labour migration, employees who contemplate their temporary assignment as a pathway to permanent settlement in Australia are mindful of the 45-year-old age limits, especially where the investment in many employment years as a temporary worker may be thwarted by what is essentially a time restriction.

- **Work experience requirement:** A new work experience requirement that excluded highly talented international graduates and intra-corporate transferees on career development rotations to Australia early in their career sparked alarm among the business community. Businesses engaged the government to stress the importance of recognizing early career talent and an adjustment was recently implemented to include the recognition of relevant experience conducted during post-graduate studies. While this limited the number of employees affected by this new requirement to the adjustment period, it impacted the overall resource management of companies until the requirement was reviewed.
- **Training levy cost:** The payment of a levy, paid upfront based on the visa length to be granted to the employee, was introduced in 2018 and companies have been feeling the financial impact. While the Australian government eventually introduced several provisions where the levy is refundable (e.g., when the employee never commences a role or leaves the role within the first 12 months of a multi-year visa), it is still seen as an additional cost that the company must account for in their mobility planning.

The new short-term Subclass 400 visa program also still presents challenges for multinational businesses who send their international specialist employees to Australia for short term project-based work. While most of these types of assignments do not exceed the imposed three-month limit, some do require a longer time frame because of project delays or scenarios where employees make regular but short-term visits to Australia over a longer time frame. An example of this is a senior executive based outside of Australia who leads a team in Australia and travels frequently to Australia (every six weeks) to oversee activities related to operational management issues and to perform some work with the Australian team.

The lack of flexibility in the current policy settings does not allow for individual case specific discretion. This can frustrate businesses looking to use the program for genuine short-term work in good faith but that sometimes falls outside policy parameters in compelling circumstances.

Finally, the Department of Home Affairs' efforts to review the entire migration program over the past few years have put a strain on businesses and while they have adapted, the repeated review and refinements have made it difficult for businesses to confidently engage in longer-term mobility planning.

In Malaysia, since the November 2016 implementation of the new Work Pass application process for companies operating in the oil and gas sector within the Sabah jurisdiction, the processing times have ballooned, compromising assignment schedules and business commitments. By adding a preliminary approval by the Chief Minister's Department of Sabah (JKM) before Work Pass applications can be filed, the government has created a process bottleneck that impacts businesses' ability to effectively plan, especially where urgent work needed to be performed. Without any published service level agreements from the government, oil and gas companies now heavily rely on the help of their immigration providers to meet deadlines and are sometimes forced to revise their mobility resource plans for Malaysia altogether.

The looming changes to **New Zealand's** temporary work visa program are unsettling organizations with a presence there, or those that plan to establish a presence in the next few years. To address genuine regional skill shortages, New Zealand's proposed changes for 2021 display a fundamental shift in the way it intends to approach work. The new system will be implemented starting mid-2021 and will be employment-led rather than migrant-led, meaning that employers will need to take several steps before being able to employ a foreign national – including applying for accreditation, conducting a job check to ensure no local job seekers are suitable for the position, and requesting a visa on behalf of the foreign national candidate.

While companies are preparing for the new system, including the requirement that they hold accreditation and implement monitoring and compliance activities, many are uneasy about unforeseen effects of the change and struggle to account for them in their long-term planning. A new immigration policy that uses the pay attached to a job to determine the skill level and consequently the visa validity sends a signal that employers should pay foreign employees according to their value and commit to their growth if the intent is to employ them beyond three years.

In addition, companies have recently been impacted by the stricter implementation of the Specific Purpose work visa policy and have had to work strategically within the New Zealand framework while ensuring they can access much needed foreign talent.

In the Philippines, companies voice frustration over the misalignment of government agency policies in their shared immigration benefits adjudication process. Because the work permit application process is wholly conducted once the foreign worker is in the Philippines, many companies have experienced inconsistent visa assessment policies across Philippine consulates for their employees' entry visa applications. Since the beginning of 2019, certain Philippine consulates have been imposing additional documentary requirements for foreign nationals intending to travel to the Philippines to apply for work visas. Businesses see these unexpected requirements as an unnecessary application hurdle and a misalignment between the Department of Foreign Affairs – or DFA – (with jurisdiction over the consulates) and the Philippine Bureau of Immigration (with jurisdiction over the in-country work visa process). Companies advocate for a single decision maker structure or clearer global DFA guidelines that align with the Philippine Bureau of Immigration policies. The additional labour market testing requirement implemented in May 2021 for Alien Employment Permits, and the severe penalties attached to noncompliance, adds another burden for employers in the work authorization process.

In Singapore, newly incorporated companies continue to experience heightened Ministry of Manpower (MOM) scrutiny of their employment pass applications, including those of companies that are related to well-known multinational corporations already established in Singapore. This is an additional factor that businesses now consider when planning for their operations in Singapore.

