**Global Mobility Management – A Primer for Chief Legal Officers and HR Executives**

**By Angelo A. Paparelli, Peter T. Schiron, Jr., and Mareza I. Estevez***

To expatriates and business visitors dispatched to far-flung locales by their corporate employers, the world can be an exhilarating, wondrous and fearsome place. The seconded worker's chance to gain new skills, colleagues and experiences through a foreign deputation, as well as familial opportunities for work, education and cultural enrichment, may be offset by the potential for failure to acclimatize, social isolation, and "out-of-sight/out-of-mind" career retrogression upon return to corporate headquarters.

---

*__Angelo A. Paparelli__, a partner in Seyfarth Shaw LLP, practicing in Southern California and New York, is the founder and immediate past President of the Alliance of Business Immigration Lawyers, a 38-member worldwide alliance of leading immigration firms. 2010 recipient of the Edith Lowenstein Award for Advancing the Practice of immigration law, Angelo blogs at *www.nationofimmigrators.com* and co-authors the Immigration Column for the *NewYork Law Journal*. He is an expert witness/consultant on immigration to law firms, businesses and individuals.

**Peter T. Schiron, Jr.,** is an Assistant General Counsel with Deloitte LLP in New York City where he provides strategic legal advice and counseling to the organization on a wide range of immigration and employment law matters with a focus on global business immigration and international employment issues. In this role, he oversees the global mobility legal function of Deloitte LLP and its subsidiaries located in the United States and India, and guides leadership and senior management in formulating U.S. and global immigration policies and compliance practices for the organization. Mr. Schiron received his law degree from William and Mary School of Law in Williamsburg, Virginia, and a bachelor's degree in Political Science from George Mason University in Fairfax, Virginia. He is a frequent speaker on topics relating to business immigration and employment practices.

**Mareza I. Estevez** serves as lead in-house immigration counsel to Cognizant Technology Solutions, which is publicly-traded on the NASDAQ exchange. Her role includes leading legal counsel to a multinational in-house immigration department in the preparation and filing of cases for permanent and temporary visa benefits in the U.S. and other geographies for Cognizant's globe-trotting employees; closely coordinating with operational counterparts in the mechanics of case preparation; advising on business operations, potential acquisitions; and regularly counseling senior management on immigration issues. She is responsible for all compliance operations relating to U.S. immigration, and she significantly contributes to immigration compliance activities for other geographies. Ms. Estevez received a Bachelor of Science degree in Environmental Science from Rutgers University in 1990 and a Juris Doctor degree from Rutgers School of Law – Newark in 1993.

For Chief Legal Officers (CLOs) and executives in Human Resources (HR), the management of global mobility – the movement of personnel and their family members to as many as 190 or more of the world's countries – presents a perhaps more desk-bound, but still quite daunting, set of opportunities and risks. Each nation of the globe has developed a body of (more or less complex) laws governing the admission, rights and duties of immigrants and sojourners. National immigration rules, moreover, do not operate in isolation, but are codified, decreed or judicially created against a backdrop of other national or regional laws dealing with labor, employment, taxation, privacy, intellectual-property protection, criminal sanctions, and local corporate registration requirements, among others. Adding to the complexity are concerns over cultural differences, immigrant integration, protection of domestic labor, sovereign instability, terrorism and organized crime. The globalized economy, after all, is no bed of daffodils.

This article will identify specific challenges and offer suggested strategies for CLOs and senior HR professionals when grappling with the legal and practical difficulties that arise in Global Mobility Management (GMM). Because there can be no one-size-fits-all solution, the authors have consulted with a variety of experienced and generous experts – in-house legal counsel, HR professionals, members of trade and bar associations, and immigration lawyers around the world – to benchmark best practices and identify avoidable stumbling blocks in the international movement of personnel. The article will touch on several key GMM considerations: national differences, alternative business models, legal compliance/risk mitigation, cost control, data management/integrity/privacy, quality assurance, and performance measurement.

