

# Immigration Laws

## 3.1 GENERAL

Any person entering<sup>49</sup> into India from any place outside India should be in possession of valid passport<sup>50</sup> except certain class of persons who are exempted.<sup>51</sup> The conditions<sup>52</sup> of valid passport is as follows:

- a. issued by or on behalf of the Government of the country of which the person to whom it relates is a national;
- b. shall be within the period of its validity;
- c. a photograph of the person to whom it relates shall be affixed<sup>53</sup> and duly authenticated by the authority issuing the passport;
- d. <sup>54</sup>shall have been endorsed by appropriate authority by way of visa<sup>55</sup> for India in one or other of the following kinds:

Note: The chapter is based upon the immigration law, visa guidelines/clarifications issued by relevant authorities as available in public domain (upto 31.07.2020).

49. by water, land or air.

50. S. 3(1), TPEIA rw R. 3(a) and R. 5, TPEIR.

51. R. 4, TPEIR.

52. R. 5, TPEIR.

53. Except in certain cases [R. 5(ii), TPEIR].

54. Not applicable to the following:

- a. Passport issued by Government of Pakistan, Bangladesh and Nepal.
- b. any person the duration of whose stay in India does not exceed ninety days (shall include any prior period of stay of such person in India during a period of six months immediately before the date of his entry into India) and who is in possession of a passport issued by, or on behalf of, the Government of Maldives.
- c. any person holding PIO Card (issued to person being a foreign citizen of Indian Origin settled outside India) by appropriate authority.

55. An applicant for a visa shall have to submit an application on the on-line system in the standard visa application form. For this purpose, the applicants may log on to <https://indianvisaonline.gov.in/visa/tvoa.html>.

- i.* single journey visa;
  - ii.* transit visa;
  - iii.* ordinary visa;
  - iv.* multi entry lifelong visa;<sup>56</sup>
  - v.* <sup>57</sup>non-diplomatic visa for multiple entries, official visa for single entry, visitor visa for single as well as multiple entry, a transit visa for single entry;
  - vi.* <sup>58</sup>an official visa for single journey or a specified number of journeys, a short-term visa for a single journey to India, a long-term visa for a single journey or a specified number of journeys, a transit visa for one district journey, a re-entry visa valid for re-entry into India
- e.* <sup>59</sup>specifically, valid for entry into India or shall have been specifically endorsed by a competent authority as valid for entry into India; and
- f.* shall not have been obtained by misrepresentation or fraud.

### 3.2 PERIOD OF VALIDITY OF PASSPORT AND VISA

Passport should have at least six months validity at the time of making application for grant of visa and it should have at least two blank pages<sup>60</sup> for stamping by the appropriate officer. The validity of all visas will commence from the date of issue of visa and not from the date of entry into India.

### 3.3 TYPES OF VISA

The proper Indian diplomatic consular or passport authority i.e. Indian Embassy/High Commission located in various countries issue different types of visa to foreign nationals depending upon their proposed activities in India.

Below is an illustrative list of visas granted in order to enter India basis the purpose to visit India:

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56. Applicable only for persons registered as OCI under the provisions of Citizenship Act, 1955.

57. Applicable only for national of Pakistan.

58. Applicable only for national of Bangladesh.

59. Applicable only for national of Nepal. In case of a person entering India over the Tibetan or Bhutanese frontier, it shall also be endorsed by a proper Indian Diplomatic, consular or passport authority by way of a visa or a transit visa. Further, a citizen of Nepal or Bhutan must have a visa for India if he/she is entering India from China, Macau, Hong Kong, Pakistan and Maldives.

