

Hungary

Executive Summary

Hungarian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for business purposes. Usually, there are several possible solutions for entry and stay in Hungary that are worth considering during the planning phase of the Hungarian residence.

Hungarian immigration law also provides various exemptions to simplify the residence and employment of foreign nationals who are executive employees of Hungarian entities, or international companies sent to Hungary on secondment, scientific researchers, students, etc. As a result of this, foreign nationals can easily choose the form of their residence and employment in Hungary that fits as close as possible to their expectations and needs.

Key Government Agencies

Depending on their nationality as well as the purpose and length of their stay in Hungary, foreign nationals may either require an entry permission, by obtaining a specific visa or residence permit, or they may enter the territory of Hungary without any visa.

If the foreign national is required to obtain a visa, the application must be processed in accordance with the Visa Code regulation adopted by the European Parliament and the Council in July 2009 entered into force (“Visa Code”). This regulation aims to include the European legislation on visa matters into a unified document and, thus, to increase transparency, enhance the rule of law and the equal treatment of visa applicants and to harmonize the rules and practice of Schengen countries where the common visa policy is applicable.

The Visa Code involves all the currently effective provisions applicable to the Schengen visa. It defines the common rules on the conditions and procedure of issuing a visa as well as the general rules. The Visa Code also harmonizes the rules on processing applications and orders.

Pursuant to the Visa Code the visa application must be submitted generally to the Hungarian Embassy (in Hungarian: “Nagykövetség”) or Consulate (in Hungarian: “Konzulátus”) at the place of residence abroad, unless the visa application may also be processed by various forms of cooperation of member states, such as limited representation, co-location, common application centers, recourse to honorary consuls and cooperation with external service providers. The application for residence permit is forwarded to the regional office of the Office of Immigration and Nationality (in Hungarian: “Bevándorlási és Állampolgársági Hivatal”) which is authorized to issue such permits in Hungary.

The issuance of the visa or the residence permit is only a preliminary requirement for entry; however, it does not ensure an automatic entry for foreign nationals. At the Hungarian border, third country nationals must establish border guard officer that specific requirements set out in the 562/2006/EC regulation are met (*i.e.* valid passport and visa, justify the purpose of their stay, the cost of their living in Hungary is covered by sufficient financial resources, they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry; they are not considered to be a threat to public policy, internal security, public health or the international relations of any Hungarian).

If gainful activity is the purpose of foreign national’s entry into Hungary, a work permit must be obtained and attached to the application for visa, provided that the performance of said gainful activity does not require a work permit. The work permit is issued by the regional office of the Public Employment Service (in Hungarian: “Állami Foglalkoztatási Szolgálat”) in Hungary. Usually no work

permit is required if the foreign national is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation.

Current Trends

Foreign nationals from a privileged or semi-privileged country, for which the European Community has abolished or simplified the visa requirement, may enter Hungary without a visa and may submit the application for residence permit to the regional office of the Office of Immigration and Nationality directly.

Simultaneously with the European integration, Hungary developed a unified immigration system of regional immigration offices that are responsible for immigration issues of any kind. Hungary joined the EU on May 1, 2004 and became a party to the Schengen Treaty effective as of December 31, 2007. These milestones of Hungary's integration had substantial impact on the Hungarian immigration law, because the applicable law has been harmonized with the EU law and the specific provisions applicable for EEA citizens has been introduced to the Hungarian legal system.

Hungary has developed extensive business and commercial relations within Europe, as well as to Asia and the overseas in the last two decades. As a consequence of this, there is a significant demand on flexible immigration rules that decrease the bureaucratic burdens for business travelers as well as foreign nationals who are employed by Hungarian entities or international corporations, but sent to Hungary for work.

Although, in the case of short-term stay in Hungary foreign nationals from non-privileged countries are still obliged to obtain a visa, the visa is issued within fifteen calendar days. This period may be extended to 30 calendar days when further scrutiny of the application is necessary, or in cases where diplomatic delegation processes the

visa application and certain authorities of Hungary are consulted. In exceptional situations, where additional documentation is necessary in, the period may be extended to a maximum of 60 calendar days.

For long-term residence in Hungary, non-EEA nationals are required to obtain a residence permit. The immigration law provides various categories of the residence permit depending on the purpose of stay in Hungary (*e.g.*, performing work, studying, family reunification, scientific research, visiting, healthcare, performing voluntary activities), therefore, applicants can easily choose a category that fits to their stay in Hungary. In addition, the applicable law also provides specific provisions on foreign nationals who intend to work seasonal or whose residence is related to the care or study of the Hungarian language, culture, or family relations except for the case of family reunification.

