FRENCH IMMIGRATION REFORM

Nicolas Sarkozy, French Minister of the Interior

Repression against illegals and stricter rules for family immigration, but still a haven for professionals, retirees, and students

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France, spurred by the repressive efforts of its charismatic minister of the Interior, Mr. Nicolas Sarkozy (photo) and the national concerns for security and repression of illegal immigration, has just promulgated on July 24, 2006 a broad reform on immigration that is the last in a series of laws to control and direct French immigration. The law has been criticized by a number of French associations as merely contributing to the precarious situation of illegals and establishing unnecessary burdens to family immigration.

The stated purposes of the law are to “better regulate immigration, fight against procedural fraud, and promote chosen immigration and successful integration, both in the interest of France and the interest of the country of origin.”

The reform provides for a stricter framework for aliens who seek to enter France for family reasons, while favouring access to those aliens having “skills and talents” who bring economic possibilities to France. The concept, in the words of Nicolas Sarkozy, is to move away from “burdening immigration” (immigration subie) to “chosen immigration” (immigration choisie).

This reform gives international immigration practitioners both an opportunity to consider how France is responding to its current immigration issues, as well as a review of what aspects of French immigration law remain intact. This article shall address some of the more salient points of the reform.

Restrictions on “burdensome” immigration

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The new legislation notably imposes (1) toughened rules on the need for an entry permit (Consular approval), (2) social integration criteria for persons intending to remain in France, (3) stricter family visa criteria, (4) repressive rules on illegal immigrants.

**The need for an entry permit**

A distinction is made under French law between a “visa” and a “stay document” (*carte de séjour*). The reform provides a generalization of the rule that a long stay visa, or entry permit, is required for all persons requesting a stay document. This essentially means that the alien must go through a French Consular authority and be approved to enter the country. Of course, for members of the OECD countries, including the United States, no such long stay visa is required for trips to France under 90 days.

However a long stay visa, or entry permit, is required for all persons entering France intending to remain there for greater than 90 days and/or work or study in France. While exceptions to the need for an entry permit, or long stay visa, are provided (especially for spouses of French citizens), the general rule is that a person will not be issued a stay document or *carte de séjour*, unless they have been approved by a foreign Consulate.

**Imposed social and linguistic integration criteria**

The reform also provides for criteria regarding the social and linguistic integration of persons intending to staying in France for long periods. This has become an issue both at the consular and municipal level. The draft law requires the signature of an integration contract in which the individual is required to undergo civic and linguistic training. In addition, the alien must demonstrate a “willingness to integrate”. This is indeed a strange provision which leaves a lot of discretion to both consular and municipal (Préfecture) authorities. Hence, when presenting a request for a long stay visa or stay card, the individual’s personal, family, and economic connections to France will be considered.

**Toughened family integration criteria**

The regime has been toughened for family immigration generally. The spouse of a French person is by right given a temporary stay permit (*carte de séjour*) immediately upon marriage on condition that the spouse entered France legally. However, spouses of French citizens can no longer claim a residency card (a 10 year stay card) as of right and can only request it after three years of marriage, as opposed to the two year period previously required. Moreover, in an effort to prevent marriage fraud, whereas previously a spouse of a French citizen could request French citizenship after two years of continued residence in France, this period has been extended to four years.

France has long had a very favourable framework for the reuniting of families, allowing an alien who has entered France legally to sponsor visa requests for his immediate family members. The new law, however, extends the term of the alien’s continued residence to eighteen months (instead of one year) before such a request may be made. Moreover, the economic showing required for such family sponsored immigration has been made more onerous.

**Cracking down on illegals**

Like in the United States, France has been forced to take a side in regard to illegal immigrants and has concluded on the side of prosecution. Furthermore, the draft law abrogates provisions which allowed illegal aliens to request a “family and private life” (*vie privée et familiale*) based visa after ten years of illegal presence in France, thus discouraging such extended illegal stays. Indeed following a televised hunger strike at the at the Saint Bernard Church in Paris, the legalizing of illegal aliens was allowed after ten years of continued presence in France. The abrogation of this provision will, in the
words of many protesters, result in persons remaining in the limbo of illegal status for their entire life and actually result in the proliferation of illegal aliens.

More generally, the French administration has given extended powers to the French police to raid public places, domiciles and places housing aliens and arrest persons in illegal status. Furthermore, provisions have been provided to facilitate the arrest of persons appearing before municipal authorities to request a stay document.

Nevertheless, the French Administration has temporarily tempered the repressive aspects of the law for illegal aliens with children who have been enrolled in school. Such persons had a limited time during this summer, prior to August 13, 2006, to present applications for stay permits.

**Facilitation of “chosen” immigration**

The reform continues in France’s tradition in favour of foreign students, university educators and researchers, who may at the moment of renewal of their carte de séjour request that a new stay document be given for a term of up to four years.

Young graduates continue to benefit from very favourable provisions. The new holder of a master’s degree or the equivalent may be given a work permit for six months to complete his/her training. Moreover, such aliens may be eligible for long term employment under certain conditions. Similarly, the draft law establishes a favourable regime for unpaid student internships.

The reform also seeks to integrate exceptional persons recognized for their “skills and talents”, who “is likely to participate significantly and in the long term in the economic development or intellectual, cultural or athletic achievement of France in the world or in the economic development of the alien’s home country.” Here is an example of France’s effort at achieving “chosen immigration”. Under this status, the individual is able to perform the professional’s activity of his/her choice, whether independently or in a salaried capacity. This reform is consistent with reforms since 2003 which have facilitated transfers of group executives to France and facilitated obtaining independent professional (merchant) status.

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France clearly remains a professional’s haven, and nothing in the reform should pose much problem for Americans and other OECD citizens from establishing themselves temporarily or permanently in France. France still has a very favourable framework for retirees, where unlike the United States a special visa category still exists. Nothing in the reform has changed France’s unique acceptance of same-sex couples, allowing an alien to enter into a same-sex marriage contract (PACS) to facilitate the obtaining of a visa for the alien partner, provided the economic criteria are met. However, French immigration is now subject to higher standards of formality and economic considerations, and any person requesting a travel or stay document at a consulate or Préfecture must be prepared.

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