

IT'S A

TOUGH

GIG

Do work authorization systems meet the needs of nontraditional, or 'gig,' workers?

BY SONYA B. COLE



When someone travels abroad and works in another country, that person typically will need work authorization in the receiving country, with the defining factor being the nature of the activities the person will perform while in the country. But what about gig workers, telecommuters, and remote online workers who are conducting work on an independent basis for a company often based outside the receiving country? Worldwide immigration schemes in large part are not geared to foreign workers seeking nontraditional and flexible work arrangements, since these schemes are based on a model requiring an employer-employee relationship and/or a contract with a company in the destination country. In these flexible arrangements, neither may exist.

Today's growing gig economy requires immigration systems to adapt to meet the needs of foreign workers who want to be able to travel outside their home country while they work. This article discusses how several countries' immigration systems handle nontraditional workers and highlights countries' immigration systems. These offer differing ways to handle nontraditional workers, highlighting the disconnect that exists in the immigration policies of countries where the gig economy is growing the fastest.

WHAT IS A GIG?

Although there is not a single definition, a gig is often defined as a temporary work arrangement that involves a worker taking on a short-term project, sometimes through a contract but without ties to an employer. Regardless of the industry, a digital platform facilitates services between these freelancers and customers. This situation provides flexibility on both sides of the equation—the employer is often free from having to offer full-time benefits and a salary package to the worker (while also benefiting from a larger pool of interested candidates than those interested in full-time work), and employees are often free to choose their own work location, work hours, and other terms of the project or job (while also benefiting from a quick paycheck and gained work experience).

HOW FAST AND WHERE IS THE GIG ECONOMY GROWING?

The gig economy is growing steadily around the world and is gaining traction with all workforce

generations. Immigration systems should consider catering to this workforce, as countries facing an increasingly aging population and shrinking labor pool need to consider options outside traditional work scenarios.

In 2019, the fastest-growing gig economies were as follows:

COUNTRY	PERCENT INCREASE (BASED ON REVENUES REPORTED BY FREELANCERS, 2018 TO 2019)
U.S.	78%
U.K.	59%
Brazil	48%
Pakistan	47%
Ukraine	36%
Philippines	35%
India	29%

Source: Payoneer's *The Global Gig-Economy Index: Q2 2019*

ARE THESE COUNTRIES' IMMIGRATION SYSTEMS KEEPING UP WITH THIS GROWTH?

The short answer is no. The summaries below discuss the available options and applicable restrictions to foreign gig workers in several of the fastest-growing gig-economy countries:

- **U.K.** There are several potential visa options available to gig workers, but none specifically tailored to gig employment. Also, the majority of these visa types tie applicants into long-term commitments to the U.K., so they are not a perfect fit for the role of a gig worker. Some examples are: the Tier 1 Innovator Visa, which requires the foreign national to have a business or business idea that is endorsed by an approved government body with at least £50,000 in investment funds and which limits the worker to employment by that business; the Tier 1 Start-Up Visa, which requires endorsement by an authorized government body and requires the worker to be able to show that the business is a new idea and viable with potential to grow; or the Standard Visitor Visa, which limits the foreign worker to certain outlined permitted work activities and does not allow frequent entries to the U.K.
- **Brazil.** The immigration regulations of Brazil do not currently contemplate visa options for foreign freelance or independent workers seeking

to conduct work activities for a local company in Brazil. The primary work authorization category in Brazil is the Work Contract Visa, used by foreign nationals to work for a Brazilian entity under an employment contract. Under this category, the foreign national is required to be directly employed and paid by the sponsoring entity in Brazil, and a regular employee-employer contract is acceptable as the basis of the visa application.

There are also two types of work visas that allow a foreign national to conduct services or work for a Brazilian company without becoming a direct employee of that company. However, some of the main criteria of these visas make it difficult for gig workers to fit into them. For example, the Long-Term Technical Visa is for foreign nationals who will provide technical assistance to a Brazilian entity under the terms of a Technical Services Agreement between the foreign national's employer abroad and the Brazilian entity; this restricts the freelance worker to technical services. The Inter-company Trainee Visa is reserved for foreign nationals who will be transferred temporarily from their home employer to an affiliated company in Brazil to receive training; freelance workers are not training, so this does not fit. And the Urgent Short-Term Technical Visa is for foreign nationals who perform urgent technical activities; however, freelance work is often not considered technical or urgent.

