

**Sven Hasse**

Rechtsanwalt und  
Fachanwalt für Migrationsrecht &  
Fachanwalt für Verwaltungsrecht

Rights of residence  
for students and scientists  
from non-EU countries

December 2019



	Student language course PhD candidate	Employment	EU Blue Card	Researcher	High qualified specialist
<b>Legal basis</b>	§ 16 (language student 16b)	§ 18	§ 19a	§ 20	§ 19
<i>from March 2020</i>	<i>§ 16b (language student 16f)</i>	<i>§ 18b par. 1</i>	<i>§ 18 b par. 2</i>	<i>§ 18 d</i>	<i>§ 18 c</i>
<b>Minimum income</b>	Subsistence must be secured <ul style="list-style-type: none"> <li>Blocked account</li> <li>Declaration of commitment</li> <li>part time jobs</li> </ul>	Subsistence must be secured by employment	53.600 €/year  41.808 €/year in specific shortage occupations (IT/natural science)	1.914 €/month	Subsistence must be secured by employment
<b>German language skills</b>	Depending on the requirement of the university, if none: A2	no	no	no	no
<b>Other requirements and restrictions</b>	Admission letter of university/ Studienkolleg or language course  May contain resolatory condition: <i>„get´s void with exmatrikulation“</i>	concrete job offer	concrete job offer	Hosting agreement and Declaration of commitment of research institute (if not public funded institute)	concrete job offer
<b>Employment</b>	120 days or 240 half days  plus employment on university/ institute	Restricted to authorized employment Self-employment can be allowed  full access to labour market after 2 years of employment or 3 years of legal residence (student residence counts 50% max. 2 years)		In context of research project	yes

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Legal basis	§ 16	§ 18	§ 19a	§ 20	§ 19
<b>Duration</b>	1 – 2 years	Depending on working contract; Max. 4 years	Duration of working contract + 3 months; max. 4 years	Depending on research project	unlimited
<b>Extension</b>	Language student max. 1year  Student: usually average duration plus 3 semesters  Student preparations: 2 years  After succesful completion: 18 months for job search	Yes if contract continues    After termination of employment for 6 months for job search under discretion	Yes if contract continues    After termination of employment for 6 months for job search	Yes if project continues    After termination of project for 9 months for job search	unlimited duration
<b>Permanent settlement permit</b> „Niederlassungs-erlaubnis“	No.  After an other residence title was issued ½ of the residence period as student can be taken into account	after 5 years of residence and 60 months contribution to social security system (from 1.3.2020: 4 years/48 months) with German university degree after 2 years/24 months Language: B1	after 33 months employment under BlueCard conditions Language: A1  after 21 months with language: B1	after 5 years of residence and 60 months contribution to social security system (from 1.3.2020: 4 years/48 months) with German university degree after 2 years/24 mths Language: B1	./.
<b>EU permanent residency</b> „Daueraufenthalt-EU“		after 5 years of residence and 60 months contribution to the social security system			

	Student language course PhD candidate	Employment	EU Blue Card	Researcher	High qualified specialist
Legal basis	§ 16	§ 18	§ 19a	§ 20	§ 19
<b>Subsequent immigration</b> (spouse and minor children)	<ul style="list-style-type: none"> <li>• Marriage must have existed at the time the residence permit was granted</li> <li>• Further duration of stay is expected to exceed one year</li> <li>• Subsistence must be secured</li> <li>• A1 language test (exceptions for some nationals)</li> </ul>	Subsistence must be secured	<ul style="list-style-type: none"> <li>• Subsistence must be secured</li> <li>• Marriage has existed at the time the residence permit was granted <u>or</u> A1 language test</li> </ul>		
<b>labour market access for family members</b>	Full access to employment and self-employment for family members				
<b>Child benefits</b> <i>„Kindergeld“</i>  and <b>Parental benefits</b> <i>„Elterngeld“</i>	no	yes	yes	yes	yes
<b>Unemployment benefit</b> <i>„Arbeitslosengeld I“</i>	no	yes if access to labour market persists (not with job seaker title)  Contributions of not less than 12 months within the last 24 months (from 2020: 30 months)			yes
<b>Change of residence permit for other purpose</b>	<ul style="list-style-type: none"> <li>• after graduation</li> <li>• for voactional training in shortage professions</li> <li>• In case of mandatory rights</li> <li>• in exeptional cases</li> </ul>	yes	yes	yes	titel is unlimited and not connected to the purpose of residence

collateral clauses	meaning	example
<b><i>Erwerbstätigkeit gestattet</i></b>	Employment and self-employment/freelance allowed	<ul style="list-style-type: none"> <li>• indefinite residence titles</li> <li>• family reunion</li> <li>• prior employment of 2 years</li> </ul>
<b><i>Beschäftigung gestattet</i></b> (als Programmierer bei Firma Müller)	Specific employment allowed	Residence titles for employment
<b><i>Selbständige Tätigkeit (nicht) gestattet.</i></b>	self-employment/freelance (not) allowed	Collateral clause for Blue Card holders
<b><i>Beschäftigung für 120 Tage oder 240 halbe Tage im Jahr gestattet</i></b>	Employment limited to 120 days/240 half days	Students
<b><i>Erlischt mit Beendigung eines Studiums an einer deutschen Hochschule/im Fach XY</i></b>	Resolutory condition: gets void if finishing studies (possible with further specification)	Students/

