

## State quota: 2009

Under standard procedure, in order to be able to employ foreign individuals in 2009, employers had to submit their quota applications prior to May 1, 2008 reporting the number of foreign citizens they anticipate hiring in 2009, their nationalities, and the positions in which they expected them to be required.

By concession, a second window of opportunity for the submission of new (or revised) forecast applications was permitted from September 2008. Further 2009 submissions were allowed under separate concession, between January and 1 May of 2009.

Quotas allocated from the first group of allocations were allocated across the summer and autumn of 2008, but few if any of the required notifications to applicant employers were made, either confirming the awarding of quotas or advising that they had been rejected. These were held in a central database at the FMS.

This information, together with limited updates from the second window were then consolidated into the Order of the Federal Employment Service (Rostrud) № 45 of February 20, 2009 (Order № 45). Since February this new database has been the starting point with work permit applications. It seems that it almost matches the previous FMS database, although there are some limited examples of companies that had quota in the old system and do not in the Order № 45 version, and that there are also some limited updates for revised or new applications last autumn. To our knowledge, despite the encouragement by concession to submit revised applications for 2009 this spring, virtually none of these seem to have been considered and included in the Order № 45 database.

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Companies employing foreign nationals in 2009 may therefore loosely be divided in four general groups:

**1. Companies that submitted 2009 forecast applications prior to May 1, 2008**

Information about these companies and the number of foreign nationals they anticipate employing should already be included in the Order N° 45, and this may and should be examined. In theory the numbers, nationalities and job positions should match those applied for, but there are multiple instances where this is not the case. As far as we can discern, the majority of differences, at least for executive-level foreign nationals, seem to be from genuine errors rather than from deliberate attempts to exclude foreigners.

If a company does have an issue where the quota applied for is lower than or different in composition to that listed in the Order N° 45 database, or they find themselves absent, then they should immediately communicate with the authorities in this respect and clarify the reason for non-approval. Further, depending on the reason, the company may argue with the authorities the non-inclusion in the state quota for 2009. Such right is defined in the Decree No. 783 of the Government of December 22, 2006, though exactly how such arguments may be effected in a manner that is practically meaningful is not quite so clear.

**2. Companies that submitted (or amended) their 2009 forecast applications in the period September - December, 2008.**

In theory, these changes should be included in the Order N° 45 database, or the company should have received a notification that their application was not approved. However, in reality the occurrence of formal notifications has been poor, and not all the autumn updates or submissions have been considered. Employers should nonetheless review the Order N° 45 database to see where they stand.

If a company is disappointed and finds it has lower quota or none at all, then it may still seek to argue as to why approval has not occurred. However, unlike the submissions prior to 1 May, any submissions made after that time have no set date by which the inter-departmental commission is required to conduct its review. Hence the authorities are technically within their rights to state that they have not yet assessed the submission. With the autumn changes our sense is that some have indeed been looked at, and hence a "no-deadline" response, whilst technically valid, is more of an excuse, rather than the real reason. What was clear by the autumn was that the economic crisis was going to affect Russia, and hence a much greater focus on limiting the approval of permissions for foreign nationals to work was already in place.

**3. Companies that submitted (or amended) 2009 forecast applications in the period January - May 1, 2009.**

Currently, Decree No. 783 states the procedure for the review of 2009 new or corrected quotas applications by the employment authorities, who must either approve or reject the applications if they consider certain applications for hiring foreigners as unnecessary for the particular region. Also, based on this Decree, employers must be notified about any full or partial rejection of a quota application within 10 days of such a decision being made, or within a month of a positive decision made.

However, it seems clear that the information on applications submitted in the period January - May 1, 2009 was not included in the quotas listed in the Order N° 45 database. Our understanding is that the authorities have simply not had the manpower (or arguably the will) to actually go through these revisions, as the number of overall work permit quota approvals is already at the maximum levels decided for 2009.

Based on the above situation, our understanding is that the companies should not wait for the positive or negative notifications from the authorities in respect of the submitted applications, but monitor the status of the applications independently and directly communicate with the authorities via participation in the Interdepartmental Commission in case their quota applications are not approved by the authorities and clarify the reasons of this.

**4. Companies registered after May 1, 2009 or companies whose demands for hiring of foreign nationals arose or changed after May 1, 2009.**

According to the current immigration legislation, employers still have the opportunity to apply for 2009 quota, even where such a need has arisen in the present, and all deadlines and concession periods are past. However, the exact procedure for this is not prescribed in the legislation in detail. Moreover, during our informal discussions with the employment authorities, we were informed that such applications most likely will not be specifically reviewed by them. Therefore, such companies should submit the quota applications and at the same time apply for a hearing with the Interdepartmental Commission in order to have the application to be reviewed. At the same time, the Moscow Labor Mobility Center, which is responsible for the acceptance of the quota applications in Moscow, has ceased accepting further 2009 applications at the moment and it is not clear whether this process will be restored in the future. It is unclear whether the Interdepartmental Commission would consider

an application that has not been formally submitted, as it might view this as outside of its scope of authority.

**The Interdepartmental Commission**

The Commission has been set up with the stated purpose of allowing applicant companies to come and state their case for changes to the quota allocated to them. Open sessions of this Commission take place once every two weeks. Based on recent information from the Moscow employment authorities, the number of positive approvals for change is limited. Also, the employment authorities have indicated that prior to implementation of a positive ruling, a close review of the applicant's compliance with the labor and immigration law requirements (whether the company has administrative violations, whether the company maintains the salary in accordance with the statutory level and other issues) is to be carried out.

Our own experience with the Commission bears out the reports we have had from the authorities. It does meet, and we have seen some positive outcomes from the hearings. However, the questioning of applicants is short and to the point, and it appears that an employer needs to have a clear and well founded case to put forward as to why the approval of additional foreign national employee quota will be of wider benefit, be it social or economic, rather than just to the benefit of the applicant organization. Cases put before the Commission can therefore be rejected as well as accepted.