- **Pakistan.** Self-employment and project-based work require setting up a business through the Securities and Exchange Commission in Pakistan, after which a work visa from the Ministry of Interior is needed—which can take several months to process. The alternative is to apply for sponsorship by a local business, which requires an employer-employee relationship and may trigger local contract and payroll requirements.
- **Ukraine.** Foreign nationals working for a Ukrainian employer from outside Ukraine must obtain a work permit, which necessitates a Ukrainian employment agreement and a salary payable by a Ukrainian employer. Foreign nationals working on freelance, self-employed, or project-based work in Ukraine for a Ukrainian employer can work without a work permit if they are registered with Ukrainian tax authorities as private entrepreneurs—though this type of stay is limited to 90 days in a 180-day period for



visa-exempt nationals, or under the rules of the business visa stay period for visa nationals. Such foreign workers are not eligible for a Visa D and Temporary Residence Permit in Ukraine. Further, if the activities of such workers are considered work—i.e., they perform the same functions that are performed by regular employees of the employing company—both the company and the foreign national may be liable for penalties.

- **Philippines.** The immigration regulations of the Philippines do not provide visa options for foreign freelance or independent workers to conduct work activities in the Philippines without a typical employer-employee relationship, which requires an employment, secondment, or assignment agreement. All workers, including freelance and gig workers, must be sponsored by a duly registered local sponsoring entity in the Philippines to conduct the full range of work in the Philippines under either a Special Work Permit (for work under six months) or a long-term work visa (the type of which depends on the local sponsoring company's registration).
- **India.** Gig workers must apply for an Employment Visa, which requires a contract between the worker and the Indian entity. The fee being paid by the Indian entity for the work being performed must meet the minimum annual salary threshold (currently approximately US\$23,000) when prorated. Since Employment Visas are sponsor-specific, workers cannot undertake projects for multiple companies while in India. They are required to complete work for one entity and obtain a new visa in their country of residence to work for another

entity. Foreign nationals who own a legally registered company in India and who have obtained an Employment Visa via this entity can work with multiple clients, provided official contracts or agreements are available.

CAN FOREIGN GIG WORKERS LIVE AND WORK ABROAD UNDER ANY OTHER ARRANGEMENTS?

- **Digital nomad visa available only in one country.** Other than the above countries, only Estonia has specifically addressed gig workers through a “digital nomad” visa that allows work online for an employer outside the host country. This visa was implemented at the end of 2019, and it targets freelancers working mostly online who spend at least half the year traveling. It is available for a duration of up to one year and includes travel rights within the 26 Schengen countries (Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland).
- **Other types of visas that may work.** This last group of countries offers independent work, entrepreneurship, self-employment, or working holiday visas, which could cover flexible work arrangements in certain situations. Countries that offer such visas include Germany, Spain, Portugal, and Australia. However, some of these programs have strict visa durations and other factors that may limit the usefulness of this visa for certain flexible work arrangements.
- **Working on a tourist visa.** When foreign nationals work under a tourist visa—either because the immigration system does not provide for a work authorization that fits the workers’ conditions or needs or some other reason—they can face fines, imprisonment, deportation, bans from entry, and other penalties. Some countries have specifically clarified that teleworking and other flexible work arrangements do in fact require work authorization. For example, in 2017, Spanish immigration authorities clarified that foreign nationals who telework without a work or residence permit in Spain and their employers are subject to fines ranging from €501 to €10,000 for the foreign worker and €10,001 to €100,000 for the employer.



CONCLUSION

Work rights for foreign gig workers are still a gray area in many countries’ immigration laws. But one thing is clear: The faster the growth of the nontraditional workforce, the more outdated many immigration schemes will become—if they remain based on a model of employer-employee relationships and local contracts with the on-the-ground company.

To keep up with the projected growth of this sector of the workforce, immigration systems will need to either create special freelance visas or make current work authorization programs more flexible to take advantage of a large pool of available international talent and their inevitable spending in the country in which they reside. Over the next 18 months, we believe countries will develop increasingly innovative immigration systems that not only allow them to take advantage of the gig economy, but also remain globally competitive in attracting foreign talent. *M*

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