

## **Government issues FAQs on work related visa for foreigners**

The Ministry of Commerce and Industry (MCI) had issued a letter dated 20 August 2009 requiring all foreign nationals in India holding Business Visa (BV) and working on project/contract based assignments in India to return to their home countries on expiry of their BV or by 30 September 2009, whichever is earlier. This deadline was subsequently extended to 31 October 2009 by the Ministry of Home Affairs (MHA).

The MHA has now issued Frequently Asked Questions (FAQs) on work related visas issued by India, clarifying the purpose, duration and various scenarios under which BV/ Employment Visa (EV) may be granted to foreign nationals.

### **Key clarifications as per the FAQs issued by MHA:**

#### **Employment Visa:**

1. EV shall be granted to a foreign national who is a skilled and qualified professional or person who is being appointed at a senior level or as a technical expert.
2. EV shall not be granted for jobs which are routine/ ordinary/ secretarial in nature or for which large number of qualified Indians are available.
3. The FAQs provide the following illustrative scenarios under which **EV** shall be granted to foreign nationals:
  - Visiting customer location to repair any plant or machinery as part of warranty or annual maintenance contract.
  - Foreign engineers/ technicians coming for installation and commissioning of equipments/ machines/ tools in terms of contract for supply of such equipment etc.
  - Foreign experts imparting training to the personnel of the Indian company.
  - For providing technical support/ services, transfer of know-how etc. for which the Indian company pays fees/ royalty to the foreign company deputing the foreign national.
  - Foreign nationals coming to India as consultants on contract for whom the Indian company pays a fixed remuneration (whether monthly or otherwise).
  - Foreign artists engaged to conduct regular performances for the duration of employment contract given by Hotels, clubs etc.
  - For taking up employment as coaches.
  - Foreign sportsmen who are given contract for a specified period by the Indian club/ organization.
  - Self-employed foreign nationals coming to India for providing engineering, medical, accounting, legal or such other highly skilled services in their capacity as independent consultants.

4. The FAQs provide the following illustrative scenarios under which **BV** shall be granted to foreign nationals:

- To establish industrial/ business venture or to explore possibilities to set up industrial/ business venture in India.
- To purchase/ sell industrial/ commercial products or consumer durables.
- **For attending technical meetings, board meetings, general meetings for providing business services support.**
- **Foreign nationals who are partners in the business or functioning as Directors in the company.**
- For consultations regarding exhibitions, participation in exhibitions, trade fairs etc. and for recruitment of manpower.
- Foreign buyers who come to transact business with suppliers/potential suppliers, to evaluate/ monitor quality, give specifications, place orders etc. relating to goods/ services procured from India.
- Foreign experts/ specialists on a visit of a short duration in connection with an ongoing project for monitoring the progress of the work, conducting meetings with Indian customer and/ or to provide high level technical guidance.
- For pre-sales or post-sales activity not amounting to actual execution of any contract/ project.
- Foreign trainees of multinational companies coming for in-house training in regional hubs of the concerned company located in India.
- Foreign students sponsored by AIESEC for internship on project based work in India.

#### **BV cannot be converted into EV in India**

Foreign nationals who are already in India on BV are not allowed to convert their BV into EV in India. Therefore, they have to necessarily leave India by 31 October 2009 and get EV overseas.

#### **Foreign company not having presence in India cannot sponsor EV**

Where a foreign entity does not have any project office/ subsidiary/ joint venture/ branch office in India, it cannot sponsor a foreign national for EV.

#### **EV not necessarily to result in legal employment**

An Indian company/ organization which has awarded a contract for execution of a project to a foreign company can sponsor employee of a foreign company for EV. Further, such Indian organization/ entity would not necessarily be considered the legal employer of that person.