While faint-hearted corporate officials or those with solely a domestic purview need proceed no further, others may find that GMM, when well conceived and overseen, offers many ways for multinational employers to help achieve business mission. Access to outstanding talent unavailable in the destination or home countries, expansion of commerce into mature and developing markets, more worldly and wise business leaders, culturally relevant branding and labor arbitrage – these are but a few of GMM's benefits.

**1. National Differences.** The immigration rules in the world's nation states differ widely in detail; yet familiar patterns emerge. National immigration schemas tend to entice highly educated and accomplished employees, personnel whose talents are not available in the local labor market and wealthy investors willing and able to create jobs, while restricting the flow of unskilled workers or those professionals who are perceived by the host country as available domestically.

Concerns about labor-market protection, cultural integration, language fluency and increasingly strict punishments for immigration violations are likewise reflected in immigration requirements worldwide. A few examples illustrate the regulatory patterns.

Some degree of language fluency is required for employment-based immigration to Austria (German) and Italy (of course, Italian), while other countries require demonstrated efforts at integration. The Netherlands requires satisfaction after three-and-a-half years (five years in some cases) of the "Inburgeringscursus" examination, a test requiring knowledge of Dutch society and basic Dutch language skills.

Still, according to Dutch immigration lawyer, Sander Groen, encouragement of employment-based immigration is also growing in Holland:

> With the planned introduction of the Modern Migration Policy (MMP) this year, The Netherlands will have the most facilitating corporate immigration program in the [European Union]. Companies will have access to speedy facilitated immigration procedures. Processing time will be two weeks and the residence card will be awaiting the foreign employee on arrival in the country. Companies, on the other hand, will have more responsibilities under the MMP, and can be fined if not compliant.

In the United Kingdom, the last eight months have seen major changes to employment based immigration, driven by the new coalition Government's aim to reduce net immigration. This has resulted in permanent immigration quotas for employers wanting to employ non-EU new hires as well as the closure of the highly skilled non-sponsored entry routes. Nick Rollason, a London based immigration lawyer, sees a shift in emphasis towards more temporary mobility:

> The Immigration limits have meant that it has been harder for UK employers to hire from outside the EU. Under the new annual limits in place from April 2011, employers will battle it out each month to see who is allocated enough points to obtain a Certificate of Sponsorship to hire these individuals. As the possibility of being granted a Certificate is based primarily on salary levels, we expect some wage inflation. Restrictions on the intra company transfer (ICT) route now means that those with salaries of less than £40,000 can only come for a maximum of 12 months and cannot then return as ICTs for a further 12 months, while those with higher salaries can stay for a maximum of five years with no possibility of obtaining permanent residence. Employers [must therefore] . . . rethink their global mobility policies.

In Mexico, although that country encourages foreign professional workers and foreign investment, particularly through exemptions from local hire requirements as in the IT sector, the general perception of risk, particularly that related to crime and lawlessness, greatly reduces the perceived value of incentives for work permits.

In Canada, according to Jacqueline Bart, an immigration attorney practicing in Toronto, the current governmental emphasis is on immigration penalties for out-of-compliance companies:

> Canada has become increasingly enforcement oriented. The Canadian government has introduced new legislation, effective April 1, 2011, which supplements previous enforcement legislation. These new measures place a substantial burden on employers to ensure compliance with all aspects of immigration law in Canada.

In India, the government has imposed additional controls on immigration, presumably in part because of the entry into the country and alleged participation in the Mumbai terrorist attack of a Pakistani-American (David Headley), as well as the large population of undocumented Chinese immigrants. Moreover, as explained by Poorvi Chothani, an immigration lawyer practicing in Mumbai, protection of local labor markets is the common theme:

> Increased interest in India has resulted in an unprecedented demand for Indian employment visas. India has . . . has introduced as of late 2010 a minimum salary requirement of US$ 25,000 for almost all foreign nationals who wish to work in India [and be exempted from other burdensome restrictions]. [These changes], along with [the fact that] employment visas [are] only issued to 'highly skilled or qualified professionals' and a ban [is in place] on the engagement of foreign nationals in routine, ordinary or secretarial/clerical jobs, are measures to protect the local work force. . . .[They reflect reactive] protectionist measures introduced in the UK, the requirement to pay a market salary and other restrictions on certain Australian visas and changes to the qualifying categories for certain Canadian visas. Protectionism seems to be the largest influence on countries' changing immigration and visa policies.

