

Austria

Executive Summary

Austrian law provides at the moment for several kinds of visas and temporary or permanent residence permits. Usually visas are less significant for doing business or employment than Austrian temporary residence permits. Residence permits are usually bound to quotas and are difficult to obtain.

Key Government Agencies

The Austrian Foreign Ministry's ("Außenministerium") embassies and consulates abroad accept applications for visas and permits and have ultimate responsibility for visa issuance.

The Austrian Public Employment Service ("Arbeitsmarktservice Österreich" or AMS) operates through local offices in Austria that have jurisdiction over work permit requests for foreign nationals.

Residence permits are handled by a number of governmental entities. The Governor of a federal province ("Landeshauptmann") is competent for all residence entitlements and documentation thereof. In Vienna, the magistrate ("Magistrat") is competent. The Federal Minister of the Interior is the authority for appeals and for certifications of educational and research institutions. The district administration authority ("Bezirksverwaltungsbehörde") handles the prosecutions. The regional competent agency is the one where the foreigner has the place of residence or planned place of residence. In case of an unknown place of residence or terminated residence, the responsible authority is that which issued the last residence permit or which would now be functionally competent.

Current Trends

On January 1, 2006, a new Foreigner's Act ("Fremdenrechtspaket 2005") entered into force. Changes became necessary due to certain political intentions of the Austrian Government and in order to implement an EC-Directive relating to family-reunion. Therefore, the Austrian legislature enacted two new, independent laws, the Foreign Police Act ("Fremdenpolizeigesetz 2005 FPG"), dealing mostly with asylum and visa matters up to six months, and the Residence Act ("Niederlassungs- und Aufenthaltsgesetz NAG"). The latter is of utmost importance for any foreign company wishing to post employees to Austria for more than six months.

Since September 1, 2009, there are new legal provisions in force which facilitate active partners of a partnership or corporation from a Member State the access to the Austrian labor market.

Business Travel

Travel Visa C

The most common visa or entry permit for tourists and "business" visitors is the Visa C ("Schengen-Visa"), which allows traveling within the European Union (EU) and staying up to 90 days within a period of 180 days in Austria. This visa does not permit employment.

Visitor Visa D

Visitor Visa D is available for visitors coming for more than 90 and up to 180 days as either a tourist or on business. Like the Visa C, the Visa D does not authorize employment in Austria.

Visitor-Travel Visa C+D

Since 2006, the Visa C+D has been available for temporary work under specific circumstances on short-term employment for up to 3 months within a period of half a year and, furthermore, it authorizes residence within the Member State that issued the Visa for more than 3 months. Due to a change in law, since April 5, 2010, no further Visa C+D will be issued. Already issued Visas, however, remain effective.

Visa Waiver

Visitors from certain countries do not need an entry permit (visa) to stay in Austria as either tourists or on a business trip for a period of up to 90 days. Such visitors are not allowed to take up local employment.

The following countries currently do not need a visa: Andorra, Argentina, Australia, Antigua and Barbuda, Barbados, Bahamas, Belgium, Brazil, Brunei, Bulgaria, Canada, Chile, Croatia, Costa Rica, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, EU, Finland, France, Germany, Great Britain and Northern Ireland, Greece, Guatemala, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Macau, Macedonia, Malaysia, Malta, Mauritius, Mexico, Monaco, Montenegro, The Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Korea, Romania, San Marino, Serbia, Seychelles, Sweden, Switzerland, Singapore, Slovakia, Slovenia, Spain, St. Kitts and Nevis, United States of America, Uruguay, Venezuela.

However, citizens from Macedonia, Montenegro and Serbia must hold a biometric passport in order to be waived from the visa requirement.

Training

Employees sent to Austria for training purposes have to obtain either a Visa C or a Visa D (which is seldom issued) or a temporary residence permit as “special cases” as described below. Please note that according to the Austrian Foreign Employment Act (“Ausländerbeschäftigungsgesetz AuslBG”), further requirements have to be met. Voluntary services, a professional or holiday traineeship or a joint venture need to be registered with the AMS at least two weeks before the beginning of the employment period by the trainer.

Employment Assignments

Temporary Residence Permit (“Aufenthaltsbewilligung”)

Foreign nationals coming for a period exceeding six months must apply for a temporary residence permit. Temporary residence permits are issued by the authorities in Austria and are solely issued for stays exceeding six months.

