

# Immigration Law in Italy

## Simplified procedures for certain categories of employees

### I- The Italian Immigration system: an overview

Since the beginning of the 20<sup>th</sup> century and until the 60's, Italy was traditionally known as a country of emigration. However, during the last decades the tendency has changed and since then immigration into Italy of nationals from non-European Community countries has developed fast<sup>1</sup>.

In order to face this “new” phenomenon, Italian governments enacted more or less rigid immigration laws according to their political orientation.

Presently, the Legislative Decree nr. 286/1998 as amended by the Law No.189 of 30.7.2002<sup>2</sup> provides for a system of programmed immigration from natives of non-European Community countries.

In other words, the number of non-European Community nationals who are allowed to enter and stay in Italy either as subordinate, self-employed or seasonal worker is limited by quotas.

Each year, before November 30<sup>th</sup>, the Italian Prime Minister issues a decree which lays down the aggregate number of non-European Community workers who can be admitted into Italy for the subsequent year (the so called “*Decreto Flussi*”) as well as the number of non-European Community workers allowed to enter into each Italian region.

The aforementioned decree also lays down special quotas for the nationals of those non-European countries who executed special immigration treaties with Italy (i.e Albania, Algeria, Nigeria, Tunisia, etc) or whose nationals have Italian roots (i.e Argentina, Venezuela, etc).

However, as it will be further explained below, there are no limitations to entry into Italy for certain categories of employees (managers, university lecturers and professors, professional nurses etc).

As a general rule, an Italian national or corporation employer is required to prepare and file a work permit application on behalf of the non-European Community (who must not be in Italy unless he/she has a work permit for other reasons rather than work). Therefore, a single individual is not allowed to lodge a work permit application.

Applications must be exclusively forwarded to the Ministry of the Interior as from the date fixed by the “*Decreto Flussi*” via Internet and the quota (and therefore the work permit) is granted on a first-come, first-served basis.

It must be pointed out that the number of quotas established by the Italian government has always revealed insufficient to satisfy the demands of the work market especially in the most-industrialized regions of the northern area of the country. This situation plus the method used to process the

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1 On 1/1/2002 the number of foreign natives domiciled in Italy were 1.356.590 whereas on 1/1/2007 the number of foreign natives grown to 2.938.922 (statistics from the ISTAT- “*Istituto nazionale di statistica*”-www.istat.it )

2 The Law No.189 of 30.7.2002 is also known as the “Bossi-Fini law” after the name of the center-right politicians who proposed it

applications have deprived thousands of aliens from the possibility to obtain a work permit, who nevertheless remain in Italy as irregular immigrants.

## **II- Procedure to obtain a work permit in Italy**

The work permit application is filed with the Ministry of the Interior via Internet as from the date indicated in the “Decreto Flussi” and at any time in the cases excluded from the quota system.

The Ministry of the Interior then forwards the application to the competent Immigration office (“*Sportello Unico per l’Immigrazione*”) of the employer’s province of residence.

After having received the opinion on the work permit application of both the Provincial Labour Office (“*Dipartimento Provinciale del Lavoro*”) and the Police Office (“*Questura*”) of the employer’s province of residence, the Immigration Office will release an authorization (“*Nulla Osta al lavoro*”) to the alien’s employer.

Thereafter the employer will forward the authorization to the employee, who must apply for the relevant work visa at the Italian consulate of his/her country of residency within six months (for those employees included in the quotas) and within four months (for those employees excluded from the quotas) as from the date of the issuance of the authorization. Otherwise, the authorization becomes invalid.

Upon arrival in Italy, the foreign employee must go to the Immigration Office in order to execute a “Contract of Stay” (“*Contratto di soggiorno*”) (a sort of employment agreement) with the Italian employer and then apply for a work permit (“*Permesso di soggiorno per Lavoro*”) to the local Police office.

## **III- Categories of employees excluded from the quota system**

Notwithstanding the general rule outlined under point I) above, art. 27 of the Legislative Decree nr. 286/1998 establishes that certain categories of aliens, due to their high qualifications and skills, do not fall within the yearly planning of entry flows and are entitled to apply for a work permit under a subordinate employment agreement and/or under self-employment positions at any time and without numeric restrictions.

### **III- 1) Applications for subordinate positions**

The following categories included in art. 27 of the Legislative Decree nr. 286/1998 are allowed to apply for a work permit for subordinate positions out of the quotas laid down by the Government:

#### **1) Executives or highly qualified employees (art. 27 of the Legislative Decree nr. 286/1998, letter a)**

Executives or highly qualified employees of companies with main or secondary offices in Italy, or representation of foreign companies having their main place of business in the territory of a member State of the World Trade Organization, or foreign executives of Italian companies or of companies from another Member State of the European Union.

This category refers exclusively to intra-company transfers. Therefore, there must be a common-parent ownership between a foreign company and its Italian affiliate or between an Italian company and its foreign affiliate.

