

The Current State of French Immigration Law – Streamlined Professional Immigration, Repression of Illegals **by Haywood M. Wise, French immigration practitioner**

Immigration issues in France are unique, given its Enlightenment traditions and colonial past. France has historically had a largely open border policy, but has had to grapple with the human consequences of its colonial past with its large Middle Eastern, African and Asian populations. The response of the former Minister of the Interior, Nicolas Sarkozy, whose enter come to power in a shift to the right, now as President, has been to state openly that certain immigration is simply not desirable. The new French immigration regime has been criticized by a number of French associations as merely contributing to the precarious situation of illegal aliens and establishing unnecessary burdens to family immigration, and introducing a lack of transparency into administrative review. Recent reforms may be lauded for their progressiveness when it comes to encouraging and streamlining immigration of professionals and artists and for intra-group needs.

This article purports to give the reader a primer on French immigration principles and to thereafter provide a sense of what issues have been in the forefront, with a summary of recent press and reforms.

The Primer on French immigration law

Certain terms must be distinguished when dealing with French immigration law. The first is the term, 'visa' which is only used in its strict sense as a permit to enter the territory. This is distinguished from residency cards, or cartes de séjour, which are of either temporary duration or of more permanent duration (10 years), called the carte de resident.

There is a harmonization of rules across the European Union for short-stay visas (called "Schengen Visas"), allowing free movement in the Schengen space (Europe). There are various types of such visas, whether for business or pleasure, issued by one of the European member states to the Schengen convention. The visa is granted for one or multiple stays for no more than three months per every six months. A short stay visa is required for a brief entry into France, unless the alien is a non EU citizen or who is subject to a visa waiver (the nations of the OECD 'United States, Australia, Canada, Korea, Japan, Malaysia, Mexico, New Zealand; and for European countries, Norway, Switzerland and Turkey).

Long stay visas (visa de long séjour) are only given by Consular authorities and they are a prerequisite to obtaining the right to remain in France and to obtain a stay card (carte de séjour). There is an intermediate visa, between the short stay visa and the long stay visa, for stays of six months, and which do not require that the alien obtain a stay card. But this visa has only limited uses and most people who wish to remain in France will need to make an application for a long stay visa.

A long stay visa is required in particular by aliens who wish to obtain a stay card as a "visitor", « employee », « student », or « family » visa, especially for spouses or PACS partners (allowing same sex couplings). When an alien first arrives in France, he must always first obtain a visa unless subject to waiver for a mere 90 day visit. This is part of France's recent efforts to regulate immigration, as this was not always the case. For instance, it was previously possible for an American to enter France on visa waiver and marry a French spouse and then immediately obtain permanent residency. It is only recent that this no longer the case, and henceforth a Consular visit shall be required for all visits over 90 days without exception.

Acquiring French nationality

If the foreign-born person is the child of a French parent, citizenship may be obtained as of right by making a petition for a French nationality certificate. The individual need not reside in France to make this application. Foreign-born persons with a French spouse may claim French citizenship following four years of marriage.

Furthermore, foreign-born persons may request to be naturalized if such persons have resided continuously in France for five years prior to filing of the request. French nationality in this case is given in the discretion of the French High Administrative Authority (Conseil d'Etat) if the French speaking person can show that his acts in France have been meritorious and contributing to French prosperity. The above-mentioned five-year period may be reduced to two years if the foreign-born person successfully performed two years of higher education in France. This request is made at the Préfecture where the foreign-born person resides. A reply is given to the request within 18 months of the request (although in practice this may take longer).

Dual nationality

Dual nationality is not expressly provided for in French law, but is recognized. Thus a child born abroad in a country which applies the rights of nationality based on place of birth, where such child may also claim nationality through parentage, will have dual nationality. Dual nationality may also be obtained through naturalization, by marriage, by transfer of a territory or by independence of a State (such as Algeria in 1962).

