

Germany

Executive Summary

Many different kinds of people immigrate to Germany each year. The reasons for leaving their home countries vary, but most foreign nationals come for employment, business or tourist purposes. In order to enter and reside in Germany, any non-European Economic Area (“EEA”) national needs permission in the form of a residence permit for the purpose of the stay.

Key Government Agencies

Depending on their nationality and the purpose and length of their stay, foreign nationals may either require an entry clearance in the form of a visa or they may enter Germany without a visa and apply for a residence permit within Germany.

In case the foreign national is required to obtain a visa, the application is submitted to the German Embassy (“Botschaft”) or Consulate General (“Generalkonsulat”) at the place of residence abroad. Before issuing the visa, the German representation will involve the Aliens’ Office (“Ausländerbehörde”) responsible for the place of intended residence in Germany and the local Labor Agency (“Agentur für Arbeit”), if necessary, for approval. Such approval of the local Labor Agency is required for most work and employment activities that are carried out in Germany.

Foreign nationals from a privileged or semi-privileged country, which is party to a non-visa movement treaty signed by Germany, may enter Germany without an entry clearance and may submit the application to the local Aliens’ Office directly. As far as necessary, the Aliens’ Office will internally involve the Labor Agency as well.

The updated list of the (semi-) privileged countries can be found at www.auswaertiges-amt.de/diplo/en/WillkommeninD/EinreiseUndAufenthalt/StaatenlisteVisumpflicht.html.

Current Trends

According to the latest studies commissioned by the Federal Ministry of Economy, Germany is currently faced with a lack of qualified employees, which costs German business billions every year. In particular, there is a lack of skilled labor for such positions as technicians, as well as in the academic subjects of mathematics, information technology, natural science and technology. The Federal Government intends to deal with this deficit of specialists not only by a national campaign for better education, but also by considerably facilitating access to the German employment market for foreign specialists in the areas sought after.

Currently, the possibility exists for some occupational groups, as well as for highly specialized employees, to obtain a residence permit for employment purposes or even an unlimited settlement permit, without first having to go through the so-called “labor market check” by the Labor Agency.

Whilst until 2009, highly qualified specialists and managers with special occupational experience who intend to apply for a settlement permit had to earn at least double the contribution assessment ceiling of the statutory health insurance carrier (that is, currently at least EUR 90,000) annually. This income limit was decreased in 2009 to the contribution assessment ceiling (west) of the general pension insurance (at present EUR 66,000).

Citizens from the European Economic Area (EEA)

Citizens of EEA countries are, in general, free to reside and work in Germany without performing any prior formalities. Family members of an EEA-national (who are not themselves EEA-nationals) will be required to obtain an “EEA-Family Permit” to accompany or join an EEA-national who is exercising his/her rights to reside in Germany. EEA-nationals and their family members are free to work for a company or be self-employed without the need to obtain work authorization. The only obligation is to register their local address.

Besides Germany, the following countries belong to the EEA: Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

The Middle and East European countries (MOE countries) which entered the EU in May 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) and January 2007 (Bulgaria, Romania) are excluded from the right of freedom of domicile possibly for up to a maximum of 7 years as of the date of accession. They are, however, privileged in the respect that they do not need entry clearances (visas) and may apply for employment-related residence permits from within Germany.

According to treaties between Switzerland and the EU, Swiss nationals enjoy immigration rights equal to those of nationals from EEA countries as well.

Business Travel

Temporary Business Visitor

Except for nationals of non-privileged countries, business visitors are not required to obtain a visa or a residence permit if their stay does not exceed ninety days within a twelve-month period.

Anyone who enters Germany as a business visitor is expressly barred from taking employment and to do so is a criminal offence. A business visitor is defined as an individual who normally lives and works outside Germany and comes to Germany to transact business, attend meetings and briefings, for fact-finding, or to negotiate or conclude contracts with German businesses to buy goods or sell services. The visitor must not intend to produce goods or provide services within Germany.

Short Term Visa (Schengen Visa)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Germany and have, therefore, to apply for such visa at the German diplomatic post abroad.

A valid Schengen Business Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland) for a maximum period of three months within a six-month period.

Schengen Visas have to be applied for at the representation of the main destination of the intended travel or, in case a main destination cannot be ascertained, at the representation of the country of the first entry into the Schengen area.

Training

The German Immigration Act does not provide a specific visa category for foreign employees who want to receive on-the-job training in Germany. Training is considered as a kind of employment from the authorities' perspective, therefore trainees must apply for a residence permit for employment purposes. That being said, there may be some privileges for specific occupational groups, such as information technology specialists or for the case of an international personnel exchange.

Employment Assignments

For most work and employment activities that are carried out in Germany, a residence permit for employment purposes must be requested. This will only be granted with the approval of the Labor Agency. The residence permit for employment purposes allows a specifically designated foreign employee to carry out a specific job for a particular employer based in Germany. The residence permit will usually be limited to one year but can be extended if necessary. An unlimited settlement permit can be granted from the beginning only to highly qualified specialists or after five years of residency in Germany.