All temporary residence permits share a number of common requirements. Applications must be submitted in person and require a passport valid at least three months beyond date of travel. Applicants must have proof of sufficient funds (solitary person/partnership; € 783,99/€ 1.175,45 as monthly net income), accommodations, and health insurance.

Applications for a residence permit are filed with the Austrian Embassy or Consulate General before departure for Austria. In general, travel to Austria is not permitted until the application is approved. It is not permissible to simultaneously file several applications or applications with differing purposes for residence.

The residence permit, once issued, is to be picked up at the issuing authority in Austria. Further, almost all foreigners who both apply for a residence permit and plan to stay in Austria for more than 12 months within a period of 24 months must sign an Integration Agreement (which proves that they have sufficient knowledge of the German language).

The types of Temporary Residence Permits most commonly used by multinational companies on global mobility assignments are:

Employee Sent on Temporary Duty (“Betriebsentsandter”)

This is for foreign nationals sent by their company as a delegate. A work permit is usually required. There is no visa for family members.

Rotational employee - company representative/manager/executive (“Rotationsarbeitskraft”)

This is for foreigners sent by multinational companies to work in Austria, but can be sent to different places as the company decides. A work permit is required. There are visa benefits for family members.

Self-employment (“Selbstständiger”)

This is for foreign nationals coming to fulfill a contract for a specific job.

The duration must be longer than six months. There is no visa for family members.

Researcher (“Forscher”)

This is used for researchers at certified research institutes only and has specific contract requirements. There are visa benefits for family members.

Student (“Studierender”)

This is for students at a university. If it is a private university, it has to be accredited. For an extension of this permit it is important to prove the success with his studies. He can bring his family and has to proof sufficient funds (2010: at least € 432.97 as monthly net income until the student has reached the age of 24). Furthermore there are different possibilities of working on a temporary work permit (“Beschäftigungsbewilligung”) within limited salary levels.

Foreign Placement Permits and Work Permits

Whereas working in Austria as an employee is limited as described above, providing services in general is not, although restrictions might apply due to trade law. That means that companies may perform “projects” in Austria. In any case, a foreign placement permit (“Entsendebewilligung”) issued by the local AMS office has to be obtained by the contracting party ordering the “project.”

Two conditions have to be met. First, the “project” cannot exceed six months and, second, the employee must not work in Austria more than four months during the whole project duration. If these conditions are not met, a work permit (“Beschäftigungsbewilligung”) is required.

It is important to emphasize that the work permit requirement cannot be avoided by claiming a chain of four month “projects” to attempt continuous use of the foreign placement permit. Austrian courts would consider this an inadmissible circumvention of mandatory provisions.

Foreign employees from third countries (including the new EU member states) working for a company that is situated in the EU are required to register with the AMS (“EU-Entsendebestätigung”), if they are assigned to a company with its seat in Austria.

Concerning salary, Austrian law stipulates that if an applicable collective bargaining agreement (CBA) for the business of the sending company exists in Austria, salary has to be at least the minimum salary as stipulated by the CBA. If no applicable CBA exists, the average salary of a comparable peer group of Austrian employees has to be taken into account.

Non-EU citizens may generally only be employed in Austria if the employer has either obtained a work permit (“Beschäftigungsbewilligung”) or the employee has been granted a certificate of dispensation (“Befreiungsschein”). In case of violation of those prerequisites, the district administration authority (“Bezirksverwaltungsbehörde”) may levy fines upon the employer.

There are special work permits for seasonal workers, specialists, nursing staff and university students to obtain.

Work permits may be issued if there are no other important public or economic reasons to preclude employment of a foreigner. Public reasons include the possibility to fill the job which the foreigner applied for by using an Austrian employee. Thus, no equally qualified and currently unemployed Austrian citizen should be registered with the AMS when requesting a work permit.

Other Comments

Settlement Permit (“Niederlassungsbewilligung”)

Non-EU/EEA citizens can immigrate to Austria upon receipt of a settlement permit.

