

Corporate Immigration 2022

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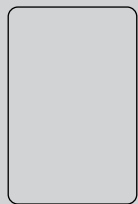
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Corporate Immigration 2022

Contributing editors**Howard Greenberg and Naumaan Hameed****KPMG Law LLP**

Lexology Getting The Deal Through is delighted to publish the eleventh edition of *Corporate Immigration*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Howard Greenberg and Naumaan Hameed of KPMG Law LLP, for their assistance with this volume.



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GENERAL FRAMEWORK

Legislation

- 1 | What primary and secondary legislation governs immigration in your jurisdiction?

The main legislation comprises the Law of Entry into Israel 1952 and the Foreign Workers Law (Unlawful Employment and the Guarantee of Decent Conditions) 1991.

Restrictions on cross-border movement

- 2 | What laws, regulations and policies control movement across borders in emergency circumstances such as a pandemic. How have the border restrictions been implemented?

The Israeli government issues ordinances, regulations and temporary regulations limiting activities, operations and movement. The Israeli authorities, including the Interior office, the Population, Immigration and Border Control Authority (PIBA), the police and the Israeli people follow these temporary regulations. The main restriction concerning the movement of foreign workers is the 'closed sky' policy. This policy requires categorising foreign workers as 'essential' to the Israeli economy and market, and as such, their entry to Israel is allowed.

International agreements

- 3 | Has your jurisdiction concluded any international agreements affecting immigration (eg, free trade agreements or free movement accords)?

No.

Regulatory authorities

- 4 | Which government authorities regulate immigration and what is the extent of their enforcement powers? Can the decisions of these authorities be appealed?

The authority governing foreign workers' employment is the PIBA at the Ministry of the Interior, which comprises an enforcement unit.

The enforcement unit may process criminal proceedings against employers and employees for violations, as well as administrative sanctions and proceedings. PIBA decisions and actions may be appealed to the administrative court. Decisions should usually be appealed within 30 days.

Government policy

- 5 | In broad terms what is your government's policy towards business immigration?

Israel allows the employment of foreigners under B-1 work permits only. There are a few categories under quota for employment, including

construction, agriculture, nursing, the restaurant business and expert professionals. Israeli immigration guidelines are trying to limit and minimise the number of foreigners seeking employment in Israel. This is achieved by limiting the maximum employment time in Israel to five years and three months (on rare occasions, this may be extended if the applicant can demonstrate that he or she makes a significant contribution to the Israeli economy). Also, Israel uses quota systems for the construction and agriculture industries and for nursing.

The expert professionals category does not have a quota or limit; however, the foreigner should meet certain criteria, including, but not limited to, showing that his or her expertise does not exist in Israel.

SHORT-TERM TRANSFERS

Visas

- 6 | In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A visitor or a traveller (B-2) will be issued with a 90-day visa, usually upon entry. Specific nationals (eg, from China, India and Turkey) are required to secure a visitor visa (B-2) in advance of, and prior to, entry to Israel. A visitor is allowed to engage in activities of a visiting nature only and the visit must be short. No employment is allowed under this visa.

Employment is available in Israel under a B-1 work permit, which is normally valid for up to one year. The nature, but not the length, of the visit is relevant to the need for an employment visa. A work permit for up to three months is also available; however, it requires the same procedure timelines as a one-year permit.

A procedure launched in January 2014, and updated and modified in February 2015 and December 2016, allows for a B-1 work visa for up to 45 days under an expedited procedure. The 45-day visa approval is available within six business days of filing the application. An additional visa issue process needs to take place after entry into Israel. The 45 days may be accumulated during a full calendar year. The visa cannot be extended beyond 45 days per calendar year. The visa is available for nationals who are exempt from obtaining a type B-2 tourist visa prior to entering Israel (eg, nationals of Australia, Canada, the European Union and the United States).

Restrictions

- 7 | What are the main restrictions on a business visitor?

A business visitor (B-2) will be issued with a 90-day visa, usually upon entry. Specific nationals would be required to secure a visitor visa (B-2) in advance of, and prior to, entry to Israel. A business visitor is allowed to engage in activities of a visiting nature only, including business meetings, and the visit must be short. No employment is allowed under this visa.

Short-term training

8 | Is work authorisation or immigration permission needed to give or receive short-term training?

