

THE CORPORATE
IMMIGRATION
REVIEW

EIGHTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

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PREFACE

The politics of immigration continue to dominate headlines worldwide.

The tensions between national protectionism, free trade arrangements and the need to attract skilled workers and foreign investors create conflict and inconsistency in many jurisdictions. This can be seen most acutely in the United Kingdom, where the net migration target (the aim to reduce the annual population increase caused by migration to the tens of thousands from a high of nearly 350,000) continues to be the central plank of government immigration policy. The result of the Brexit referendum in June 2016 is beginning to impact on the figures. In the 12 months from June 2016 to June 2017, migration from the EU decreased by over 100,000, causing a significant drop in net migration. Undoubtedly this is the consequence of uncertainty surrounding the United Kingdom as a long-term destination of choice – EU workers find the country less attractive. The referendum result has therefore assisted in the delivery of the overarching policy.

However, this reduction in the supply of workers from the EU has resulted in a spike in demand for workers from the rest of the world. The consequence of this has been friction in the Tier 2 (General) scheme, where demand has exceeded supply of Certificates of Sponsorship for the final four months of the allocation year (April to March). The government imposes a strict limit of 20,700 Certificates of Sponsorship for skilled new hires from abroad across all employers annually, regardless of business needs. This overall annual allocation is broadly equally divided across 12 monthly allocations. The final four months of the year were oversubscribed, causing significant frustrations for the many businesses that cannot sponsor the workers they need. This is unhelpful when added to the general business uncertainty surrounding the United Kingdom's post-Brexit trading arrangements.

The reduction in worker supply dictated by government policy does not appear to have resulted in an 'upskilling' of the local labour market or a reduction in UK unemployment (which in any event remains fairly low). There is a risk that the strict migration policy and uncertainty caused by Brexit will result in a slowdown in the economy, as businesses struggle to fill skilled jobs. Is this really a sensible immigration policy for Britain in the 21st century?

Furthermore, setting aside the overall policy wisdom, a major question mark hangs over whether the Home Office has the operational capacity to handle a registration and settlement scheme on the scale required to manage Brexit. There are approximately three million EU nationals in the United Kingdom and each one of them will have to engage with a new 'light-touch' process between now and the end of the transition period in 2021. We are promised a streamlined digital scheme that will minimise inconvenience and delay, but how can this promise be squared with the need for data integrity and avoidance of

fraud? Apparently 1,200 new caseworkers are being recruited to carry the burden. However, whether they can be recruited and trained in time to ensure a seamless transition to a new set of immigration arrangements remains to be seen.

The future of post-Brexit immigration policy remains opaque. The Migration Advisory Committee (MAC) will not issue its substantive report on EEA nationals and the UK labour market until September, although earlier indications of its thinking are expected. A White Paper and Immigration Bill will then follow. It will be some time before clarity is reached on the new immigration arrangements for 'taking back control'.

The Home Affairs Committee of the House of Commons has been highly critical of the government's Brexit preparedness in the context of immigration. The Committee's report (February 2018) expresses frustration at the lack of administrative preparedness and policy definition, and there is a sense that the government is feeling its way on the issues rather than providing firm leadership. By the time the next edition of *The Corporate Immigration Review* is published, the immigration road map to Brexit should be much clearer.

Donald Trump's 'America First' immigration and trade policies provide an echo of the situation in the United Kingdom. As with Brexit, we see in the United States the long-term effects of populism at the ballot box. The realisation of the President's promise to start building a border wall on 'day one' has proven more elusive in practice than his campaign-trail proclamations suggested. He is learning that the implementation of ideas is more complex in Washington than it is when undertaking more traditional real-estate deals in the private sector (and particularly when Congress controls the budget). However, Trump's hard-line approach to immigration policy is beginning to bite in less symbolic ways. On the ground, applications to the authorities are receiving considerably more scrutiny than was the case under the Obama administration, attracting harsher refusals or calls for additional evidence. US immigration practitioners report significant uncertainty in respect of the outcome of their cases. Paradoxically, this uncertainty results in a spike in business for lawyers, as applicants seek guidance and assistance in navigating a fast-changing legal landscape.