Key Employees and Top Managers

For key employees (“Schlüsselkräfte”) obtaining a work permit is easier. An employee might qualify as a key employee if he is

specially educated (*i.e.*, university or other specific degrees) and receives salary in a certain amount (2010: at least € 2,466 gross monthly). Further criteria have to be met. A residence permit for a key employee may now be issued for up to 18 months and may be extended for several reasons. The residence permit allows the key employee to bring his spouse and children, based on the key employee - permit. Obtaining a key employee-permit is usually linked to the quota limits on the amount of permits issued per year. The employer must have a registered office in Austria.

Family members of employees already lawfully working in Austria who are not EU citizens may only acquire an Austrian residence permit derived from their relatives, if their relative's residence permit is of an unlimited nature. If a residence (and work) permit has only been issued for a limited period of time, relatives wishing to join the employees in Austria have to file a separate visa request and are usually only admissible from outside of Austria.

Top Managers, their spouse and children, as well as their support and household staff, are exempt from the Austrian Foreign Employment Act. This category consists of executives of the board or management level of companies, as well as international renowned scientists who receive a salary in a certain amount (2010: at least € 4,932 gross monthly). Support and household staff consists of secretaries, assistants, *etc.*, as long as they are employed by the executive.

Key employees as well as Top Managers and their family members do not have to proof the integration criteria as prescribed in the Integration Agreement. Apart from these restrictions there are no comparable quota limits in force for Top Managers.

Assignment and Employment within a Corporate Group (Lease of Employees)

Non-EEA employers may generally send their employees to Austria in order to work under the direction of an Austrian company only if the local trade authority (“Gewerbebehörde”) approves the lease of employees and confirms that:

- these employees are significantly well-qualified for the proposed tasks (*i.e.*, the employee has already held a specific position for a long period of time and therefore is “significantly well-qualified”) and the assignment of such employees is required due to labor market and economical reasons.
- employment is only possible by sending employees from foreign countries (*e.g.*, no equally qualified Austrian employees would be available on the Austrian labor market); and
- employment of those employees does not jeopardize payment and working conditions of comparable Austrian employees.

Austrian law stipulates that the employees are entitled to adequate payment and working conditions. Likewise, the assigned employees will be entitled to the same minimum wages provided by the CBA to comparable Austrian workers. “Wage” also includes supplementary grants and other benefits, but in general not compensation for expenses.

Applications for the assignment of employees undergo strict scrutiny of the Austrian authorities and permits are seldom issued. However, the lease of employees in the European Economic Area does not require the prior permission of Austrian authorities. But, in such case, the notification of the assignment to the local trade authority is required.

Furthermore, Austrian law contains an important exception concerning corporate groups. The normal requirements do not have to be met if employees are leased within a corporate group, when both, the assigning and the receiving company have their seat in the European Economic Area (EEA). Thus, no special permit by the authorities is required. However, employees who have been sent from one corporation group member to another within the EEA are entitled to adequate payment according to applicable CBAs and further provisions of mandatory Austrian Law regarding vacation and working time apply to them.

Additionally, any lease of employees requires the agreement of the affected employee to being sent to another company or corporate group member in advance, even if employment is only planned for a short-term-period.

Citizens from the European Economic Area

Citizens of the EEA and Switzerland may be employed in Austria easily. They do not need any special residence or work permit, however, the general regulations on notifying the Austrian authorities of their address in Austria still applies.

Employment of employees from some new Member States is possible under certain circumstances in Austria. During a specific transitional period, generally all citizens from the new Member States (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia) need a work permit (“Beschäftigungsbewilligung”), if they want to work in Austria and possess a freedom of movement certificate. A work permit is usually difficult to obtain, particularly regarding mandatory consent by the responsible AMS office. The AMS is obliged to refuse its consent if Austrian employees would be equally suitable to work in the proposed position.

EU/EEA citizens making use of their right to free movement and their family members have to register their permanent residence with the authorities within three months if they intend to reside in Austria for more than three months. EU/EEA citizens may permanently settle in Austria if they are employed or self-employed in Austria or earn a secure living and have sufficient health insurance coverage.

Residence status or a quota-free “settlement permit for family members” (“Niederlassungsbewilligung Angehöriger”) may also be available to family members of EU/EEA citizens under certain circumstances.

Furthermore, a residence permit may apply to third countries citizens who are family members of Austrians or EU/EEA citizens as far as certain requirements are met. Such family members are, furthermore, only entitled to free movement within the EU if further prerequisites are met.