

# **WHITE PAPER ON IMMIGRATION**

**BASED ON PROCEEDINGS OF THE CONFERENCE ON  
IMMIGRATION AND MOBILITY @ BANGALORE**

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**PRHUB EFFORT**

## **Immigration in the 21<sup>st</sup> century – An introduction**

Among other challenges faced by the countries, immigration would remain in the forefront during 2007. Besides being sensitive, the issue has other ramifications for countries which witness influx of population ready workforce. In some countries there is substantial population whose originality could be traced to other countries and continents as well. Most importantly the issue of illegal immigrants besides having political repercussions, does impacts communities well beyond the job market. However, it should not be forgotten that immigrants – registered or not - have filled a huge void in the demand gap of workforce. The big challenge for all countries is whether immigration reforms would really help their economy.

According to a 2005 Pew Research Center study over one-fourth of the meat cutters and food-processing workers in the US are illegal immigrants. This is a huge issue for the packaging and processing segment of the food industry and a sizeable concern for the production side, as well. However, it should be remembered that “Registered or not, immigrants have filled a void in the American workforce.” **The big picture is immigration reform would certainly have an impact on the US economy.**

Even as immigration reforms are being talked about more often than ever before, the 9/11 incident has changed the very approach of many countries, especially the developed nations, to the issue of immigration. Many developed countries have started strengthening the immigration rules and making the procedure more stringent. Increasingly technology is being leveraged to foolproof the immigration process. The challenges and complexity faced by immigration industry are outlined in this white paper which is based entirely on the proceedings of the INS-Zoom sponsored conference on Immigration and Mobility. For convenience and readability, the information is organized under the below heads:

- **Visa evaluation**
- **International taxation**
- **Global compliance**
- **Travel**
- **Support & partnership**
- **Visa processing tool box**
- **Key immigration challenges**
- **Best practices in immigration**
- **Road ahead**

### **Visa evaluation - Challenges and complexity faced:**

India has been acknowledged as a talent powerhouse and is donning the mantle of supplier of workforce for the past few decades. In the 60's and 70's, well heeled Indian's went overseas to pursue higher education and settled for jobs overseas mainly in the US and Europe; the mid 70's and 80's witnessed a surge in migration to middle-east countries. While migration to the US and Europe was mainly for the white collared jobs, the exodus to middle-east was mainly for the blue collared jobs. The global economic boom and emergence of India as IT powerhouse in the 90's and early half of this decade has led to large scale migration of white collared workforce to the developed countries.

Migration to fill the demand gap was welcomed by most countries. But the scenario has changed over the last few years. With several old economy industries in developed countries relocating/shutting operations and new economy companies shifting jobs to other countries as part of outsourcing deals, the local population is not only losing employment opportunities but also getting desperate. This trend has paved way for politicians and trade unions in these countries to demand new immigration laws to stem migration. As one third of workforce of Indian companies is working overseas, the changed scenario is putting tremendous pressure on immigration and mobility teams to respond quickly on real time basis. Also the company management is increasingly realizing that immigration is a core function of the organization and not just another activity. Also given the growing complexity of immigration related issues, many global law firms are opening offices in India to offer their services and managements are finding it difficult to ascertain the veracity and efficacy of these firms.

Since, the immigration process itself is a very complex process - as it involves Government agencies, Human Resources, Forex, Employee family, Business Unit heads, Insurance, Corporate Immigration team, Global laws firm, Third party vendor - it is suggested that one agency offering integrated services under one roof should be the preferred choice. However, it should be noted that while in India the corporate houses may hire a single agency to execute the multifaceted immigration related tasks, in other countries including the US there exist numerous specialist agencies with deep expertise in their respective domains.

In order to undertake the visa evaluation process effectively, organizations need to ensure compliance across varied aspects like I-9, LCA, public access file, prevailing wages and international taxation. The ensuing paragraphs detail these compliance facets.

## **Form I-9**

Form I-9 is an employment eligibility verification form which is used to establish employment eligibility of persons being considered for employment. This means that companies could hire only those persons who are eligible to legally work in the U.S. The Form I-9 must be completed for each employee within three days of the start of employment. If the duration of employment is less than three days, Form I-9 must be completed at the time of employment itself. Form I-9 has three sections:

**Section 1**- Ensures that the employee fully completes section one of the Form at the time of hire, when the employee begins to work, by filling in the correct information, signing and dating the Form.

**Section 2** - Employees must present the original documents that establish identity and employment eligibility within three business days from the date of employment. Employers examine the original documents presented by the employee and then fully complete section two.

**Section 3**- Employer must complete section three of the Form I-9 when updating and/or re-verifying the I-9. Employer must re-verify employment eligibility of their employees on or before the expiry date recorded in section one.

