THE INTERNATIONAL BAR ASSOCIATION

GLOBAL EMPLOYMENT INSTITUTE

Recapturing

A Draft Policy Document and Recommended Best Practices

By: The Working Group on the Global Corporate Relocation Treaty

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Background

All countries place limits on the period of time a work permit may be issued for, however some countries calculate the amount of time spent in the country of destination by calendar days, and others by net. Should it make a difference if the foreign expert was out of the country for a few days or for a few months? Can one recapture this time, and if so, what is the optimal way to file this request?

Purpose of the Document

This draft document has been prepared by the Working Group of the International Bar Association Global Employment Institute (GEI) for matters regarding the Global Corporate Relocation Treaty as a white paper or draft policy document. The purpose of the document is to be used by any country or organization that would be interested, as well as for a basis for discussion.

Description of the Problem

Foreign experts often spend a large amount of the time allotted to them by their work permit outside of the country of destination. This may occur for a variety of reasons, including a project delay or another concurrent project in the country of origin that the expert may need to attend to. However, in most cases, countries do not allow the expert to "recapture" the time lost within their work permit period.

Example: A foreign expert receives a one year work permit, but spends 8 months outside of the country of destination while he waits for other parties to complete their portion of the same project. The foreign expert should be able to recapture the time.

The Proposed Solution

The proposed solution acknowledges that there is a need for a recapturing procedure in order to allow foreign experts to recapture the amount of time spent on a work permit outside of the country of destination.

However, recapturing often has a limit, and will only be permitted if the foreign expert spends more than a predetermined period of time outside of the country of destination (i.e. 25% of the total time).

This solution attempts to balance the interests of the foreign expert (namely, to fully utilize the time allotted in the work permit) with the ability of local immigration authorities to monitor and control the total time allotted to the foreign expert on the work permit.

Note: 1) It is recommended that time spent within the country of destination in which work activities were not performed will not be time considered eligible for recapturing.

2) The recapturing procedure is only available for a foreign expert who is on the same job or project.

The Stages of the Proposed Solution

Stage A – Sponsor Obtains a Local Work Permit for Foreign Expert

Stage B – Sponsor Submits Application for Recapturing for Foreign Expert

Stage C – Approval of Recapture Request

Stage D – Application for Extension

Stage A – Sponsor Obtains a Local Work Permit for Foreign Expert

The sponsor must apply for and secure a work permit for the foreign expert in accordance with the standard procedures in place.

Note: Any country may set different limits for different types of work permits. For example, a country may set the work permit expiration in accordance with the expiration of a project or a predetermined period of time.

Stage B – Sponsor Submits Application for Recapturing for Foreign Expert

A recapturing application can be filed beginning from 75 days prior to the expiration of the work permit, or up to three months after the work permit has expired.

Note: The due process time will be 21 days from the date of filing. Should a request for further evidence be issued, the processing time clock will reset. It is recommended to establish a system for online submission of recapturing applications.

Stage C – Approval of Recapture Request

Applications for recapture will be determined based solely upon the actual time spent in the country, and will not be subject to appeal (i.e. 25% of time spent outside the country of destination). However, eligibility can be revoked if new information comes

to the attention of the immigration authorities (i.e. information has been tampered with or falsified).

Notice of the length of the recapture will be updated in the applicant's electronic file and passport once recapture has been approved by the relevant authority.

Note: Regulations on the subject of wages and taxation will be published and may be a prerequisite for approval of the recapture request.

Stage D - Apply for Extension

The applicant may apply for an extension following the expiry of the recapture period. This application may be filed either at the expiry of the work permit (before recapture has occurred) or at the conclusion of both the work permit *and* recapture period together.

Problems in the Absence of a Solution

As all work permits limit the period of time a foreign expert can work in a country, the absence of a recapturing policy may lead to a variety of unreasonable situations. An employee may have to leave before their work is complete, a company may have to transfer employees less qualified for the job and the final projects may not be as successful.

Example: Company sends person A to a foreign country to install air-conditioners; this takes 4 months, and over 4 years remain on the 5 year visa. 10 years later, the air conditioners need to be fixed, but the company cannot send the original expert because he is not permitted to recapture the remaining time on his visa. It is forced to send a less qualified expert with no experience working in the destination country.

Fees

This process will be subject to the following fees:

- Recapturing fee: 50% of fee for obtaining original work permit. Payment will be made at the time of submitting the request.

Recommended Time Frame

Requests for recapturing will receive a response within 21 days of filing of the application.

Conclusion

Time lapses are expected in many foreign work situations, thus creating the need for recapturing. Recapturing should be permitted provided that certain criteria are met (i.e. minimum time absent from the destination country, no change in circumstances, etc.).

The application required to recapture lost time on a work visa should be as transparent and clear as possible to ensure a short and efficient process.

Computing and Information Privacy

Electronic submission of notifications should be encouraged through the use of temporary fraud defense systems and confidentiality and privacy of information protection.

Procedures and Transparency

As part of an effective public service free of corruption, transparency in management of procedures is encouraged.

Procedures and timetables will be published in print and on the internet to encourage transparency and will build reasonable expectations for the processing of applications.

This proposal will enable the business sector to plan its activities accordingly.

Disclaimer

This draft policy document does not constitute any legal relationship between the GCRT sub-committee and/or team, with any party that will decide to use any part of this draft protocol for their purposes. This draft protocol is free for use by anyone who would like to do so, provided they give the necessary credit to the sub-committee on the Global Corporate Relocation Treaty.

Contact

The procedure is published in order to encourage comments, suggestions and ideas of concerned subjects, including, HR, immigration officials, academics, lawyers, CPA's and other service providers in the field.

This document was prepared by a team of the Working Group of the GEI on the Global Corporate Relocation Treaty, co-chaired by Adv. Tsvi Kan-Tor and Graeme Kirk.

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