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### International Immigration and Nationality Law

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## **Germany**

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## Section 1

### **Government's attitude towards Immigration and Naturalization**

#### **1.1 New Immigration Act 2004**

The new German Immigration Act ("Zuwanderungsgesetz") was finally implemented on June 30th 2004. The preceding discussion about the bill was highly controversial in both Chambers of Parliament and the process of legislation had to overcome several obstacles. A modernised Immigration Act was proposed by the government, including a selection system, referring on qualification, waiting-time and quotas. The first draft of the bill passed both Chambers with a very small majority and should have been implemented on January 1st 2003. Due to a procedural error, the Federal Constitutional Court ("Bundesverfassungsgericht") declared the bill void in December 2002. A new draft was given to the process of legislation. In order to pass the Second Chamber of the Parliament ("Bundesrat"), the bill had to be altered again. The result is a compromise between all political powers.

This is a short overview of the main changes – for details see the referring chapters:

The quota-based immigration system had to be cancelled. The main goal of the revised law remains in restricting immigration. Nevertheless the protection of refugees was slightly improved and the general possibility of immigration in highly qualified jobs or jobs with a shortage of workers, was realised. The possibility for highly skilled employees to obtain a permanent residence permit immediately was added to the bill. Graduates of German Universities can get a residence permit for the first year after graduation to find a job in their field of studies. integration courses which contain language lessons, German history and culture became obligatory.

The process of obtaining a working permit became easier. The decision about the residence permit and the working permit is no longer made by two authorities, but only by the Foreigners Authority ("one-stop-government") – still the Foreigners Authority has to ask for the accordancy of the Employment Agency ("Bundesagentur für Arbeit") in most of the cases before being able to issue a residence permit together with a working permit.

For foreigners which can not return to their home country for humanitarian reasons the law gives the possibility to obtain a residence permit. In accordance to the Geneva Convention on Refugees genderspecific or non-state persecution became recognised as humanitarian reason. Illegally entering foreigners, which can not refer on political persecution, but can not be expelled immediately, are subject of distribution in the federal territory. A residency on humanitarian reasons can be issued, as long as the obstacle persists. Foreigners which do not cooperate in overcoming the impossibility of deportation, are excluded from reaching a legal status and can only get a temporary suspension of deportation (Duldung).

In consideration of the fact, that the demographical situation in Germany leads to a lack of highly qualified workers, it should just be a question of time that the proposed but now dismissed quotasystem will return to the political agenda.

## **1.2 Naturalization Act 1999**

In 1999 the Naturalization Act (Staatsangehörigkeitsgesetz) was completely revised. The former strict principal of *jus sanguinis* was basically modified and the principal of *jus soli* was introduced for children of long-time legal resident foreigners.

In consequence children of aliens with an indefinite settlement permit (“Niederlassungserlaubnis”) acquire the German citizenship by birth, if one of the parents has a legal status for at least 8 years. For details see section 10

## **1.3 Influence of the European Union**

The influence of the European Union regarding the treatment of Non-EU foreigners increases permanently. Under the label of “Common Foreign and Security Policy”, the previous years brought a harmonization of standards for refugees. Another aim is to distribute the number of asylumseekers equally to the member states. For this purpose the treaty of Dublin II states that the state which made it possible for the

foreigner to enter the Union is responsible for performing the asylum procedure.

On the other hand the EU grants a high standard of freedom for travel, settle down or float a business for EU-citizens.

Due to EU-directives it can be expected, that there will be a need to modify national regulations of immigration. Further steps of harmonisation will take place in the field of the freedom to travel for legal resident aliens between the member states and the harmonization of directives on the subsequent immigration of relatives.

## Section 2

### Visitors

As a general rule, a visitor who wants to enter the German territory has to apply for a visa in advance. A visa is issued by the mission of the Federal Republic of Germany for the area where the applicant has his ordinary residence. For the application procedures see Section 3. Some nationals are exempt from the need of applying a visa in advance.

#### 2.1 Stay of less than three months

##### 2.1.1 *Visa-free tourists*

The Governments of the Schengen-Countries<sup>1</sup> agreed on a list of states, whose citizens are exempt from applying for a visa in advance (see Appendix 1), if they

- a. have a valid and acknowledged document of identification,
- b. do not intend to work in Germany
- c. do not intend to stay longer than 3 months within a period of 6 months, beginning with the day of first entry into "Schengencountries".

The extension of the stay is only possible for exceptional reasons.

