
Assignments and short term trips of Indian employees to Germany

Regardless of industry, Indian employees working for German and Indian companies need to travel frequently to Germany for short meetings at the headquarters, urgent customer support or an intra-corporate assignment. All these trips are subject to German immigration rules. For purposes of compliance, employee safety and a seamless immigration process, some key rules and red flags need to be taken into consideration by operational and HR-Managers as well as by any employee boarding a plane to Germany.

General rules

Indian citizens always require a visa to travel to Germany. For trips up to 90 days, a Schengen Visa, Type C, is appropriate. For assignments of more than 90 days, a National Visa, Type D, is required. A C-Visa can be issued for up to 5 years, granting access to Germany and the Schengen Area for up to 90 within any rolling 180 day period. A D-Visa can be granted for up to 12 months and gives the right to stay and work in Germany for the duration of its validity. If the assignment to Germany is scheduled for more than 12 months, the D-Visa will have to be converted into a work and residence permit, issued by the local immigration office in Germany. Visas are issued by the German Consulates General and the German Embassy. Work permits usually require the approval of the Federal Employment Agency (Bundesagentur für Arbeit). A C-Visa application usually requires 5 to 10 working days of government processing time, a D-Visa about 4 - 8 weeks.

Business trips

When planning a trip to Germany, the starting point of any visa consideration is that generally, any work related activity requires a full work permit, even if the professional activity is only supposed to be performed in Germany for a few days.

Depending on the particular activity which is to be performed in Germany, Indian citizens can make use of the business visitor status which is granted as a Schengen Visa, Type C. Under the business visitor status, a legally defined list of professional activities do not require a work permit if they are performed for less than 90 days. It is untrue that any work trip to Germany below 90 days is considered a business trip by law. The rule is, rather, that any work trip is considered to require a work permit unless the business visitor exception described above applies. The majority of these exceptions support the creation and the enablement of business projects, not their implementation. For example, any activity that is related to negotiating, preparing and concluding business deals is a business visitor activity. Internal meetings and discussions which take place with colleagues in Germany are also deemed business visitor activities. Once a deal is signed with a customer, however, only managers who are in charge of supervising the implementation of a project can still travel as business visitors for up to 90 days within 180 days. All other employees who actually work on the implementation of the project will require work visas. In the same way, employees who are required to work short term at an entity of their own company also require work permission.

The business visitor status doesn't apply to what is often referred to as "knowledge-transfer" in IT consulting and IT outsourcing projects. Usually, this phase will only be kicked off once a deal is in place with the customer. If preparing a larger deal requires a visit from specialists to understand the technical infrastructure of the potential customer, this may occur under the business visitor status as part of the preparation of a contract offer. Subsequently, a manager may wonder if his staff member can qualify for a business visa for the purposes of a knowledge transfer trip on the basis that it is a training situation, which is another allowed business visitor activity. This idea is, however, not applicable to a knowledge transfer situation at a customer. Even if the employee will learn a lot

about new systems and structures, he is still considered part of the implementation of a technical project and not a participant on internal training, aimed at extending the employee's skill set and qualifications. Other business visitor activities are intended to grant managers temporary access to Germany to establish, audit and run entities in Germany or for employees to visit or present at trade fairs or perform acceptance tests on equipment bought from German producers. In terms of duration of stay, the business visitor status comes with two tiers of timeline: some activities are allowed to be performed for 90 days within 180 days, whilst others are only allowed for 90 days within 12 months. It is recommended that, in addition to reviewing allowable business visitor activities for each trip, employers also take into consideration the duration of the employee's business travel. Trips of more than three weeks are unlikely to qualify for business visitor status. Most longer business trips are likely to be work trips and may be subject to close scrutiny by immigration authorities.