Receiving short-term training from an Israeli person or entity does not require a work permit to be issued. However, in some cases, the training schedule and sponsor application should be presented to the authorities explaining the purpose of the visit. Giving short-term training would be considered as work and would require the appropriate employment visa (B-1) to be issued in advance, following the full work permit process. Someone giving short-term training may also use the expedited 45-day B-1 visa procedure. The 45-day visa may be accumulated and cannot be extended beyond 45 days per calendar year, per individual. An expert or individual who arrives in Israel to provide a lecture or a series of lectures may use the B-2 visitor visa as long as he or she will not be paid for his or her services (per diem may be paid) and the entity arranging the lectures will not enjoy a profit.

Transit

9 | Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Transit visas are rare in Israel as the country does not serve as a passage for travelling to other countries. Transit visas must be approved by the Population, Immigration and Border Control Authority and may be requested at the Israeli consulate in the applicant's country of residence or at the Israeli Ministry of the Interior in Israel.

Visa waivers and fast-track entry

10 | Are any visa waiver or fast-track entry programmes available?

There are no visa waiver programmes, although nationals of some countries do not need to apply for a visitor visa prior to arrival in Israel. There is an expedited procedure that processes a B-1 work visa (for up to 45 days) within six business days of filing the application. The visa is available for nationals who are exempt from obtaining a type B-2 tourist visa prior to entering Israel (eg, nationals of Australia, Canada, the European Union and the United States).

There is also a fast-track process for high-tech work visas, which was introduced in May 2018 for experts in high-tech and cyber companies. The high-tech visa is available for nationals who are exempt from obtaining a type B-2 tourist visa prior to entering Israel (eg, nationals of Australia, Canada, the European Union and the United States).

LONG-TERM TRANSFERS

Categories

11 | What are the main work and business permit categories used by companies to transfer skilled staff?

The main category used by companies to transfer skilled staff is the B-1 expert category and B1 high-tech category. B-1 can also be used for high-level managers of both Israeli and foreign companies. The B-1 expert visa and B1 high-tech visa, for those with proven high-level expertise or essential knowledge that is not available in Israel, also includes an 'expert wage' salary obligation (more than double the Israeli average salary as the base salary and changing over time).

The B-1 expert category is divided into two levels: high-level experts in a field requiring an academic background or experts with no academic background, including, but not limited to, qualified workers

such as expert welders and chefs. This subcategory has an additional burden on the employer asking for work permits to be issued. This may include, but is not limited to, the following:

- depositing a bank guarantee at the airport prior to the visa issue;
- additional affidavits and statements signed by the employee and the applicant company's general manager;
- an Israeli bank account to be opened for the employee for the payment of his or her salary; and
- a contract of employment signed by the employer and employee, in English and in a language the employee understands, aligned with Israeli labour laws and including confirmation by an Israeli attorney that the agreement complies with Israeli law.

In May 2018, a new experimental procedure was issued for B-1 work visas for experts in high-tech and cyber companies (the high-tech work visa). The high-tech visa is available for nationals who are exempt from obtaining a type B-2 tourist visa prior to entering Israel (eg, nationals of Australia, Canada, the European Union and the United States). This procedure, allowing an expedited procedure for experts, is also available under the existing expedited process and allows:

- extending the 45-day procedure for high-tech and cyber company experts to up to 90 days per year;
- an expedited process for work permits for up to one year;
- the issue of work permits to foreign students with Israeli academic qualifications; and
- work permits for the expert's spouse.

A business visa category applicant is issued with a B-2 visitor visa, which covers all manner of visiting activities, including tourism.

Procedures

12 | What are the procedures for obtaining these permissions? At what stage can work begin?

The following are the required immigration procedures that should be addressed for a B-1 expert category visa and a B1 high-tech category work permit:

- step one: a request must be filed for an 'in-principle working approval' to be examined by a special committee within the Population, Immigration and Border Control Authority (PIBA). The authorities' processing time is about one to two months from application. If the application is for an expert with no academic background or in a field that does not require an academic background, the authorities may issue a list of additional requirements allowing approval to be issued (see Restrictions). Approval for a 45-day visa, and for a high-tech work visa, is issued within six working days of submission;
- step two: after receiving the in-principle working approval, a request to issue a B-1 work permit will be submitted to the regional PIBA office. Once approved, the Ministry of the Interior will issue and send an 'invitation to enter Israel' to the Israeli consulate in the expert's country. The expedited process for a 45-day visa allows the expert to enter Israel and the work visa is issued after entry to the country;
- step three: the expert collects his or her invitation at the Israeli consulate. The consulate issues a work permit with a single-entry visa valid for 30 days. After receiving the visa and invitation, the expert can enter Israel, activate the work permit and start working immediately; and
- step four: upon arrival, a full-year work visa will be issued at the airport. Shortly after entry, a request for a 'multiple-entry visa' should be submitted and issued at the regional office of the Ministry of the Interior that issued the visa and invitation.