It is perhaps the fate of the 'Dreamers' that speaks most eloquently to the shift in approach to immigration policy in the United States. Named after the failed Development, Relief and Education for Alien Minors Act, the Dreamers are migrants who were brought to the United States illegally as children and who applied for renewable two-year work permits under the Deferred Action for Childhood Arrivals (DACA) programme, introduced under Barack Obama in 2012. In 2017, the Trump administration rescinded DACA and announced that, from 5 March 2018, the protection it offered to almost 800,000 people would begin to expire. Since then these individuals have found themselves at the centre of a political impasse that shut down the US federal government for three days. The Democrats had refused to agree to a budget deal that did not offer permanent protection to the Dreamers, but on 22 January they relented, agreeing to a short-term spending package to fund the government until 8 February, in exchange for a pledge by Republicans to address the fate of DACA recipients. At the time of writing, the Dreamers' future remains uncertain. Whether they are provided with a route to citizenship or face deportation will depend on the Democrats' ability to negotiate with a Republican Party dominated by hardliners and an unpredictable president.

Travelling east, we can see the tentacles of protectionism spreading to Singapore, where the Fair Consideration Framework (the Framework) approaches its fourth anniversary. Businesses are witnessing increased scrutiny of foreign manpower profiles, Employment Pass applications and hiring practices.

The Framework was introduced in 2014 as part of the Singapore government's overall strategy to promote fair employment practices and to strengthen the Singaporean core in the local workforce. Since then, the practical measures designed to facilitate this have been increasingly felt by companies and individual foreigners. The Ministry of Manpower (MOM) continues to emphasise that a quota for Employment Passes is not on the agenda, and instead that foreign workforce growth must be moderated to ensure it functions as an enhancement to the local workforce in a sustainable manner. In essence, the measures aim to maintain the delicate equilibrium between protecting and nurturing the local workforce, while also capitalising on available foreign talent to enable the longer-term growth and expansion of the Singapore economy. Development of the local workforce is key, as unemployment rises and net growth in the local economy begins to slow down.

The MOM wishes to see employers actively interpreting the spirit of the Framework in demonstration of their commitment to the overarching policy. The authorities will not shy away from scrutinising a company's hiring practices and curtailing work pass privileges in circumstances where firms are found to have nationality-based or other discriminatory HR practices. Around 300 countries are currently estimated to be on the MOM watch list and are required to work with Singapore's Tripartite Alliance for Fair and Progressive Employment Practices to demonstrate their commitment to improving internal hiring and employment practices. The term 'triple weak' has been used to describe companies found not to be actively nurturing a strong Singaporean core or demonstrating a strong relevance to Singapore's economy and society.

Immigration practitioners, wherever they live, face a constant stream of political scrutiny, policy development and legislative change. Now in its eighth edition, *The Corporate Immigration Review* contains the thinking of the world's leading business immigration lawyers. We are immensely grateful to them all for their contributions.

Chris Magrath and Ben Sheldrick

Magrath Sheldrick LLP

London

May 2018

UNITED ARAB EMIRATES

*Charles S Laubach*¹

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

The United Arab Emirates (UAE) has progressively transformed itself into a Middle Eastern business hub since its inception in 1971. The ongoing growth and development of the country are facilitated by the relatively straightforward business controls in place and by the UAE's long-term vision of becoming the financial capital of the region.

The UAE has achieved this by high levels of immigration, of both skilled and unskilled immigrants. Employers in the UAE are able to sponsor residence visas for their employees. The residence visa allows the employee to reside in the UAE and to enter and leave the UAE freely for as long as the visa remains valid. Such visas are valid for a two- or three-year term, which is renewable an indefinite number of times. A holder of a residence visa is generally able to apply for residence visas for his or her dependent family members. A person does not obtain the right to become a UAE citizen solely by reason of long-term residence in the UAE.

The vast majority of foreigners who reside in the UAE hold residence visas sponsored by their employers or their heads of household. A smaller number of foreigners reside in the UAE on the basis of residence visas that are granted by reason of holding shares or other ownership interests in local businesses (a visa known locally as an 'investor' or a 'partner' visa), and yet others are able to reside in the UAE on the basis of real estate ownership; we do not discuss these types of residence visa in detail in this chapter, because they are of little relevance to corporate employers.

