

## CHAPTER 10

### MOVEMENT OF NATURAL PERSONS

#### Article 125 Definitions

For the purposes of this Chapter:

**business visitor** means a natural person of either Party who is:

- (a) a service seller being a natural person who is a sales representative of a service supplier of that Party and is seeking temporary entry into the other Party for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (b) an investor of a Party, as defined in Chapter 11 (Investment), or a duly authorized representative of an investor of a Party, seeking temporary entry into the territory of the other Party to establish, expand, monitor, or dispose of an investment of that investor; or
- (c) a goods seller, being a natural person who is seeking temporary entry into the territory of the other Party to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public;

**contractual service supplier** means a natural person of a Party who:

- (a) is an employee of a service supplier or an enterprise of a Party, whether a company, partnership or firm, who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract(s) between his or her employer and a service consumer(s) in the territory of the other Party;
- (b) is employed by a company, partnership or firm of the Party, which has no commercial presence in the territory of the other Party where the service is to be provided;
- (c) receives his or her remuneration from that employer;
- (d) has appropriate educational and professional qualifications relevant to the service to be provided;

**executive** means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives,

the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment;

**immigration measure** means any law, regulation, policy or procedure affecting the entry and sojourn of foreign nationals;

**immigration formality** means a visa, permit, pass, or other document or electronic authority granting a natural person of one Party the right to enter, reside or work in the territory of the other Party;

**installer or servicer** means a natural person who is an installer or servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract;

**intra-corporate transferee** means a manager, an executive, or a specialist, who is an employee of a service supplier or investor of a Party with a commercial presence, as defined in Chapter 9 (Trade in Services), in the territory of the other Party;

**manager** means a natural person within an organization who primarily directs the organization or a department or subdivision of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations;

**natural person** or **natural person of a Party** means a natural person of a Party as defined in Chapter 9 (Trade in Services);

**skilled worker** means a natural person of a Party who enters the other Party in order to work temporarily under an employment contract with a natural or juridical person of that other Party, and who is appropriately qualified and/or experienced for that employment;

**specialist** means a natural person within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organization's service, research equipment, techniques or management;

**temporary employment entry** means entry by a natural person of a Party, including a skilled worker, into the territory of the other Party in order to temporarily work under an employment contract concluded pursuant to the law of the receiving Party, without the intent to establish permanent residence;

**temporary entry** means entry by a business visitor, an intra-corporate transferee, an independent professional, a contractual service supplier, or an installer or servicer, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or juridical person which employs that visitor in the visitor's home country.

## **Article 126 Objectives**

The objective of this Chapter, which reflects the preferential trading relationship between the Parties and their mutual desire to facilitate temporary entry and temporary employment entry of natural persons, is to establish transparent criteria and streamlined procedures for temporary entry and temporary employment entry, while recognising the need to ensure border security and to protect the domestic labour force in the territories of the Parties.

## **Article 127 Scope**

1. This Chapter applies to measures affecting the movement of natural persons of a Party into the territory of the other Party, where such persons are:

- (a) business visitors;
- (b) contractual services suppliers;
- (c) intra-corporate transferees;
- (d) skilled workers; or
- (e) installers and servicers.

2. Nothing in this Chapter, Chapter 9 (Trade in Services) or Chapter 11 (Investment) shall apply to measures pertaining to citizenship, nationality, residence or employment on a permanent basis.

3. Nothing contained in this Chapter, Chapter 9 (Trade in Services) or Chapter 11 (Investment) shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided

such measures are not applied in a manner so as to nullify or impair the benefits accruing to the other Party under this Agreement.<sup>7</sup>

## **Article 128           Expeditious Application Procedures**

1. Each Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement. Each Party shall notify applicants for temporary entry and temporary employment entry, either directly or through their authorized representative or their prospective employer, of the outcome of their applications, including the period of stay and other conditions.

2. Each Party shall, within 10 working days after an application requesting temporary entry or temporary employment entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application, or advise the applicant when a decision will be made. At the request of the applicant, the Party shall provide, without undue delay, information concerning the status of the application. The contact point for each Party for such queries is set out in Article 132.

3. The Parties affirm their commitments established in the *APEC Business Travel Card Operating Framework*.

4. Any fees imposed in respect of the processing of an immigration formality shall be limited to the approximate cost of services rendered.

## **Article 129           Grant of Temporary Entry**

1. The Parties may make commitments in respect of temporary entry of natural persons.

2. Such commitments and the conditions governing them shall be inscribed in Annex 10.

3. Where a Party makes a commitment under paragraphs 1 and 2, that Party shall grant temporary entry to the extent provided for in that commitment, provided that such natural persons are otherwise qualified under all applicable immigration measures.

4. In respect of the commitments on temporary entry in Annex 10, unless otherwise specified therein, neither Party may:

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<sup>7</sup> The sole fact of requiring a visa for natural persons of a Party and not for those of non-Parties shall not be regarded as nullifying or impairing trade in goods or services or conduct of investment activities under this Agreement.

- (a) require labour certification tests, or other procedures of similar effect;
  - (b) impose or maintain any numerical restriction relating to temporary entry; or
  - (c) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.
5. Each Party shall limit any fees for processing applications for temporary entry of natural persons in a manner consistent with Article 128.
6. The temporary entry granted by virtue of this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary entry.

### **Article 130 Grant of Temporary Employment Entry**

1. The Parties may make commitments in respect of the temporary employment entry of natural persons.
2. Such commitments and the conditions governing them shall be inscribed in Annex 11.
3. Where a Party makes a commitment under paragraphs 1 and 2, that Party shall grant temporary employment entry to the extent provided for in that commitment, provided that such natural persons:
- (a) are otherwise qualified under all applicable immigration measures; and
  - (b) are in possession of a genuine employment offer from an employer in that Party.
4. In respect of temporary employment entry under paragraphs 1 and 2, the Parties shall not require labour market testing, economic needs testing or other procedures of similar effect.
5. The Parties shall limit any fees for processing applications for temporary employment entry in a manner consistent with Article 128.
6. The temporary employment entry granted by virtue of this Chapter does not replace the requirements to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary employment entry.

## **Article 131            Transparency**

Each Party shall:

- (a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter;
- (b) no later than 6 months after the date of entry into force of this Agreement, prepare, publish, and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry and temporary employment entry under this Chapter in such a manner as will enable natural persons of the other Party to become acquainted with them; and
- (c) upon modifying or amending an immigration measure that affects the temporary entry and temporary employment entry of natural persons, ensure that such modifications or amendments are promptly published and made available in such a manner as will enable natural persons of the other Party to become acquainted with them.

## **Article 132            Contact Points**

Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the movement of natural persons between the Parties or on any matter covered by this Chapter, and shall provide details of this contact point to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact point. The contact point should identify and recommend areas for and ways of furthering cooperation between the Parties.

## **Article 133            Committee on Movement of Natural Persons**

1. The Parties hereby establish a Committee on Movement of Natural Persons that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.
2. The Committee's functions shall include:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) identification and recommendation of measures to promote increased movement of natural persons between the Parties; and

- (c) considering other issues with respect to movement of natural persons of interest to a Party.

#### **Article 134 Dispute Settlement**

1. The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the movement of natural persons) that may arise from the implementation and administration of this Chapter.

2. If both Parties cannot reach agreement with regard to any specific issues raised from the implementation and administration of this Chapter as provided for in paragraph 1, Chapter 16 (Dispute Settlement) shall apply to the issues.