The varieties of national immigration laws thus require CLOs and HR executives to craft a GMM strategy that takes into account and adapts to these non-static differences, while still serving the needs of the global enterprise.

**2. Alternative GMM Business Models.** In many companies, GMM operating models have evolved in response to *ad hoc* needs. An executive or a team of employees (often of various nationalities) urgently needs to relocate to another country on a long-term secondment. Or, a commercial opportunity arises in a foreign state that will require the prolonged, if intermittent, presence of sales and technical personnel (with the group as a whole carrying a mix of national passports). The ***ad hoc* or decentralized approach** typically involves the enlistment of local HR personnel or the hectic search for an immigration lawyer or firm in the country of destination. The pattern is then repeated in different countries with each new secondment or series of business visits. The decentralized model carries with it substantial risks. Officials at corporate headquarters may lack the ability to gather and track information such as visa expiration dates, manage tax and other business risks, assure host-country legal compliance, maintain a consistent level of quality, control costs, or explain to the soon-to-be expatriate the immigration process and rules in the foreign destination.

At the other end of the spectrum, experienced multinationals have adopted elaborate arrangements for **centralized control** of the migration process from corporate headquarters or within major regions of the world. Few companies, however, have the capacity and expertise to devote resources for in-house preparation of visa and work permit applications in multiple foreign jurisdictions. Hence, even under the centralized model, global companies must identify and manage outsourced relationships with a bevy of widely dispersed immigration lawyers, law-firm alliances, registered migration agents (in companies such as Japan and Australia where such status is recognized), relocation companies and other types of vendors providing outbound migration services.

Typically, providers are required to enter into Service Level Agreements (SLAs) offering high-volume work with fixed legal fees but requiring assured response times for the delivery of an array of immigration legal services in a host of foreign countries. Under the usual SLA, providers must take responsibility for capturing and protecting or encrypting sensitive personal information to be used in visa applications and immigration petitions, tracking passport, visa and status expirations, responding with prescribed promptness to questions from expatriates, HR or the legal department, reporting changes in local immigration rules, and complying with the corporation's ethics code and national laws.

In between the *ad hoc* and centralized models, another approach has emerged, that of a **single project manager**, usually an American or European law or accounting firm, to which the bulk of responsibility for GMM is fully outsourced. In this arrangement, for a negotiated fee, the project manager, on behalf of the global company, performs all or some of the migration work itself, negotiates individual SLAs with destination providers, maintains an integrated immigration case management database, monitors performance and issues a single monthly or periodic invoice to the client.

To determine the optimal GMM organizational structure, the CLO and HR executives must consider a variety of factors. These include the number of home- and host-country locations and related business and tax law implications; the mix of nationalities represented in the global enterprise's employee population; the capabilities and bandwidth within the organization of such supporting functions as finance, payroll, travel, HR and legal; the inclination of senior management to support or limit the outsourcing of mobility services; the level of support the enterprise is prepared to deliver on a consistent basis to its mobile population (concierge service is of course more expensive and burdensome than "traveler-you're-on-your-own" policies); the relative simplicity or complexity of corporate policies involving out-of-country assignments; the corporation's level of risk tolerance; and the degree to which line managers in the particular organization are authorized or able to overrule process or policy decisions involving GMM.

**3. Legal Compliance/Risk Mitigation.** As noted, GMM mandates not merely scrupulous compliance with a vast array of foreign countries' immigration laws. The global assignment of personnel also requires adherence to many categories of national laws that intersect with host-country immigration rules. These areas of concern extend to taxation, trade, business, and employment laws, employee benefits, anti-bribery legislation, conflicts of law, as well as national and European Union regulations relating to privacy and electronic-data transmission.