For an individual who will visit the UAE for a specific job assignment of short duration, a separate category of visa is available known as a Mission Visa. This may be obtained for a term of up to 180 days.

For shorter trips to the UAE, not suitable for permanent employees, visit visas and transit visas are available. A visit visa is usually issued for a 30-day period, with a possibility of up to two renewals depending on the conditions of the visa. Citizens of many countries (listed in Section II, below) are routinely granted visit visas upon arrival at UAE ports of entry; nationals of other countries require sponsors for their visit visas. A transit visa may be obtained for a period of two weeks and is not renewable. A sponsor is required for a transit visa. Both visit visas and transit visas are single-entry visas and they cease to be valid once the holder departs the UAE.

¹ Charles S Laubach is a partner at Afridi & Angell.

i Legislation and policy

The rules governing immigration requirements are contained primarily in Federal Law No. 6 of 1973 Regarding the Entry and Residence of Foreigners, as amended (the Immigration Law). Further immigration regulations are contained in various ministerial resolutions and orders, the most important of which is Ministerial Resolution No. 360 of 1997, as amended (the Regulations). The requirements of the Immigration Law and the Regulations are administered by the General Directorate of Residence and Foreigners Affairs (GDRFA) within the UAE Ministry of Interior.

The Federal Ministry of Human Resources and Emiratization (MOHRE) administers laws pertaining to the employment of locals and foreigners in the UAE.

The UAE has established a number of free zones to facilitate the conduct of business by foreigners and investments in such businesses. Approximately 30 free zones have been established in the UAE at the time of writing. The general approach to employment and immigration is the same within the free zones as in the rest of the UAE. However, as a matter of form, the relevant free zone authority serves as the employer of record for each of the employees hired by an employer that is licensed in the relevant free zone. The employee then serves the specific employer that hired him or her on the basis of secondment from the free-zone authority. Personnel employed in the free zones hold residence visas issued by the GDRFA, but they are not required to hold labour permits issued by the MOHRE.

ii The immigration authorities

The GDRFA is the government body responsible for issuing visas and permits to foreigners wishing to enter the UAE. There is a GDRFA presence in each of the seven emirates. The GDRFA controls nearly all aspects of immigration in the country, including receipt, processing and granting or denial of applications for visas, for amendments or extensions to visas, and for cancellation of visas, as well as policing, enforcement, prosecution and adjudication of immigration offences. The MOHRE, formerly known as the Ministry of Labour and Social Affairs, supervises the implementation of the Labour Law in the UAE. Free zones have their own application centres for visas, many of which can be processed online.

iii Exemptions and favoured industries

There are no exemptions for favoured industries in the UAE private sector as such. However, employers in the free zones generally deal with fewer regulatory restrictions on the hiring of personnel than is the case in the rest of UAE.

Under the UAE Labour Law, there is a strong preference in favour of hiring UAE nationals. As a formal matter, an employer can hire a non-national of the UAE only following a finding by the MOHRE that there is no UAE national that could fill the proposed role. However, in practice, applications for residence visas are rarely denied on this basis.

There is a formal requirement that an employer with more than 50 employees must ensure that at least 2 per cent of its employees are UAE nationals. Higher thresholds exist in certain industries, such as banking and insurance. As a matter of official policy, employment of UAE nationals is strongly encouraged. Special rules apply to UAE national employees over and above those that apply to non-national employees; among other matters, pension contributions are required in respect of UAE national employees and there are various protections from termination of service.

II INTERNATIONAL TREATY OBLIGATIONS

The Gulf Cooperation Council (GCC) is a regional association whose members are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Nationals of these countries may travel within the other Member States of the GCC on the basis of their official ID cards, without having to obtain a visa or even produce a passport. They are also permitted to live and work within the other Member States of the GCC without obtaining a residence visa.

Political differences emerged during 2017 that led three of the GCC Member States to impose sanctions on Qatar. The long-term status of Qatar as a member of the GCC remains uncertain.

