

Quota Fulfilled: Migration Policy or Barrier to Investment?

On May 26, 2008, the Federal Migration Service of the Russian Federation stopped accepting applications for work permits because the year's quota of work permits for Moscow had been met. Thousands of foreign nationals had to leave Moscow because their work visas had expired and could not be renewed or extended. Now Russian nationals and expats alike are left wondering how to interpret the move: Is it the government's somewhat ham-fisted effort to tighten migration policy or is it a signal that foreign investments are no longer welcome?

Every country tries to strike a balance in its migration policy between two major goals: The need to sustain economic growth by allowing foreign workers into the country and the need to regulate the inflow of foreign nationals so as to minimize the problems that can attend large influxes of workers from abroad (e.g., tensions between citizens and immigrants, protection of jobs for locals, taxation, etc.).

Russia is no exception. In 2007 Russia attracted more foreign immigrants than even the United States, and that is according to the official statistics. If we consider illegal immigration, the number of foreigners residing in Russia is dramatically higher – some sources say around 10-12 percent of the country's total population. For the most part, these people are unskilled workers originating in Soviet successor states and developing countries in Asia (such as China and Vietnam).

However, I would like to focus here on the policy regarding employment of highly qualified foreign personnel in the country. Russia's significant economic growth has attracted foreign companies to do business and invest here. As a result, Russia – and Moscow in particular – is home to a significant number of foreign employees of multinational corporations, a population that can be divided into three major groups:

1. Intracompany transferees – top management sent to Russia to work in branch and representative offices. Legally speaking, they are employed by their head offices, located outside of Russia.
2. Foreign employees of the Russian daughter companies of multinational corporations. Legally, members of this group are employed by the local Russian daughter companies.
3. Foreign entrepreneurs that have come to Russia because they see the country's potential.

In light of the goals of the government's migration policy, it is not entirely clear why the authorities should be targeting high-level foreign employees. The reality may be, however, that the newness of Russian immigration legislation makes for many loopholes and inconsistencies, and it is these, rather than a conscious anti-foreigner policy, that end up causing great difficulties for foreign investors doing business here in Russia.

The biggest problem is that Russian legislation does not distinguish among the various groups of foreign workers, using the same approach to unskilled workers who came to Russia seeking jobs and highly qualified employees sent to Russian offices of multinational corporations.

Regardless of the reasons, there are several chief difficulties that foreign investors and their employees face. The first is the newly enforced rule requiring a company to submit by May 1 an application in expectation of foreign employees to be working in Russia the following year. The application must include the number, positions, and citizenship of all these employees, information that is difficult to know

seven months in advance. If any of the submitted data changes, then the company must file amendments to the original application.

But even the submission of a timely, accurate application that receives the approval of the authorities gives no guarantee that a company will receive work papers for its foreign employees. For example, if the quota is met – as occurred on May 26, 2008 – then no work permits will be issued even to those organized, foresighted early birds who followed all the rules. This absolutely absurd situation begs the question of why these quotas are necessary in the first place. To compound the absurdity, there is a “reserve quota” of 30 percent of the regular annual quota for 2008. But since the mechanism for activating this reserve is not automatic, there is a period – after the regular quota has been fulfilled and before the reserve quota is accessible – when no visa applications are accepted. This can cause significant difficulties for foreigners whose visas expire in the interim.

Moreover, the early deadline for the application presents a problem for new companies that did not even exist on the Russian market at the time the application had to be submitted. This makes it nearly impossible for corporations about to enter the Russian market to assign foreign nationals to their planned Russian offices, which, in turn, creates a significant barrier to foreign investment in Russia.

As mentioned above, Russian migration legislation does not differentiate among various types of foreign employees. This becomes significant for migration policy when protectionism arguments are invoked. For example, intracompany transferees are not employed by a Russian company and do not take jobs from Russian citizens. Instead, they are assignees sent to work here and cannot be replaced by Russian citizens once the company’s business operations in Russia have commenced.

In addition, maintaining expatriate employees in Russia is a big expense for foreign companies. Thus they rely on foreign employees only when they must and would doubtless prefer to train Russian specialists as quickly as possible to replace their expensive foreign personnel.

Foreign individual investors such as entrepreneurs are also in a tough situation. With a certain amount of investment in Russia, they are formally eligible to receive a temporary residency permit. Yet while the law stipulating this investment option as a basis for residency eligibility was introduced in 2002, the decree stating the exact amount of investment required has yet to be adopted. Moreover, temporary residency status makes it difficult to travel abroad, as temporary residents must apply for an exit visa each time they leave the country.

Secondment schemes are not considered by Russian immigration legislation to be grounds for a work permit, which creates difficulties for daughter companies of foreign corporations doing business in Russia.

New rules requiring foreign nationals to register their presence in Russia are nightmarish. Given the frequency of business travel, it is nearly impossible to comply with the rule demanding that foreigners register within three working days of arrival. Apart from this tight timeframe, there are other significant practical difficulties with registration. For example, according to law arriving foreigners may register through the post office or in person at the district migration office (OVIR).

Yet some branches of OVIR have been ignoring registration documents received by mail, accepting only those that are submitted in person. In addition, some offices are demanding that foreigners produce

documents other than those stipulated by law. Foreign companies find themselves incurring additional expenses in order to comply with the unlawful demands of local immigration authorities.

Last year, the positive step was taken to allow representative and branch offices of foreign companies to apply for the right to issue visas and letters of invitation directly – that is, without having to go through a third-party institution or agency as was previously required. But as it turned out, this “convenience” covered work visas only and did not include business visas, a limitation that simply pushed companies to resort to illegal ways of obtaining business invitations.

All that said, even though it looks at first blush a lot like Russia is erecting barriers to foreign investment, I maintain that the problem is a function of unrefined migration policy and not hostility to foreigners. If that is, in fact, the case, then in my opinion there are relatively simple measures to be taken to address the problem: When we talk about unskilled workers, migration policy considerations should take precedence, and when discussing the highly qualified employees of foreign companies and foreign individual investors, then investment climate and foreign investments should be the key factors. Otherwise migration policy, or the absence of a well-balanced and differentiated migration policy, becomes a barrier to foreign investment in Russia’s economy. Certainly, employment of highly qualified workers must be regulated by the Federal Migration Service and other authorities, as it is in other countries. But this regulation requires a more finely tuned approach that has the flexibility to shift the balance between the “migration” and “investment” priorities when necessary.

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