The expert may not leave the country until this process is finalised (which may be within a few days of arrival). Leaving the country prior to the completion of the process may require a new invitation to be issued.

Period of stay

13 | What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

Each B-1 work permit is valid for up to one year. Extensions are available for up to one year at a time, allowing no more than five years and three months in total.

A procedure launched in January 2014 allows the in-principle approval to be issued for a period of two years under specific criteria. The B-1 work permit shall be issued for one year at a time under the two-year in-principle approval and shall require an extension after one year within the 'approval' coverage.

Extensions beyond five years and three months are rare and should demonstrate a significant contribution to the Israeli economy. Additional and special procedures and approvals are needed to obtain work permits beyond the limit of five years and three months.

The expedited 45-day visa allows a maximum of 45 days in Israel per calendar year. The high-tech work visa allows a maximum stay of 90 days under the expedited procedure. Similar to standard expert (B-1) applications, standard high-tech visas are valid for one year at a time, for up to five years and three months in total.

Processing time

14 | How long does it typically take to process the main categories?

Processing usually takes one to two months from submission for approval and an additional month for the visa issue procedures, including the Israeli consulate step in the expert's home country.

The expedited 45-day visa requires six business days' processing for approval (step 1) and an additional visa issue after entry to Israel.

Staff benefits

15 | Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

The employer is committed to the employee or expert's benefits, including health insurance, suitable housing or residency and compliance with Israeli labour law regulations.

These commitments are part of the employer's undertakings upon the submission of a request to employ a foreign employee or a foreign expert.

Health insurance must cover the employee's entire stay in the country and needs to meet Israeli standard health insurance. Housing requirements are also included in Israeli regulations allowing for living and washroom space, etc.

Amendment No. 3 to the Foreign Workers Law (the Law) determines that an employer, at its expense, shall arrange for health insurance, which shall include the basket of services as determined by the Minister of Health. The Law does not define that the insurance must be provided by an Israeli insurance company.

The Foreign Workers Order (Basket of Health Services for a Worker) 5761-2001, sets down a detailed list of health services and additional matters which are to be included within the framework of the health insurance for a foreign worker. It is necessary to ensure that the health insurance policy (that which is issued in Israel or overseas) in fact includes the list of the required services. In this regard, it is likely that there will be greater certainty that an insurance policy issued by an Israeli insurer will in fact include the required basket of services. Therefore, it is best to involve the insurance advisor of the Group in order to decide on the matter.

The application to receive a permit for a foreign expert is supported by an affidavit signed by one who requests to employ the foreign expert. From here, where a body affirms regarding the application to employ a foreign expert, by the nature of things, it is expected to be the employer of that expert.

This affidavit is likely to have various ramifications regarding the existence of an employee-employer relationship, tortious aspects, and more. Attention should be drawn to the fact that the employer is likely to be required to provide an employment agreement with the foreign expert and in general, sometimes a body does not have such employment agreements, since the actual employer is a foreign entity that is sending those experts to provide the services. This matter should be discussed with a local labour lawyer with knowledge of Israeli law.

In many cases, the employers who sign the applications to employ a foreign worker are the foreign employers themselves. However, the procedure to file applications in this manner is likely to be a little more extended, mainly due to the need to sign and legalise the affidavit by the foreign employer overseas.

Assessment criteria

16 | Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

There is a list of criteria that the authorities examine upon receiving an application from a skilled worker or expert. The criteria to be considered are whether:

- the expert has special skills that cannot be found in Israel;
- the base salary or wage is more than double the average Israeli salary, to determine the employee is an expert;
- the expert contributes to the Israeli economy and creates a need for new positions to be filled by Israeli employees;
- the expert passes knowledge and experience to the local Israeli employees;
- the expert demonstrates a high level of education and a high level of experience; and
- the expert should have a high managerial position and a high-level position of development in his or her industry.

High net worth individuals and investors

17 | Is there a special route for high net worth individuals or investors?

All skilled workers and experts should follow the same general B-1 work-permit procedures. All applications must be sponsored by an employer – either Israeli or foreign.

A new investor visa (B-5) for US investors in Israel was introduced in 2016. The B-5 Israel investor visa permits the investor and several key workers in the business and their families to work and live in Israel.

