

How Can American Companies Staff Projects In Iraq in the Current Environment?

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I have just returned from a trip to Iraq in which I was able to visit the oil fields of Basrah, the government offices in Bagdad and the Ministry of Oil in Irbil. While I have personally observed that there are still significant security issues in segments of Iraq, economic activity and infrastructure continues to develop. The ride from the Bagdad airport into the city center was tranquil and surprisingly pleasant driving past sprinkler systems watering gardens growing in the well-manicured esplanades. The city workers and people on the streets of Bagdad seemed more at ease than in some of my trips to more tense locales closer to home in the western hemisphere. Irbil, in the far north of Iraq, could be confused for any number of European cities and Basrah, in the far south, was bustling with construction. There is particularly strong growth and significant potential in the areas of reconstruction and energy as Iraq's government is focused on rebuilding the country's essential infrastructure and utilities.

Iraq is blessed with vast reserves of oil and natural gas and sits on 115 billion barrels of proven reserves. Iraq has demonstrated sophistication in courting international investment and expertise in order to support its economy and recognizes the value of western companies willing to invest in Iraq and bring much needed technology and skills to bear on the existing energy infrastructure. The Iraqi government has prioritized Energy production projects as critical to the national interest as the means to fund a defense against its security challenges. The Ministry of Oil (MOO) has announced plans to triple production of oil by 2018 and is counting on the skill sets of specialized engineers and experienced technicians employed by international engineering companies to return oil production to pre-war levels.

I. Legal Structure for Securing Work Authorization in Iraq

Iraq is a civil law country. The Parliament legislates laws on specific matters, and then the Council of Ministers should issue regulations designed to implement the laws. Unfortunately, the lack of implementing regulations, thus far, can lead to inconsistent interpretation and contradictory instructions amongst and between the various government agencies charged with implementing the laws governing the entry of foreign professionals to work in Iraq and assist with the reconstruction and modernization of the energy production infrastructure.

The fundamental Iraqi law which relates to immigration is the Stay of Foreigners Law No 118 of 1978 as amended (the "Stay of Foreigners Law"). However, since there is an absence of an implementing regulation for the Stay of Foreigners Law, many of the practical policies and procedures are neither consistent with the law, nor the manner in which engineering companies provide service to their corporate clients in the 21st century.

The Ministry of Interior (MOI) and its General Directorate for Nationality, Passport and Residency (the "MOI Residency Office") is the Iraqi government body responsible for approving work authorization in Iraq and can issue Visas upon arrival. Iraqi Consulates operate abroad under the authority of the Ministry of Foreign Affairs and can issue work authorized visas under limited circumstances.

II. The Pivotal Role of the Ministry of Oil

The Ministry of Oil (MOO) is not a visa issuing agency, but more of a "sponsor" for the oil and gas companies; the MOO reviews the visa application packets before submitting on behalf of the oil companies to the MOI for adjudication. The MOO and its Field Operating Divisions (FODs) regulate the requirements and process for obtaining a MOI-issued visa through its sponsorship. The MOI issues visas for foreign personnel of 1) private sector entities, 2) foreign government contractors and 3) Iraqi government contractors such as oil companies and service companies. Each of these categories has different policies and procedures in terms of reviewing authorities and steps before reaching the MOI.

Throughout 2014, this process was not overly cumbersome. Oil service providers could file applications directly with the Ministry of Oil and receive approval on a relatively predictable and efficient basis. This was due to the status granted to a number of service providers as "prime." This ability to file directly with the Ministry of Oil resulted in a relatively smooth process for applications with a timeline of 4-6 weeks. Unfortunately, the process for obtaining visas with the Ministry of Oil has undergone a wholesale shift in 2015 which has interspersed months of delay and many stages into the process.

III. Present Immigration Process

The current immigration process now imposes several restrictions upon oil service providers seeking to bring their employees into Iraq. Oil service providers can no longer file directly with the Ministry of Oil and must instead go through communication channels and pre-screening imposed by the Prime Contractors. The Prime Contractors are the oil companies that have secured direct contracts with the Ministry of Oil and are responsible for managing oil fields in Iraq.

The 2015 procedures require that the oil service providers split up their filings into groups based on the "prime" contract under which each employee was working. As may be human nature, each Prime Contractor has since evolved their own independent internal visa process which entails specific instructions and processes which must be followed in order to file a visa application. Once all of the Prime Contractor's requirements have been met, the visa application materials are submitted to the point of contact at the Prime Contractor, who then submits directly to their point of contact at one of the State Owned Oil Companies. Additionally, each State Owned Oil Company is developing their own

independent requirements for visa applications, which could include further reporting and disclosure requirements on the filings.

The imposition of these new requirements has exponentially lengthened the visa adjudication period from a matter of weeks, to many months. The process, as evolved, now requires oilfield services subcontractors to file visa applications through their corporate customers, or the customers of their customers. The current system also envisions the employees working only on a single prime contractor's project per visa approval. This expectation is contrary to decades of energy industry practices whereby the same employee may bring expertise, proprietary technology, and processes to work on as many projects as can be scheduled before departing the country. This new interpretation could significantly impact the economics of skilled labor utilization on which the industry is based.



Having experience both with energy industry standards and the advising on immigration policy, law, and procedure, Foster LLP is working with representatives of the Iraqi government to identify procedures consistent with existing enabling legislation which can be memorialized and implemented consistently. The eventual regulations must protect the indigenous work force's right to employment and provide for the eventual localization of skills. New guidelines must also address security screening and national security while creating the framework for a fair and transparent system that allows foreign contractors to secure timely work authorization for key employees and skilled workers whose expertise is needed so urgently to rebuild Iraq.