Companies have also faced stricter requirements for work authorization applications:

- As the MOM's salary expectations increase for both new and renewal applications, companies are seeking proactive guidance for borderline cases. They are actively using the MOM's Self-Assessment Tool and restructuring remuneration packages to account for any benefits that can be designated as fixed monthly allowances or increases to avoid rejections or downgrading of passes. The challenge of meeting high salary requirement is leading to changes in compensation packages companies offer their foreign employees.
- With the anticipation of the planned reductions to the S pass quota over the next couple of years, companies are also looking to obtain employment passes for those S pass holders who are now eligible for an upgrade. The S pass allows mid-level skilled staff to work in Singapore. Candidates need to earn at least \$2,400 a month and have the relevant qualifications and work experience. Companies have had to adapt to a greater role in monitoring their S pass quota to assess the impact of the forthcoming changes and plan accordingly.
- As of May 2021, Dependant's Pass holders must secure a work pass (with limited exceptions), creating new requirements for employers seeking to hire Dependant's Pass holders, including complying with qualifying salary levels, employee quotas and levies.

However, foreign nationals in technology can now apply for a new work authorization program called Tech.Pass, which allows investing in companies, starting or operating businesses and lecturing in institutes of higher learning in Singapore. This adds a new favorable entry route for qualifying workers.

In South Korea, the last few years challenged Korean subsidiaries with a quota system that significantly impacts their operations – notably the D-8 visa⁶ for corporate foreign investors, which is subject to quotas and limits the number of visas available to them, despite a need for skilled talent to support their operations. Subsidiaries that exhausted their D-8 visa quota have been unable to apply for additional D-8 visas without resorting to more time-consuming and resource-intensive measures. Fortunately, with the help of immigration professionals, they were able to consult with the government to present a compelling

6 There are several types of D-8 visas, notably: D-8 (Business Investment) for skilled professionals involved in foreign invested companies; D-8-1 (Incorporated Enterprise Visa) for qualified individuals posted to a foreign invested company; D-8-2 (Business Venture Visa) for business ventures that adhere to the Special Act on the Growth of Business Ventures; and D-8-3 (Unincorporated Enterprise Visa) for foreign nationals who have invested in a company operated by a Korean national.

case for relaxing the existing D-8 visa quota. Companies continue to support a system that provides flexibility and allows them to adequately plan to support their Korean branches' operations.

In a similar effort to engage with the government on new immigration regulations in [Vietnam](#), companies raised concerns about the impact of more restrictive requirements. Among other items, companies were unwilling or unable to meet the increase in documentary requirements for intracompany transfer applications, including the additional requirement that supporting assignment letters be issued by the overseas investor entity. Their combined efforts to engage with the government yielded a new classification for work permit applications – the Manager, Executive Director, Expert and Technical Worker (MEDET) – which enables employees who fall under this classification to apply for a work permit with a mere 12 months of working experience within the same business group as the overseas investor entity.

However, in January 2021, the government implemented a new requirement for experts and specialists applying for Work Permits to have at least five years' work experience and meet other requirements if they do not have at least a bachelor's degree and at least three years' work experience in a field relevant to the job position. This narrowed the field for foreign experts' eligibility to enter the Vietnamese workforce.

Europe

► Key observations

► Adapting to a post-Brexit world remains a looming challenge for companies and requires revised strategic planning.

► Slow adoption rate of EU-wide work programs – like the EU ICT Permit – across EU countries frustrates businesses seeking consistency and clarity across the territory.

► Guidelines with respect to calculated requirements, like minimum salary levels, lack clarity and hinder confident resource planning across the business community.

Pre-Brexit, our survey results revealed that approximately 40% of our clients were finding it more difficult to recruit EU nationals and a third were finding it harder to retain them. In preparation for the end of freedom of movement where UK nationals benefited from work authorization exemption throughout the EU and vice-versa, companies had to implement smart change management, including effective communication of the anticipated EU changes to their employees.

Now that freedom of movement has ended, companies continue to adapt to a post-Brexit world – from managing their EU national employees currently working in the UK and vice-versa to strategically planning for future assignments in the UK post-pandemic. With the help of their immigration providers, businesses have been shifting their approach; adopting strategies that outline how they plan to use their employees to achieve their objectives, rather than setting out their objectives and shoehorning their employees to meet them. This has allowed them to adapt to a post-Brexit world.⁷

⁷ The UK left the European Union on 31 January 2020 and the transition period ended on 31 December 2020. Citizens of an EU member state who relocate to the UK and UK citizens who relocated to an EU country before the end of 2020 may continue living and working in that country but must take the necessary action to protect this position before an established deadline (which varies based on the country). As of 1 January 2021, UK nationals who move to the EU and Europeans who move to the UK must comply with EU and national immigration rules, i.e. obtain a work permit. New restrictions are also in place for business visitors, assignees, and cross border workers.