In most cases the Labor Agency will only approve an employment application in Germany under the condition that:

- No adequately trained or qualified German or EEA personnel is available for the vacancy in question. The Labor Agency can insist on a four-week waiting period during which they will try to find personnel with German or other EEA-countries citizenship, who can fill the position, before they grant the approval;
- the salary is comparable to that offered to resident workers in the same position; and

- the intended assignment (vacancy) is allowed to be filled by foreign nationals under the ordinance on employment of foreign nationals, which is a detailed catalogue of possible qualifying professions.

International Personnel Exchange Members

Specialists and skilled employees of an internationally operating group who are transferred temporarily to Germany may apply for their residence/work permit under simplified conditions provided that the intended assignment can be seen as part of a personnel exchange program for internationalization of the group. Furthermore, the assignment must be of crucial interest for the cooperation and development of the group or the company in the international market. It is essential that the employees are permanently employed by the company and that they possess a university diploma or similar education (or a minimum of five years employment with the company). Moreover, it is sufficient that, from time to time, the company also sends skilled employees from Germany to other countries. A work-related residence permit under this provision can be granted for up to three years.

The approval of an intended employment like this has to be granted by a special labor authority (“Zentralstelle für Arbeitsvermittlung” or “ZAV”) without a labor market check, which usually speeds up the visa process considerably.

Service Delivery

Approval from the Labor Agency is not required for non-EEA employees working for an EEA company that provides its services to customers within Germany, if they are employed at the company’s place of residence and if the assignment to Germany is temporary.

Senior Executives

No approval of the Labor Agency is required in case the foreign national is:

- Chief-Executive Officer with full power of attorney (“Generalvollmachten”) or “Prokura” as certified/verified by the German commercial register; or
- Member of the executive body of a legal entity (e.g., Managing Director of a GmbH); or
- Partner and/or shareholder of trading or commercial companies with the power to represent the company.

Highly qualified Specialists

Highly qualified specialists may apply for a settlement permit that gives unlimited residence rights to them and their family members. Prior approval for the intended employment from the Labor Agency is not required in these cases. Highly qualified persons include:

- Scientists with special technical knowledge;
- Teaching or scientific personnel in prominent positions; and
- Specialists and executive personnel with outstanding professional experience who earn a salary corresponding to at least the earnings ceiling (west) of the general pension insurance (at present € 66,000).

Specific assignments

The following categories of visitors are exempt from the requirement of a residence permit for employment purposes, provided the foreign national retains residency abroad:

- Sportsmen and women who take part in official sport festivals (provided that the person has completed their sixteenth year and that the association or organization pays a gross salary which amounts to at least 50% of the contribution assessment ceiling for the statutory pension insurance and the sports qualification as professional athlete or the professional expertise as a trainer has been ascertained by the German sport association);
- Artists who take part in art festivals or guest performances (for a temporary limitation of 90 days within a 12-month period);
- Pupils and students of foreign universities or vocational schools for a holiday job placed by the German Labor Agency (for a temporary limitation of 90 days within a 12-month period);
- Journalists, who are accepted by the German Press and Information Office (“Presse- und Informationsamt”) or who are only temporarily in Germany (for no longer than 90 days within a 12-month period);
- Trainers who are employees of a company whose business is in a country outside of Germany for the installment or setting up of a “ready-to-use” machine or a (computer) system delivered by their foreign company; for the provision of training for the use of such machine or system and the maintenance or repair thereof. An individual is only eligible for this exemption if it can be shown that the company has

sold a product or computer system that its employee shall implement in its customer office and that some installation or training is necessary (“trainer”). The exemption from the work authorization must be approved by the labor authorities.

Other Comments

There are privileges for additional groups (*e.g.*, for foreign students) who may stay in Germany for one year after the successful completion of their exams for the purpose of looking for work or for foreign nationals who come to Germany for mainly charitable or religious purposes.

Foreign nationals may apply for a settlement permit, which gives unlimited residence rights to the applicant and the family in case the foreign national has held a fixed-term residence permit for at least five years and fulfills further requirements (*e.g.*, proving maintenance, sufficient knowledge of the German language, *etc.*).

Spouses and dependent children may accompany the holder of a work-related residence permit. These family members may stay for the same period of time as the applicant. However, the applicant must provide evidence of the ability to financially support the family members during their period of stay in Germany. Generally, spouses and dependants of the applicant are not entitled to work during the first two years in Germany unless they have obtained a work-related residence permit in their own right. Family members of a settlement permit holder are allowed to work without restriction.

Foreign nationals who want to be naturalized to German citizenship must have been legally residing in Germany for at least eight years and must fulfill some other preconditions. Such naturalization generally requires that the foreign national be established in Germany (*i.e.*, able to sustain self and family without the help of welfare benefits or unemployment assistance), have no criminal record, and

possess adequate command of the German language. Furthermore, applicants are generally requested to give up their present citizenship. In this category, naturalization is generally not possible from abroad.

The same requirements apply in the case of a foreign national who is the spouse or legal partner of a German citizen that wants to become naturalized, provided that they have been married for two years and have been residing in Germany for three years.