60. The last two observation pages are not considered.

Sl. No.	Type of Visa	Eligibility
1	Transit Visa	Granted to a foreign national for the sole purpose of enabling the foreigner to travel through India to a destination outside India.
2	Tourist Visa	Granted to a foreign national whose sole objective of visiting India is recreation, sight-seeing, casual visit to meet friends or relatives, attending a short-term yoga programme <sup>61</sup> , short duration medical treatment including treatment under Indian systems of medicine etc. and no other purpose/activity.
3	Medical Visa	Granted to a foreign national whose sole purpose is to seek medical treatment in established/recognized/specialized hospitals/treatment centres in India. The same is also granted to the by stander of the medical patient. <sup>62</sup>
4	Student Visa	Granted to a foreigner whose sole objective is to pursue on-campus, full time (structured) courses (including English and other language courses and vocational education) at educational institutions (Central/State Government Educational Institutions & Private Educational Institutions) duly recognized by statutory regulatory body and have acquired statutory authorization to conduct the course(s) complying with GST regulations. The same is also granted to a foreign research <sup>63</sup> scholar as well as a foreigner intending to pursue internship <sup>64</sup> in Indian companies, educational institutions and NGOs subject to <i>specified</i> conditions.
5	Entry Visa	Granted to a foreigner (Indian Citizen/Person of Indian Origin)/foreign national for specified purposes.
6	Conference Visa	Granted to a foreigner whose sole objective of visiting India is to attend a conference/seminar or workshop being held in India to discuss a particular subject or for a seminar or workshop on a specific subject.
7	Mountaineering Visa	Granted to foreigners for participating in mountaineering activities.

61. Short term yoga programme means a yoga programme not exceeding 6 months duration and not issued with a qualifying certificate/diploma etc.

62. Medical attendant visa is now merged with Medical visa.

63. Research visa is now merged with Student visa.

64. Intern visa is now merged with Student visa.

Sl. No.	Type of Visa	Eligibility
8	Journalist Visa	Granted to (a) a foreigner who is a professional journalist, photographer, documentary film producer or director (other than of commercial films), a representative of a radio and/or television organization, travel writer/travel promotion photographer etc., (b) professional journalist working for an association or a company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through the print media, electronic or any other mode of mass communication, (c) correspondent/columnist/cartoonist/editor/owner of the association or company referred in (a)/(b) above.
9	Film Visa	Granted to a foreigner for shooting of a feature film/reality TV show and/or commercial TV serials.
10	Missionary Visa	Granted to a foreigner whose sole objective of visiting India is Missionary work not involving proselytization.
11	Employment Visa	Granted to a foreign national who is a highly skilled and/or qualified professional and is not be granted (i) for jobs for which qualified Indians are available and (ii) for routine, ordinary or secretarial/clerical jobs. Employment visa is also granted to a foreign national coming to India for execution of projects in the power and steel sectors subject to the <i>specified</i> conditions. <sup>65</sup>
12	Business Visa	Granted to a foreign national who wish to visit India to establish an industrial/business venture or to explore possibilities to set up an industrial/business venture. Business visa is also granted to foreigners who are members of sports teams. <sup>66</sup>

*The foreign nationals are required to strictly adhere to the purpose of visit declared while submitting the visa application. If the activities undertaken by the foreigner in Indian is not in consonance with the visa category, the same may be treated as contravention. For illustration, if the correct visa category for a particular activity is business visa but the individual comes on tourist visa or conference visa etc., the same will amount to contravention. Similar will be the implications where the correct visa category is employment visa (say execution of projects in power sector) but the individual visits on business visa (say monitoring of projects).*

65. Project visa is now merged with Employment visa.

66. Sports visa is now merged with Business visa.

Having discussed the broad categories of Visa granted by the Government of India, let us now understand the relevant visa categories for secondment viz., Employment Visa and Business Visa in detail.

### 3.4 EMPLOYMENT VISA

#### 3.4.1 Conditions

An Employment visa is granted to a foreigner<sup>67</sup> drawing a gross salary<sup>68</sup> in excess of ₹ 16.25<sup>69/70</sup> lakhs per annum<sup>71</sup> who is a highly skilled and/or qualified professional *except* for jobs for which qualified Indians are available and/or for routine, ordinary or secretarial/clerical jobs. Further, employment visa is also granted in following cases:

- a. Foreign skilled/highly skilled nationals coming to India for execution of projects in the power and steel sectors
- b. Contract consultant on contract for whom the Indian company pays a fixed<sup>72</sup> remuneration
- c. Foreign artistes engaged to conduct regular performances for the duration of the employment contract given by hotels, clubs, other organizations
- d. Foreign nationals who are coming to India to take up employment as coaches of national/state level teams or reputed sports clubs

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67. Not a citizen of Pakistan.

68. Salary and all other allowances in cash as well as kind like rent free accommodation etc. included in salary for the purpose of calculating income tax. Further, the perquisites should be quantified and indicated in the employment contract.

