

GLOBAL IMMIGRATION GUIDE: Overcoming Common Challenges Faced By Companies Sending Field Service Engineers to Work Overseas

Authored by Audrey Lustgarten, Lustgarten Global PLC



Introduction

As you and your company leaders know, Field Service Engineers (FSEs) come in many forms. At Lustgarten Global, our firm's attorneys and paralegals have worked with FSEs who have commissioned heavy equipment for large-scale projects in remote areas of Asia, Africa and Latin America and those who have installed and maintained wind power blades for cutting-edge wind power turbines across Europe. We have worked with FSEs who set up industrial printers in capital cities worldwide and those who have installed industry-leading financial software for top banks in the most exotic foreign locales.

But while your company's FSEs may be very different in terms of their skill sets, backgrounds and areas of expertise, they do face a common set of challenges when it comes to procuring the visas and work permits they need to get where they are going in the world without running afoul of increasingly more stringent immigration laws.

This guide examines those challenges – timing, cost, multi-jurisdictional coordination, and limited access to documents – and identifies best practices to overcome roadblocks and make your global FSE immigration program function smoothly.

Challenge #1: Timing

With traditional long-term international assignments, both the employee and the HR personnel supporting them often have months to prepare; as a result, there is ample time to address the logistics of relocation and to procure the appropriate visas and work permits needed to travel. This is often not the case with your company's FSEs. By definition, FSEs work constantly in the field, moving from one location to another, often on very short notice. This can be because a machine or system breaks unexpectedly, or because the contract of sale may have overpromised regarding when FSE personnel would be on-site to commission a piece of equipment. Whatever the case, your FSEs often have only a few weeks (or in some cases a few days) to prepare for their next trip.

The immigration rules and systems of most countries are set up to accommodate the more traditional long-term assignment. Many require multi-step processes carried out in both the destination country and the home country. A plethora of documents – including sometimes documents from the FSE's family members who are not traveling with them – are often required. Thus, your company's very real, urgent need to have the FSE on the ground at a client site as soon as possible collides with the destination country's antiquated immigration system.

➤ **Best Practices to Address Timing Challenges:**

- ❖ **Develop an annual calendar.** Although advance planning can be difficult, it is important to attempt it. Work with your company's relevant sales and service teams to identify which countries FSEs may need to visit over the course of the

year and then partner with your immigration advisor to understand the visa and permit options and requirements. We often recommend that our clients develop an initial plan at the beginning of the year and revisit it quarterly so that applications can be filed as far in advance as possible.

- ❖ **Educate your stakeholders.** It is also very helpful if your company's relevant stakeholders – most often sales and service management – can be made aware that they will need to document the need for travel, particularly if travel will be needed on an urgent basis. When a sales or service manager is asked to produce a copy of the sales or service contract, it is surprising how often they are unable to do so, either because it does not exist or has not been properly stored. Holding educational sessions with these key stakeholders in advance can go a long way in both setting their expectations regarding the speed of the process and preparing them to play their part in providing necessary documents for the visa or permit application. This advance planning can also help to avoid the need for expedited processing, which can add hundreds or even thousands of dollars to the cost of the visa.

Challenge #2: Cost

The cost of obtaining visas and work permits can be quite substantial, and some countries have purposefully increased costs in an effort to limit immigration. In Australia and the UK, for example, government filing fees alone can be several thousand dollars. But often more significant are the costs of the immigration-related delay in getting the FSE where they are needed in the world when they are needed. Over the years, we have seen many sales contracts that not only fail to account for the fact that FSEs will need to procure visas in order to be able to set up/install/commission/troubleshoot the company's product, but even provide for penalties in case the company is unable to deliver the FSEs to the client site on time. In one particularly egregious instance, a company agreed to a penalty in the six-figure range for every week the FSEs were delayed in commissioning the equipment.

➤ Best Practices to Address Cost Challenges:

- ❖ **Know what your FSEs can do without a visa.** Get advice from an attorney with experience in this area of global immigration law and document what, if anything, your FSEs can do without a visa, as avoiding the need for a visa is the cheapest up-front option. But be cautious, and know the penalties to your company and employees for unauthorized work. Penalties for unauthorized work can run into the thousands of dollars in some jurisdictions and can result in travelers being personally banned from returning to the country and your company being banned from sending other employees to perform work.
- ❖ **Apply for the duration of visa you need.** Although it is a very good idea to map out your company's anticipated travel schedule in advance, it is also important to

only seek the duration of visa or permit that you need. Government fees for visas are often based on the duration and type of visa issued, so applying for a longer duration than necessary can drive up the cost. For instance, a long-term Subclass 482 work visa in Australia will cost thousands of dollars in government fees alone, while government fees for a short-term Subclass 400 work visa are only a few hundred dollars. However, it is also important to plan for the fact that projects sometimes go longer than anticipated and renewal costs can be far more than obtaining a visa valid for slightly longer than you think you initially need. It is a delicate balance.

- ❖ **Educate your stakeholders.** It is important that your company's relevant stakeholders – sales, service and often legal – are aware of the necessary visa processes and the time that it can take to complete them. We strongly recommend that any of your executed contracts with customers or other parties contain provisions for governmental delays in issuing visas and permits, so that your company is not penalized for delays that are outside your control.

