



Migration law and practice



With AEB updates on: specifics of migration registration; audits for companies; court decisions; employment of foreign nationals.

Review of current court practice related to migration law topics



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Court decisions show how certain specific requirements and situations in the sphere of migration compliance are checked and treated in practice. Below we will outline some approaches in current court practice and summarise general related recommendations.

It will be hard to avoid punishment, but it is possible to reduce the degree of punishment

In practice, when challenging administrative penalties for violations of the formal requirements of migration legislation (for example, the incorrect drafting of a notification on hiring or dismissal or the submission of

a quarterly wage notice to a division not identified by legal acts), employers often refer to the insignificance of the violations committed. However, the courts usually find this reference unfounded. Notably, this position has been expressed in the decisions of the Russian Supreme Court.

For instance, an employer made several mistakes in the notification on termination of the employment contract with a foreign employee and was fined for that. The Supreme Court of the Russian Federation, in its Resolution No. 127-AD18-6 dated 27 December 2018, did not recognise the violation as insignificant and agreed with the punishment. The court stated that, despite the fact that the organisation managed to notify the police within three business days, it had not duly fulfilled the obligation to provide notification.

However, there is a practice according to which an employer can at least receive a discount of up to 50% on the fine. For example, a company did not notify the Ministry of Internal Affairs of the payment of wages to a highly qualified specialist in a timely manner (until the end of a month following a respective quarter). The police charged a minimum statutory RUB 400,000 fine for this, but the court cut the fine in half (see, as an example, Decision of the Moscow City Court dated 18 April

2018 in case No. 7-4806/2018). When setting the administrative punishment, the judge took into account the nature of the administrative violation committed, the fact that the violation was quickly rectified by the company on a voluntary basis, the fact that the actions did not lead to any serious consequences, and, finding these circumstances exceptional, thought fit to reduce the amount of the prescribed administrative punishment to half of the minimum amount of the administrative fine, i.e. to RUB 200,000.

A nominal corporate address (such as a PO box) may lead to a refusal to issue a work permit or its cancellation

Lately, the tax authorities responsible for the registration of legal entities have undertaken a campaign to check the correctness of the addresses of companies contained in the Unified State Register of Legal Entities (US-RLE). Among others, companies that are not located at their registration address are being caught in the cross-hairs.

A similar approach can also be seen in the practices of the Ministry of Internal Affairs when considering cases involving a refusal to issue work permits to highly qualified specialists. For example, when considering application documents the employees of the Ministry of Internal Affairs in Moscow



visited the address indicated in the application and found that there was no office of the employer at this address. The company tried to contest this decision, but the court dismissed the claim with a reference to Clause 9.7 of Article 18 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation", according to which a work permit shall not be issued or an issued permit shall be cancelled if the employer submits knowingly false information about itself to the police.

Ban on entry into Russia for two administrative violations is contestable

Two or more administrative violations within a span of three years may lead to a ban on a foreign citizen entering

Russia for several years. Once the migration authority has made the decision to ban a foreign citizen from entering Russia, it is very hard to dispute this decision. The major argument that works in most cases is the foreign citizen's family status (for example, if a spouse or children hold Russian citizenship). However, recent practice shows that as long as administrative violations are minor (e.g. two minor traffic violations), it is possible to dispute such a ban even without reference to relatives in Russia (see e.g. Appellate Ruling of the St. Petersburg City Court No. 33a-4667/2018 dated 13 March 2018).

General recommendations

When a company files documents for a work permit with the migration au-

thority (including for a highly qualified specialist), it should be prepared for the migration authority to conduct a fairly comprehensive check before issuing the permit, especially if citizens from so-called "countries with migration risks" are being hired. Therefore one should verify that all information provided is complete and true, and be prepared that the officers may decide to visit the company's office or have a face-to-face interview with its management, etc.

The employer shall not relax when a work permit is received (especially in the case of highly qualified specialists) and should prepare and follow a strict schedule, which includes quarterly reporting on salary payment, fulfillment of the inviting party's obligations regarding the purpose and duration of the foreign employee's stay in Russia, prompt notification in the event of his/her early dismissal, etc. Since legal requirements, the forms of documents, and the names/addresses of authorities are constantly changing, it is essential to ensure that you have up-to-date information.

Apart from its own responsibility, the employer should also request a proper attitude from its employees. This should include (on the part of the employee) prompt notification of any change of his/her personal data such as surname and passport details (which may require a revision to the work permit), avoiding administrative violations and situations that place the employee at a risk of such violations (including driving a car in Russia registered in his/her own name), informing the employer of the planned duration of stay in Russia, travel within Russia, etc. |