69. Not applicable to following jobs:

- a. Ethnic cooks employed by foreign Missions in India (not applicable to ethnic cooks employed in commercial venture),
- b. Language teachers (other than English language teachers)/translators (this will not include teachers employed to teach particular subjects in foreign language),
- c. Staff working for the concerned Embassy/High Commission in India,
- d. Foreigners, eligible for 'E' visa for honorary work with the NGOs registered in the country without salary,
- e. Foreign teaching faculty employed in the South Asian University and the Nalanda University, and
- f. Circus artists.

70. ₹ 9.10 lakhs per annum for people engaged as assistant professor and above by the Central Higher Educational Institutions viz., IITs, CUs, NITs, IIMs and IISERs or Bangladeshi nationals married to Indian nationals but not eligible for registration as OCI cardholder.

71. For visa period of less than one year the minimum salary requirement to be worked out on pro-rata basis.

72. May not be in the form of a monthly salary.

- e. Foreign sportsmen<sup>73</sup> who are given contract for a specified period by the Indian Clubs/organizations
- f. 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 provided the provision of such services by foreign nationals is permitted under law
- g. Foreign language teachers/interpreters
- h. Foreign specialist chefs
- i. Foreign circus artists
- j. Foreign engineers/technicians coming to India for installation and commissioning of equipment/machines/tools in terms of the contract for supply of such equipment/machines/tools
- k. Foreign nationals deputed for providing technical support/services, transfer of know-how/services for which the Indian company pays fees/royalty to the foreign company
- l. Foreign journalists, who intend to travel to India to work in Indian media organizations
- m. Employees/managers coming to India for non-journalistic activities within media organizations

The employment visa must be issued from the country of origin or from the country of domicile of the foreigner provided the period of permanent residence of the applicant in that particular country is more than 2 years.<sup>74</sup> The employment visa is granted for a specific duration depending upon the nature of activities proposed to be undertaken by the foreigner in India. The visa<sup>75</sup> duration vis-à-vis nature of activities to be undertaken by the foreign national<sup>76</sup> is mentioned as under:

73. Foreign nationals who are engaged in commercial sports events in India on contract (including coaches) are not included.

74. Answer to question 5, FAQs Relating to work related VISAs issued by India. The FAQs can be accessed at [https://www.mha.gov.in/sites/default/files/work\\_visa\\_faq.pdf](https://www.mha.gov.in/sites/default/files/work_visa_faq.pdf).

75. With multiple entry facility.

76. Other than Japanese national. The visa (with multiple entries) duration vis-à-vis nature of activities to be undertaken by the Japanese national is mentioned as under:

Nature of activities	Duration
Japanese technician or expert coming to India in pursuance of a bilateral agreement between the Government of India and Government of Japan, or in pursuance of arrangements between non-governmental organisations approved by the Government of India	5 years <i>or</i> duration stated in agreement, whichever is less
Highly skilled foreign personnel being employed in the IT software and IT enabled sectors	3 years
Any activity other than above	3 years

Nature of activities	Duration (lower of the two)
A foreign technician/expert coming to India in pursuance of a bilateral agreement between the Government of India and the foreign government, or in pursuance of a collaboration agreement that has been approved by the Government of India	5 years <i>or</i> duration of agreement
Highly skilled foreign personnel being employed in the IT software and IT enabled sectors	3 years <i>or</i> term of assignment
Any activity other than above	2 years <i>or</i> term of assignment

### 3.4.2 Documents/information

The following documents/information is required while applying for employment visa:

- a. Original passport
- b. Proof of name change, if any
- c. One<sup>77</sup> photograph, to be pasted on the application
- d. Copy of the proof of residence/address that matches with the present address on the visa application
- e. Appointment letter from the employer along with salary details
- f. Copy of duly signed<sup>78</sup> employment contract
- g. Copy of applicant's resume along with a copy of educational qualifications and professional expertise
- h. Proof of registration/incorporation of employer in India
- i. Tax eligibility letter certifying that the Indian employer should be liable/take responsibility for paying taxes on behalf of the applicant
- j. Project report on the Indian employer's letterhead duly signed by the authorised signatory of the company

77. Citizen of Pakistan is required to submit four photographs.

78. By employer as well as employee.

- k.* A letter from Indian employer or sponsor<sup>79</sup> certifying that the applicant is a skilled and qualified professional, technical expert, senior executive or in a managerial position along with stating that the applicant's skill is not available in India

The visa application needs to be made online in accordance with the instructions<sup>80</sup> and thereafter, the signed hard copy of the online filed application along with abovementioned document needs to be submitted with the Indian visa application centre.