Challenge #3: Multi-Jurisdiction Coordination

Even once the significant hurdles of timing and cost are overcome, the issue of multi-jurisdiction coordination remains. FSEs often need to travel to multiple foreign countries in a short period of time, in some instances not even returning to their home countries in between trips. Immigration authorities and consulates have not designed their processes to make it easy for someone to obtain multiple visas simultaneously. For example, if an FSE with your company needs to visit both the UK and China in one international trip, they would need to submit their original passport to both countries in order to have visa stamps affixed. Thus, the processing time has essentially doubled from what it normally would be before they can depart. To make matters worse, many consulates require the traveler to appear in person, often in a location other than where they live, necessitating multiple domestic flights. And in some instances, countries that do not recognize one another – predominately in the Middle East – will not stamp a visa in the passport of a traveler with a visa from the unrecognized country. Hence, careful planning regarding the order in which applications are submitted is crucial.

➤ Best Practices to Address Multi-Jurisdiction Coordination Challenges:

- ❖ **Consider multiple passports.** Citizens of some countries, including the U.S., are able to hold more than one valid passport at a time. (We once had a client who had three U.S. passports, although that is not typically allowed.) This allows the traveler to submit visa applications to multiple consulates simultaneously rather than having to apply to one at a time.
- ❖ **Plan the order of submission carefully.** If a country does not require travelers to submit their original passports for stamping, it's wise to submit that application

first followed by any other applications that do require original passports. Likewise, if country A will not grant a visa if the traveler has the visa of country B in their passport, apply to country A first; alternatively, use multiple passports, particularly if having a visa for country B might result in issues at the port of entry when traveling to country A.

- ❖ **Group multiple applications or have an agent file for you to reduce domestic travel.** Countries usually have at most a handful of consular locations in the U.S. that accept visa applications. This often means your FSE seeking to travel overseas will have to travel domestically to reach the consulate and file their application. When applying for a visa with a consulate that is not in the traveler's city of residence, plan to file multiple applications in one go if possible. For instance, if a traveler who lives in Maine needs to visit China, the Netherlands and the UK to perform work for your company, they could try to coordinate so that they only need to make one trip to where the consulates are located in New York rather than three separate trips. Alternatively, for countries that allow it, you may have an immigration advisor or other agent file the application on your traveler's behalf so they do not have to make the trip to the consulate.

Challenge #4: Limited Access to Documents

Finally, by virtue of their frequent travel, FSEs regularly encounter challenges accessing and providing the personal information and documents that are needed for many visa applications. This is even more true for FSEs who work in remote locations where access to computers and internet is still spotty at best. Your employee who is on assignment commissioning heavy equipment in Mongolia is rather unlikely to have a copy of their birth certificate handy. Waiting for your FSE to return home to either locate or order the necessary documents frequently causes significant delays in the visa process.

➤ Best Practices to Address Limited Access to Documents:

- ❖ **Gather common documents in advance.** For FSEs who know they will need to travel on an ongoing basis throughout the year, we recommend that they obtain multiple copies of common documents like birth and marriage certificates and diplomas as well as passport photos, so that they will have them on hand. However, note that some jurisdictions require the document copies to be very recent – within 90 and 120 days from date of issue – so it is not advisable to get many more copies than necessary. If your company's FSE is not able to obtain their documents, it may be possible to appoint a representative to obtain the documents on their behalf.
- ❖ **Develop a system for storing information.** This can be done either internally at the company, or in coordination with your immigration advisor. The key is that information from prior visa and permit applications should be retained and re-

used so that your company and your FSE are not having to resupply information previously provided. If your company works with different immigration advisors in each jurisdiction, it will be necessary for your company to retain the information for each traveler. Alternatively, if your company works with a single immigration advisor across all jurisdictions, it should be possible for your advisor to retain the information. Note that it is very important to re-verify information that may have changed since it was provided. (For example, birth certificates are unlikely to change but the traveler could have gotten married or had a child in the interim).

- ❖ **Designate a company representative.** If, due to travel, your company's FSE cannot reliably access email to reply to requests for information, it is highly advisable to designate a company representative – usually an HR representative or manager – to manage the communication process and avoid missing important emails or other correspondence letters from your immigration advisor or government authorities.

Final Thoughts

The global business immigration challenges of timing, cost, multi-jurisdictional coordination, and limited access to documents tend to be universal no matter the type of FSE your company is sending to perform work around the world. But by following the suggested best practices, your company can significantly mitigate and overcome these challenges. Where possible, it is equally important to partner with a global immigration advisor you trust to help you through the process.

This guide was written by Audrey Lustgarten, the Founder and Principal Attorney of Lustgarten Global PLC. Lustgarten Global is a law firm dedicated to representing employers in global immigration matters. Audrey and her team are committed to helping employers obtain the visas and work permits they need to send key employees to foreign countries. From authenticating documents to filing visa applications with consulates in the U.S. and overseeing the filing of work permit applications abroad, Lustgarten Global strives to make complex immigration processes as painless as possible for both the employer and the employee by providing comprehensive support and guidance every step of the way. Audrey can be reached at audrey@lustgartenglobal.com.