Intra-Corporate Transfers

The predominant immigration category for work trips to Germany is the Intra Corporate Transferee (ICT) visa. There are two ICT visa categories in Germany; the International Staff Exchange Category (ISE, *Internationaler Personalaustausch* in German) and the ICT Card (*ICT-Karte* in German; coming into force from 1 August 2017). Both ICT categories require an intra-corporate transfer from a sending entity in India or anywhere else outside the European Union to a receiving entity in Germany, both of which must be part of the same company. Assignments in this category can have a duration up to three years. Assignees must be in possession of a university degree or have comparable education and must be specialists or managers in their company. In addition, an ISE visa requires an outbound move of another employee from Germany into an entity abroad. The ICT visa requires the assignee to have at least 6 months employment experience with the same employer prior to the assignment. In both cases, the assignee must be paid a salary at the level of an employee in Germany in the same position. Allowances can partly be taken into account to reach the minimum salary and

minimum wage levels. For work trips of up to 90 days which do not fall under the allowable business visitor activities, approval from the Federal Employment Agency can be obtained and the work permission can be put into a Schengen Visa, which makes this short term work visa the safest option to remain compliant with immigration rules when the supposed professional activities do not comply with business visitor status. If it is an option to issue a temporary employment contract from the German entity, it is also possible to obtain an EU Blue Card visa. This can be an useful tool for two reasons. Firstly, the minimum salary required for an approval may be much lower than for an ICT. Secondly, if the assignee is paid an annual salary of at least EUR 50.800, the EU Blue Card allows hiring out of employees to a customer (*Arbeitnehmerüberlassung* in German). This is very important as many (IT)-Consulting projects tend to lie in the grey area between fulfillment of services and contractor relationships. Hiring out Indian employees who have been granted ICT-Visas as contractors to a customer is illegal for both the employer and the customer.

Technical Support and Contractual Service Supplier Visas

A further option to obtain work permission for short term work trips is the Technical Support Category Visa (*Werklieferungsvertragsverfahren* in German), which allows producers of goods and software (but not services) to send their employees to the buyer of the product to install, maintain, troubleshoot or train staff for up to three months within a 12 month period. After a notification to the Federal Employment Agency, a Schengen Visa can be issued. For suppliers of services to German customers, a Contractual Service Supplier Visa can be issued. This visa category requires approval from the Federal Employment Agency and can also be granted for up to three months within a 12 month period. The assignee needs to be paid a comparable salary during the assignment. This category, however, cannot be granted if the employer also has an entity in Germany. In this case, only an ICT Visa is applicable.

In summary, German immigration law offers a diverse range of visa types which HR and mobility managers can utilize to achieve full immigration compliance for their company and their employees. One must always take the following red flags into account: the tight limitations of the business visitor status; the avoidance of illegal hiring out of employees in consulting projects and salary and allowance compliance with the requirement of a fully paid market salary for assignees.

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Praxiswissen Indien – Fachseminar

Beschäftigung indischer Mitarbeiter in Deutschland, Düsseldorf

Die Beschäftigung indischer Mitarbeiter in Deutschland, sei es zum Training, zeitlich begrenzte Arbeitsstelle oder dauerhafte Integration im deutschen Team muss wohl geplant werden. Neben der grundsätzlichen Entscheidung indische Mitarbeiter einzustellen, müssen Fragen des Arbeitsvertrages, des Steuerrechts und der Sozialversicherung geklärt werden. Besonders intensiv und sorgsam muss auch die Beantragung des Visums bzw. der Arbeitsgenehmigung vorbereitet werden. Nach dem großen Erfolg im letzten Jahr bieten wir Ihnen gerne erneut die Möglichkeit sich zu diesem Thema zu informieren und laden Sie herzlich zu unserem Fachseminar „Beschäftigung von indischen Mitarbeitern in Deutschland“ am 05.07.2017 in unser Büro (Citadellstrasse 12, 40213 Düsseldorf) ein. Bitte beachten Sie, dass die Teilnehmerplätze begrenzt sind. Nähere Informationen zu Anmeldung und Programm erhalten Sie bei Frau Anne Kriekhaus Email: kriekhaus@indo-german.com