### 3.4.3 Extension

The request for visa extension is to be communicated to appropriate registration officer in prescribed format within 60 days before the expiry of initial visa. The application for extension should be accompanied with the following:

- a.* Visa extension form
- b.* Applicant's photograph
- c.* Copy of passport and visa viz., photo page, page indicating validity, page bearing arrival stamp of Indian immigration, visa with endorsement
- d.* Form C copy from hotel or lodge/electricity bill/landline telephone/municipal bill of the landlord in case of staying in a house of a relative or friend along with a letter and photo-id card of the landlord. In case of rented accommodation copy of the lease and license agreement (1st and last page & page containing its validity)
- e.* PAN of landlord
- f.* Employment contract mentioning about the salary, employment period etc.
- g.* Annual salary certificate
- h.* Address certificate
- i.* Request letter from the company for extension mentioning the period for which extension is sought along with proof of employee provident fund payment (if applicable)

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79. An Indian company/organization which has awarded a contract for execution of a project to a foreign company that does not have any base in India, can sponsor employee of foreign company for Employment visa. Since the Indian organization/entity sponsors an employment visa, it does not mean that the Indian organization/entity has to necessarily be the legal employer of the person. However, the foreign company/organization that does not have any project office/subsidiary/joint venture/branch office in India cannot sponsor a foreign national/employee of a foreign company for employment visa.

80. The instructions can be read at <https://indianvisaonline.gov.in/visa/instruction.html>.

- j. Letter of undertaking (TDS, general etc.) from company signed by Indian host or authorized signatory with name and contact number
- k. Form 16/income tax return in case the applicant is residing in India for more than 1 year or proof of TDS with bank challan for the current financial year
- l. Registration certificate/residential permit

The visa may be extended by the appropriate registration officer, up to a total period of 5 years from the date of issue of the initial employment visa, on an annual basis subject to the condition that maximum duration of visa (including initial term) does not exceed 10 years. The extension shall be granted subject to good conduct, production of necessary documents in support of continued employment, tax compliances and no adverse security inputs about the foreigner.

#### **3.4.4 Change of Employer**

An employment visa holder can change the employer once during the tenure of 5 year of the original employment visa upon approval of MHA. On receipt of the application regarding the change of employer, MHA may, on the basis of the merits of each case allow the change of employer. The following criteria are considered by MHA while considering the application:

- a. The applicant is employed, at the senior level e.g. managerial or a senior executive position and/or, at a skilled position e.g. a technical expert within an organization in India;
- b. The change of employment is between a registered holding company, Joint Ventures & Consortiums and its subsidiaries and vice versa or between subsidiaries of a registered holding company, Joint Ventures & Consortiums; and
- c. The company that originally employed the applicant issues a no objection letter towards the change.

*In cases not falling within above, the foreigner has to leave India and apply for a fresh employment visa where the foreigner wants to change the employment to another company/organisation.*

#### **3.4.5 Conversion**

Employment Visa cannot be converted to any other kind of visa during the stay of the foreigner in India except in the following circumstances and with the prior approval of the MHA:

- a. Employment visa can be converted to 'X' (Entry) Visa if a foreigner who has come to India on employment visa marries an Indian national during the validity of his/her visa and does not intend to continue on employment visa. Such conversion would be considered subject to fulfilment of following conditions:
  - i. submission of a copy of registered marriage certificate, and
  - ii. report from the FRRO/FRO concerned about their marital status which will inter alia include his/her antecedents, confirmation about their living together and security clearance
- b. Employment visa in case of PIO, who were otherwise entitled for 'X' (Entry) Visa but have entered into India on Employment visa, can also be converted to 'X' Visa
- c. Employment visa of the foreigners who fall ill after their entry into India rendering them unfit to travel and require specialized medical treatment can be converted to medical visa if they are eligible for grant of medical visa and medical certificate is obtained from government/government-recognized hospitals. In such a case, 'X' visa of family members/attendant accompanying the foreigner (whose 'Employment' visa is converted into 'Medical Visa') can also be converted into medical visa of the foreigner.<sup>81</sup>

### 3.5. BUSINESS VISA

#### 3.5.1 Conditions

A business visa is granted to foreigners who have expertise in the area of intended business and is a person of sound financial standing.<sup>82</sup> The said visa is granted for following activities (other than business of money lending or for running a petty business or petty trade or full-time employment) in India:

- a. Establish an industrial/business venture<sup>83</sup> or to explore possibilities to set up an industrial/business venture<sup>84</sup>, in India

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81. On conversion of Employment visa into 'X' visa/Medical visa/'Med X' visa, the following endorsement shall be made on the Passport/Residential Permit - '*Employment/Business not permitted*'.

