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The issuing of work permits

Before taking up and engaging in salaried employment, foreigners from non-EU countries must first obtain a residence permit containing a work permit. In other words, they must have a residence permit which grants them permission to exercise an employed activity. This leaflet explains the rules companies must observe when employing foreign staff from non-EU countries.

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Prerequisites for a work permit

The legal prerequisites for the issuing of a work permit and the corresponding visa are to be found in Art. 39 of the Residence Act in conjunction with the [Employment Regulation](#). A work permit is generally issued if the following conditions are met (Art. 39 Residence Act):

- a concrete job offer has been made;
- no adverse consequences for the labour market arise from the employment of foreign staff;
- no privileged employees (i.e. Germans, EU citizens, citizens of EEA States) are available for the job;
- the foreign worker is not employed on less favourable terms than those which apply to comparable German workers.

Workers who want to come to Germany and employers may use the [migration check](#) service of the Federal Employment Agency to find out whether in their circumstances it is possible to obtain a work permit.

Filing an application

Applications for entitlement to take up gainful employment (a work permit) must be filed **with the Aliens Authority**. The completed application form should always be accompanied by a binding job offer or an employment contract as well as a job description completed by the company. The 'Application for entitlement to work' (*Antrag auf Erlaubnis einer Beschäftigung*) and 'Job description' (*Stellenbeschreibung*) forms can be downloaded directly from the [website of the Aliens Authority](#). The Aliens Authority and the Federal Employment Agency will then conduct an internal consultation process to discuss the merits of approving the application.

Important: The employer for whom the foreigner is to work must inform the Federal Employment Agency about his/her remuneration, hours of work and other working conditions (Art. 39 Para. 2 Sent. 3 Residence Act). A fine may be imposed if inaccurate information is supplied (Art. 404 Para. 2 No. 5 Book III of the Social Code (*Sozialgesetzbuch*)).

Approval by the Federal Employment Agency

Exceptions from the requirement for Federal Employment Agency approval

A residence permit for the purpose of gainful employment (work permit) may be issued to foreigners entering the country without approval from the Federal Employment Agency, provided the employment does not require approval under the Employment Regulation (BeschV). According to this regulation, the approval is not required for the employment of persons in the **following categories**:

- **Interns** whose internships are prescribed as a compulsory part of a study or training programme; interns on EU-sponsored programmes or international exchange programmes of up to one year in length arranged with the consent of the Federal Employment Agency; and interns with specialist and management skills receiving

grants from public German funds, European Community funds, or funds from intergovernmental organisations (government interns);

- **Senior management staff** such as executives with a general power of attorney or a power of procuration; members of the body of a legal entity authorised to act as legal representatives; partners in a general partnership or members of another group of persons if they are appointed by law, statute or articles of association to represent the group of persons or to act in a management role; executives of a company which also operates outside Germany for employment at board, directorial or management level or for an activity in another executive position;
- **Academic and scientific personnel in higher education or research institutes;** language teachers; third-country scholars; engineers and technicians working as technical staff in the research team of a third-country scholar; teachers at state schools or state-approved private schools;
- **Persons** employed on business abroad by an employer based in Germany; persons who conduct meetings or negotiations, sign contracts or are planning to purchase goods in Germany intended for export for an employer domiciled abroad; in both cases, they may not remain in Germany for more than three months within a twelve-month period;
- **Particular professional groups** (Art. 7), including professional sportsmen, professional coaches, photo models, promotion staff, and male and female catwalk models;
- **Journalists** working for an employer domiciled abroad, whose work is approved by the Press and Information Office of the German Federal Government;
- **Persons** whose work is not intended primarily for profit, for instance volunteers and those employed by charity and religious organisations;
- **Students and scholars** from foreign universities and technical colleges seeking vacation work lasting up to three months within a twelve-month period which is arranged by the Federal Employment Agency;
- **Employees** posted to Germany for brief visits amounting up to three months within a twelve-month period by their foreign-based employers to carry out assembly, maintenance or repair work on machinery, equipment or electronic data processing programmes used for commercial purposes; to accept machinery, equipment or other items which have been purchased or to be instructed in their operation; for dismantling work; to construct, oversee and dismantle trade fair stands; to complete courses on company premises in accordance with the terms of export supply contracts and licensing agreements;
- **Persons** involved in the preparation, execution and follow-up work of international sporting events or participating in them, in particular representatives, employees and appointees of associations and organisations, including referees and their assistants, players, and paid staff of the participating teams, representatives of the official association partners and official licence partners, media representatives including technical personnel, and employees of TV and media partners;
- **Mobile workers** (Art. 13) whose employer is domiciled abroad and who are involved in cross-border road transportation under specific conditions;
- **Crew members of seagoing vessels which operate internationally,** persons authorised to provide piloting services under the German Sea Pilot Act, the technical

staff of inland waterway vessels operating across borders, the waiting and service personnel required to attend to passengers on passenger vessels, and aircraft crews with the exception of pilots, flight engineers and flight navigators where the company has its registered office in Germany;