##### 2.1.2 *Tourist visitors*

Tourists of states not included in the exemption list (see Appendix 1) need a Schengen-visa to enter Germany. The visa is issued for a maximum stay of 3 months within a period of 6 months and can hardly be renewed.

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<sup>1</sup> Schengen Visa Member Countries comprise 13 of the 25 European Union (EU) Member States and 2 European Economic Area (EEA) Member States: **Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Italy, Greece, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden**

The visa *can* be issued under the conditions mentioned in chapter 2.1.1 (visa-free tourists). The mission makes the decision on its own, without consulting the Federal Foreign Office or the Foreigner Authority. The visa will be denied, if the embassy suspects that the alien intends a non-touristic purpose of stay (work, immigration etc.) or if the alien can not proof enough money or health insurance coverage for the duration of stay. Usually a formal invitation and/or obligation of the visited person is needed.

The refusal of a visa for tourist purposes shall not be subject to appeal<sup>2</sup>.

With a tourist visa, issued by any of the “Schengencountries” the foreigner is allowed to travel to any other Schengencountry and stay there, until the visa expires<sup>3</sup>.

## **2.2 Stay extending three Months**

If a stay of more than three months is intended or the foreigner wants to work in Germany, a visa has generally to be issued in advance. Citizens of specific countries may also apply for the residence permit at the Foreigners Authority in Germany after entering the country (see Appendix 2).

## **2.3 Exemption for Specific Groups**

No visa is required for other specific groups, for example for diplomatic personnel, ship or flight personnel<sup>4</sup>, non-European Union pupils if they have a legal residence in the European Union or a country mentioned in Appendix 2<sup>5</sup>.

## **2.4 Business Visitors**

For business visitors who do not want to work in Germany, regulations as for tourist

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<sup>2</sup> § 83 S. 1 Aufenthaltsgesetz

<sup>3</sup> Art. 20 Abs. 1 Schengen Execution Agreement

<sup>4</sup> § 23 ff Aufenthaltsverordnung

<sup>5</sup> § 22 Aufenthaltsverordnung



visitors are applicable. In case, that the foreigner intends to work in Germany, he has to apply for a visa in advance regardless of the intended duration of stay. Citizens of the countries mentioned in Appendix 2 can apply for a residence permit after entering Germany.

The Foreigners Office has to agree to grant the visa<sup>6</sup>. Furthermore the employment office checks, if the visitor can be issued an employment permit after his entry to Germany<sup>7</sup>.

In the examples listed below the agreement of the Foreigners Office is not required and the visa can be granted by the mission without participation of any other authority<sup>8</sup>:

- a. Scientists in a public scholarship
- b. Engineers and technicians in the team of a scientist
- c. Lecturers, scientific staff members and assistants of universities of public or public financed research organisations
- d. Students with a public scholarship, if the studies are arranged by a publicly funded organisation.
- e. e. on the basis of bilateral treaties (Vacation summer jobs, workers in service contracts) f. Internships in a public scholarship
- f. crew members of a sea-going vessel under German flag

In those cases that the Foreign Authority has to agree, it is obliged to check, whether the planned business activity is characterised as work. A visa for some business activities can be granted without participation of the Employment Agency that means without checking the impact on the labour market<sup>9</sup>.

In the following fields some business activities are not deemed as work, if they are conducted for less than three months within a period of twelve months:

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<sup>6</sup> § 31 Aufenthaltsverordnung

<sup>7</sup> § 39 Aufenthaltsgesetz

<sup>8</sup> §§ 34ff Aufenthaltsverordnung

<sup>9</sup> § 34 Beschäftigungsverordnung

1. Executives (§ 4 BeschV<sup>10</sup>)
2. Education (§ 2 BeschV)
3. Science, Research and Development (§ 5 BeschV)
4. Activities as Merchandiser (§ 6 BeschV)
5. Specific Groups of Employees (§§ 7, 8, 11 BeschV)
6. International Sport-Events (§ 12 BeschV)
7. International Road- and Rail-Traffic (§§ 13 BeschV)

If the planned work is not mentioned above, the Labour Authority has to agree to the issue of a residence permit with a work allowance. The approval depends on the effects on the labour market. Because of a currently high rate of unemployment in Germany the grant of a visa for work is only likely in an area with a scarcity of workers.

