

AFTER THE VISA STORM

November 2009

On August 20, 2009 the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry notified certain guidelines for the issue of business visas (“**BVs**”) and employment visas (“**EVs**”) to foreign nationals. Per these guidelines all foreign nationals in India who were on BVs and were engaged in the implementation of projects, were required to leave the country, either upon the expiry of their visas or by October 31, 2009, whichever was earlier, and that no further extension of visas was liable to be granted. Though, ostensibly directed at unskilled Chinese workers to whom an inordinately large number of BVs had been granted by the Indian Embassy and Consulates in the People’s Republic of China, the notification potentially threatened the continued presence of all the foreign expatriates and their dependents. Understandably, the Ministry of Home Affairs (“**MHA**”) was inundated by the foreign expatriates enquiring whether they were covered under the notification and whether they and their families were required to leave India. It was to address this emergent situation that the MHA on October 30, 2009 issued Frequently Asked Questions (“**FAQs**”) on “Work related visas issued by India” outlining the categories of those eligible and the conditions subject to which BVs and EVs were to be granted.

Though the FAQs, issued just a day before the expiry of the deadline on October 31, 2009 clarified many doubts and issues raised by the expatriate community regarding the eligibility and conditions subject to which the BVs and EVs were to be granted, many unresolved issues and grey areas persist. Some of the issues the MHA needs to urgently address are :

1. The stay stipulation of the foreign experts visiting India for a “short duration” in connection with: (i) an ongoing project for monitoring the progress of the work, or (ii) conducting meetings with Indian customers, (iii) to provide high level technical guidance are to be prescribed by the Indian missions abroad. FAQs however do not clarify what qualifies as “a visit of short duration.” A clarification stating the maximum permissible duration for such visits shall greatly facilitate the process of their application and consideration.
2. BVs are issued for business services support and EVs are issued to foreign experts who impart training to the Indian personnel. Where business services support involves a component of training, potentially some confusion can arise, unless a clarification is issued stating whether or not “business services support” includes training.
3. While BVs are issued to foreign experts for providing high level technical guidance and EVs for providing technical support and services and for transfer of know-how, nebulousness would persist unless the

respective scopes of “providing high level technical guidance” and “technical support and services” are elaborated and distinguished.

4. A condition for the issuance of BVs is that their grant is subject to instructions that may be issued by the Government of India on the basis of reciprocity with other countries from time to time. This window unfortunately permits a host of subjective factors to come into play. In our view, for the purposes of ensuring transparency, the instructions issued for the grant of BVs and EVs on the basis of reciprocity need to be spelt out country-wise and communicated to the applicant.

Clarifications on the above issues would induce greater clarity and certainty in the reform process, which having been initiated, needs to be taken to its logical conclusion.

Naresh Sahai Mathur & Sunaina Kapoor



[SITEMAP](#) | [CONTACT US](#)

PSA © 2021 | Developed by [INFOTYKE](#)