French law does not require that when a foreigner becomes French he renounce his original nationality, or that a French person renounce French nationality when he/she acquires foreign nationality. Nevertheless, the French government applies the Convention of May 6, 1963 which provides that former nationality is lost in respect of national laws of signatory states whose laws provide for loss of nationality, such as Germany. The effects of this Convention was substantially reduced by a 1993 amendment signed between France, Italy and the Netherlands, which provides that dual nationality shall be permitted under certain conditions. French-U.S. dual nationality is not subject to restriction. French nationality may be renounced by declaration made to the foreign Consulate.

Asylum in France

French law recognizes rights to asylum or political refugee status for a foreign-born person who is subject to persecution by a sovereign or non-sovereign authority. Asylum may be granted further to the rules of the Geneva Convention, where the petitioner can establish that he/she is persecuted in his/her country due to race, religion, nationality, belonging to a social group or due to his/her political opinions. Asylum may also be granted by reference to the 1946 French Constitution based upon persecution due to actions in favour of freedom. Refugee or asylum status is requested at the French Office for Protection of Refugees and Expatriates (OFPRA). After the OFPRA issues a certificate of deposit of the request, the petitioner must go to the Préfecture where he resides, which will issue a receipt of request for asylum, valid for three months. If the petitioner is admitted under asylum status and he/she has a long stay visa, the Préfecture will issue a receipt valid for a six month stay, which is renewable until the OFPRA issues its final decision. If OFPRA's reply is positive, the petitioner may claim a residency card.

France has recently opened its borders to foreign (non EU) workers via a number of recent reforms. A number of categories of work permit and temporary work visas exist, notably a new hire of a foreign person, the transfer of a foreign employee to France for a limited time to perform a specific function, and special provisions for high-level employees of international groups. A special provision is provided for foreigners sent to France to open a representative office of a foreign company. A foreign professional may also obtain a work visa as an independent (non-salaried) professional or officer of a French company. Specific categories are provided for scientists performing research work or performing a teaching position at a university level, artists/performers and musicians, film artists, living language teachers, secondary school teachers via exchange programs, university teachers and other teachers of higher learning, researchers, interpreter/guides, camp counselors, air pilots and crew, models, bull-fighters, student interns, professional interns, students requesting the right to work during period of study or during vacation periods, public service hospital workers, and private medical and pharmacy professionals.

Recent reforms

Recent reforms aim to better regulate immigration, fight against procedural fraud, and promote chosen immigration and successful integration—both in the interest of France and the interest of the country of origin. The result is a stricter framework for aliens who seek to enter France for family reasons, while favouring access to those aliens having skills and talents who bring economic possibilities to France. The concept is to move away from “burdening immigration” (*immigration subie*) to “chosen immigration” (*immigration choisie*). Indeed the government is responding to what it considers the disaster of immigration policy during the former leftist government, which was showing a steady progression of family based (hence unskilled) immigration (41% growth from 2001 to 2004) to the detriment of employment-based immigration, which had fallen 26% in the same years. The response has been to make family immigration more difficult, establishing an unspoken quota system for family immigrants and subjecting spousal immigration to more scrutiny, while at the same time streamlining professional immigration.

Restrictions on “Burdensome” Immigration

Recent reforms have (1) toughened rules on the need for an entry permit (pending consular approval); (2) imposed social integration criteria for persons intending to remain in France; (3) imposed stricter family visa criteria; and (4) established more repressive rules on illegal immigrants.

The Need for an Entry Permit

As stated above, a distinction is made under French law between a “visa” and a “stay document” (*carte de séjour*). The reform provides a generalization of the rule that a long stay visa, or entry permit, is required for all persons requesting a stay document. This essentially means that the alien must go through a French consular authority and be approved to enter the country. Of course, for members of the Organisation for Economic Co-operation and Development (OECD) countries, including the United States, no such long stay visa is required for trips to France under 90 days.

However, a long stay visa or entry permit is required for all persons entering France intending to remain there for greater than 90 days and/or work or study in France. While exceptions to the need for an entry permit or long stay visa are provided (especially for spouses of French citizens), the general rule is that a person will not be issued a stay document (*carte de séjour*) unless he or she has been approved by a foreign consulate.

