

Employment Law Bulletin: Immigration Overview Germany

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In a globalized working environment it is more than ever important to work effectively. This includes sharing highly qualified employees at any of the company's worldwide locations. This way it is possible to get the very latest international expertise to all countries, e.g. in the course of an international expansion, a post merger integration process, or simply to train and coach local employees in the high industry and company standards. Other companies will have one or another non-European employee who should be sent to Germany. In many cases, people without German citizenship require an official permit to be allowed to work. The following overview intends to quickly summarize the regulations and exceptions that have to be observed before entry and working in Germany.

1. General Note

German immigration law is based on a system of different types of visa (Aufenthaltstitel). In general, there are no quota restrictions on certain visa or general deadlines.

2. Entry

2.1 EU nationals / new EU member states / European Economic Area / Switzerland

EU nationals (as well as citizens of the EEA and EFTA member States) are not required to have a permit or visa for entering or remaining in Germany. In case these nationals remain in Germany they must register (as any German as well) with the respective municipal authorities at their residence.

2.2 Privileged third-countries

Nationals of certain third countries may also enter without a visa (Annex to council regulation EC 539/2001) for a maximum of 90 days without being obliged to have previously obtained a visa. Certain nationals may enter Germany without a visa for a period longer than 90 days (Australia, Japan, Canada, South Korea, New Zealand and the United States). In these cases a residence permit can be obtained after a visa-free entry within three months of entry. Without an additional work permit, however, these privileged nationals are not permitted to work in Germany.

2.3 Other third-country nationals

To enter Germany, all other third-country nationals must have previously obtained au-

thorization, e.g. a visa, a residence permit or permanent residence. The German embassies or German representations in the third-country national's home country and in his or her place of residence must be contacted prior to entry. Please note that a Business (Schengen-) visa does not entitle the holder to work in Germany.

2.4 Privileged industries / professions

For certain industries / professions (e.g. academic research and development, teachers, cooks, international sportsmen, international road/air traffic), visa facilitations exist by way of special visa.

3. Working in Germany

3.1 EU nationals / new EU member states / European Economic Area / Switzerland

According to the principle of labor mobility, EU nationals are free to work and thus freely move and reside within the EU. For the new member states (joined on May 1, 2004 and January 1, 2007) transitional regulations still apply. EEA and EFTA nationals enjoy similar rights.

3.2 Privileged third-country nationals

Certain nationals can enter and reside (not work) in Germany without a visa (Andorra, Australia, Canada, Israel, Japan, Monaco, New Zealand, San Marino, United States). They can apply for a residence / work permit after entering Germany.

3.3 Other third-country nationals

Remaining third-country nationals are required to contact the German embassy or diplomatic representation in their home country that is competent for their place of residence. Those nationals must file for a work / residence permit before entering Germany. In case an approval of the German Federal Employment Office is required (see 4.2 below), the Federal Employment Office will be included in an internal process. In practice, it can be useful to also already simultaneously contact the local aliens' office in Germany.

4. Work permit

4.1 General conditions

General conditions for a work permit include that the applicant has sufficient means of subsistence, his identity / nationality is established, and no grounds for deportation exist.

The work permit can be granted for a period of three years. However, in practice it is often only granted for an initial term of one year. The work permit can be limited with respect to the employer, specific job or job area, working time and location, in the individual case.

4.2 Approval of Federal Employment Office

As a principle, the foreign applicant must have a specific job offer (draft employment agreement including a job description) in Germany.

As a general rule, the grant of a work permit is dependent upon an individual assessment of the labor market, unless German immigration law provides that no such approval is required. Such assessment (labor market test) is carried out by the Federal Employment Office. In particular the following points will be taken into account:

- No adverse consequences for the (local) labor market
- No availability of a German / EU worker with similar status and qualifications
- Justification with respect to labor market policies and integration aspects
- Employment terms for foreigners are no less favorable than for comparable German workers.

In the following exemplary special cases for an applicant with a so called qualified education, the labor market test is not required (the approval of the Federal Employment Office, however, still is). The requested work permit must then be aimed at a so called qualified employment in Germany, such as:

- Executive personnel and specialists with special company knowledge
- Specialists, in particular IT specialists
- Intercompany exchange of specialists in international groups
- Long-term deployment (up to three years) for repair, maintenance and set up of machinery, constructions, IT and programs in Germany.