A directive refers to the following professions (§§ 26 ff BeschV):

- a. native-speaking teachers of languages
- b. chefs for specialties
- c. IT-specialists
- d. Social workers for migrant labourer
- e. Nursing staff

In any other case an individual examination of the local employment situation has to be undertaken. If the Employment Agency can not name a privileged worker (German or EU-citizen or foreigner with access to the German labour market) and the job has no negative effects to the local job market, the visa can be granted for that job.

This restrictive practice is not applicable for citizens of **Andorra, Australia, Israel, Japan, Canada, Monaco, New Zealand, San Marino and United States of America**. These citizens can obtain a visa with work allowance without examination of the labour market<sup>11</sup>.

Furthermore some bilateral treaties grant a “most favoured nation” status. Such treaties have been signed with the **Dominican Republic, Iran, Japan, Indonesia,**

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<sup>10</sup> Beschäftigungsverordnung

<sup>11</sup> § 34 Beschäftigungsverordnung

**the Philippines, Sri Lanka, Turkey and the United States of America.** These treaties do not guaranty the issuing of a visa or a residence permit in any case, but oblige the foreign authority to examine the application with goodwill. The interest of the foreigner has to be considered and the residence permit can not solely be refused for lack of public interest.

### **2.5 Self-employed workers**

A foreigner can be granted a visa and residence permit for the purpose of self-employment, if

1. an overriding economic interest or special regional needs applies,
2. the activity is expected to have positive effects on the economy and
3. personal capital on the part of the foreigner or a loan undertaking is available to realise the business idea<sup>12</sup>.

The relevant authorities for the planned business location are involved in examining the application. These are usually the regional Chambers of Industry and Commerce or the local Departments of Trade and Industry.

Although certain prerequisites like the investment of , one million euros and the creation of at least ten jobs are demanded, the requirements are much easier to fulfil in practice.

Furthermore a “most favoured-nation clause” in some bilateral treaties simplifies the procedure. Such treaties exist with the following countries: **Dominican Republic, Indonesia, Iran, Japan, Philippines, Sri Lanka, Turkey and The United States of America.** The regulations are specified in every treaty individually. The strongest rights are given by the treaties with a “most favoured nation clause”. Citizens of these nations have the right to be handled as a citizen of a nation with the most privileged regulation (except European Union).

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<sup>12</sup> § 21 Aufenthaltsgesetz

## 2.6 Special regulation for citizens of the European Union

Article 18 of the treaty establishing the European Community of 2002 guarantees, that every citizen of the Union shall have the right to move and reside freely within the territory of the member states. The guidelines of the treaty were implemented to German law. Generally every citizen of the Union is free to enter, reside, work, offer or receive services in Germany.

A residence or work permit is not necessary for EU-citizens. The citizen just has to announce at the registry office that he settles down in Germany. Relatives have the right to reside in Germany also, even if they do not have the citizenship of a member state. This right can be lost, if the foreign police declares that the foreigner has lost the freedom of movement. This can be the case, if he endangers the public order, security or health. A non-working EU-citizen has the right to reside in Germany, if he has sufficient means of subsistence and health insurance.

It has to be stressed, that Germany opted for a transition time of maximum seven years in restricting the access to the labour market for the new member states **Estonia, Lithuania, Latvia, Poland, Slovenia, Czechia, Slovakia and Hungary**. During this time a work permit is needed for citizen of these EU-member states. These restrictions are not applicable for self-employed workers.

## Section 3

### **Visa Requirements and Procedures**

If a visa is needed (see Section 2), this has to be applied for at the German mission before entering Germany. It has to be applied in the country, where the applicant has his ordinary residence. If there is no German mission, a diplomatic mission of another country of the European Union will be named by the Ministry of Foreign Affairs or a German Mission in another country is responsible for the visa procedures.

Considering the purpose of the stay, the mission decides with participation of the Foreigners Authority, the employment authority, the National Security Agency and other authorities. If an authority in Germany has to agree, the procedure of consultation can take several weeks or months.

The necessary documents for the application process depend on the purpose of stay, but generally the following documents are needed:

- a. passport
- b. application form
- c. photos
- d. documents, which can proof a reasonable maintenance,
- e. health insurance for at least the first 3 months of stay
- f. documents, which can proof the purpose of stay (invitation, work contract, business plan etc.)

Depending on the country of application and the purpose of stay, other documents may be necessary.

A visa will be issued for a maximum of three months, if a longer stay is intended, the foreigner has to apply a residence permit after entering Germany at the responsible Foreigners Authority within that time. The residence permit has to be refused, if the foreigner has not entered the country with the visa according to the specific purpose of

stay<sup>13</sup>.

