

# IMMIGRATION LAW 2019 EXPERT GUIDE

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## French Business Immigration

By Karl Waheed

### I. General principles

Certain individuals legally residing in France may work without specific work permission including nationals of any country in the EEA and of Switzerland. Short assignments for periods of less than three months in certain fields may be carried out without a work permit. Certain Intra-company transfers and work qualifying under the “Talent Passport” regime may be carried out without a work permit. However, all other individuals are required to obtain a work permit issued by the regional labour authorities. Such work permits are issued once the labour authorities are convinced, after a labour market test, that the applicant has skills which are not available on French labour market, unless the work permit application is made under a specific category set out under ‘Key type of work permission below’. Employing someone without the right to work in France can lead to civil and penal sanctions for the employer of up to €100,000 per illegal employee and imprisonment of up to five years.

### II. Key types of work permission

#### A. Multi-year residence card “Talent Passport” (article L313-20 of the CESEDA).

The multi-year residence card “Talent Passport” brings together, under a single residence permit, 10 categories of professional activities for which the stay and work in France ought to be facilitated. Its duration is in principle four years and it can be issued from the first admission to stay.

When issued for the exercise of an activity as an employed person, prior authorisation to work is not required. Family members

can receive a “Family Passport” residence permit, the duration of which will be equal to that of the principal and with a right to work.

First application: If the foreign national resides outside of France, the decision to issue the title is taken by the diplomatic and consular authority and the residence permit is issued by the prefect of the residence of the foreign national on presentation of his/her passport bearing a long-stay “Passport Talent” visa. When the envisaged duration of the stay is less than or equal to 12 months, a joint long-stay visa and permit to stay (VLS-TS) is issued for the duration of the envisaged stay. When the duration of the stay exceeds 12 months, a long stay visa and residence permit are issued on arrival in France, according to the contract or the nature of the project.



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Where the foreign national is already admitted to residence on French territory, the decision to issue the permit shall be taken by the prefect of his/her place of residence.

Renewal: The renewal must be requested within two months of the expiry of the VLS-TS or the residence permit. Renewal is subject to compliance with the initial conditions and certain additional conditions for the specific categories: business creator, innovative economic project holder, economic investor.

The following are the 10 categories of “Talent Passport”:

- The “European Blue Card Passport” (L313-20-2 °): foreign nationals who are in highly qualified employment for a period of one year or more and who have completed at least three years of higher education or have acquired an equivalent qualification through at least five years’ experience.
- The “Talent Passport Employee on Assignment” (L313-20-3 °): employee of a foreign affiliate being transferred to France.
- The “Talent Passport Researcher” (L313-20-4 °): foreign national holding a degree equivalent to a master’s degree which requires research work or provides university-level education, under a hosting agreement signed with a public or private organisation having a previously approved research or higher education scheme.
- The “Talent Passport Performing Artist” (L313-20-9 °)
- “Passport talent Young Graduate Employee” or “Employee of an Innovative Company” (L313-20-1 °)
- The “Creator of Business” (L313-20-5 °)
- The “Talent Passport Innovative Economic Project” (L313-20-6 °)

- The “Talent Passport Mandataire Social” (L313-20-8 °)
- The “Talent Passport Foreigner of International or National Fame” (L313-20-10 °)
- The “Talent Passport Economic Investor” (L313-20-7 °)

#### B. Intra Company Transferees (ICT)

B.1. The multi-annual “ICT Seconded” residence permit (L313-24 I and II): foreign employee who is a third-country national seconded by his employer to an affiliate company in France and for the purpose of holding a senior management position or to provide expertise without a contract of employment with the host entity in France.

B.2. The ICT “Mobile Seconded” (L313-24- III and IV): foreign employee holding an ICT residence permit issued by another member state of the European Union and who is assigned to France for more than 90 days as an intra-group transfer.

B.3. The “ICT trainee”, “ICT family trainee”, “ICT mobile trainee”: employee who is not a citizen of the European Union, who is undertaking an internship within the framework of an internship agreement.

#### C. The temporary residence permit “employee” and “temporary worker” (article L313-10)

The “employee” residence permit may be issued to a foreigner who has a contract of indefinite duration. The “Temporary worker” residence permit may be issued to a foreign national who has a fixed-term contract or is subject to the posting under Articles L1262-1 and L1262-2 of the Labor Code (own account, intra-group, in the framework of a service provision or within the framework of the interim).

D. Temporary residence permit “entrepreneur / professional”

This category merges the previous “merchant” and “professional” titles and may be issued to foreigners who wish to pursue a self-employed, commercial, craft, industrial or professional activity.

E. Posted workers under international service agreements

Third-country nationals may be assigned by their foreign employer to work at the site of a French company in the framework of an International Service agreement between the French company and the employer abroad.

F. Trainees

This category is for those who: (i) undertake training in a business, within the framework of a training program organised in their home country which leads to a diploma or professional qualification (for up to six months); or (ii) are employees of a business abroad and are following training provided by an approved professional organisation (for an initial period of up to 12 months, renewable once for a maximum duration of 18 months).

**III. Accompanying family members**

Spouses (including same sex spouses) and dependent children under the age of 18 are considered to be dependents for the purpose of accompanying a work permit holder to France. Dependents of a worker qualifying under one of the ICT or “Talent Passport” immigration category may be issued with permits to stay in France as dependents enabling work in any capacity. Long term unmarried and civil partners are not recognised in France for immigration purposes and must apply for permission to reside and work in France in their own right. They may apply to be

admitted as long term visitors but approval of such applications is highly discretionary.

**IV. Penalties for non-compliance**

Third-country nationals may not conduct productive work in France without a work permit. If they do, they expose their management to penal and administrative sanctions. The third country national may be fined €3,750, prohibited from re-entering France for up to three years, and given a jail sentence of up to one year in case of illegal entry on French territory. The management faces multiple penal and administrative sanctions of €15,000 to €100,000 per infraction of illegal work, and a jail sentence of up to five years. The corporate entity risks a fine of up to €75,000 and restrictions on business. The user or the beneficiary can be held jointly liable for the non-compliance by the employer of certain obligations. Repeated breaches are punished more severely. Furthermore, un-declared work may also result in the breach of other regulations of the labour and social security codes.

Karl Waheed, member of the New York (1987) and Paris (1993) bars, founded Karl Waheed Avocats, which was retained in 2006 by the French Ministry of Labour to present a white paper on corporate immigration in France. This report presented a series of recommendations which were incorporated in the current French regulations on business immigration.

Karl is a frequent speaker on subjects of interest to international mobility experts at conferences organised by AILA, the ABA, the IBA and the Union Internationale des Avocats. His articles have been published by the French government’s Bulletin de Migration, the French National Association of HR Managers journal La Revue Personnel, and the IBA’s newsletters on Immigration and Nationality Law.