In general, a work permit application of a national of Andorra, Australia, Israel, Japan, Canada, Monaco, New Zealand, San Marino and the United States is handled favorably by the Federal Employment Office.

4.3 No Federal Employment Office approval

In the following exceptional cases (again, non exhaustive), a prior approval of the Federal Employment Office is not required:

- Executives (e.g. executive and management personnel with general power of attorney; legal representatives of a legal entity)
- Commercial delegates negotiating contracts for a period of up to three months within a 12 month period
- Scientists and researchers at research and science institutes and universities
- Short-term deployment (e.g. service and maintenance of machinery or IT by specialists) for a period of up to three months within a 12 month period

Spot light: Highly qualified individuals/professionals and Blue Card EU

A highly qualified individual may apply for a (permanent) residence and work permit (no limitations with respect to employer, etc.) from the onset. Approval of the Federal Employment Office is not required. Highly qualified individuals in terms of immigration laws are: (i) scientists with special knowledge, (ii) professors and lecturers of exceptional standard or (iii) executive personnel and specialists with an income (in Germany) at least in the amount of the German social security contribution ceiling (EUR 67,200 gross p.a.). Individuals who do not earn this annual salary can obtain a temporary visa for 5 years.

With the EU 'Blue Card', a new residence / work permit introduced in 2012, the immigration of third-country highly qualified employees is further facilitated. The main requirement is a university degree (acknowledged foreign university degree, German university degree or similar foreign degree). The Blue Card applicant must have a German job offer. The required income was significantly lowered vis-à-vis other specialists and must amount to EUR 44,800 gross p.a. In some so called 'shortage of labor industries' (e.g. engineers, IT-specialists and science) the required annual income may even be as low as EUR 34,944 gross. The term of residence and employment under the Blue Card is limited to four years. A Blue Card holder becomes eligible for a (permanent) residence permit following two years of employment that was subject to social security contributions in Germany.

5. Settlement permit

Under specific circumstances, a foreign national may be granted a settlement permit, allowing him to work and reside for an unlimited term in Germany. The principal requirements for a settlement permit are (excerpt):

- Holding of a residence permit for five years
- Security of livelihood and private means
- Payment of statutory social security contributions (or similar scheme) for a minimum of 60 months
- Work permit and other required permits for economic activity
- Adequate knowledge of the German language

- Basic knowledge of the legal and social system of Germany
- Sufficient living space for oneself and household members.

6. Investors / Entrepreneurs

There is no specific “investor visa”. Investors or entrepreneurs may apply for a self-employed visa. Precondition for such a visa is, in general that there is a higher economic interest or a certain local requirement for service or investment, that the activity of investor/entrepreneur will have positive effects on the economy and the applicant holds sufficient capital. Aforementioned requirements can be considered complied with, if (i) the investment amounts to at least EUR 250,000 and (ii) the activity of the investor / entrepreneur leads to the creation of at least five jobs. Nationals of Japan and the United States are privileged in this process.

7. Authorities and Procedure

The German diplomatic representations abroad, the local aliens’ offices in Germany and the Federal Employment Office (if involved) are the competent authorities with respect to the immigration process. In practice, it is recommended to contact the German embassy or consulate (or the local aliens’ office in Germany) to coordinate with respect to documentation and requirements. In Germany, the local aliens’ offices are responsible for the visa extension.

On a procedural note, it is important to correctly specify the intended purpose of the stay when applying for the visa. The granting of a permit for a different purpose after entry is only possible in exceptional cases. At least one personal appointment will be necessary, in the course of which a sample of the applicants fingerprints will be taken (the biometric acquisition is expected to be phased in by region in the years 2011 to 2013).

In general, the following documents are required (may vary subject to permit requested):

- Valid passport (at least three months of validity beyond the entry visa)
- Visa application form
- Curriculum vitae
- Identification card / passport
- Photographs (two, biometric)
- Professional credentials and certificates (e.g. diplomas)
- Information about intended employment (job description, draft employment contract) Business references (letter from employer; invitation from the respective German company or organization, stating that it will bear all accumulating expenses)

- Sufficient health insurance coverage during the period of stay
- Sufficient private financial means

The application process may take between 8 to 12 weeks. However, in case of early personal contact with the respective authorities and professional preparation (e.g. through a German lawyer) much shorter processing times (e.g. three days for a specialist work visa in individual cases) are possible.

The administrative fee is in every case EUR 60.

About m law group

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Please do not hesitate to contact us for any comments you might have or if you require more detailed information.

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