Furthermore, violation of immigration and other laws routinely trigger negative publicity that may originate in one country but result in brand damage and impaired relationships with foreign consumers, business partners and governments elsewhere. Securing consistently high-quality legal representation and counsel in multiple foreign countries with expertise in these disparate fields of law is challenging under any of the business models discussed above, but extremely difficult with the decentralized approach. Irrespective of the particular model chosen, however, CLOs and HR executives should not wholly abdicate responsibility for global law compliance and risk mitigation through an outsourcing or project management arrangement.

One particularly vexing and recurrent problem involves the potential for breach of legal rules governing the entry and activities in the host country of sojourners who are variously dubbed "business commuters" or "stealth visitors." The exigencies of business, for some, lead to a stretching of the envelope and the masking of activities requiring a work permit under the guise of a routine business visit. Stealth visitors place the global enterprise at serious risk, and efforts to deal responsibly with the problem admit of few foolproof solutions.

Many large multi-national companies are severely challenged when attempting to monitor systematically the extensive foreign travel and return to home base of all personnel. Thus, corporate headquarters may have no way of knowing where their people are situated at any given moment or what possible fabrication or embellishment of facts may have been made to receiving countries' border inspectors and immigration officers. Once the business commuter makes entry to a foreign country, the activities in which the individual is engaged may trigger tax liability (e.g., the creation of a permanent establishment for tax purposes), violate local employment and immigration laws, impair intellectual property rights, and possibly result in incarceration and substantial fines. One solution, albeit difficult to implement, is the integration of the travel department with the GMM function. Under this approach, which must be supported by automated technology with periodic auditing, the travel department will not authorize air or rail tickets, rental cars or foreign lodging unless the employee presents proof of a required work visa, work permit or residency status in the destination country, or, presents evidence of intended activities abroad that are clearly permitted as a business visitor under the particular country's laws.

**4. Performance Measurement, Quality Assurance and Cost Control.** These areas of GMM must be maintained on a consistent basis. GMM accountability requires nearly-constant vigilance, perpetual fine-tuning and comparative benchmarking of like companies because, over time, foreign laws and procedures are prone to change, existing providers may flag in performance, alternate providers may surface, or the fundamental needs of the global enterprise may morph. In addition to consistent reporting and monitoring, regular auditing is a key accountability tool; thus, the development of expertise – whether internal or through an outside advisor/partner – is elemental. Increasingly, global companies are using stakeholder satisfaction surveys, negotiated fee arrangements for fixed periods, SLAs, audits of fees/costs and law compliance, and periodic provider reviews to confirm that quality and performance, as well as law compliance and risk mitigation, are at high levels and costs are contained without diminution in service levels.

In addition, multinational companies regularly adapt business-process-improvement strategies such as "Six Sigma" and "Lean Services" that have long enjoyed popularity elsewhere within the enterprise. Six Sigma is a metrics-based improvement strategy that strives, through "voice of the client" exercises intended to ascertain optimal service-delivery standards, business-process mapping, and error-identification and error-correction strategies, to reduce transaction errors to a targeted minimal level (no more than six errors in every one million transactions). Lean Services focuses upon the acceleration of cycle time and the elimination of waste in all its forms, and may be better suited in the GMM service-provider setting than pure Six Sigma strategies (which originated in industries primarily involved in the manufacturing of goods, machinery and equipment).

CLOs and HR executives should therefore (a) maintain flexibility in the terms and duration of engagement agreements with service providers or a project manager, (b) enlist only those providers who themselves maintain current knowledge of local legal requirements, consistently meet SLA requirements, and employ sophisticated technology and advanced business-improvement methods, and (c) "drill down" on the project manager's in-country providers to ensure that there are adequate options for back-up, alternative or substitute subcontractors who are enlisted or readily available.

* * *

Most importantly, CLOs, in the final analysis, have ultimate responsibility for law compliance. They must therefore communicate clearly to all stakeholders in the GMM process chain that the legal department "owns and controls" global mobility, even if other corporate functions, such as HR, or other internal or external participants, support the CLO in fulfilling that business-critical responsibility. This undertaking requires substantial effort and achievement, sometimes of Shakespearean proportions – for, as the Bard reminds us: "An enterprise, when fairly once begun, should not be left till all that ought is won."