A business-visa without work allowance can be granted for multiple short-term entries of not more than three months within a period of six months. The maximum possible - period of validity is five years<sup>14</sup>.

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<sup>13</sup> § 5 Abs. 2 Nr. 1 Aufenthaltsgesetz

<sup>14</sup> § 5 Abs. 2 Nr. 1 Aufenthaltsgesetz

## Section 4

### Immigrants

#### 4.1 In General

Most immigration intended for long term residency proceeds in the field of moving in of family members (see 4.3) and refugees (see 4.4).

Although it was intended in the draft of the new immigration law, the conservative majority in the second chamber of parliament impeded a general creditbased selection scheme for the selection of highly qualified immigrants. Nevertheless the immigration law gives the possibility to obtain an indefinite settlement permit for highly skilled scientists, scientific staff members and executive staff with special experience and high income<sup>15</sup>.

Beside of that, the temporary status of visitors can be transformed to a settlement permit after a certain time of legal residency (see chapter 4.5).

#### 4.2 Investors and Business Persons

There are no further provision for investors or business person to immigrate. In most of the cases a temporary residence permit results in an indefinite settlement permit after a certain time of residency. For the requirements see chapter 4.5.

#### 4.3 Relatives

According to Art. 6 of the German constitution, the Government has to respect the right of marriage and family. From this derives a right of the family member to immigrate, if it is not possible or reasonable to conduct the marriage in a foreign country. The requirements depend on the status of the referring relative which communicates the residency and depends on the purpose of their stay.

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<sup>15</sup> § 19 Aufenthaltsgesetz

The term “family member” refers to spouses (see 4.3.1) and children under the age of 18 years (see 4.3.2). For same-sex-relationships the same is applicable, if the relationship is registered in Germany. Other family members only can immigrate, if it is necessary to avoid a particular hardship<sup>16</sup>.

#### **4.3.1 Spouses**

Spouses generally have the right to immigrate, if the other spouse has a legal residence, does not need social welfare and can provide for enough housing space<sup>17</sup>. For spouses of German citizenship and foreigners with a long-term residency these requirements are not obligatory<sup>18</sup>.

#### **4.3.2 Children**

A foreigners child, unmarried and below the age of 16 of a has the right to immigrate, if either both parents or the parent possessing custody possesses a residence permit.

If only one of the parents possesses a residence permit, the immigration *can* be allowed. In practice the decision is geared towards the well being of the child. The decision is made referring the circumstances in the homeland and the chances of integration. The economic situation is not the most important fact.

Children of German citizens living abroad basically have the right to immigrate as long as they are under age.

### **4.4 Asylum and Refugee Status**

#### **4.4.1 Asylum**

The German Constitution gives a legally enforceable right of asylum for everybody who is persecuted for political reasons. During the process of examination through the Federal Agency for Migration and Refugees the asylum seeker has the right to stay in

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<sup>16</sup> § 38 Aufenthaltsgesetz

<sup>17</sup> § 29 Aufenthaltsgesetz

<sup>18</sup> § 28, § 30 Aufenthaltsgesetz



Germany.

Since the revision of the Constitution in 1993 a large number of exceptions hinder the assertion to claim one's right for asylum. Applicants entering Germany from a so called safe country (currently Bulgaria, Ghana, Romania and Senegal) are excluded from the right to political asylum. Furthermore no asylum can be granted, if the asylum seeker entered Germany through a safe third country. In these cases a protection against deportation according the European Convention on Human Rights can be granted.

As Germany is surrounded by safe third countries, entering is only possible by air or sea. If the application is made at the border police station at the airport and the applicant does not possess a valid passport, the application is examined before entering the country. The asylum agency has to decide the application within two days. The applicant has three days to appeal and the court has to decide within two more weeks. During the procedure the applicant is housed at the airport.

The Agency of Migration and Refugees examines also, if there is an obstacle to deportation linked to the situation in the homeland. This might be the case, if a necessary medical treatment is not possible in the homeland or if it is highly possible, that due to the situation in the homeland (e.g. civil war), a deportation endangers the life or health of the foreigner.

Due to these restrictive rules, the quota of positive decisions is approximately 1.5 %. The quota rises to approximately 5 %, including the positive decisions according to the European Convention on Human Rights or the protection against deportation.