## **Labor condition approved (LCA)**

The Department of Labor (DOL) which oversees the H-1B visa application process imposes considerable liability on employers in case of violations while filing H-1B petitions. For example, the University must make certain attestations about the wage for H-1B positions and must guarantee the return fare home if an H-1B's employment is terminated before the end of the period of authorized stay. Willful violation results in the University being fined and barred University-wide from filing H-1B and permanent residence petitions for a year.

A Labor Condition Application must be filed by the ISSO, approved by the Department of Labor. The Labor Condition Application requires that the department certifies that the salary being paid to the H-1B applicant is higher than the prevailing or actual wage.

The prevailing wage is the average of the rate of wages paid to workers similarly employed in the geographic area of intended employment. Similarly employed means having substantially comparable jobs in the occupational classification in the area of intended employment. The actual wage level is that paid by the employer to all others in the department with qualifications and experience similar to the H-1B worker for the specific employment in question at the place of employment.

The H-1B non-immigrant application is a three-step process involving both the Department of Labor (DOL) and the USCIS. Employers are required to obtain prior clearance from the Department of Labor before an H-1B visa petition may be filed with the USCIS. Specifically, employers are required to file a Labor Condition Application (Form ETA 9035) with the DOL, making certain attestations concerning the prevailing wage, working conditions, possible labor disputes and notice of filing of the position.

These regulations apply to both initial and extension of H-1B applications. The three step application process involves 1) determining the Prevailing Wage, 2) filing of the Labor Condition Application and 3) completion of the I-129 application.

**Tracking AR-11** – It is important for the employer to check the documents including passport, visa papers, birth certificate and all other necessary papers and ensure consistency of the information across all of them. The employers also need to estimate the duration of stay of their employees at the Hotel before they move to permanent accommodation. These details have to be provided by the employee within 10 days of their joining.

### **PERM – Green Card**

Perm replaces the existing process for the Labour certification effective March 28, 2005. PERM wage determination requires, submission of efforts made in conducting recruitment interviews, and prove that employer was unable to find a suitable person for the post. Subsequently employers have to give advertisement in the Local Market and fulfill the stipulated criteria before outsourcing people.

### **International taxation:**

For most companies, effectively managing tax issues at home are challenging enough. Where can you turn to find professionals with an in-depth understanding of tax issues in your new locations? Where can you find advisers who combine technical tax knowledge with practical business skills to craft the planning and compliance strategies that work for your business? Most importantly, where can you find an international tax team that not only understands the tax implications inherent to each of your locations, but can also design integrated solutions that minimize your company's overall tax burden?

Pursuing new international opportunities also means confronting a wide array of new tax planning and compliance challenges. Each new location means new regulations, different tax rates, and specific planning strategies.

Interest, dividends and capital gains from abroad are already important and will become more so as pension funds continue to diversify their portfolios internationally. In addition, more individuals will derive service income (accounting, legal, engineering, design, consulting, etc.) from foreign clients, and they will earn rents on foreign properties. Finally, many more people will choose to spend their retirement years abroad, while drawing social security and other pension benefits from the country where they once worked. These incidents of mobility play havoc with personal income tax systems - especially the U.S. system which claims to tax the worldwide income of all citizens, regardless where they reside.

India and US have a double taxation treaty. There should be 183 days threshold for a total resident status. In case if the employee leaves US before 183 days, US treat the income as allowance deducts only TDS for the same. The employee can return to India and file their returns.

### **Global Compliance:**

Global Compliance Resources Group within a corporate house provides support in the development, maintenance, and distribution of policies and procedures to serve immigration divisions across multiple regions. They generally advise and assist business units and their supervisors in compliance with the rules and regulations that govern immigration industry. The compliance functions are divided broadly between a Central Compliance group in each major region, and the severe groups that are housed within several specific divisions.

