

# TRANSFER OF U.S. EXECUTIVES AND EMPLOYEES TO FRANCE: FRENCH VISA ISSUES

Haywood M. Wise, Esq.

---

France is a gateway to European business and an ideal location for managing EMEA commercial activity, and remains a great place to be an expatriate. The use of foreign (and particularly U.S.) executives in France is facilitated by liberal French regulations. Also, Franco-American tax and social security treaties make the transfer of an employee to a foreign office of the transferring company a cost-effective solution for training local personnel and strengthening ties between foreign offices.

---

*Of Counsel to the firm of Goff and Wilson, P.A. Attorney at the Paris, New York and New Jersey bar.*

*Haywood Martin Wise is an American-born attorney (member of the New York, New Jersey and Paris bars and graduate of Brooklyn Law School and Panthéon-Sorbonne (masters (D.E.A.) in French Business and Economic Law) and has been consulting U.S. and foreign businesses in the development of their French business since 1996. He is of counsel to the US immigration firm, Goff & Wilson, P.A. Copyright (c) 2004 American Immigration Lawyers Association (<http://www.aila.org>). Reprinted with permission from AILA's Immigration Law Today (May/June 2004).*

While for most work visa applications the French State, faced with significant unemployment, has enacted measures to reduce the number of foreign workers, exceptions have been carved out in the laws and regulations for foreign executives and transferred employees. These types of foreign workers are deemed to fall within privileged categories and their visa applications are simplified and accelerated. Indeed, the transfer of a foreign employee, and an executive in particular, is a much simpler process than recruiting a foreign employee by a French company, which in the latter case requires presentation and posting of the petition to the French National Work Agency (*Agence National de l'Emploi*).

## **TRANSFER OF FOREIGN EMPLOYEES**

To qualify as a transferred employee (*salarié détaché*), the transferred employee must remain an employee of the company for the entire term of the transfer. He/she remains subject to the authority of his/her foreign employer. Unlike the foreign executive category be-

low, this transfer need not be a company belonging to the group, but may rather be working at the business location of an independent entity. His/her duties must generally be limited in nature to financial auditing, technical assistance or liaison with the foreign employer and the French entity.

Whereas the duration of a foreign executive's visa shall depend upon the nature of his/her mission and may be longer than one year, the duration of the foreign employee visa is nine months, and may be renewed once.

## **TRANSFER OF FOREIGN EXECUTIVES**

For foreign executives (*cadres*), the process is even simpler. The terms and conditions for the delivery of a work permit for foreign executives are detailed in administrative regulation DPM/DM2-3 no. 96256 dated April 15, 1996. The regulations provide that French labor authorities are to review the file within fifteen days of filing, and shall not consider employment issues but merely verify the content of the request.

Persons falling under this status are presumably to work in a management capacity, although the regulations do not specify this as a requirement. To qualify for this status, the employee concerned must provide proof that he/she has worked more than one year within a corporate group whose parent company has a share capital of the equivalent of 450,000 euros and which has been in existence for at least three years, and that the Host Company is part of this group. The employee's wage must also surpass certain coefficients fixed by law, which as of July 2003 should equal at least 3,835 euros monthly.

### **THE FILING PROCEDURE**

The filing procedure for both a transfer of a foreign employee or a foreign executive is almost the same. It is important to perform the request for a work visa properly, to avoid unnecessary delays and costs. Unlike U.S. visa procedures, no government form applications are provided, the petition requires attention to form and substance.

The petition to introduce a foreign employee is made by the French entity hosting the employee (the "Host Company"). The Host Company, the company transferring the employee to France (the "Transferring Company"), and the employee himself must provide various documents and certifications regarding the purpose of the transfer and the specific need which the employee answers in regard to the French business. A written employment contract must also be provided. Once these documents are prepared and signed by authorized representatives of the Transferring Company and the Host Company, and sworn translations are obtained of certain personal documents, the

application is sent to the competent labor authority, the DDTE.

The DDTE will thereafter review the file for its completeness, and determine, with reference to the employment situation in the geographic location whether the transfer should be granted. No such regional employment review shall be made in the case of the transfer of an executive. The DDTE, the OMI (see below) and the French Consulates are given a broad degree of discretion to approve or refuse French visas. For top management, the stated policy of the DDTE is that highly paid executives offer significant financial and cultural contributions to France, and that their work visa requests should be approved in most cases. It will thereafter issue an approval by letter, and send the file to the International Migrations Authority, or Office des Migrations Internationales (OMI). If there is any question or objection made to the application, it is likely to be made at the level of the DDTE, since the OMI will most likely simply process the application if it is approved by the DDTE.

The OMI shall perform a cursory review of the documentation and thereafter send it to the French Consulate where the U.S. employee resides.

The employee would thereafter have his passport stamped by the French Consulate. The French Consulate will contact the employee directly to schedule a time for him to claim his provisional entry visa. Upon receipt of this provisional visa, the employee is free to enter France and begin working.

The Host Company files a request for a temporary work visa at the municipal building (Préfecture). Thereafter the employee will personally go to the Préfecture where he shall reside and claim his

temporary work visa. The temporary permit only allows a foreign employee to reside in France for the time indicated on the card, and renewals should be timely applied for (no later than three months prior to term). The Préfecture will send the employee to the OMI for a comprehensive physical examination as a condition to the granting of his/her visa.

It is important to specify to your French counsel whether the seconded employee has family members who will be accompanying him, so that such dependents can be included in the initial visa request. Children under 16 years of age are not required to have a residence permit.

### **SOCIAL SECURITY AND TAX**

For transferred employees, the DDTE requests a standard form certification of social security coverage, issued by the U.S. social security administration. The Franco-US social security convention shall preclude liability for French social security coverage providing that the individual's employment relationship remains exclusively subject to U.S. law, and that the transfer does not exceed five years.

In regard to French income tax, the seconded employee would not generally be subject to income tax provided that he continues to be paid by his U.S. employer (or on behalf of his U.S. employer) and for a given fiscal year, he/she does not live in France for a period greater than 183 days. Should the seconded employee become subject to French income tax in the event that that period is surpassed, then he would be entitled to tax credits on the tax actually paid by him in the United States.