82. Sufficient proof of the financial standing and expertise in the field of intended business is checked thoroughly while granting the visa.

83. other than proprietorship firms and/or partnership firms.

84. *ibid.*

- b.* Purchase/sell industrial products or commercial products or consumer durables
- c.* Technical meetings/discussions, attending board meetings or general meetings for providing business services support
- d.* Recruitment of manpower
- e.* Partners in the business and/or functioning as directors of the company
- f.* Consultations regarding exhibitions or for participation in exhibitions, trade fairs, business fairs etc.
- g.* To transact business with suppliers/potential suppliers at locations in India, to evaluate or monitor quality, give specifications, place orders, negotiate further supplies etc., relating to goods or services procured from India
- h.* In connection with an ongoing project with the objective of monitoring the progress of the work, conducting meetings with Indian customers and/or to provide technical guidance<sup>85</sup>
- i.* Pre-sales or post-sales activity not amounting to actual execution of any contract or project
- j.* In-house training in the regional hubs of the concerned company located in India
- k.* Tour conductors and travel agents and/or conducting business tours of foreigners or business relating to it etc.
- l.* Academicians/experts coming under GIAN (Global Initiative for Academic Networks)
- m.* Crew members of scheduled/non-scheduled flights operated by scheduled airlines, non-scheduled and chartered flights operated by non-scheduled airlines and special flights
- n.* To participate in cultural events/activities with remuneration<sup>86</sup>
- o.* Engaged in commercial sports events<sup>87</sup> in India on contract (including coaches) with remuneration<sup>88</sup>

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85. Short duration visit. However, a foreign national coming for executing projects/contracts will have to come only on an employment visa.

86. To participate in cultural events/activities without remuneration for short duration Entry (X-Misc.) Visa may be granted.

87. Indian Premier League, Indian Soccer League, etc.

88. May be granted 'B-Sports' Visa with multiple entry facility for appropriate period.

The business visa must be issued from the country of origin or from the country of habitual domicile of the foreigner provided the period of residence of that foreigner in that particular country is more than 2 years. If the period of permanent residence of the applicant in the particular country is less than two years, the Indian Mission/Post concerned will issue business visa only after personal interview, review of documentation and prior clearance from the Mission where the applicant has permanent residence. Such cases will be examined by the Missions/Posts on merits on case-to-case basis and, after issue of business visa, an intimation will be sent to the Indian Mission/Post in the applicant's country of origin.

Business visa is granted for different durations viz., 10 years<sup>89</sup>, 5 years<sup>90</sup>, up to 5 years<sup>91</sup> or as per the bilateral agreements/policy guidelines<sup>92</sup> depending upon the country to which such foreign national belongs with a specific condition that 'continuous stay during each visit shall not exceed 180 days and registration not required'.

### 3.5.2 Documents/information

The following documents/information is required while applying for business visa:

- a. Original passport
- b. One photograph
- c. Invitation letter from the company in India on company letter head indicating the nature of applicant's business, duration of stay, the validity of visa applied for, places and organisations to be visited
- d. Letter from the applicant's company on company letter head in home country stating that expenses would be paid by company. It should indicate the nature of applicant's business, probable duration of stay, the validity of visa applied and organisations to be visited
- e. Proof of financial standing and expertise in field of intended business
- f. Proof of registration/incorporation of Indian entity.

The visa application needs to be made online and thereafter, the signed hard copy of the online filed application along with abovementioned documents needs to be submitted with the Indian visa application centre.

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89. Citizens of United States of America or Canada or Japan or United Kingdom or South Africa.

90. All countries except those mentioned in note 91 and 92 below.

91. Iran, Egypt, Libya, Qatar, Iraq, Syria, Sudan, Tunisia, Kuwait, Yemen, Algeria, Bahrain, Turkey, Morocco, Kyrgyzstan, Turkmenistan, Democratic People's Republic of Korea (North Korea), Lebanon, Afghanistan, Saudi Arabia, Uganda, Congo, Ethiopia, Nigeria, Belarus, Somalia, South Sudan, Kazakhstan, Uzbekistan and Sri Lanka.

92. China, Pakistan and Bangladesh.