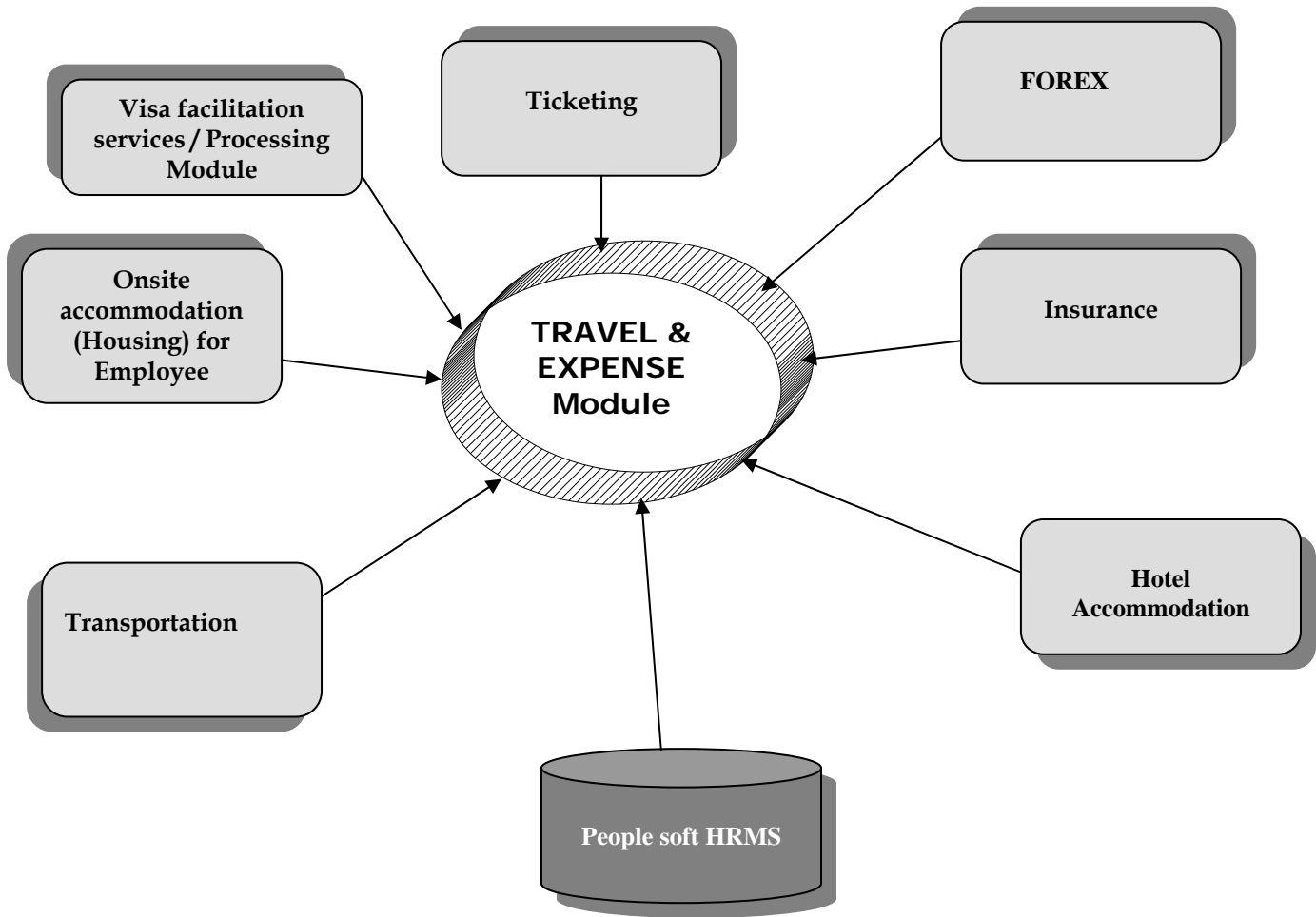
For Global compliance it is necessary for employers to follow the US immigration process very closely. It should be noted that US does only minor verification and paperwork. Also it should be noted that in US prevailing wages are predefined for all designations and does not vary much from company to company. This should be followed by Indian employers to ensure that same standards are maintained when deployment takes place. It is better for the employers to follow the standardized formats of US as it would facilitate uniformity of processes and thereby ensuring statutory requirements are complied with. Employer also need to have local entity represent them in some countries as it would lead to better understanding of the rules & regulation and tradition & culture of that particular country.

### **Travel:**

Travel management plays a vital role in immigration and mobility. Travel can be divided into many parts like VISA reading – whether it's a travel visa or business visa. According to visa, travel request or Authorization can be made. Travel settlement has to be done between employee & vendor. Ticketing needs integration between two systems because different systems are used. Sometimes when employees travel with family though not entitled, they opt for a loan. Since employers find it difficult to handle the personal financial transactions, they prefer to give employees a credit card but with a clause that personal and official expenses need to be maintained separately.

Step by step plan to ensure better travel planning is outlined below:

- Visa Readiness
- Travel Request / Authorization
- Travel Planning
  - TCF
  - TICKETING
  - FOREX
  - INSURANCE
  - BRIEFING
- Travel tracking
  - Assignment start
  - Relocation
  - Assignment Termination
- Travel Settlement – Employee and Vendor
- Travel Master – ERP Data Management., Exchange Rate, Insurance Rates
- MIS / Analytical reports for Decision making
- Metrics- Measures for efficiency



**Support & partnership:**

1. Request your business to identify resources for different countries well in advance
2. New country requirement to be planned in advance (3-5 months)
3. Request your business to frequently interact with immigration team to share their business plan
4. Ask them to involve immigration team prior to resource deployment commitment to clients.
5. Get your leadership support to address international challenges.

