

## SUMMARY

The below document describes information relevant to visa programs/categories specifically designed for Intra-corporate (also known as Intra-company) Transferees (ICT). These programs generally allow a foreign national who has worked for a company abroad to enter a new country and work for a company in that same corporate group. Further, most programs do not require foreign nationals to have a local employment contract or be placed on local payroll. The information below provides both a general overview of OECD countries with ICT programs, as well as specific information on the programs of 9 countries: Argentina, Canada, Japan, the Netherlands, Panama, South Korea, Spain, the United Kingdom and the United States.

## OECD COUNTRIES WITH ICT PROGRAMS:

Out of the 38 OECD countries, 28 of them (or 73%) have Intra-Company Transferee programs. Among the OECD countries who do not have such programs are: Australia, Chile, Colombia, Costa Rica, Denmark, Iceland, Israel, Mexico, New Zealand and Switzerland.

Almost all of the EU Member States who are OECD members have an ICT program, largely as a result of the 2016 EU ICT Directive which asked Member States to implement an ICT program in domestic law. (Denmark opted out of this directive.) The EU had originally passed this directive after seeing data that its Member States lagged behind other OECD countries in terms of intra-corporate transfers. This was particularly notable as these types of workers often help address workforce and skills shortages and are usually comprised of highly-skilled workers.

## COMPLIANCE:

The countries surveyed employ a variety of tactics to ensure corporate compliance with government legislation regulating ICT programs and prevent employer fraud and abuse.

- **Registration programs.**
  - The **United Kingdom** has a robust program, where a company must submit a sponsor license application to become a sponsor, explaining how the company will meet their license obligations (monitoring immigration status and preventing illegal work, maintaining migrant contact details, record keeping, migrant tracking, monitoring and recruitment practices and general sponsor duties). They must also provide specific evidence surrounding the United Kingdom's Senior or Specialist Worker Visa (Global Business Mobility) (which was introduced as the ICT replacement program to the Tier 2 program which closed in April 2022) including evidence of how overseas entities are linked by common ownership or control.
  - In **Argentina**, in order to sponsor foreign nationals for work permits or visas, companies must be registered with a government agency and the company's registration number must be included in each foreign national's work authorization application.
  - **Spain** also requires companies to register with the government in order to submit ICT applications.
- **Audits.**
  - In the **United Kingdom**, audits can occur at any time, unannounced. During an audit, the government interviews individuals responsible for the license to question them on their knowledge and the processes they have in place. Sponsors are expected to retain certain documents on file which can be reviewed during an audit to ensure the sponsor is compliant with their license.

- Audits are less frequent in **Canada** and are usually only performed on a case-by-case basis after a complaint. Individuals usually make complaints to immigration authorities through a web form which are then followed up on.
- In **Panama**, audits are used to ensure that a company actually has a physical presence in the country.
- In the **United States**, the Department of Homeland Security conducts site visits to ensure that the information presented to the government in a specific petition materially represents the terms and conditions of the employment.

## VOLUME PER YEAR:

Although many countries were lacking in data for this question, among the ones we did receive information for, there was a wide variety of usage of ICT programs. In **Argentina, Canada, the United Kingdom** and the **United States**, the programs are widely used. However, they are less-widely used in **Panama** and the **United Kingdom** due to other existing programs which are seen as more beneficial to foreign workers or employers.

- In the **United States**, the L program is one of the most popular programs as there is no cap on the number of workers allowed to enter. A rough number of the L visas issued annually (although this does not include the large number adjudicated at the Canadian border each year) is as follows: 2017 (78,178); 2020 (35,942); 2021 (24,863). It should be noted that the numbers for 2020 and 2021 were affected by the COVID-19 pandemic.
- **Argentina** and **Japan** do not have exact data available. However, in Argentina, the program is extremely popular and Japan admits tens of thousands of people each year as ICTs.
- In **Canada**, specific data is not available but the program is widely used, particularly for executives and senior managers which have relatively objective criteria.
- In **Panama**, under their ICT program, there were 201 people admitted in 2021 (.92% of all visa applications) and 114 persons admitted as of August in 2022 (.63% of all visa applications). This program is not as widely used as the SEM program, which is used by multinational companies who are certified by the government. The SEM program is more streamlined (no work permit required for foreign nationals, only a visa), has a shorter processing time, longer validity and tax benefits, which may explain the low usage rate of the ICT program in this country.
- In the **United Kingdom**, from April 2022, when the Senior or Specialist Worker Visa (Global Business Mobility) program was launched (being it's ITC program), through June 2022, there were 2,927 applications. These numbers are lower than the previous ICT route (Tier 2 Intra-corporate Transfer Long Term visa) had in 2019 during a similar time frame. It is likely that the numbers have dropped significantly as applicants instead apply for the Skilled Worker route (which replaced Tier 2 General) which does not have a labour market test, can be extended indefinitely up to five years at a time and can lead to settlement.

## FEATURES TO CONSIDER:

- **Temporary versus permanent residence and pathways to permanent residence.** Some countries, such as **EU Member States**, have made their ICT programs temporary without a route to permanent residence. The temporary nature of the program is emphasized by the implementation of "cooling off" periods in some EU Member States; for example, in the **Netherlands**, after foreign nationals have completed their maximum period of stay, they must change immigration status or leave the EU for at least six months during the "cooling-off" period. However, programs that do offer routes to permanent residence, such as the **United States**, can

help to attract some of the best talent across the globe who are seeking to permanently resettle in another country.

- **Minimum salary levels.** Many of the countries surveyed institute minimum salary levels for foreign nationals on ICT permits, including **Canada, Japan, the Netherlands, Panama, South Korea and Spain**. Minimum salary levels can help guarantee fair treatment of foreign nationals while avoiding undermining the wages of the local population. Further, they ensure that the foreign nationals will be able to support themselves and contribute to the local economy. Other countries may find minimum salary levels unnecessary if the work permit's requirements are of a level that they only attract foreign nationals who would regularly be paid a high salary. For instance, in the **United States**, there is no minimum salary requirement for this visa type; however, applications with extremely low salary levels for the given position are likely to be heavily scrutinized and the salary may undermine the argument that the person is in a specialized or managerial/executive position.
- **Dependents.** The ICT programs in each of the nine countries surveyed allow dependents to enter the country with the principal applicant. This is a critical aspect for many foreign nationals when deciding whether to take a position abroad.
- **Labour Market Impact Assessment.** Countries have differing approaches to whether a labour market test is used for this type of program, with benefits and drawbacks to each approach.
  - **Using labor market test.** Countries who do use a labour market test are typically **European Union Member States**. However, labor market tests usually increase processing times.
  - **No labour market test.** Countries, such as the **United States** and **Canada**, who do not employ labour market tests for their ICT programs, allow for faster processing times and make the job market more accessible for the *types* of workers they are trying to attract through these programs. In Canada, the foreign national must be currently employed and has continuously worked for at least 1 year within previous 3 years for the related entity abroad in an executive or senior managerial position or a position involving specialized knowledge on a full-time basis and will work in a similar role in Canada. Fragomen supports no labour market testing for ICT in the Australian environment (and other concessions such as formal skills assessments where it may otherwise be required) particularly in the context of trusted employers/accredited sponsors combined with businesses of a certain size.