- **Employees** who have been sent to the Federal Republic of Germany temporarily to provide a service by an employer who is based in an EU Member State or a state that is a party to the EEA Agreement, provided the residence permit is issued for a period no longer than six/twelve months and they were actually and properly employed by the employer for at least six/twelve months beforehand in the country where the company has its registered office.

In addition, the Federal Agency is not required to review the situation for **prioritisation of access to employment** under Art. 39 sec. 2 Nos. 1 and 2 of the Residence Act in the following cases:

- Qualified skilled workers who engage in an activity for up to three years as part of an **exchange of staff** within a group or company which operates internationally, as well as skilled workers normally employed abroad who are sent to the German division of the group or company or company group that operates internationally, if the activity is indispensable to the preparation of **projects abroad**, and the employee is actively engaged abroad in carrying out the project and has qualifications comparable with those of a German skilled worker as well as specialist knowledge, in particular knowledge specific to his own company (Art. 31 BeschV).;
- Activities relating to the assembly of prefabricated and turn-key self build kit houses (Art. 35 BeschV) ;
- Assembly and dismantling work by employees posted for extended periods (Art. 36 BeschV).

In addition, **foreigners already living in Germany** do not require approval for certain occupations, including the following:

- Working for the business of an employer who is a family member (spouse, registered partner, parent or child), provided they live in the same household together;
- Occupations of individuals who are employed temporarily for health or reintegration purposes, for their moral improvement or for their educational development,
- All occupations listed in Art. 2 of the Employment Procedure Regulations:

Approval in the case of certain professional groups

As a matter of principle, certain professional groups are treated as a special case when it comes to the requirement for approval, **depending upon the qualifications of the applicant**.

Exception: No differentiation according to professional group or level of qualification is made in the case of foreigners already living in Germany, unlike in the case of recent immigrants. Consequently, foreigners living in Germany can in principle engage in any occupation, although this is subject to the approval by the Federal Employment Agency.

Occupations requiring *qualified vocational training*

A residence permit which allows the holder to engage in an occupation which requires **qualified vocational training** may only be issued to recent immigrants for occupations in a professional

group approved by statutory order. The Employment Regulation (BeschV) lists these individual professional groups.

Occupations requiring at least two years of training

The Federal Employment Agency may grant approval for occupations requiring at least two years' training for the following professional groups:

- Temporary permits for language teachers (up to five years) and speciality chefs (up to four years), IT specialists and academic professionals, executives and specialists, and skilled social workers employed by a German agency for social work employing foreign employees and their families, who have an adequate command of the German language;
- Nursing staff, in particular public health nurses and hospital nurses, paediatric nurses and geriatric nurses trained to the same statutory professional standards which apply in Germany and who have an adequate command of the German language, provided the persons concerned have been recruited on the basis of a procedure and selection process agreed between the Federal Employment Agency and the employment services in their country of origin.

Occupations requiring no qualified vocational training

A residence permit which allows the holder to engage in an occupation which requires **no qualified vocational training** may not be issued to recent immigrants unless agreed by intergovernmental agreement, or if a statutory order allows approval to be granted for a residence permit for this occupation.

The Federal Employment Agency may grant approval for occupations requiring no vocational qualification for the following professional groups:

- **Seasonal workers** in the agricultural and forestry sectors, the hotel and catering industry, fruit and vegetable processing, and sawmills, working an average of at least six hours per day for at least thirty hours per week, up to a total of four months per calendar year, provided the persons concerned have been recruited on the basis of a procedure and selection process agreed between the Federal Employment Agency and the employment services in their country of origin. Staff may be employed for no more than eight months per calendar year by a business, with the exception of those involved in the cultivation of fruit, vegetables, wine, hops or tobacco;
- **Fairground entertainers' assistants** for up to a total of nine months per calendar year, provided the persons concerned have been recruited on the basis of a procedure and selection process agreed between the Federal Employment Agency and the employment services in their country of origin;
- **Au-pairs** for positions lasting no more than one year, provided the person concerned has a basic command of the German language and is no older than 25;
- **Domestic personnel** to engage in full-time employment which is subject to statutory insurance for up to three years in the households of persons requiring nursing care according to the definition in book eleven of the German Social Code (*Sozialgesetzbuch*), provided the persons concerned have been recruited on the basis of a procedure and selection process agreed between the Federal Employment Agency and the employment services in their country of origin;