Visitors from certain countries can enter the UAE for tourism or business purposes with a visit visa granted upon arrival based on a bilaterally agreed visa waiver programme. This visa is valid for up to 60 days. Eligible persons are passport holders from the following countries: Australia, Andorra, Austria, Brunei, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, South Korea, Spain, Sweden, Switzerland, the United Kingdom, United States and the Vatican.

III THE YEAR IN REVIEW

The UAE continues to attract large numbers of expatriate employees. Simultaneously, the authorities in the UAE are dedicated to developing attractive career opportunities for UAE nationals, particularly in the private sector. To address these twin objectives, the authorities have moved more and more of the processes for handling visa and labour permit applications online, while at the same time introducing stronger incentives to encourage the employment of UAE nationals.

The most important change in the past year was the introduction of a new requirement for a new applicant for a residence visa, the requirement for a 'Certificate of Good Conduct' issued in the applicant's home country or country of previous employment. Like all the other documents that must accompany an application for a residence visa, the Certificate of Good Conduct must be issued by the concerned authorities and thereafter 'fully authenticated', an authentication process that is described in the following section.

IV EMPLOYER SPONSORSHIP

i Residence visa

An employer that wishes to hire a foreigner in the UAE must fulfil a number of obligations. The most important obligations are to obtain immigration approval from the GDRFA and then to obtain labour approval from the MOHRE. The following is a general outline of the process for recruiting an employee from overseas. Similar but somewhat abbreviated procedures would apply to recruitment of an employee who is already present in the UAE.

Typically, an employer would file an application with the GDRFA for an entry permit for the prospective employee. It would be necessary to attach an offer letter signed by both parties outlining the general terms and conditions of employment; identification documents for the employee (usually a passport copy); and copies of the prospective employee's educational qualifications if the employee will be hired in a managerial, professional or executive capacity.

The application must also be supported by a Certificate of Good Conduct issued by the law enforcement authorities in the employee's home country or in the country where the employee resided during the five years immediately preceding the filing of the application.

Based on these documents, the GDRFA reviews the application and either grants or denies the entry permit. As part of the application, internal verifications are conducted to determine whether the prospective employee presents any security or law enforcement risks.

If granted, the employee then enters the UAE under the entry permit. Following the employee's arrival, the employer begins the process of obtaining a residence visa and labour permit for the employee.

In this connection, the foregoing documents are submitted once again to the authorities. However, each of the documents noted above must now be fully authenticated, which means a chain of authentications culminating with the UAE Embassy in the country of origin of the document, followed by authentication by the UAE Ministry of Foreign Affairs and, finally, by translation into Arabic by a UAE Ministry of Justice-licensed translator. (An abbreviated authentication process is followed in respect of free-zone applications). The employee is required to undergo a local health check, in which persons are specifically screened for tuberculosis, HIV, leprosy and hepatitis B and C; applications of persons who test positive will be denied. In addition, the employee must sign an employment contract substantially conforming with the terms stated in the offer letter. This employment contract is filed with the MOHRE. Following these procedures, the employee will be issued a residence visa and a labour permit, upon receipt of which the employee will be able to formally commence employment duties in the UAE.

The procedure for employees who will be hired by a free-zone employer are very similar, although the authentication process is somewhat shortened (as noted above). In addition, the employment contract will be filed with the relevant free-zone authority, not with the MOHRE.

ii Labour market regulation

A unique feature of the labour market in the UAE is the significant presence of non-UAE national employees. The process for admitting such persons to the UAE for the purpose of employment is administered by the GDRFA, while the process of granting employment permits is administered by the MOHRE. The right to reside in the UAE is closely tied with employment in the UAE and generally one cannot reside in the UAE if one is not employed.