Since 2003 the EU-directive No. 343/2003 (so called Dublin II) defines, which state is responsible to examine the application. The EURODAC fingerprint system gives proof, if the asylum seeker asked for asylum in another member state before, if an asylum request is processed in another member state and if the applicant entered into the area of Dublin-Treaty at the border of another member-state. In these cases the asylum seeker can be deported to that state without examination of his application. All EU-states, Norway and Iceland participate in these processes.

A foreigner, whose asylum application has been rejected, can only be granted a humanitarian residence permit. If the application is rejected as “obviously unfounded”, generally no residence permit can be granted prior to leaving the country<sup>19</sup>.

#### **4.4.2 Refugee status**

Nevertheless in numerous cases the deportation of a refused asylumseeker is “de facto” not possible. This might be the case if no flight-connection enables the deportation or no legal document (passport, laissez-passer etc.) for a deportation is available.

Furthermore the foreign police can suspend the deportation for humanitarian reasons. This might be the case, if the foreigner is not able to travel for any health reasons or is needed to care for a relative.

In these cases the grant of a residence permit is legally possible. It shall be granted, if the foreigner is prevented from leaving the country through no fault of his or her own<sup>20</sup>.

It was an aim of the new legislation, to reduce the number of formally tolerated (*geduldet*) foreigners (approx. 220.000) and give them the perspective to legalise their stay. The foreigners authorities are still very reluctant to legalise tolerated sojourns. 150.000 foreigners were tolerated for longer than five years. The biggest ethnic group (80.000) comes from former Yugoslavia.

### **4.5 Settlement-permit (unlimited residence permit)**

#### **4.5.1 In General**

The immigration law provides the possibility to obtain a permanent residence permit (“settlement-permit”) after a certain time of legal residency. A settlement permit is an unlimited residence permit that allows any economic activity and does not incorporate any subsidiary provision<sup>21</sup>.

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<sup>19</sup> § 10 Abs. 3 Aufenthaltsgesetz

<sup>20</sup> § 25 Abs. 5 Aufenthaltsgesetz

<sup>21</sup> § 9 Aufenthaltsgesetz

A permanent residence permit can be issued basically if the following requirements are fulfilled:

- a. possess of the residence permit for at least five years
- b. proof of sufficient means of subsistence
- c. payment into the statutory pension scheme for at least 60 months or proof of similar pension
- d. no conviction for a mayor crime
- e. allowance to work
- f. sufficient knowledge of German language
- g. basic knowledge of the German legal and social system
- h. sufficient housing

#### **4.5.2 German-married foreigners**

For German-married foreigners only the following requirements have to be fulfilled<sup>22</sup>:

- a. possess of residence permit for three years
- b. the family household continues to exist
- c. no grounds for expulsion (e.g. mayor crime, no means of subsistence)
- d. basic knowledge of German language

#### **4.5.3 Holders of an asylum or refugee status**

An recognised asylum-seeker or refugee according the Geneva Convention for Refugees will be issued a residence permit for three years. After this period the refugee has the right to get a settlement permit, if the Federal Office for Migration and Refugees has provided notification, that the conditions for revocation and withdrawal do not apply<sup>23</sup>. In consequence the settlement permit has to be issued without further requirements, if the conditions that lead to the acceptance of the refugee status did not change.

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<sup>22</sup> § 28 Abs. 2 Aufenthaltsgesetz

<sup>23</sup> § 26 Abs. 3 Aufenthaltsgesetz

#### **4.5.4 Holders of an residence title for humanitarian reasons**

The issue of a settlement permit to holders of a residence title for humanitarian reasons without asylum or refugee status requires the possess of a residence permit for at least seven years. Additionally the conditions named in chapter 4.5.1 b. to h. have to be met<sup>24</sup>.

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<sup>24</sup> § 26 Abs. 4 Aufenthaltsgesetz

## Section 5

### Expulsion and Deportation

#### 5.1 In General

Every foreigner has to leave the country if he does not or no longer possess a required residence title<sup>25</sup>.

The residence title becomes void

- a. upon expiry of its period of validity,
- b. revocation or withdrawal
- c. expulsion (see 5.2)
- d. if the foreigner leaves the country and fails to re-enter within a period of 6 months or
- e. leaves the country for a reason which is not of temporary nature<sup>26</sup>.

#### 5.2 Expulsion

The formal expulsion of a foreigner will be ordered in all cases of serious criminal activity, especially if he is sentenced to a prison term and the sentence has not been suspended on probation or he is convicted in a drug-related crime<sup>27</sup>.