In the United Kingdom, specific programs also present challenges that companies need to plan around – for example, with the Intra-company Transfer visa category and the imposed cooling off period for most before they can return to work in the UK as an ICT visa holder. While this requirement is designed to establish finality to an intended temporary stay, companies find it restrictive in that it compromises business continuity where they wish to extend the transfer of key employees. Nonetheless – and even under the new points-based system – businesses have the option of selecting other visa categories, such as the Skilled Worker visa, that do lead to a more permanent situation. In this respect, companies find the British immigration framework flexible enough to accommodate changing business decisions. It remains to be seen whether the Skilled Worker visa category, with a higher eligibility threshold but more flexibility, will supersede the use of the ICT visa for temporary work purposes, thereby making it obsolete.

Another favourable aspect of the British system is the Trusted Sponsor Program that allows companies to pre-register for sponsorship ability and benefit from streamlined processing measures like not having to evidence qualifications or experience of hired foreign employees. Companies that can take advantage of this service find that it adds a level of predictability to the process and decreases the time to sponsor foreign talent.

Throughout the EU, the gradual adoption of the intracompany transfer program of non-EU workers to the European Union still presents challenges to companies. With the gradual adoption of the EU ICT permit across the EU, local versions of the permit are sometimes still favored to circumvent the teething issues of the EU version. While companies will more readily use the EU ICT permit over its national counterpart in countries like Austria, Croatia, France, the Netherlands and Sweden, process challenges, restrictive requirements, inflexible conditions and lack of clarity still make it cumbersome for organizations to bring foreign workers into the EU under this program. Depending on the receiving country, these include inconsistent, extensive or unclear documents requirements, strict dependent rules, limited awareness of the program by the decision makers which complicates the process and reduces transparency, and unclear social security liability in intra-EU mobility scenarios. In addition, despite a dedicated stream for ICT scenarios, some countries still impose quotas, salary thresholds and require specialist diplomas; requirements that businesses view as best suited for a local hire situation where the foreign national is an unknown entity to the company.

In Belgium, the business community still eagerly awaits implementation of the EU Intra-Company Transferee Permit. Belgium is the last EU country to implement this permit type, which was scheduled to go live in November 2020 but still cannot be issued.

In the Netherlands, companies faced unforeseen complications when sending an employee to provide services across the border. While the so-called Van der Elst visa program⁸ does facilitate movement and quick relocation within the EU, employees were negatively affected by it as their time spent outside the Netherlands could not be counted toward their residence requirements, exposing them to possible loss of their residence permit. This created a strain on companies whose employees were reluctant to compromise their residence permit to provide services in another EU country. The business community brought forward this issue to the government who subsequently revised the program so that employees moving their residence for more than eight months out of the Netherlands would no longer risk the loss of their residence permit. Companies support such engagement to help them quickly assign the best talent for EU-wide service, while preserving their ability to maintain their residence in their home base.

⁸ The Netherlands recognized a 1994 ruling by the European Court of Justice relating to the right of an EU company to provide services across the EU without the need for obtaining additional work permits. This “Van der Elst” ruling has evolved into a new type of visa category, called “Van der Elst visas” in some EU countries. The regulation provides for any non-EU employees who have been working in the EU for a service provider for more than 12 months to be admitted as Van der Elst cases. The maximum stay in the Netherlands on a Van der Elst visa is six months. (source: <https://workpermit.com/immigration/netherlands/netherlands-van-der-elst-visas>)

In Switzerland, high Minimum Salary Levels (MSL) requirements and the structures in place to meet the requirements can be challenging, especially for businesses that are new to sponsoring foreign workers. Where sponsors can specify the exact amount of taxation imposed on a foreign worker, the tax can be included in the minimum salary calculation. While this may be straight forward, it may be tricky for companies without previous historical taxation data on file or a general approximate range, to establish the exact amount that they may include in the calculation. As such, new sponsors are generally reluctant – or unable – to utilize the taxation amount in their MSL. Clearer requirement guidelines that account for first-time sponsors would allow for more confident preparation and planning.

Africa & Middle East

► Key observations

- Protection and promotion of local labour markets is the driving force behind temporary labour migration schemes on the African continent.
- With some planning, flexible short-term visa programs offer companies an alternative to more cumbersome long-term work visa options.
- The business community is skeptical of the government skills shortage designation methodology as it often conflicts with the reality of trying to build a suitably skilled workforce in Africa.
- In the absence of structured legislation, the business community relies on case specific precedent to establish predictability- often an unreliable method.

In Africa, the lack of a dedicated intracompany transfer pathway compromises organizations' ability to efficiently transfer employees to their African branch or to establish an African branch. Companies continue to struggle with a general long-term work permit program that seems mostly designed to support the local hiring of foreign nationals, rather than the transfer of existing employees.

Compulsory labour market testing⁹, high eligibility criteria with minimum academic qualifications or work experience, and skills transfer plans compromise companies' business continuity plans and extend processing times, making it more difficult to relocate urgently needed employees. While these requirements are common across jurisdictions, organizations seek a dedicated intracompany transfer program with lower thresholds to support the mobility of employees and their deployment across a company's global offices. This is particularly true in Africa, where temporary work authorization programs are generally designed around the length of stay (beyond three or six months) and/or the nature of the professional activities conducted by the foreign worker – rather than the nature of the work arrangement.