For nationals of the UAE, there are substantial incentives to find employment in the private sector and there are generous pension benefits provided to UAE national employees as well as protections from termination. Nevertheless, the economy is so large that the local private sector labour market is still dominated by foreign employees.

iii Rights and duties of sponsored employees

The UAE Labour Law is Federal Law No. 8 of 1980, as amended. It governs the rights of employees in the private sector. The Labour Law deals with matters related to working hours, vacations and public holidays, sick leave, the employment of juveniles, maternity leave, employee records, safety standards, termination of employment and end-of-service payments. The Labour Law applies to all employees working in the UAE, whether UAE nationals or expatriates, except for following categories of employees:

- a* officials, employees and workers in federal and local government departments, or appointed for federal or local government projects;

- b* members of the armed forces, police and security officers;
- c* domestic servants working in private residences; and
- d* workers employed in agriculture, apart from employees of agricultural companies engaged in processing products, or operating or repairing machinery required for agriculture.

In addition, employees in the Dubai International Financial Centre and the Abu Dhabi Global Markets, two financial free zones in the UAE, are subject to the labour laws specific to those free zones, and not to the UAE Labour Law.

Probation period

It is often the case that a new employee is hired under a probation period. Under the UAE Labour Law, the probation period may be up to six months. No employee may be required to serve two probation periods with the same employer.

Minimum wages

There is no minimum salary stipulated in the Labour Law. The GDRFA requires an employee to receive a minimum salary of 8,000 UAE dirhams per month if the employee wishes to sponsor residence visas for dependent family members.

Working hours

Article 65 of the UAE Labour Law provides that the regular working hours for the private sector are eight hours per day and 48 hours per week. An employee who works in excess of either threshold will be entitled to overtime compensation. Overtime compensation is 25 per cent more than the employee's salary during the normal working hours, which increases to 50 per cent for overtime between 9pm and 4am.

For some employees, working hours may be extended to nine hours per day. This primarily benefits employers in the hospitality (hotels, restaurants and cafes) and retail sectors.

Regular working hours are reduced by two hours daily during the holy month of Ramadan.

Reduction in working hours

Construction and industrial workers are not permitted to work outdoors during the peak hours of the day during the summer. Any firm found to have staff working during the designated break time would be fined 5,000 UAE dirhams per worker up to a maximum of 50,000 UAE dirhams.

Working in remote areas

Every employer who employs staff in remote areas that are not served by public means of transportation must provide the employees with the following services:

- a* suitable transportation;
- b* suitable accommodation;
- c* suitable drinking water;
- d* suitable food;

- e* first aid services; and
- f* means of entertainment and sports activities.

All the above services, apart from food, are provided on the employer's account.

Labour accommodation

In June 2009, the UAE Cabinet issued a General Standards Manual for Group Labor Accommodation and Related Services. The Manual sets minimum standards for facilities that must be provided to labourers while adhering to the established environmental and health and safety laws. It also recommends providing recreational amenities. Municipal authorities regularly inspect labour accommodation.

Ministerial Resolution No. 591 of 2016 requires employers with 50 or more employees who each earn less than 2000 UAE dirhams per month to provide accommodation for its employees.

Insurance

Employers in the Emirates of Abu Dhabi and Dubai are required to provide medical insurance to all employees.

Official leaves and vacations

Friday is the official weekend for all employees, except for daily wage workers. If circumstances require an employee to work overtime on that day, the employee will be entitled to regular working hours' pay, plus an increase of not less than fifty per cent of that amount.

Employees are entitled to paid leave on the following public holidays:

- a* Hijri New Year – one day;
- b* Gregorian New Year – one day;
- c* Eid Al Fitr – two days;
- d* Waqfa day and Eid Al Adha – three days;
- e* Prophet Mohammed's birthday – one day;
- f* Isra and Miraj or the Ascension Day – one day;
- g* Martyr's Day – one day; and
- h* National Day – one day.

In addition, employees are entitled to annual leave of:

- a* two days per month, if they have completed six months of service but not one year; or
- b* 30 days, if they have completed one year of service.

An employee's annual leave is not extended by any weekends or official holidays that fall during the course of the annual leave.

Employees are entitled to sick leave of not more than 90 days per year subject to conditions stipulated in the law. They will receive full pay for the first 15 days, half pay for the next 30 days and no pay for the final 45 days. Employees are not entitled to any paid sick leave during the probation period.

An employee may be granted special leave not in excess of 30 days, without pay, for the performance of Hajj. This is granted only once during the employee's years of employment.