The executive or the highly qualified employee who will be seconded to Italy must be highly specialized in his/her professional domain of activity and must have at least six months of experience in such sector before the date of the secondment.

The work permit will be released for the duration of the secondment (which must be in connection with the effective needs of the Italian entity hosting the employee) and in no case will be longer than five years, including eventual renewals.

It must be pointed out that the employee will not be considered an Italian-based employee and will remain an employee of and on the payroll of the foreign company. However, after the expiration of the work permit, the Italian company will be allowed to hire the foreign employee directly either under a permanent or under a fixed-term agreement.

**2) Exchange or mother-tongue university lecturers** (*art. 27 of the Legislative Decree nr. 286/1998, letter b*)

In order to obtain a work permit for exchange or mother-tongue university lecturers, the concerned University, High Education Institute or Research Institute must recruit the lecturers under a permanent or a fixed-term agreement and must certify that they meet the professional requirements for the performance of the activities for which they are hired.

**3) University professors and researchers** (*art. 27 of the Legislative Decree nr. 286/1998, letter c*)

This category includes University professors and researchers who are engaged to carry out an academic task or a paid research activity at a University, a Training or Research Institute in Italy. As in letter b) above, the skills for the performance of the activities for which the University professors and researchers are hired must be demonstrated.

**4) Translators and interpreters** (*art. 27 of the Legislative Decree nr. 286/1998, letter d*)

The application must be lodged by the employer and must include an authenticated copy of a diploma in translation or interpretation. Such diploma must be specific for the language required and must be released by a training entity in accordance with the legislation in force in the State where such diploma was released. The diploma must be also certified by the competent Italian Embassy or Consulate.

The work permit cannot be released for a longer period than the fixed-term employment agreement duration and in no case for more than two years. The work permit may be however renewed in case the employee continues to work for the same employer but it cannot be converted into an ordinary work permit.

**5) Home-keepers** (*art. 27 of the Legislative Decree nr. 286/1998, letter e*)

Home-keepers are entitled to obtain a work permit in Italy outside the quotas provided that they have been hired abroad under a full time employment agreement for at least a year, by Italian citizens or by European Community natives who live abroad but are moving into Italy, for the purposes of continuing the employment relationship.

**6) Individuals entitled to stay in Italy for training purposes** (*art. 27 of the Legislative Decree nr. 286/1998, letter f*)

This category includes individuals who, being entitled to stay in Italy for training purposes, carry out temporary training stages with Italian employers, performing also services which may be considered subordinate work.

If the training activities are necessary for the completion of a course, it will be necessary to obtain a study permit pursuant to the specific procedure concerning study permits.

On the other hand, if the training activities are performed on the basis of a temporary transfer by the entity in which the individual is currently employed, the application for the work permit must be lodged by the Italian entity to which the employee is temporary transferred to in order to perform the training activities. The application must include a training project approved by the Italian region in which the Italian entity is located.

In no case the training activities will be longer than two years.

**7) Employees of foreign companies working in Italy for the purposes of performing specific assignments** (*art. 27 of the Legislative Decree nr. 286/1998, letter g*)

This category refers to employees of foreign companies who are required to perform in Italy specific assignments for a limited period of time. Such assignments must involve specific tasks of subordinate nature related to the performance of a particular work or service for which it is necessary to have accrued a specific experience.

As in the case of point 1 above (executives or highly qualified employees), it must be an intra-company transfer. In addition, these employees will also remain on the payroll of the foreign home company.

The foreign company must guarantee to the employee the minimum salary set forth by the Italian applicable collective bargaining agreement.

If there is no social security international treaty in place between Italy and the native state of the foreign company, this latter must also guarantee the payment of the pension contributions which are set forth by Italian law but which are not paid for in the native country.

Conversely, if a social security international treaty exists<sup>3</sup>, the employer will pay no pension contributions in Italy but will have to certify the secondment vis-à-vis the National Social Security Institute (INPS).

The duration of the work permit will not exceed two years and the employees must leave Italy as soon as the assignment is concluded.

**8) Maritime employees** (*art. 27 of the Legislative Decree nr. 286/1998, letter h*)

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<sup>3</sup> Up to date, Italy executed International treaties on social security with Argentina, Australia, Brazil, Canada and Quebec, Capo Verde, Korea, Croatia, Jersey, former Yugoslavia, Israel, Mexico, Monaco, Republic of San Marino, United States, Tunisia, Uruguay, the Vatican and Venezuela

Employees of foreign companies contractors of the ship's husband who are boarded in Italian flag cruises in order to perform complementary services such as room or cooking services, general services in cruises or any other commercial activity complementary, ancillary or related to the cruise industry, do not need to obtain any work authorization.

The relative visa is released by the Italian diplomatic or consular representation in shorter terms and following a simplified procedure.

