

*Kyiv, 15 July 2013*

## **CHANGES TO THE PROCEDURE FOR OBTAINING A WORK PERMIT FOR FOREIGNERS**

**Dear Ladies and Gentlemen!**

Following our policy of supporting our current and potential clients at all stages of their activity in Ukraine, we would like to inform you about the recent changes in the procedure for obtaining a work permit for foreigners.

**As of July 5, 2013 the procedure for issuance, prolongation and annulment of work permits for foreigners has been changed.**

Resolution of the CMU No. 322 dated 08.04.2009 ceased to be in force and Resolution of the CMU No. 437 dated 27.05.2013 "Issues of issuance, prolongation and annulment of permits for the employment of foreigners and stateless persons" that approved the Procedure of issuance, extending and annulment of permits for the employment of foreigners and stateless persons came into effect (Resolution No. 322 and Resolution No. 437 respectively).

Resolution No. 437 obliges the employer to inform the territorial agency of the State Employment Office about vacant positions (demand for employees) not later than 15 days prior to applying for a permit, as citizens of Ukraine with respective qualifications and able to perform the respective work have the priority regarding the employment at vacant positions.

Moreover, now the CMU has determined that if a foreigner or a stateless person (hereinafter – the foreigner):

- applies for position of a chief officer, deputy chief officer or any other management position provided that such foreigner is a founder or a cofounder of an enterprise, institution, organization;
- is the subject of copyright or allied rights and is invited to work in Ukraine for exercise of such rights, the employment shall be treated as expedient and sufficiently justified.

On the permit obtaining procedure. The general list of documents regarding the foreigner to be submitted by the employer to the territorial agency of the State Employment Office has been reduced, practically, to 7 positions.

The following documents are not on the list anymore:

- substantiation of the expediency to employ the foreigner and of the possibility to create respective conditions of his/her work and stay;
- certificate from the tax authority on payment of taxes and fees (compulsory payments) by the employer;
- certificate from the employment centre that the employer has no indebtedness towards the Fund;
- receipt on payment of the fee for application consideration;
- copy of a labour agreement (contract) draft certified by the employer;
- copy of the articles of association of the employer certified in the order established by the law.

A new requirement is that the employer shall submit a document issued by a healthcare facility that the foreigner does not suffer from chronic alcoholism, substance abuse, drug abuse or any other inflectional disease according to the list as approved by the Ministry of Health.

From now on, the application shall be submitted in the form set out in the exhibit to Resolution No. 437.

At the same time, requirements to the documents of the employer for employment of foreigners as (i) "internal assignees" or (ii) foreigners sent by foreign employers to Ukraine in order to perform a certain amount of work (services) based on agreements concluded between foreign and domestic business entities, has practically not been changed. A provision of Resolution No. 437 that the quantitative correlation between qualified foreigners employed

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and the general number of employees working under agreements (contracts) shall not exceed 50% corresponds with the provision of Part 2 Article 42 of the Law of Ukraine "On Employment" dated 05.07.2012 No. 5067-VI.

For employment of the foreigner who applies for position of a chief officer, deputy chief officer or any other management position provided that such foreigner is a founder or a cofounder of enterprise, institution, organization, the employer shall submit duly certified copies of constituent documents. If the foreigner is the subject of copyright or allied rights and is invited to work in Ukraine for exercise of such rights, the general list of documents shall be complemented with notarized copies of documents identifying the object of copyright and/or allied rights and confirming the copyright.

Compared to Resolution No. 322 the period for consideration of the documents for purposes of issuance, prolongation or refusal of the same has been cut from 30 to 15 days. The same term was determined for making a decision on annulment of an issued permit.

It is envisaged to establish at territorial agencies of the State Employment Office commissions consisting of representatives from the Ministry of Internal Affairs, the State Customs Service of Ukraine, the State Security Service of Ukraine, the Ministry of Science and Education of Ukraine, the Administration of the State Border Service, the Federation of Trade Unions and Employers of Ukraine that would consider applications and give recommendations regarding issuance of or refusal to issue work permits for foreigners.