Skills shortage is also a reality that hasn't been addressed across the continent. While a noted global phenomenon, skills shortage is particularly challenging in Africa where increasing demand has outpaced supply. Despite this, several notably African jurisdictions maintain a list of occupations that are not open to foreign workers. In the **Democratic Republic of Congo**, certain types of professions are reserved

⁹ Labour market testing is a requirement to support a work authorization application in many countries. Although not generally required for intra-company transfer categories, it is designed to 'test' the local labour market and confirm that there is no local resident worker who has the suitable skills and experience for the position sought to be filled by a foreign national. Labour market testing guidelines differ across jurisdictions and with varying flexibility but generally involve advertising the position – either by the hiring organization or a government authority – and documenting the response(s) (e.g. whether any local candidates were found to be suitable for the position). Generally, the lack of responses confirms that the position requires a unique set of skills not available in the local labour market.

for Congolese nationals; in **Ghana**, where junior and mid-level positions in the Oil and Gas industry are not open to foreign workers applying under the Petroleum Commission Work Permit, and **Angola** where – while not officially restricted – administrative positions are highly likely to be refused as eligible occupations for work authorization. Companies have little faith in the methodology, view the listed professions as mostly arbitrary and have little confidence that the list is in fact based on a thorough local labour market analysis. In addition, the common use of quota limitations imposed on companies cripple the business community's ability to effectively mobilize their workers.

In the absence of a standard structured and comprehensive labour migration program, companies can and do make representations to governments for projects that they consider to be of a national interest. This means that where the exception is the rule, the level of uncertainty is high and business planning is dangerously compromised. Companies have the daunting task of navigating hurdles to resource projects without adequate mechanisms in place to bring talent and train local workers to build a suitably experienced workforce. They see governments' inability to plan for long-term labour needs – such as not adequately preparing for the booming oil and gas exploration in Kenya and recognizing the need for upskilling workers – as a potential issue for both the local labour market and their prospects for establishing a presence in Africa.

In Kenya, while many East African countries offer short-term work programs, the Special Pass is a successful pathway for companies to send foreign workers to the country. Designed for short-term work (up to three months, renewable for a maximum of six months per year), the Special Pass's streamlined process – in terms of low eligibility threshold, single individual decision, and quick processing time – has made it an efficient alternative to the more cumbersome long-term visa. In fact, companies that need to send specialists to Kenya for long term projects have opted to rotate foreign workers to adapt to the terminal nature of the Special Pass. For example, they have assigned a larger number of employees to a project and rotate them within their individual stay limits to accommodate a longer project timeline. The flexibility of the Special Pass makes it even more attractive to companies as foreign nationals can enter Kenya as a visitor and apply for it in country, in step with what is often a natural business progression of work.

There are, however, downsides to this approach that may negatively affect foreign employees: Special Pass holders' time spent in Kenya cannot count toward permanent residence status or citizenship in Kenya – as is the case with many short-term programs. Employees seeking the possibility of a more permanent situation are not able to "invest" their residence spent on a Special Pass. Also, Special Pass holders cannot include dependents on their application, nor can they be issued Kenyan police clearances by the Kenyan Police; a reality that may compromise their ability to apply for a work permit in other countries. In response to companies' use of the short-term program, the Kenyan government has linked its revenue system to that of immigration to ensure taxes are paid (an obligation that sits firmly with long-term work visas). While most companies have complied with this requirement, they may have missed opportunities to bring in foreign talent for all of the Special Pass shortcomings noted above.

In South Africa, efforts to protect and promote the local labour market sometimes compromises companies' long-term plans and unpredictable document requirements hinder the quick deployment of workers. For example, initial work permit validity is limited to four or five years, depending on the work permit type, and requests for renewals are now highly scrutinized. With limited pathways to permanent residence, companies have had to adjust their resource planning and/or shorten their projects to accommodate these restrictions, along with other limitations like quotas. Similarly, document requirements – like that of a police clearance imposed on short term work authorization – not only adds complexity to the application process but is also applied inconsistently across diplomatic posts. Where a police clearance issued by the issuing country's consular post may be acceptable in some missions, others may require it to be issued by the national agency. Companies struggle where there appears to be no standard universal document requirement guidelines, and heavily rely on anecdotal evidence for guidance – which is generally unreliable.

In Qatar, the implementation of stricter eligibility requirements and a new pathway to permanent residence means companies have had to adapt in the short term but see benefits for long-term staff retention. The government's unexpected implementation of eligibility requirements for certain occupations, like project coordinators and general supervisors, caught the business community by surprise.