The minimum amount of investment required to receive the B-5 Israel investor visa is undetermined; however, it must be substantial. In the United States, this is normally considered to be at least US\$100,000, but the actual amount required will be determined by the value or cost, or both, of the business. Applications for the Israel investor visa must meet the following conditions:

- the investor must invest a substantial amount of his or her own money into a new or existing Israeli business;
- the investor must own at least 50 per cent of the business;
- the business must be for profit;
- it must be shown that the business will provide income significantly in excess of what is needed for the livelihood of the investor and his or her family; and
- the business must have a plan to hire Israeli workers.

18 | Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

In 2016, a new investor visa (B-5) for US investors in Israel was introduced. The B-5 Israel investor visa permits the investor and several key workers in the business and their families to work and live in Israel.

Highly skilled individuals

19 | Is there a special route for highly skilled individuals?

In May 2018, a new experimental procedure was issued for B-1 work visas for experts in high-tech and cyber companies (high-tech work visa).

Ancestry and descent

20 | Is there a special route for foreign nationals based on ancestry or descent?

There are special routes for individuals based on ancestry or descent under the Jewish origin or law of return processes, as well as for those with Israeli parents.

Minimum salary

21 | Is there a minimum salary requirement for the main categories for company transfers?

Yes. One of the criteria to determine that a skilled worker is an expert is by paying the foreigner a base salary or wage that should be more than double the average Israeli salary (expert salary). The employer and signatory are committed to this criterion and an accountant should confirm that the employer has met this criterion upon application for a work permit extension.

The authorities may address the employer at any time and request evidence of monthly payslips to meet this criterion.

The expedited 45-day visa does not require the expert salary to be paid during the assignment; neither do applications for a visa for up to 90 days.

Resident labour market test

22 | Is there a quota system or resident labour market test?

There is no general quota and there is no need to actually search the market for local skilled workers. The application, however, should explain and demonstrate that such skilled workers cannot be found in Israel. The authorities may ask for an additional explanation on this matter.

There are a few categories under quota for employment, including construction, agriculture, nursing and caregivers and the restaurant business.

Shortage occupations

23 | Is there a special route for shortage occupations?

No.

Other eligibility requirements

24 | Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

An expert category application needs to demonstrate that the expert has unique and special knowledge and experience that is not available in Israel.

Newly hired employees can be issued with Israeli B-1 work permits. The employer-employee relationship history is not needed.

Third-party contractors

25 | What is the process for third-party contractors to obtain work permission?

The employer is the entity who should submit the application for a work permit. The employer may be an Israeli entity or a foreign entity. The Israeli authorities examine the application and prefer a direct employer-employee relationship to exist, allowing the work permit to be issued to the entity actually employing the expert.

Recognition of foreign qualifications

26 | Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

There is no assessment, equivalency or recognition of qualifications. However, a diploma, certificate of qualifications or expertise recognition should be provided and presented.

EXTENSIONS AND VARIATIONS

Short-term to long-term status

27 | Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

A change of status from visitor visa to employment visa is not available. The expert should leave the country and return, after invitation, under the appropriate employment visa, if it is for work purposes.

An extension of an employment visa is available. The process should take place prior to the expiry of the work permit to avoid a situation where the expert is in the country with no valid visa in place (waiting for the extension to be approved and issued).

Short-term employment visas (under three months, which do not meet expert salary criteria) cannot be extended. The 45-day visa cannot be extended beyond 45 days during a calendar year, but this term may be accumulated. A full B-1 long-term work permit may be requested and issued after the employee has left the country, after using his or her 45-day visa.

Long-term extension

28 | Can long-term immigration permission be extended?

Each B-1 work permit is valid for up to one year. Extensions are available for up to one year at a time and for no more than five years and three months in total.

Exit and re-entry

29 | What are the rules on and implications of exit and re-entry for work permits?

As long as a multiple-entry visa is issued and stamped on the expert's passport, exit and re-entry is available without influencing the work permit.

Once the multiple-entry visa has expired and the expert has returned to Israel, he or she will be issued with a B-2 visitor visa and employment will not be covered unless a new work permit is issued or extended.

Multiple-entry permits are available for the B-1 expert category. This is not usually available for other categories, such as construction, agriculture and nursing.

Permanent residency and citizenship

30 | How can immigrants qualify for permanent residency or citizenship?