Wage Protection System

The Wage Protection System (WPS) is intended to ensure that all employees are paid salary in a timely manner. WPS requires that employers pay all their employees their monthly salaries in UAE dirhams via the local banking system. Payments are monitored by the MOHRE to ensure compliance and it conducts inspections and takes other remedial measures in the event of discrepancies.

Termination

The UAE Labour Law places some limitations on the circumstances in which an employer may terminate the services of an employee. An employee may serve under a contract of specified term or unspecified term. An employee serving under a specified-term contract may have services terminated only for one of the specific reasons of employee misconduct that are listed in Article 120 of the Labour Law. In contrast, an employer may terminate services of an employee who is serving under an unspecified-term contract by providing at least one month notice of termination on the basis of a 'legitimate reason' for termination. A legitimate reason is a far less demanding standard than the grounds listed in Article 120. If the termination is done improperly or for an arbitrary reason, then the employer could be required to pay up to three months' salary as damages for wrongful dismissal. The UAE Labour Law does not provide for damages in excess of this figure.

End-of-service benefits

At end of service, an employee becomes entitled to a severance payment known as an 'end-of-service gratuity'. This payment is equivalent to 21 days of salary for each of the employee's first five years of employment, plus 30 days of salary for each year thereafter. The end-of-service gratuity is based on the employee's total salary excluding any allowances or in-kind payments, which is roughly equivalent to basic salary. The end-of-service gratuity obligation can be replaced, in some circumstances, by an employer-funded pension or savings scheme.

Grievances

Employees with grievances may file the grievance directly with the labour disputes section of the MOHRE. Collective bargaining is not permitted in the UAE and there are no labour unions. The MOHRE serves as the principal body charged with protecting employees' rights.

Renewal and transfer

Most employer-sponsored UAE residence visas are valid for a two-year term, after which they must be renewed for the employee to stay in the country. Employers are subject to numerical limitations depending on the employer's business activities. Some of the free zones give employers visa quotas that depend on the size of the employer's business premises.

Visa transfers within the UAE are generally possible for employees who hold bachelor's degrees or higher educational qualifications. The specific requirements on transfers vary somewhat from time to time and from place to place.

Free-zone employees

There are numerous free zones in the UAE and most of them have their own separate employment regulations that apply in addition to the provisions of the UAE Labour Law. The exceptions are the Dubai International Financial Centre and the Abu Dhabi Global Markets, which have their own stand-alone labour regulations that apply in lieu of the Labour Law.

As noted above, employees in free zones do not generally hold labour permits issued by the MOHRE. Instead, they are granted residence visas by the GDRFA under the sponsorship of the free-zone authority where they are employed.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

There are no special measures in place for investors, skilled migrants or entrepreneurs; instead, if they wish to locate to the UAE, they must do so pursuant to the rules that apply to employees generally.

An investor of substantial means could establish a business entity in the UAE and then obtain either an investor visa or partner visa on the basis of a proprietary interest in that entity. Alternatively, the business entity could hire the investor as an employee.

Investors in real estate can also be eligible for residence visas in some circumstances. The general requirements are as follows:

- a* a title deed from the Dubai Land Department must be produced;
- b* the property must be worth 1 million UAE dirhams or more and the investor must be the sole owner;
- c* if the property is mortgaged, then 50 per cent of the financing secured by the mortgage must have been repaid;
- d* the investor must have a minimum monthly income of 10,000 UAE dirhams either in the UAE or in the country of citizenship, and bank statements for the six months prior to the application must be provided to prove the same; and
- e* the principal applicant must obtain UAE health insurance coverage for the applicant and for any sponsored dependents.

VI OUTLOOK AND CONCLUSIONS

Growth in the economy over the next five years as a result of economic diversification will continue to establish the UAE as a vital economic and commercial centre in the Middle East. The UAE has a long history of political and economic stability and has a well-earned reputation for ease of doing business. These factors are likely to continue to contribute to the growth of the UAE in the future. This is likely to lead to a continuing high demand for a foreign workforce. At the same time, with the UAE population growing, there will be increased demand to create rewarding careers for nationals of this country.

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