Imposed Social and Linguistic Integration Criteria

The reform also provides for criteria regarding the social and linguistic integration of persons intending to stay in France for long periods. This has become an issue both at the consular and municipal level. The draft law requires the signature of an integration contract in which the individual is required to undergo civic and linguistic training and under which the alien is bound to comply with certain obligations to comply to French values. In addition, the alien must demonstrate a willingness to integrate, and renewal of status shall require compliance with integration criteria. This is indeed a strange provision that leaves a lot of discretion to both consular and municipal (*préfecture*) authorities. Hence, when presenting a request for a long stay visa or stay card, the individual’s personal, family, and economic connections to France will be considered.

Toughened Family Integration Criteria

The European Convention on Human Rights signed in Rome on November 4, 1950 established the principle in Article 8 that “any persons have a right to respect of their private and family life, their home and their correspondence.” Indeed French law has applied very favourable family integration criteria, allowing immediate family members of legal aliens to enter France and obtain the right to reside and work. However, the regime has recently been toughened for family immigration generally. The spouse of a French citizen is by right given a temporary stay document (*carte de séjour*) immediately upon marriage on the condition that the spouse enters France legally. However, spouses of French citizens can no longer claim a residency card (a 10-year stay card) as of right, and can only request it after three years of marriage—as opposed to the two-year period previously required. Moreover, where previously a spouse of a French citizen could request French citizenship after two years of continued residence in France, this period has been extended to four years in an effort to prevent marriage fraud. Moreover, the sponsor of a family visa must demonstrate that the family home in France is sufficiently large and that financial criteria are met.

Upon arrival in France, the family immigrant receives a temporary visa which may be renewed once. He/she may not request a residency card (a 10 permanent residency card) until he/she has resided in France for at least two years and he/she is able to demonstrate that he/she speaks French and has satisfied certain integration criteria.

France has long had a very favourable framework for the reuniting of families, allowing an alien who has entered France legally to sponsor visa requests for his or her immediate family members. However, the new law extends the term of the alien’s continued residence to 18 months (instead of one year) before such a request may be made. In addition, the economic showing required for such family-sponsored immigration has been made more onerous. Furthermore, spousal visas may be revoked in the event that there is any interruption in the family relationship (such as separation or divorce) within three years of entry into France (this period was formerly two years).

Cracking Down on Illegal Aliens

As in the United States, France has been forced to take a side regarding illegal immigrants and has chosen the side of prosecution. Furthermore, the draft law abrogates provisions that allowed illegal aliens to request a “family and private life-based” (*vie privée et familiale*) visa after 10 years of illegal presence in France, thus discouraging such extended illegal stays. Indeed, following a televised hunger strike at the Saint Bernard Church in Paris, the legalizing of illegal aliens was allowed after 10 years of continued presence in France. The abrogation of this provision will, in the words of many protesters, result in persons remaining in limbo for their entire lives and actually leading to the proliferation of illegal aliens.

More generally, the French administration has given extended powers to the French police to raid public places, domiciles, and places housing aliens in order to arrest persons in illegal status. Furthermore, there are provisions for arresting persons as they appear before municipal authorities to request a stay document.

Nevertheless, the French administration has temporarily tempered the repressive aspects of the law for illegal aliens with children who have been enrolled in school. Such persons had a limited time during the summer prior to August 13, 2006, to present applications for stay documents.

More generally as regards illegal aliens, the government has in many ways limited adjustment to lawful status on family grounds in favour of employment grounds. Henceforth limiting the obtaining of lawful status to aliens with a promise of employment, there is a shift away from consideration of family relationships which has been criticized as being contrary to principles of human rights established under European law. This has incited French human rights associations to bring legal actions to prevent the increase of deportations where a foreign parent's rights to remain on French territory are jeopardized. Similarly, spousal visas are met with much more suspicion and scrutiny at certain French Consulates, based upon largely discriminatory criteria. Similarly, French naturalizations and nationality petitions are subject to considerably more administrative and judicial hurdles as there have been in the past.

Facilitation of "Chosen" Immigration

The reform continues France's tradition of favouring foreign students, university educators, and researchers who may, upon renewal of their *carte de séjour*, request that a new stay document be given for a term of up to four years.