Some companies had to not only shift their hiring strategy, but also revise their block visa approvals to include only job titles that corresponded to their candidates' academic qualifications and their business needs. The effect was also felt across some existing employee populations and beyond employees' job situations; a change in occupation classification could impact employee benefits, such as being able to sponsor dependent family members or securing a driver's license while in country. So, while companies might be able to classify a candidate under a different job title, potential employees run the risk of losing other benefits.

Conversely, Qatar's recent introduction of a permanent residence program was well received by a business community that values continuity to support long-term planning. While the residence eligibility period may be long (20 years of consecutive legal residence in Qatar; or 10 years for Qatari-born persons) the prospect of resulting benefits such as the ability to own property in select areas and to access free healthcare and education in government schools remains a worthwhile incentive for employees. This permanent residence pathway promotes long-term retention of valuable foreign talent who contribute to the competitiveness of an organization.

In Saudi Arabia, companies continue to plan around the male-only sponsorship rules. In one instance, a company sending a husband and wife on an assignment to Saudi Arabia argued that the wife – whose visa had been approved before her husband's – could in this exceptional case sponsor their dependent children so the family could relocate quicker, in time for the start of both the school year and their work project. Sponsorship restrictions of this kind make it difficult for companies to effectively move talent to Saudi Arabia and narrow the pool of eligible workers who can be quickly mobilized.

Americas

► Key observations	
► Growth of online web-based immigration services receives mixed reviews from companies in light of frequent technical issues, inefficient processes and unreliable information.	► Companies attribute disruptive process delays and inefficiencies to governments' lack of proper planning and resource management that plague processes across the region.
► Regional unrest disrupts companies' ability to mobilize talent not just in the country but across the region due to frequent consular post closures.	► Tightening of U.S. policies and regulations jeopardizes employers' ability to effectively source and mobilize foreign talent.

Companies sending or hiring foreign talent in the Latin American region have witnessed a rapid development of web-based immigration services, while grappling with crippling disruptions sparked by political and civil unrest. Some elements of immigration – such as quotas – remain unchanged and some countries, such as Panama, provide ample alternate work visa programs around which companies can adjust their resourcing practices. Efficiency in process, however, is still a challenge.

The business community generally supports the growing implementation of online systems intended to facilitate processes like government appointment booking and degree validation, provided they are effectively implemented, responsibly managed, and maintained. Unfortunately, many organizations have had to grapple with system delays and inefficiencies, requiring them to frequently adjust their internal processes to mitigate the disruption to their mobility planning. This is the case for Chile's in-country online appointment system, and consular system (SAC) and Colombia's notification system (SIRE).

Companies specifically point to political and civil unrest – most notably **in Venezuela, but also in Chile** – as continual disruptors to their hiring plans and employee mobility in the region. These include numerous diplomatic post closures and government closures in Venezuela, and immigration department closures in Chile. From simple processes like registration and visa stamping to full application processes, companies have had to plan around delays and unscheduled suspension of government services. In response to the effects of the conflicts, some countries have also modified their own service model, adding a layer of disruption for companies looking to hire foreign talent.

For example, companies that were accustomed to relatively predictable – albeit lengthy – processes in Chile, were still, pre-pandemic, faced with a change in process that introduces uncertainty to bringing foreign workers into the country. In response to the increasing volume of migrants, Chile plans to modify its in-country work authorization process to a consular-based process that is inconsistently applied across its diplomatic posts. While designed to move the assessment stage earlier in the process for greater entry control, the consular model does reduce the processing times (from 10 months to two-to-three months) but presents several new challenges for companies. Consular discretion means the decision-making process is less predictable, document requirements vary among consular posts that operate with a certain level of independence, and foreign workers are now active players in preparing and submitting their applications to consular officers. Companies have had to heavily rely on their immigration providers to help them adjust to these changes and prepare for the unplanned.

Conversely, companies have benefited from concessions for their Venezuelan employees that some countries have implemented. Chile's Ministry of the Interior has notably waived passport validity requirements for Venezuelans, allowing them to use expired passport or identification cards to enter and regularize their status in the country.

In Mexico, it is staffing woes that caused process disruptions and delays in application outcomes, causing companies to adjust deadlines and rethink their resource allocation. They attribute the disruption to a process that is wholly reliant on a few designated government officials who, following their resignations, left an unfilled function in the key approval process stage of temporary and permanent residence visas, post-arrival registrations, and corporate registrations in several Mexican cities.

While resourcing services is identified as a challenge by companies sending or hiring foreign workers in the region, the lack of alignment among agencies involved in the immigration assessment process threaten a predictable outcome, thereby derailing business plans. For example, **in Brazil**, where a foreign national's Work Contract Visa must be approved by the Ministry of Justice before the worker can file a consular application, the process steps are divided between two other government agencies: the Ministry of Foreign Affairs overseeing consular decisions and the Federal Police issuing the foreign employee's identification document. Requirements and practices vary among agencies, viewed as a fractured process by companies who must be quick to respond to often conflicting agendas.