Simultaneously, with the increased number of foreign nationals employed in Hungary, there is a significant growth in the number of foreign nationals employed illegally. In the scheme of the fight against illegal employment, the applicable law has been amended to enhance the rigor of the immigration rules and consequently, the employers of foreign nationals are increasingly subjected to penalties and other sanctions in Hungary for unauthorized employment.

Citizens from the European Economic Area (EEA)

Citizens of EEA countries are, in general, free to reside and work in Hungary 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 Hungary. EEA-nationals and their family members are free to work for a company or be self-employed without the need to obtain work authorization. If the EEA nationals stay for longer than three months, they are required to notify the competent regional office of the Office

of Immigration and Nationality about their residence in Hungary at latest on the ninety third day of their stay in Hungary and the competent office will issue a registration card certifying the notification.

Besides Hungary, the following countries belong to the EEA: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Iceland, Ireland, Italy, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

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

EEA citizens and family members who have resided legally and continuously within the territory of Hungary for five years have the right of permanent residence. However, in certain cases, less than five years residence is required for EEA citizens who have been residing in Hungary with the purpose of gainful activity (*e.g.*, more than three years is required, if the EEA citizen performing a gainful activity is entitled to receive pension upon termination of his/her employment). The right of permanent residency must be terminated if such EEA citizen spends more than two years outside of Hungary or if such EEA citizen is subject to residence restriction in Hungary.

Business Travel

Short Term Visa (Schengen Visa)

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

A valid Schengen 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 and Sweden) for a maximum period of three months within a six-month period.

Schengen Visas have to be applied for at the representation of the country being 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.

Long-Term Visa

Foreign nationals may enter and stay in Hungary for a period exceeding three months if they meet the specific requirements (*e.g.*, justify the purpose of their stay, have sufficient financial resources to cover their healthcare services and similar) included in the Third-Country Nationals Act.

The applicable law distinguishes between the following type of visas and permits:

- a visa for a longer period than three months (*i.e.*, a visa for acquiring the residence permit; a seasonal employment visa, for single or multiple entry and for the purpose of employment for a period of a minimum of three months but no longer than six months; or a national visa may be issued under specific international agreement, for single or multiple entry and for a period of longer than three months);
- a residence permit;
- an immigration permit;

- a permit for settling down;
- an interim permit for settling down;
- a national permit for settling down; or
- an EC permit for settling down.

Residence Permit

Based on the residence permit a foreign national is entitled to stay longer than three months, however such permit can only be obtained for two years and occasionally be extended for an additional two years. If the purpose of the stay is the performance of work, the residence permit at the first occasion may be issued for a maximum period of 3 years, but later it may be extended for an additional three years. However, if the foreign national intends to perform an activity which requires a work permit, the validity period of the residence permit must be identical to the validity period of the work permit. In addition to the gainful activities, under specific circumstances, a residence permit may be issued for the purpose of family reunification, studying, scientific research, *etc.*

Settlement permit

The applicable law specifies three types of settlement permit: (i) an interim settlement permit; (ii) a national settlement permit; and (iii) an EC settlement permit. However, the Third-Country Nationals Act also acknowledges the settlement permits which were issued prior to the Third-Country Nationals Act coming into force.

A third-country national intending to settle down in Hungary may obtain (i) an interim settlement permit, (ii) a national settlement permit or (iii) an EC settlement permit, if specific requirements are satisfied (*e.g.*, expenses related to the third-country national's living

and accommodation in Hungary is covered or similar) of the Third-Country Nationals Act.

A third-country national, holding an EC settlement permit granted by an EU Member State in accordance with Council Directive 2003/109/EC of November 25, 2003, can obtain an interim settlement permit, if the purpose to stay in Hungary is to: (i) work, except seasonal employment; (ii) engage in studies or vocational training; or (iii) other certified reason. Such permit can be obtained for five years, but occasionally it can be extended for another five years.

A national settlement permit may be issued to third-country nationals holding a residence visa or a residence permit or an interim settlement permit and the particular person satisfies the specific requirements included in the Third-Country Nationals Act.

An EC permit for settling down may be issued to a third-country national, after living legally at least for five years in Hungary prior to the filing of the application.

Spouses and children

Hungarian immigration law provides specific provisions on the residence permit and work permit of spouses and other close relatives of foreign nationals holding a residence permit, a settlement permit or other valid long-term visa. These specific provisions aim to facilitate the cohabitation of families during the residence in Hungary.

Training

There is no visa category exclusively for training. Training is considered either (i) as a kind of employment; or (ii) if the foreign employees only attend lectures and classes in the scheme of the training, as a kind of visit from the authorities' perspective. In light of

this, trainees must apply for a residence permit for gainful activities or visiting purposes.