Other grounds of expulsion are violation of judicial order or administrative decree, severe drug consumption, long-term homelessness, prostitution, dependence on social welfare. If an expulsion is planned on these grounds, the Foreigners Authority has to take into account the duration of lawful residence, the consequences for family members, the personal ties to Germany and if there are reasons for suspending the deportation<sup>28</sup>.

Foreigners with a long time of legal residence, minors, recognised refugees or foreigners living together with a German family member enjoy a special protection

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<sup>25</sup> § 50 Aufenthaltsgesetz

<sup>26</sup> § 51 Aufenthaltsgesetz

<sup>27</sup> §§ 53, 54 Aufenthaltsgesetz

<sup>28</sup> § 55 Aufenthaltsgesetz

from expulsion<sup>29</sup>.

### 5.3 Deportation

A foreigner has to be deported, if he is obliged to leave the territory, the granted period for departure has expired and voluntary fulfilment is not assured<sup>30</sup>.

However, the alien may not be deported to a country where his life or freedom is threatened because of race, religion, gender or political conviction nor in states where he is threatened by torture or death penalty. Even if the formal expulsion is ordered, suspense of deportation (Duldung) can or has to be granted in these cases.

If the deportation is de facto possible and legal, the Foreigners Authority has the right to apply for a warrant and detain the foreigner to ensure the deportation. Detention may be ordered for up to six months. In cases in which the foreigner obstructs the deportation it may be extended by a maximum of twelve months.

### 5.4 Detention

If the deportation is de facto possible and legal, the Foreigners Authority has the right to apply for a warrant and detain the foreigner to assure the deportation if

- a. the foreigner entered the territory unlawfully,
- b. the period allowed for departure has expired and the foreigner has moved his residence without notifying the foreigners authority
- c. did not appear to an announced deportation
- d. has evaded deportation
- e. a well-founded suspicion exists that he intends to evade deportation

Detention may be ordered for up to six months. In cases in which the foreigner frustrates the deportation it may be extended by a maximum of twelve months. In any case the decision has to be made by a judge.

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<sup>29</sup> § 56 Aufenthaltsgesetz

<sup>30</sup> § 58 Aufenthaltsgesetz

## Section 6

### **Administrative and Judicial Review**

#### **6.1 General Proceedings**

Every administrative act is subject to juridical review. An administrative notification has to contain information about the form of how to appeal against the decision. The time limit for an appeal is basically one month after receiving the decision; one year if the decision does not contain an information about the possible appeal. If the deadline is not met, all remedies are lost.

Basically an opposition is the first possibility of review. If the opposition decision does not remedy, an appeal has to be directed to the administrative court (Verwaltungsgericht). In many cases federal or legal law excludes opposition. Then the decision has to be appealed to at the administrative court directly.

In some cases the opposition or lawsuit suspends the effectiveness of the notification. In other cases an application for a suspension of effectiveness has to be added, to avoid that the authority executes the decision (e.g. by deportation).

In those cases that an application for suspension is directed to the court, the authority has to await the court decision before executing.

If an authority fails to act within three months, action is admissible, and even though the capacity of the administrative courts are heavily overloaded, such action does not accelerate the decision finding.

#### **6.2 Asylum Proceedings**

In the asylum process the right of opposition is not provided and the time limit to appeal to the court is generally shortened to two weeks. Basically the suit effects suspension of effectiveness. If the application is refused as “obviously unfounded” or “unremarkable” the suit has to be combined with an application for suspension of effectiveness within one week.

### **6.3 Proceedings in Visa Applications**

If the issuing of a visa is denied, the mission does not tell the reasons of the denial. The decision can be appealed at the mission with a remonstrance. The application will be examined again and the embassy encloses the grounds of the decision. This decision can be appealed to at the administrative court in Berlin within one month after receiving.

The refusal of a visa for tourist purposes can not be subject of appeal.



## Section 7

### Employment and Work Permits

#### 7.1 In General

As mentioned above, the residence law of 2005 abandon the need of two applications, one for a residence permit at the Foreigner Authority and one for a work permit at the Employment Agency. The Foreigner Authority has to decide, if a work allowance can be granted. Every residence permit has to state whether the employment is allowed or not. Nevertheless the procedure is neither easier nor faster, because the Employment Agency basically has to agree in most of the cases<sup>31</sup>, in which the planned activity is deemed as work<sup>32</sup>.