The region's MERCOSUR treaty, a South American trade bloc established in the early 1990s designed to generate business and investment opportunities through competitive integration of national economies, is also a popular avenue for companies that transfer eligible employees across the member countries, although its distinct obligations sometimes confuse employers. Companies value this regional agreement and leverage it to transfer staff among the member countries. But while the process is straightforward and the application outcome predictable because of clear eligibility criteria, companies have sometimes neglected to account for the tax implications attached to this program. In fact, many appear to take full advantage of MERCOSUR visa conditions for their eligible workers, like the relatively quick assessment process and clear pathway to permanent residence, but have failed to enlist their MERCOSUR temporary residence visa holders on local payroll for tax compliance.

In Colombia, where strict government notification requirements for work start and end dates lie with the employer, companies have had to be vigilant about their obligation to notify the government on their MERCOSUR workers employment dates. In general, many companies have had to be well informed of not only immigration regulations and conditions but also associated notification requirements and tax implications in order to remain compliant with MERCOSUR visa program requirements.

In the United States, the election of President Joe Biden has meant a shift to a more pro-immigration outlook and an expected rescission of many of former President Donald Trump's initiatives to increase hurdles for employers seeking to access foreign talent by means of the H-1B (for local hire scenarios) and L-1 visa (designed for intracompany transfers) programs – the two most commonly used temporary worker categories. Nevertheless, the new Biden Administration is expected to impose increased obligations on employers who sponsor foreign nationals in temporary worker categories, which could restrict the business community's ability to effectively source and mobilize foreign talent particularly at the entry level. At the same time, there is likely to be continued modest flexibility toward the H-2A and H-2B programs for temporary agricultural and non-agricultural workers, respectively, including continued willingness to exercise discretion to increase the H-2B annual quota in response to U.S. employer needs and to facilitate the re-entry of foreign nationals who have held H-2A or H-2B status in the past.

- **Higher rate of government challenges and application denials continue.** During the Trump Administration, increased government scrutiny of petitions for employment-based non-immigrant visas resulted in a doubling of denial rates and a similar increase in government requests for further evidence. Certain industries – including professional and technical services, financial services and manufacturing – faced a near tripling of denial rates since 2016. Though these high rates of denial and requests for further evidence are expected to lessen in the new administration, close scrutiny of employer-sponsored visa petitions is expected to continue.
- **Eligibility criteria were toughened, with further changes possible.** During the Trump Administration, the immigration agencies toughened their stance on the occupations that qualify for H-1B and L-1 categories, though there were no changes to the laws governing these categories. Last-minute regulations of the Trump Administration – which sought to heighten eligibility standards for several key non-immigrant categories, including the H-1B professional – are being reviewed by the new administration. Several Trump-era regulations have been withdrawn by the Biden Administration. However, the new Administration is expected to seek new limits and increased employer obligations in several key nonimmigrant categories.
- **The gap in short-term work visa options persists.** The U.S. immigration system lacks a visa category for employers sponsoring specialist foreign employees for short-term work in the United States. Long-discussed reforms to the existing B-1 business visitor category could eliminate the few short-term work options that exist under current law, leaving a noticeable gap for companies looking to send their foreign workers on short-term work assignments.
- **Process revisions continue.** Following a process revision in early 2019, dependent family members of employer-sponsored temporary workers were subjected to biometrics collection and background checks when seeking to extend or change their status in the United States. As a result, processing times increased, and dependent work authorization approvals were commonly delayed. The Biden Administration has suspended these background checks in an effort to improve processing of dependent applications.
- **Dependent work authorization remains.** A Trump Administration proposal to rescind a work authorization program for the spouses of H-1B employees who are in the green card process was never finalized and has been withdrawn by the new Biden Administration, which is also seeking to expand work authorization options for H-1B spouses.
- **Government enforcement is on the rise.** Employers have seen a spike in workplace audits and investigations by several immigration enforcement agencies, which is expected to continue in 2021.

► Summary

Based on our research and in combination with our experience, a well-functioning migration system includes the following key characteristics that support the local economy and meet business practice needs.