- **Domestic staff**, who are working in Germany for a period of up to two years for an employer or on behalf of a company domiciled abroad (posted workers), provided the posted workers employed the domestic staff in their household to care for a child under the age of 16 or a member of the household requiring nursing care prior to the deployment for at least one year;
- **Persons working in the culture and entertainment sector**, in particular those engaging in an art-related or artistic occupation or as an assistant who is essential to the presentation/performance; persons sent to Germany to take part in guest performances or foreign film or television productions for periods exceeding three months;
- **Fixed-term practical activities** that are a prerequisite for the recognition of foreign educational degrees.

Approval regardless of qualifications

By way of derogation from these regulations, the Federal Employment Agency may approve the issuing of a residence permit for work purposes with or without qualified vocational training in the following cases:

- the temporary employment of persons of German ethnicity
- the employment of the citizens of certain states: Andorra, Australia, Canada, Israel, Japan, Monaco, New Zealand, San Marino, and the United States of America
- frontier workers pursuant to Art. 12 sec. 1 of the Ordinance Governing Residence (AufenthV)

Other exceptions

By way of exception, a residence permit may be issued on a discretionary basis for the members of a profession whose employment is not subject to statutory order. However, the employment of the foreign worker must be in the **public interest, in particular, there must be a regional, economic or labour market interest**.

Refusal and withdrawal of approval by the Federal Employment Agency

The approval of the Federal Employment Agency **must be refused** in the following cases:

- the employment relationship came about as the result of an illegitimate recruitment process or advertisement.
- the foreigner wishes to be employed as a temporary agency worker (Art. 1 sec. 1 of the Temporary Employment Act (Arbeitnehmerüberlassungsgesetz)).

Approval **may be denied** if:

- the foreigner has violated relevant legal provisions (Arts. 404 sec. 1 no. 2 or sec. 2 no. 2 to 13 or Arts. 406, 407 of book three of the German Social Code (*Sozialgesetzbuch*) or Arts. 15, 15 a or 16 sec. 1 no. 2 of the Temporary Employment Act);
- there are important reasons lying within the foreign individual.

Approval **may be withdrawn** if the foreign worker is employed on less favourable terms than those which apply to comparable German workers or if there are grounds for refusal.

Special regulations

Special regulations for highly-qualified persons

'EU Blue Card'

Since the summer of 2012, highly-skilled individuals have benefited from easier access to the job market in Germany. The **so-called 'EU Blue Card' ('Blaue Karte EU')** enables highly-qualified foreign employees as well as skilled workers and their families to obtain a work permit in Germany more quickly and under less stringent conditions than previously.

Applicants with a certain level of qualification whose salary in the position they are seeking to fill exceeds a predetermined threshold may apply for the 'EU Blue Card'. The residence document is then issued without the need for approval by the Federal Employment Agency (exception: applicants with a degree from a foreign university seeking employment in a shortage occupation).

Additional information on the 'EU Blue Card', in particular on the individual requirements which must be met and the application procedure, is available from our website in our [leaflet on the EU Blue Card](#) under [Doc. No. 106756](#).

Settlement permit for certain highly-qualified persons pursuant to Art. 19 of the Residence Act

In addition, a certain group of highly-qualified personnel can obtain a permanent residence permit known as a settlement permit straight away (Art. 19 Residence Act) if their integration into the German way of life is guaranteed, and they can provide an assurance that they can earn their living without state assistance.

This regulation applies particularly to:

- academics or scientists with special professional qualifications
- teachers or research staff in key positions

Bringing family members into the country

Unlike in the past, the residence permit of a family member joining a foreign worker permits him or her to take up gainful employment in a similar way without first having to wait for a certain time to elapse. This means that family members have unrestricted access to the labour market in Germany if the family member is allowed to be gainfully employed in Germany without any restrictions. Furthermore, a spouse is entitled to work unrestrictedly if the matrimonial community with the foreign worker who she/he is joining has lawfully existed in Germany for at least two years.

This document is intended to provide a short introduction to the law, and does not claim to be exhaustive.