The Employment Agency may approve to granting of a residence permit to take up employment, if the employment does not result in any adverse consequences for the labour market, in particular with regard to the employment structure, the regions and the branches of the economy and no German or EU-workers or privileged foreigners are available for the specific type of employment and the worker is not employed on terms less favourable than those which apply to equally qualified German workers.

Further the approval of the employment agency can be given, if bilateral agreements statue the privileged access to the labour market. Such treaties have been entered into with **Dominican Republic, Iran, Japan, Indonesia, Philippines, Sri Lanka, Turkey and the United States of America**<sup>33</sup>.

#### 7.2 Work permits for new entering foreigners

The regulations under which newly entering foreigners can obtain a residence permit with work allowance were discussed in chapter 2.4.

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<sup>31</sup> § 39 Aufenthaltsgesetz

<sup>32</sup> see chapter 2.4

<sup>33</sup> e.g. Treaties of Friendship and Commerce (see chapter 2.4)

### 7.3 Work permits for resident aliens

A resident foreigner is allowed to work if he

- a. has a settlement permit<sup>34</sup>, or
- b. is a legal resident or tolerated in Germany for at least four years<sup>35</sup>, or
- c. worked in Germany legally for at least three years<sup>36</sup>, or
- d. entered Germany to live together with a German relative<sup>37</sup>, or
- e. entered two years ago in order to live with a foreign relative. The relative is entitled to work insofar as the foreigner is entitled to do so<sup>38</sup>, or
- f. is recognised asylum-seeker or refugee according to the Geneva Convention<sup>39</sup>,  
or
- g. has a resident permit for students and wants to work not more than 90 days per year or unlimited for spare-time student employment<sup>40</sup>.

In other cases a legal resident alien can obtain a working permit if an individual examination of the local employment situation results, that no privileged worker (German or EU-citizen or foreigner with access to the German labour market) is able to do the work and that the job has no negative effects to the local labour market. An exception is possible in cases of particular hardship<sup>41</sup>. The jurisdiction acts on the assumption that this is the case if a tolerated foreigner can not be deported for at least six years.

Work is forbidden for tolerated foreigners in the first year of residence and if they foiled their deportation. In other cases work can be allowed under consideration of the above mentioned effects to the labour market.

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<sup>34</sup> § 9 Abs. 1 Aufenthaltsgesetz

<sup>35</sup> § 9 Abs. 1 Nr. 2 Beschäftigungsverfahrensverordnung

<sup>36</sup> § 9 Abs. 1 Nr. 1 Beschäftigungsverfahrensverordnung

<sup>37</sup> § 28 Abs. 5 Aufenthaltsgesetz

<sup>38</sup> § 29 Abs. 5 Aufenthaltsgesetz

<sup>39</sup> § 25 Abs. 1 S. 4, § 25 Abs. 2 S. 2 Aufenthaltsgesetz

<sup>40</sup> § 16 Abs. 3 Aufenthaltsgesetz

<sup>41</sup> § 7 Beschäftigungsverfahrensverordnung

## Section 8

### **Ownership of Real Property or Shares in Domestic Companies**

The ownership of real property and the acquisition of shares is not subject of a specific alien-related regulation. Every alien is free to buy and sell real property and can be owner and possessor of real property or shares in domestic companies as any German citizen.

## **Section 9**

### **Taxation**

The taxation of aliens is a very complex question of international tax law. For the purpose of this chapter only a very basic outline can be given.

#### **9.1 Income Tax**

German income tax does not distinguish between income from domestic or foreign sources. A foreigner with only temporary residence in Germany has to pay income tax on his worldwide income. There is a presumption that the foreigner has his domicile in Germany if he resides in Germany for a minimum of 183 days per year.

An individual without residence in Germany is taxed by the German Government for his German income. This can cause a double-taxation, if the home state of the alien taxes his worldwide income.

Foreigners who become residents of Germany can apply for a special flat tax charge for the maximum of ten years. This may result that foreign income is partly excluded from income tax or an individual reduction is granted. The application has to be made at the local Tax Authorities, which will consider public interest in the examination of the request to grant this special status.

#### **9.2 Double-Taxation Treaties**

A large number of double-taxation treaties between Germany and other countries regulate which state has the right to tax a certain type of income of an individual. The treaties try to avoid, that tax has to be paid in more than one country due to different principles of taxation in different states (principle of residence, principle of source-country, principle of territory or world-income-principle). The instruments to avoid double-taxation in these cases differ in the various treaties.

If no double-taxation treaty provides relief from double taxation, the German Income Tax Act provides a limited waiving of taxation.