Employment Assignments

EU nationals are not required to obtain a work permit or visa to stay or work in Hungary. They are subject to registration requirement only. Similar treatment applies to citizens of Norway, Lichtenstein, Iceland, and Switzerland. However, the employer is required to notify - not later than on the commencement date of the employment - the competent labour center concerning the employment of an EEA nationals without a work permit, furthermore, the employer must also notify the labour center on the termination of such employment.

Other foreigners may be employed, provided that they have been granted a work permit and a residence permit.

As a general rule a work permit must be obtained if a foreign national would like to perform work in Hungary within the framework of an employment relationship. A work permit is also necessary if a foreign individual who is employed by a foreign company performs work in Hungary on secondment.

A work permit is issued by the labour center having competence over the area where the place of work in Hungary is located. The Hungarian entity for which the foreign employee will work must apply to obtain a work permit. The law technically requires that the work permit be issued or denied within ten working days following the submission of an application including the above listed documents; however, the applicable law provides that in certain cases the statutory period is two working days. If issued, the work permit will be valid for two years.

The competent labour center will issue the work permit if the documentation referred to above satisfies the legal requirements and if:

- the employer, prior to the submission of an application for a work permit, filed a valid manpower request in respect of the position to be taken by the potential foreign employee;
- after the labour center receives the employer's manpower request it examines the unemployment database to determine whether there are any unemployed workers who might be able to fill the position. If no Hungarian employee, or citizen of the European Economic Area or the relative thereof having the qualifications prescribed by law or requested by the employer for the relevant position, has been directed by the labor authorities to the employer; and
- the potential foreign employee has the qualifications prescribed by law or requested by the employer for the relevant position.

The employer's manpower request qualifies as a "valid manpower request" if it is filed with the labor center at least 15 days, but maximum 60 days earlier, or it was filed earlier than 60 days, but the manpower request was renewed after 60 days and the most recent renewal took place not later than 60 days, prior to the employer's submission of a work permit application. The work permit request is rejected if the employer does not intend to commence the applicant's employment within 120 days following the date on which the work permit request has been submitted.

Under certain circumstances the work permit may be issued in a simplified procedure, without examining the conditions set out above. Among others, the following circumstances may give rise to simplified procedure:

- if one or more foreign firms (or persons) have majority ownership interest in the company applying for work permit, provided that the total number of foreigners to be employed by the applicant in one calendar year does not exceed 5% of the total work force of the company as of December 31 of the immediately preceding year; or
- if the applicant, pursuant to an agreement concluded between the applicant and a foreign entity, intends to employ a foreigner for installation work, or to provide guarantee, maintenance or warranty related activities for more than fifteen consecutive working days (however, no work permit is required at all, if the foreigner nationals are to be employed by the applicant for less than fifteen consecutive working days occasionally).

Exceptions

Without providing an exhausting listing of each category exempted from the requirement of the work permit, we summarize below those categories that are relevant for business travelers and foreign nationals sent by multinational corporations for the performance of work in Hungary.

No work permit is required for the performance of work by a foreign national:

- who is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation;
- who is the head of the branch of representative office of an enterprise having its registered seat abroad based on international treaties;

- who performs work related to the installation, warranty and other repairing activities based on a contract concluded with a foreign enterprise, provided that such activity does not exceed fifteen working days per occasion;
- who performs work science, education or art related work for a period of no more than 5 working days per calendar year.

Spouses and children

Similar to the residence permit, special provisions apply for family members in the field of the work permit. There is no need to examine the labour market by the local office of the Public Employment Service, if the spouse of a foreign national living together at least for one year in Hungary, or a close relative of a foreign national employed at least for eight years in Hungary living together with the said foreign national at least for five years in Hungary apply for a work permit.

Other Comments

There are additional authorizations that may apply to the specific cases such as work permit exception and residence authorizations that apply to professors or other university lecturers as well as researchers performing research or educational activities; students sent to Hungary by international student organizations for vocational trainings; sportspeople; students with Hungarian student card for performing work in Hungary; foreign nationals employed in Hungary in the scheme of the Leonardo da Vinci program of the EU; or the reunification of families.

The issuance of visas is a discretionary decision. Furthermore, the authorities have the power to deny those petitions without the opportunity to appeal the decision; however, the applicant may submit a complaint to the head of the Embassy or Consulate, if they complain

the process of rejecting their visa application. The applicant may appeal within five working days, if his/her application for residence permit was rejected. Since the duration of the general application process is thirty days, the best practice is to visit the consulate or contact the immigration authorities in order to clarify any issues that may arise in connection with the application. This can prevent the applicants from the rejection of their application due to formal or material deficiencies of the application documents.