A novelty in Resolution No. 437 is the setting of a term for giving notice to the employer about the decision made on its application – within 3 business days after passing the order with simultaneous publishing of such information on the website of the territorial agency.

With enactment of Resolution No. 437 the procedure for obtaining a work permit for foreigners will consist of the following stages:

1. notice to the territorial agency of the State Employment Office about a vacant position – at least 15 calendar days prior to permit application;
2. submission of documents according to the list set out in Resolution No. 437;
3. examination of documents by the State Employment Office – within one business day;
4. consideration of documents and decision making by the State Employment Office – within 15 calendar days after the documents have been submitted by the employer;
5. obtaining an order of the State Employment Office composed upon results of consideration of the documents – within 3 business days with simultaneous publishing of the respective information on the website of the territorial agency;
6. payment for services of the State Employment Office in the amount of 4 minimum wages provided the decision on issuance of the work permit has been made - within 30 calendar days after the decision making on issuance of the permit. Violation of this term leads to annulment of the permit. This provision has liberalized provisions of Resolution No. 322, as it envisages payment only for a positive decision of the State Employment Office;
7. obtaining permit at the territorial agency of the State Employment Office issued within 10 business days after the payment has been deposited to the account of the State Social Unemployment Insurance Fund;
8. conclusion of a labour agreement (contract) with the foreigner and provision of its copy to the territorial agency of the State Employment Office – within 3 business days after conclusion of such agreement (contract) formalized based on the permit.

In order to prolong the permit the employer shall submit only an application, certificate from the Ministry of Internal Affairs that the foreigner does not serve sentence for any crime and that the foreigner is not subject to any criminal proceedings, and colour pictures requirements to which are similar to requirements set out for obtaining the initial permit. Other documents, set out in Resolution No. 437 shall be submitted only provided that information contained

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therein has changed during the validity period of the permit. The term in which the employer shall apply for a prolongation has not been changed and is 30 calendar days prior to expiry date of the permit.

Issuance of a copy is free of charge. The same conclusion may be drawn regarding services of the State Employment Office on prolongation of the permit as Resolution No. 437 contains no provision envisaging that they are payable.

It shall be noted that Resolution No. 322 did not regulate the reissuance, issuance of a copy instead of a damaged or a lost permit which led to a necessity to submit all the documents again and to wait another 30 calendar days for a decision. Now this loophole has been closed by Resolution No. 437. Thus, the employer receives a copy:

- if lost: provided that the employer has submitted an application in free form and copies of documents confirming that the employer had informed the territorial agency of the State Employment Office that had issued the permit, the Administration of the State Border Services and the territorial agency or a subdivision of the State Customs Service that had issued the residence permit;
- if damaged: provided that the employer has submitted an application in free form and returned the damaged permit.

Decision on issuance of a copy of the permit shall be made by the State Employment Office within 5 business days after receipt of the respective documents from the employer.

Moreover, Resolution No. 437 sets forth reasons based on which the State Employment Office decisively refuses to prolong issued permit. In particular, a reason for refusal to issue or to prolong a work permit for the foreigner is simultaneous occurrence of the following (1) there are qualified workers in Ukraine (the region) that may be employed on the vacant position announced by the employer and that comply with requirements indicated by the employer in the notice of the demand for employees (vacant position), and (2) the employer has refused to employ citizens of Ukraine which were sent by the territorial agencies for the employment (except decision on issuance of a work permit for foreigners sent by the foreign employer to Ukraine in order to perform a certain amount of work (services) and foreigners falling under the category of "internal assignees"). Therefore, while composing job requirements for the vacant position the employer shall be very careful and describe in detail the characteristics taking into account the experience, knowledge and skills of already approved applicants for such vacant positions.

If you have any further questions regarding the information of this legal alert, please, do not hesitate to contract us.

Sincerely yours,

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