### **9.3 VAT tax-refund for tourists**

All goods in Germany include a value added tax of 16%. (probably 19% from 2007). Tourists can apply for a VAT refund for goods purchased in and exported to a country outside of the European Union within three months after the date of the purchase, if the shop participates in the VAT-tax refund system.

In this case the shop issues a special form. This has to be stamped at the German Customs Office to confirm the export of the goods. To get the tax refund this confirmation has to be send back to the shop.

## Section 10

### Citizenship and Nationality

#### 10.1 German Citizenship by birth, adoption and acknowledgement of paternity

Children, born in Germany after 1<sup>st</sup> of January 2000 obtain the German citizenship by birth, if either one of the parents is German citizen or

- a. one of the parents has his legal residence in Germany since eight years,
- b. has a settlement-permit<sup>42</sup>.

The citizenship will be obtained if a child under the age of 18 years will be adopted by a German citizen<sup>43</sup>.

If the German father of a child acknowledges the paternity, the child obtains the German citizenship, in case that the declaration is made before the child becomes 23 years old.

#### 10.2 Acquirement of German Citizenship

The right of naturalization is a complex question and depends on individual circumstances. Nevertheless the naturalization law contains some general requirements to obtain a right for naturalisation. Furthermore a certain time of legal residence is needed for naturalization.

##### 10.2.1 General requirements

- a. Explicit statement to abide by the principles of the constitution (Grundgesetz) and not support any activities contrary these principles, including the support of extremist groups
- b. Sufficient means of substance for himself and the relatives depending on him (exceptions possible for aliens under the age of twenty-three or if it is not the fault of the alien that he depends on social welfare)
- c. Sufficient knowledge of the German language
- d. No conviction for a major crime
- e. Abandonment of the former nationality (exceptions are possible, if the

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<sup>42</sup> § 4 Staatsangehörigkeitsgesetz

<sup>43</sup> § 6 Staatsangehörigkeitsgesetz

abandonment is not possible or not reasonable)

- f. Possession of settlement permit (basically)

### **10.2.2 Time of Legal Residence**

The time an alien has to reside in Germany before naturalization, his residence permit status depends particularly on the reason, on which his residence permit was granted. Generally a time of legal residence of eight years is necessary to have a right of naturalization. If the alien attended an integration course, this will be reduced to seven years. The time of the asylum process can be credited in certain cases.

For alien spouses of German citizens a naturalization may be possible after three years of residence and marriage. For recognized refugees a legal residence of six years can be sufficient. In cases of public interest (e.g. by highly skilled scientists, arts, culture, media or sports) three years can be sufficient. Beside of these regulations are no special conditions for investors or business person.

The administrative fee for naturalization basically amounts to EUR 255 per person, EUR 51 for minor children.

### **10.3 Loss of German Citizenship**

The German citizenship will be lost by

- a. dismissal, abandonment or declaration
- b. acquisition of any other citizenship by application (even if the alien was citizen of that country before naturalization)
- c. adoption by an alien
- d. entrance to the armed forces of any other country

## Section 11

### **Miscellaneous**

#### **11.1 Residence Registration**

Every German and alien resident has to register at the local Registration Authority within one or two weeks (depending on local regulations) after establishing residence in the particular city. After announcing residence at the Registration Office, the local foreign authority becomes responsible. In few cities aliens have to register at the Foreign Authority. EU-citizens can obtain their residence permit (Freizügigkeitsbescheinigung) at the Registration Authority.

#### **11.2 Drivers' licence**

A non-EU drivers licence will be acknowledged in Germany for the maximum period of one year and should be transcribed into a German drivers licence during this year. After the one-year-period, the foreign licence becomes void. This can cause criminal consequences and affects the insurance of the car. The application forms for the transcription are available at the municipal administration.



## **Appendix 1**

Citizens of these countries do not need a visa to enter the EU-Memberstates:

**Andorra, Argentina, Australia, Bolivia, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Romania, San Marino, Singapore, South Korea, United States of America, Uruguay, Vatican, Venezuela.**

in China: **Hong Kong** (with Passport “Hong Kong Special Administration Region”)

**Macao** (with Passport “Regiao Administrativa Especial de Macau”)

## **Appendix 2**

Citizens of these countries can apply for a residence permit at the Foreigners Authority in Germany without applying for a visa in advance:

**Australia, Canada, Israel, Japan, Republic of Korea, New Zealand and the United States of America**