

## HR Law Hotline

January 27, 2015

### INDIA SIMPLIFIES IMMIGRATION NORMS FOR ITS OVERSEAS CITIZENS

- Merger of Person of Indian Origin Scheme with the norms pertaining to Overseas Citizens of India
- All benefits applicable to OCIs will apply to PIO cardholders
- All existing PIO card holders will be deemed to be OCI card holders
- PIO scheme ceases to remain in effect from January 9, 2015

The Indian Government has merged the provisions of Person of Indian Origin ("PIO")<sup>1</sup> scheme with the norms pertaining to Overseas Citizens of India ("OCI")<sup>2</sup>. This welcome move is likely to streamline the immigration norms for overseas citizens.

On January 6, 2015, the Citizenship (Amendment) Ordinance, 2015<sup>3</sup> ("Ordinance") was promulgated by the Ministry of Law and Justice in order to amend the Citizenship Act, 1955 ("Citizenship Act"). As a result, the Ministry of Home Affairs issued a press release<sup>4</sup> and notification<sup>5</sup> on January 9, 2015 notifying the change. In view of the Ordinance, the PIO scheme will cease to remain in effect and the provisions relating to OCI shall be the sole immigration norms pertaining to for overseas citizens of India.

### BACKGROUND

The Government of India had originally envisaged two categories of persons, being PIO and OCI, for its overseas citizens. These categorisations provide persons having some lineage or connection with India, certain relaxations with respect to Indian immigration norms, such as non-requirement of India visa, relaxed registration requirements while in India, absence of police verification, etc.

#### PIO Scheme

The PIO scheme was formulated in the year 1999 and was subsequently revised in 2002 ("PIO Scheme"). PIO card holders were entitled to visit India without a visa for 15 years from the date of issue of PIO card and were are exempted from registration at foreigners' registration office if their stay in India did not exceed 180 days. In October 2014, PIO card holders were granted lifetime validity for entry in India and an exemption from reporting formalities, which benefits are similar to those offered under the OCI card<sup>6</sup>.

#### OCIs

In the year 2003, the Citizenship Act was amended to include provisions relating to OCIs. OCI card holders are entitled to a multipurpose, multiple entry, lifelong visa allowing them to visit India at any time, for any length of time and for any purpose. They are also exempted from police reporting for any duration of stay in the country.

Owing to different norms for these two categories, there was confusion with respect to the eligibility to apply for registration under either of the categories. Due to this, there was a necessity to streamline the immigration norms to make it easier and convenient for overseas Indians to apply for citizenship.

The Ordinance seems to have been promulgated as a follow up to Hon'ble Prime Minister, Mr. Narendra Modi's announcement during his visits to the United States of America and Australia regarding the Indian Government's efforts towards simplification of immigration norms for its overseas citizens. This change has also come through ahead of the recently concluded Pravasi Bhartiya Divas<sup>7</sup> which since the year 2003 sees a conglomeration of overseas citizens visiting India.

### IMPORTANT AMENDMENTS

The important amendments affected through the Ordinance are as follows:

- Inclusion of the following categories for the purpose of applying for an OCI card:
  - i. Great grand-child
  - ii. Minor child whose both parents are citizens of India or one of the parents is a citizen of India
  - iii. Spouse of foreign origin of a citizen of India or an OCI card holder whose marriage has been registered and subsisted for a continuous period of at least 2 years immediately preceding the date of application for OCI card.
- Clarification that if a person holding an OCI card renounces his card then the spouse of foreign origin of such OCI card holder shall also cease to be an OCI.
- Clarification that the Government may cancel the OCI registration if it is satisfied that the marriage of the spouse of

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foreign origin of an OCI (a) has been dissolved by a competent court or (b) has not been dissolved but, during the subsistence of such marriage, he/she has solemnized marriage with any other person.

- Separately and with respect to application for registration as an Indian citizen as per the Citizenship Act, earlier, it was required for (a) a person who or either of his parents, was earlier a citizen of independent India or (b) a person who has been registered as an overseas citizen of India, to reside in India for 12 months<sup>8</sup>. Through the Ordinance, Government has been granted the power to relax the 12 months period to a maximum of 30 days, if special circumstances exist<sup>9</sup>.

## ANALYSIS

The Ordinance aims to simplify and consolidate the immigration norms for overseas Indians. The rights and benefits available to OCIs will now be extended to existing PIO card holders. Accordingly, apart from other benefits, existing PIO card holders will be exempted from various procedural requirements like registration with foreigners' registration office and reporting requirement to the police. All persons of Indian origin who wish to travel to India may apply for an OCI card in order to avail the benefits enjoyed by an OCI. This is a welcome move from the perspective of all the overseas citizens of India and should go a long way in ensuring India's stronger bond with its overseas citizens.

It is important to note that an ordinance promulgated under Article 123 of the Constitution of India, 1950 has to be approved by both the Houses of the Parliament, i.e. the Rajya Sabha and the Lok Sabha, during its next immediate session. An ordinance ceases to operate at the expiration of six weeks from the reassembly of the Parliament or at such time before the expiration of the six week period when resolutions disapproving the ordinance are passed by both the Houses of Parliament. Accordingly, the Parliament will need to approve the Ordinance within the prescribed timeframe, failing which it would no longer be effective.

– Ajay Solanki & Vikram Shroff

You can direct your queries or comments to the authors

<sup>1</sup> A PIO is defined under the Persons of Indian Origin Scheme 2002 issued vide notification no. 213 dated August 19, 2002 as a foreign citizen (not being a citizen of Pakistan, Bangladesh, Afghanistan, Sri Lanka, Bhutan, Nepal and China), if:

i.) He/she at any time held an Indian passport;

ii.) He or either of his parents or grandparents or great grandparents was born in or permanently resident in undivided India; or

iii.) He is a spouse of citizen of India or PIO covered in (i) or (ii) above.

<sup>2</sup> An OCI has been defined under section 2(ee) of the Citizenship Act, 1955 as a person registered as an overseas citizen of India under the provisions of the Citizenship Act.

<sup>3</sup> An ordinance is typically promulgated by the consent of the President of India under Article 123 of the Constitution of India, 1950, in cases where the Parliament is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action.

<sup>4</sup> <http://pib.nic.in/newsite/erelease.aspx?relid=114499>; accessed on January 9, 2015

<sup>5</sup> Ministry of Home Affairs, Notification F. No. 26011/01/2014-IC. I. dated January 9, 2015

<sup>6</sup> Ministry of Home Affairs, Notification no. 25024/9/2014-F.I. dated September 30, 2014

<sup>7</sup> <http://www.dnaindia.com/india/report-pravasi-bharatiya-divas-concludes-several-nris-awarded-2051268> accessed on January 19, 2015

<sup>8</sup> Section 5, Citizenship Act, 1955

<sup>9</sup> Section 2, Citizenship (Amendment) Ordinance, 2015

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