- **Strong ties between the business community and policy makers.** The business community needs access to policymakers to provide insights on labour market needs and modern business practices in the revision and reorganization of immigration systems. Because employers are best positioned to determine the skills and business models necessary to effectively achieve their business objectives, governments should actively consult employers when undertaking reforms.
- **Predictability and efficiency in immigration processing systems.** This is important for not just for multinational organizations, but small and medium-sized enterprises as well. Based on the client survey, 90% of survey respondents seek transparent processes for visas and work permits and 87% seek predictable processing timeframes. Respondents commented that processing delays and burdens “place a choke-hold on...growth” and are “a barrier to planning”. Shifting immigration regulations and requirements make it challenging to quickly mobilize workers. In general, the processing of immigration applications should be centralized within a single government agency, preferably consular services abroad, rather than a two-tiered process involving in-country agencies and consular posts. If implemented consistently across consulates – and noting that this would require a concerted effort to standardize guidelines and practices and to integrate systems – consular processing options can streamline the application process and reduce delays in onboarding foreign workers.
- **Flexible laws that account for the evolution in employment models.** Current migration programs often lack appropriate visa categories to meet current business needs, let alone future needs. Respondents cite a dearth of visa categories for short-term assignments, and particularly technical work, along with unpredictable processing times, as especially challenging limitations of current systems. One respondent remarked: “The short/medium term assignment type typically requires quick execution to meet a critical business need. Immigration processing is generally a significant roadblock.” Employers face increasing hurdles in obtaining visas and work permits for all employment durations but are particularly challenged when sponsored employees will work in short – and medium-term assignments – those most characteristic of the evolving workplace. 70% of respondents find that medium-term assignments of three to twelve months in duration are somewhat difficult to extremely difficult to obtain.
- **The promotion of facilitative administration.** Governments should be encouraged to develop coherent, efficient and predictable labour migration policies, and to ensure transparent and timely processes of policymaking and adjudication. Based on the survey, respondents overwhelmingly view transparency as an urgent need (90%). In a similarly robust response, around 70% of surveyed organizations reported difficulty in obtaining medium-term and long-term visas or work permits. This indicates that a strong majority of employers struggle to navigate immigration systems around the world. Efficiency and transparency are also significant needs in the mechanics of immigration administration. 86% of respondents want to see more governments establish online application systems, with functionality that allows electronic submission of applications and supporting documentation. The creation of mechanisms to match cross-border labour supply and demand should be encouraged to promote efficiency. These include a close monitoring of unfilled job vacancies, a quarterly evaluation of skills that are in shortage, as reported by both employers and labour specialists, and an eye for the emergence of new positions/skill sets. Such mechanisms can serve as a viable alternative to and solution for irregular migration.

- **Quotas to reflect current market conditions.** Programs should provide adequate allocation of immigration quotas for employment-based categories. As noted previously, 70% of survey respondents cited a lack of visas or work permits as a challenge that restricts talent mobility. Multinational employers observe that annual quotas make it particularly difficult to hire and retain talented foreign graduates.
- **Data transparency.** There is generally little reliable and consistent data on temporary labour migration programs. While some governments have invested in technology to gather data on program use, including outcomes and processing times, (and sometimes, elected to release the data to the public), others still lack transparency. Effective enforcement by national labour standards enforcement agencies of labour and employment laws to protect temporary workers and the development of standards on labour and workers' rights are both hindered by a lack of clean and consistent data.
- **Consistency of application of law and policy.** This is the remit of the immigration agencies and their adjudicators. It can be achieved by clearly defining immigration categories, by establishing objective criteria for immigration eligibility, and by establishing and enhancing ethics standards to give policies credibility. On a practical level, the use of trusted employer programs¹⁰ – which simplify migration processes for employers and confer other benefits on organizations with an established record of compliance – would do much to promote consistency and conserve resources as well. Features of such program include attestation-based immigration benefits applications as well as compliance obligations such as reporting and auditing. 79% of respondents seek such programs.

¹⁰ A Trusted Employer Program is designed to pre-qualify employers who have previously demonstrated a strong record of compliance with laws and regulations.

► Recommendations

A well-designed labour migration system should encompass the full range of mechanisms for each stage of the employee's immigration life cycle to address evolving business needs. These migration system components are based on feedback received from the business community and Fragomen's experience in supporting their mobility needs.

Business Visitors

A sound migration system begins with provisions that promote legitimate business travel. A business visitor immigration classification must clearly specify the activities business travelers may undertake, including restrictions on local work and a requirement that visitor activities benefit the foreign employer. Visa waiver agreements among nations should be more widely used. Governments should promote expeditious processing of visitor visas where they are required, including avoiding complex adjudications standards; this is appropriate given the short stays typical of business travelers. Harmonization of the rules for business visitors across countries or trading regions would reduce confusion and noncompliance in this area.

Foreign Students and Trainees

Student migration categories should facilitate undergraduate, professional and graduate education as well as provide for post-study practical training and first professional experiences as an entrée to skilled-professional temporary migration and to permanent settlement where appropriate.

The Best and Brightest

There is increasing global competition to fill management, executive and top research jobs with the most qualified candidates regardless of citizenship. The growth of the "global CEO" exemplifies this trend. In Western Europe, for example, some 30% of multinational companies are led by foreign-born executives¹¹.

Among the best and brightest are the most qualified foreign graduates of local universities, as well as promising foreign students who are sought after to attend school in undergraduate and particularly in graduate programs. Top foreign students are encouraged to remain in the host country after completion of their studies through offers of employment and facilitative immigration policies. Also included in "best and brightest" are the most highly skilled and talented foreign nationals beyond the student and early career stages.