The ways to become Israeli are either to marry or to live with an Israeli citizen who will serve as the sponsor of the application until the residency process is completed and an Israeli ID or passport is issued, or to be eligible under the Law of Return allowing Jewish-origin nationals to apply for residency or citizenship. This may also be achieved by converting to Judaism, which is a very demanding process requiring deep sincerity and acknowledgement by the rabbinical authorities.

End of employment

31 | Must immigration permission be cancelled at the end of employment in your jurisdiction?

A work permit does not have to be cancelled upon the termination of employment. In the event of early termination, it would be necessary to report to the authorities that the expert has left the country with no intention of returning as an employee. It would be preferable to cancel the visa and the multiple-entry visa prior to the expert's departure or shortly after.

Employee restrictions

32 | Are there any specific restrictions on a holder of employment permission?

The work permit is issued per employer and per specific employee. Any change with the employer or employee reflected on the expert's visa should be reported, including the position, as this is part of the approval issued to the employer and employee.

The employee is allowed to conduct work only in accordance with the work permit issued.

DEPENDANTS

Eligibility

33 | Who qualifies as a dependant?

The immediate family to be considered as dependants are the spouse and children up to the age of 18. High-level experts may be accompanied by their family on assignment to Israel. The following categories of expert do not permit dependants to accompany the applicant:

- under approval in a field not requiring an academic background;
- under approval of up to three months; or
- under approval for 45 days.

Conditions and restrictions

34 | Are dependants automatically allowed to work or attend school?

Dependants may attend school but are not automatically allowed to work in Israel. A dependant may be issued with a B-1 work permit if he or she meets the expert's criteria and is sponsored by a company under a full B-1 expert category application.

The high-tech work visa allows spouses to apply for employment authorisation.

Access to social benefits

35 | What social benefits are dependants entitled to?

A work permit holder will pay either full social security contributions or limited social security contributions if the salary is paid in the expert's home country. Social insurance will include coverage for injury at work

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to the employee and his or her family members and the employer's bankruptcy (this does not waive the need for full medical coverage according to the Israeli Health Basket requested by law for the employee and his or her family during the entire Israeli employment term).

OTHER REQUIREMENTS, RESTRICTIONS AND PENALTIES

Criminal convictions

36 | Are prior criminal convictions a barrier to obtaining immigration permission?

Prior criminal records may cause the rejection of a work permit application.

Penalties for non-compliance

37 | What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

There is an increasing trend to initiate criminal proceedings against employers and their managers (who are liable for full responsibility) that unlawfully employ foreign employees. The penalties involved with unlawful employment are as follows:

- according to the Law of Entry into Israel 1952, a person entering Israel without a permit, or committing a breach of one of the conditions of his or her entry permit, is committing an offence and the punishment is one year's imprisonment. Such a person can be deported;
- according to the Foreign Workers Law (Unlawful Employment and the Guarantee of Decent Conditions) 1991, an employer who employs a foreign worker who does not hold a work permit shall pay a fine defined in the Criminal Law 1977 of approximately 104,400 New Israeli shekels and an additional 5,200 New Israeli shekels for each worker for every day that the offence continues; and
- if the offence was committed by a corporation, any person who was responsible for the matter shall be charged with the offence unless it is proven that the offence was committed without his or her knowledge or that he or she has taken all the necessary measures to prevent its occurrence.

The above is relevant to all sectors requiring work visas in Israel, including the oil and gas industry. Population, Immigration and Border Control Authority enforcement units check employers and work sites.

Language requirements

38 | Are there any minimum language requirements for migrants?

No.

Medical screening

39 | Is medical screening required to obtain immigration permission?

Yes. The Israeli consulates request that medical screening takes place and is presented upon the visa issue in the worker's home country. Blood tests may also be requested.

Secondment

40 | Is there a specific procedure for employees on secondment to a client site in your jurisdiction?

There is no specific procedure for secondments. All employers and employees must go through full Israeli B-1 work permit procedures.

UPDATE AND TRENDS

Key developments of the past year

41 | Are there any emerging trends or hot topics in corporate immigration regulation in your jurisdiction?

The Population, Immigration and Border Control Authority is constantly being improved, with most work permit applications and approvals for the expert categories now being processed online, which has reduced processing times and has resulted in partial applications not being processed.

The worldwide covid-19 pandemic has influenced dramatically the work permits sector adding challenges to procedures and approvals for new foreign experts' applications. The relevant ministries are requested to support and define the foreign employees as 'essential' to the Israeli economy, allowing the permit approvals and entry clearances to foreigners to allow them to enter the country for their assignments.

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