**9) Employees of foreign individuals or companies executing a contract in Italy** (*art. 27 of the Legislative Decree nr. 286/1998, letter i*)

This category includes employees of individuals or companies domiciled abroad, who are directly paid by the employers and are temporarily seconded from overseas to Italy in order to perform a contract ("*Appalto*") executed between the foreign employer (contractor) and an Italian or foreign individual or company domiciled and operating in Italy (principal).

If the contractor is domiciled in a non-member State of the European Union, the principal must ask for an authorization to the competent police office. The work permit will be released after the employer notifies the most representative worker trade union of the sector.

However, if the contractor is domiciled in a member State of the European Union no previous authorization is required. In this case, the principal must forward to the competent Immigration Office a copy of the contract together with a declaration containing the details of the employees seconded, including a certification of the regularity of their immigration situation in the State where the contractor is domiciled.

The contractor must guarantee to the employees seconded to Italy the minimum compensation set forth in the collective bargaining agreement applied to the Italian employees as well as the payment in Italy of the social security contributions which are not paid in the foreign State.

The work permit will always be released for the period of the duration of the contract and will not be longer than two years.

**10) Artists** (*art. 27 of the Legislative Decree nr. 286/1998, letters l, m, n, o*)

Within the category of artists are included:

- artists working in circuses or wandering shows abroad;
- artistic and technical personnel for lyrical, theatrical, concert or ballet shows;
- dancers, artists and musicians to be engaged by entertainment clubs;
- artists to be engaged by musical, theatrical or movie corporate entities or by public/private radio or television enterprises, or by public bodies, in the framework of cultural or folkloristics events.

In the cases above, work permit applications must be lodge directly to the Ministry of Labour.

The relative work permit will be released for a period of twelve months; however the work permit may be extended.

As far as dancers, artists and musicians to be engaged by entertainment clubs are concerned, the extension is granted only to allow the closing of the show and for the continuation of the labour relationship with the same employer.

It must be highlighted that artists cannot change sector of activity and position.

**11) Professional athletes** (*art. 27 of the Legislative Decree nr. 286/1998, letter p*)

Foreign nationals who are engaged to practice a sport at a professional level at Italian sports clubs are also excluded from the yearly entry flows established by the Italian government. In these cases, the authorization is replaced by a specific consent statement granted by the CONI (National Olympic Committee) to the club which will engage the athlete.

For the purposes of executing the contract of stay, such specific consent statement is lodged via Internet to the Immigration Office of the province where the club is located.

CONI specific consent statement as well as the work permit can be renewed also in order to allow the transference of the foreign athletes between sport entities within the framework of the same federation.

**12) Journalists** (*art. 27 of the Legislative Decree nr. 286/1998, letter q*)

This category of employees relates to correspondent journalists who are officially accredited in Italy as well as employees who are regularly paid by daily or periodic newspapers or by foreign radios or TV broadcastings stations.

Journalists do not need any authorization and the application for the relative visa must be directly addressed to the competent Italian consulate.

**13) Individuals participating to exchange or mobility programmes or persons working “au pair”** (*art. 27 of the Legislative Decree nr. 286/1998, letter r*)

Foreign nationals who, according to the provisions of the international agreements in force for Italy, carry out either a research activity or an occasional job in Italy in the framework of exchange or mobility programmes or persons working “au pair” are also excluded from the annual entry flows.

Work permits are released pursuant to the international treaties in force executed by Italy, for the maximum duration of one year, except as otherwise provided for in the relevant treaty. In the case of individuals working “au pair” who are not included in youth exchange or mobility programmes, the work permit may not exceed three months.

In case of foreigners arriving in Italy with a summer job visa issued under an international treaty in force executed by Italy, the work permit may be released, at the employer’s request, by the Provincial Labour Office after the foreigner’s arrival to Italy for a maximum aggregate duration of six months and for no longer than three months with the same employer.

**14) Professional nurses** (*art. 27 of the Legislative Decree nr. 286/1998, letter r bis*)

Nurses having an academic degree (conferred by an Italian or by a foreign University) which has been recognized by the Ministry of Health are eligible to apply for a work permit out of the quota system.

The following entities may apply for a work permit to engage a professional nurse:

- private or public hospitals;

- temporary employment agencies which have signed an agreement with any private or public hospital;
- cooperatives of workers provided that they manage a hospital, a section or a service of the hospital.

### **III- 2) Applications for self-employment positions**

The following individuals included in art. 27 of the Legislative Decree nr. 286/1998 are also eligible to apply for a work permit for self-employment positions:

- Executives or highly qualified employees,
- Exchange or mother-tongue university lecturers,
- University professors and researchers,
- Translators and interpreters;
- Professional athletes.

In the cases above, the Italian authorities require the execution of a service agreement which must be assessed by the Labour Office in order to verify that the services to be performed by the alien do not have a subordinate nature. After that, the Provincial Labour Office will release a certificate which must be used for the purposes of obtaining the relative visa. No previous authorization is required.