Facilitative migration policies for this group include broader permissible activities, such as self-employment and entrepreneurial activities, and more generous policies with respect to dependent family members, including employment authorization. Private organizations cited lack of options for dependents as a key challenge to attracting the most highly skilled foreign workers.

Intracompany Transferees

Intracompany transfer categories facilitate the movement of employees between related companies within multinational organizations in order to promote international trade and develop the skills of employees through global assignments. Such categories must be defined clearly, with objective eligibility criteria, an exemption from labour market impact tests and expedited processing. Liberal interpretation of eligibility standards is necessary and appropriate in view of the temporary nature of intracompany assignments and their goal of facilitating the development of employee skills and knowledge.

¹¹ Ken Favarro, "Is there really such thing as a 'global CEO'?", Fortune, April 16, 2013: <http://fortune.com/2013/04/16/is-there-really-such-thing-as-a-global-ceo/>

Local Hires

Categories for the direct hire of foreign nationals by local employers – including skilled, semi-skilled and low-skilled employees – should be defined with variable eligibility standards to accommodate labour market fluctuations and to protect both local and foreign workers. These protections vary by skills category but may include a requirement for employers to give back through the training of the domestic workforce which may benefit business continuity, local-hire quotas, and job portability for foreign workers, among other policy mechanisms. Local-hire immigration categories are the only ones for which labour market impact should be tested.

Mobility Provisions in Bilateral and Multilateral Trade Agreements

Provisions in bilateral and multilateral trade agreements can facilitate the movement of workers among signatories and are essential to accommodate trade partnerships and regional relationships. Mobility provisions are particularly appropriate in treaties because they support the trade activities contemplated by such agreements. Mobility provisions should cover a range of immigration options, from business visitors to intracompany transfers to direct hires. They should also facilitate the recognition of skills and credentials between countries. The North American Free Trade Agreement – now succeeded by the US-Mexico-Canada Agreement – is a case in point, with an array of labour mobility provisions and relaxed procedures that facilitate the entry of business travelers, professionals, intracompany transferees, traders and investors.

A large portion of survey respondents advocate for free trade and labour mobility agreements, with 42% reporting efforts to promote such agreements when engaging with governments.

Investors, Innovators and Entrepreneurs

A fully developed migration system must include opportunities for self-employment by those who can offer unique benefits to receiving countries, including investment, start-ups and development of existing businesses, and innovative ideas. Self-employment categories should include a range of subcategories to attract foreign nationals at each stage of the innovation lifecycle, from recent graduates to early-stage entrepreneurs to later-stage entrepreneurs and investors.

Migration promotes entrepreneurship and development in home and host countries. The entrepreneurial spirit of migrants has helped create and develop some of the most successful businesses. The migration of innovators and investors must be encouraged to promote development. Sound, well-developed immigration categories for entrepreneurs and investors must be promoted as an aid to development.

Short-Term Assignments and Project Work

These categories permit foreign nationals to conduct brief assignments that facilitate contractual relationships for the provision of services. Such categories should be exempt from labour market testing in view of their limited impact on the local labour market and their importance to the global trade in professional services.

As noted above, multinational organizations cite a lack of short-term options and administrative hurdles with existing options as significant roadblocks to business and development.

Low/Semi-Skilled Labour

Advancements in economic development that increase the employment opportunities of the domestic workforce and demographic changes have typically resulted a greater need for low skilled or semi-skilled labour. While many developed nations have longstanding migration programs to meet essential worker needs, in at least some developed countries, migration schemes inadequately consider these labour needs because of a perception among the public and among immigration restrictionists that local workers can fill these positions. Labour shortage areas and

seasonal employment are exceptions, however, and these needs can be addressed effectively through migration. In some highly developed jurisdictions, options for lower-skilled workers have been the most underdeveloped aspect of migration systems because of their potential impact on the local labour market and because of resistance to filling essential needs with foreign labour. The reality is that, in many jurisdictions resistant to formal essential worker programs, low-skill labour needs are filled by foreign workers who lack proper status; this is one of the key drivers of irregular migration, and has significant negative consequences for irregular migrants, who, because of their lack of immigration status, become vulnerable to exploitation by unethical employers and recruiters, as well as human traffickers.

The legal migration system should create mechanisms that allow the employment of foreign nationals in essential worker positions. Shortage categories must facilitate both seasonal and indefinite work that meets essential labour market needs. Sound low-skill migration mechanisms – with appropriate protections for local workers such as recruitment obligations and skills matching components – are crucial elements of a coherent migration system. Their absence has serious consequences. Improving regular avenues for low-skilled migration tends to reduce incidences of trafficking, irregular migration, informal employment activities, unethical recruitment practices and forced labour.

Residents

Long-term/permanent residence visas facilitate the long-term retention of valuable migrants who contribute to economic growth and competitiveness. A pathway to permanent residence should be established based on the length of a foreign national's stay in a temporary immigration category or on a labour market test.



ilo.org

International Labour Office
Route des Morillons 4
1211 Geneva 22
Switzerland