**Visa processing tool box:**

1. Required doc check list – sometime its not updated
2. eligibility criteria Qualification , communication , zero rejection,, zero compliance
3. step too be followed – documents necessary information person is having
4. Forms required – business visa / work visa/ dependent have different form keep a copy with you.
5. Filing fees – early there was no fees person should no the filing fees also.
6. e filing – when its corporate it is easy
7. Do & Don'ts – giving the documents as per the check list only no need for extra does.

## **Key immigration challenges:**

Immigration challenges are many, which includes both internal and external. Herein we have briefly captured key challenges businesses are likely to face.

### **Internal challenges:**

At the time of immigration non availability of documents like birth certificate, marriage certificate etc. with the employee is one common issue. Sourcing of such documentation is very time consuming. Also employers are not updated on current process and procedure. Many companies don't have proper tools to support the immigration function (even if they have a function, resources assigned are often limited) and this results in poor work permit status visibility and communication. The major problem with immigration is inadequately trained administration. So hiring qualified people for immigration function can solve the problem in India.

### **External Challenges:**

Frequent change in immigration process is the biggest challenge in immigration process. Other challenges include non availability of single vendor offering the whole gamut of immigration services and non-adherence to internal compliance guidelines. There is limited accessibility to decision making agencies in government, which results in increased lead times. In India there is no facility to get premium service even if organizations are ready to pay a premium to the agencies.

Immigration issues are not only dynamic but also grey owing to sensitivities involved. Thus it would be prudent for the organizations to strengthen their immigration department and also chalk out a road map for this critical function. The following table highlights the current situation in organizations and also the suggested road map.

<b>Change aspect</b>	<b>Current situation in many organization</b>	<b>Future Roadmap</b>
Dedicated resource	Limited	Augment your team
External vendor support	Weak ad hoc	One vendor approach
Tech support (tool)	Weak US specific mostly	Focus on enhancing your current tool or go for a proper tool
Proactive communication	Weak, need- based	SLA based reporting wherein efficiency could be measured
Counselor relation	Need based	Be proactive, aim at obtaining preferential status
Knowledge base	Available in bits and pieces	Process documentation critical, identify process consumer.

### **Best Practices in immigration:**

For better results organizations should put their immigration policies in writing so that it could be referred to at any point of time. Since organizations do not have trained people for immigration and mobility, it is important they invest in training the immigration management team, HR and other related functional managers. Creating intranet facility to communicate information would be good practice as it allows seamless information flow. Following industry leaders could help in better understanding of the current market trends. Automation is the way, so make the status available online. India centric organizations could set up global immigration hubs within the country to carry out many tasks here and keep documentation ready. For filing tax returns, rules should be followed regarding the number of working days outside India, process for the filing up the income tax, etc. Most importantly proper follow-up should be done with the local HR team. Since there are different rules for granting visa under various windows, organizations should try and leverage the best possible option available.

### **Road ahead:**

The external environment has changed post September 11 (9/11) where most countries are concerned with border security and increased monitoring of incoming people. There is an ongoing shift of immigrants from traditional source countries such as the United Kingdom, the United States, and Western Europe towards arrivals from Asia, Latin America, and Africa. And there is increasing international competition for skilled labour for both permanent and short-term employment. With organizations overseas having shortage of skills and professionals, it is increasingly outsourced from India. Against this backdrop, companies need to plan well in advance and be clear about visa categories, kind and type of projects and also the kind of qualifications required. Some governments like that of Canada and many in Europe use the well-known absorptive capacity model where they relate the level of inflow to prevailing economic conditions. While this eases immigration, the challenge arises from small oversights like misspelling your name or getting your address incorrect which can be a reason to be deported or denied legal status forever. However, with a one-stop solution, this is automatically addressed.

As every country has its' own policies, languages, customs & culture, one needs to be aware of each country's policy. Besides, the immigration process in most cases is complicated & cumbersome requiring extensive knowledge and time. This leads to numerous challenges (both internal and external) for organizations which can only be addressed by fully equipped immigration departments inside corporates or by usage of integrated, one-stop solutions.

In summary, there is still a long way to go before consensus can be reached on immigration reforms like securing the borders, strengthening enforcement inside the country and creating a guest worker program. Till then it is wise to stay informed and invest in the right personnel and solutions.