Promising Future for Young Graduates

Young graduates continue to benefit from very favourable provisions. The new holder of a master's degree or its equivalent may be given a work permit for six months to complete his or her training. Moreover, such aliens may be eligible for long-term employment under certain conditions. Similarly, the draft law establishes a favourable regime for unpaid student internships.

France has recently streamlined various professional and employment visas, making it easier for the foreign, non-EU national to engage in professional activities in France. The most significant advance is the new "Skills and Talents" (I) permit, valid for an initial three year period for performance of a professional or artistic project in France. However, provisions for employment have also been streamlined, for "Salaried" and "Temporary Workers" (II), "Employees on Assignment" (III), "Senior Managers" or "High Level Executives" (IV), "Seasonable Workers" (V) and "Scientists" (VI). These provisions make professional establishment considerably easier than was previously the case. Certain of these work visas require both Consular and Municipal (Préfecture) approval, but recent reforms to streamline the process, requiring only Consular approval and limiting prior procedures in France and following visa approval.

The New "Skills and Talents" permit

The reform also seeks to integrate exceptional persons recognized for their skills and talents who are likely to participate significantly, and in the long term, in the economic development or intellectual, cultural, or athletic achievement of France in the world or in the economic development of the alien's home country. Under this status, the individual is able to perform the professional activity of his or her choice, whether independently or in a salaried capacity. This reform is consistent with previous reforms since 2003, which have facilitated transfers of group executives to France and facilitated obtaining independent professional (merchant) status. This status allows the alien to immediately obtain a three year residency card, as opposed to the standard, one year renewable residency card.

This new visa is a significant advance for entrepreneurs, who can apply directly for such a visa at the Consulate and hereby bypass French labor office (DDTEFP) and French Immigration Office (ANAEM) formalities and receive a visa that is valid for three years instead of the standard one year, renewable term and related administrative hurdles at the Préfecture

It has been established as a manner to give the Consulates the discretion to choose persons and projects which are favorable to the economic and cultural development of France.

Furthermore, under this status, the family will receive the *Private and Family Life* permit, which will enable them to accompany you to France and seek employment themselves.

The "Salaried" and "Temporary Worker" permit

A "salaried" or "temporary worker permit is provided for specific professions in France, or for direct hires of foreign employees in France, which can be done subject to a prior job search. These permits generally require initial submission to the French labor office (DDTEFP) and French Immigration Office (ANAEM) by the French

employer. However many options exist to allow the French employer to expedite work permits, primarily under options III and IV discussed below.

The “Employee on Assignment” permit

For companies performing services to its clients in France, temporary transfers have been facilitated. The foreign company may transfer any employee that has been employed for at least three months to by a company based outside of France to its client’s or other offices to perform a temporary assignment for an initial period of three years.

Evidence must be shown that the employee receives a gross salary equal to 1.5 times the minimum wage. After a continuous secondment of 6 months in France, family members will be entitled to a *private and family life* permit allowing them to seek employment in France.

A similar permit exists for secondment, or transfer (*détachement*), to the French client of your employer for a period generally not exceeding one year, allowing you to work on assignment under your foreign employment contract (for instance for performing services under a services agreement with your employer’s French client/customer).

The “Employee on Assignment” card for senior managers or high-level executives

Special, expedited status is reserved to managers and high-level executives of an international group, permitting their immediate hire in France, provided that such persons receive a gross monthly salary greater than or equal to 5,000 euros. In this case the French employer will not be required to demonstrate that a job search for an equivalent candidate has been sought and the employee will be issued with a residence permit valid for a period of three years.

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French immigration is now subject to higher standards of formality, cultural integration and economic considerations, and any person requesting a travel or stay document at a consulate or *préfecture* must be prepared. As has been shown above, the new Administration has aggressively implemented a reform which favours employment-based and professional immigration, and has unabashedly pursued policies allowing France to use its discretion and discriminate as regard the “huddled masses”, those immigrants and aliens who seek to secure legal status through family immigration.

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