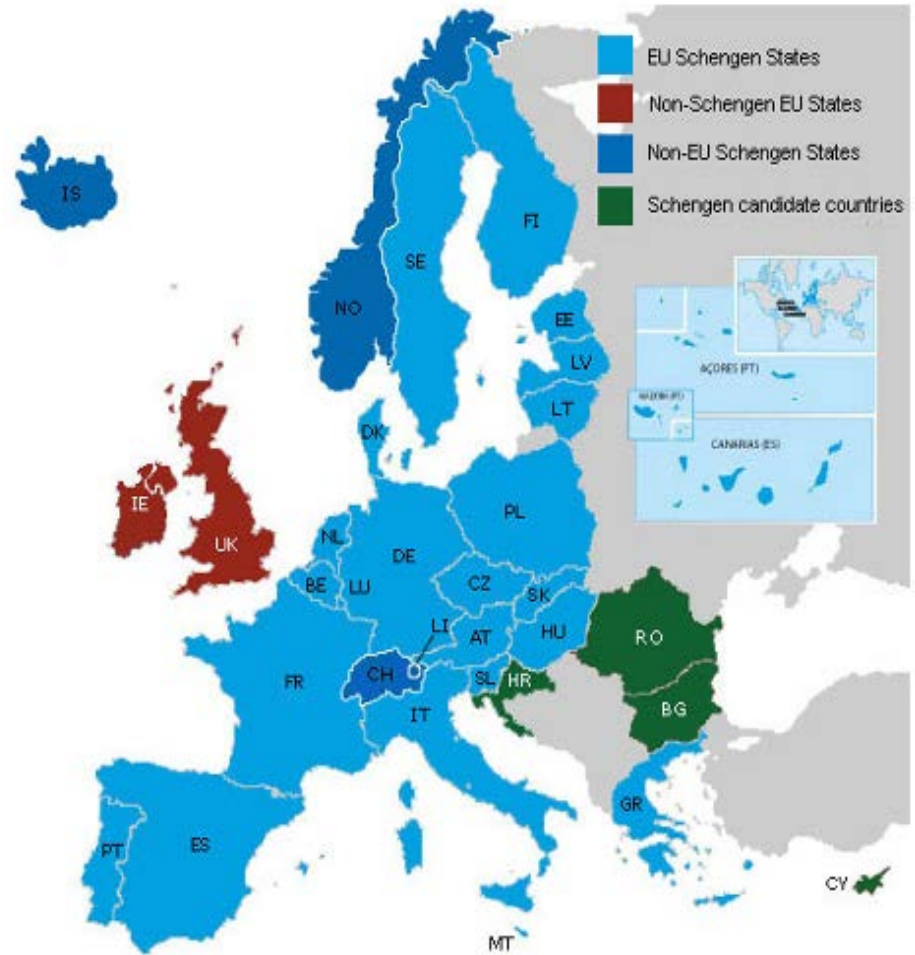


# Schengen-countries

## European Union

- UK
- Ireland
  
- Romania
- Bulgaria
- Croatia
- Cyprus

- + Island
- + Norway
- + Switzerland



Karte des Schengenraumes

Quelle: EU-Kommission



# visa exception list for short stays

- **These nationals** can apply any residence permit in Germany
- **These nationals** can apply a residence permit in Germany for other purposes than employment (e.g. student, language course, family reunion)

- Albania
- Andorra
- Antigua und Barbuda
- Argentina
- **Australia**
- Bahamas
- Barbados
- Bosnia and Herzegowina,
- **Brasil**
- Brunei Darussalam
- **Canada**
- Chile
- Costa Rica
- Dominica
- Mazedonia
- **El Salvador**
- Georgia
- Grenada
- Guatemala
- **Honduras**
- **Israel**
- **Japan**
- Kiribati
- Kolumbia
- Marshall Inseln
- Malaysia
- Mauritius
- Mexiko
- Mikronesia
- Moldowa
- **Monaco**
- Montenegro
- **New Zealand**
- Nicaragua
- Palau
- Panama
- Paraguay
- Peru
- Salomones
- Samoa
- **San Marino**
- Serbia
- Seychelles
- St. Kitts und Nevis
- St. Lucia
- St. Vincent und Grenadines
- Singapur
- **South Korea**
- Timor-Leste (Osttimor)
- Tonga
- Trinidad and Tobago
- Tuvalu
- Ukraine
- Uruguay
- Vatikan
- Vanuatu
- Venezuela
- United Arab Emirates
- **USA**
- Hongkong and Macau  
(appendix 2 EU-VisaDirective)



# Applying for a residence title, § 81

- (3) If a foreigner who is **legally resident** in the federal territory and **does not possess a residence title** applies for a residence title, his residence shall be deemed to be **permitted up to the time of the decision** by the foreigners authority. If the application is filed too late, deportation shall be deemed to be suspended from the time of application up to the time of the decision by the foreigners authority.
- (4) If a foreigner **applies for an extension of his residence title** or for a different residence title before his current residence title expires, **the current residence title shall be deemed to remain in force from the time its expires until the time of the decision by the foreigners authority**. This shall not apply to visas pursuant to Section 6 (1).
- If the application to issue or extend a residence title was filed too late, the foreigners authority may order that the previous residence title remains valid in order to avoid undue hardship.

# acquiring citizenship (§ 4 StAG)

## ■ Birth in Germany

- ✓ one parent is German or
- ✓ one parent has an indefinite residence permit and legal residence for not less than 8 years

## ■ Birth abroad if one parent is German;

if the parent is born abroad himself after 1999 registration in German birth registry within one year.

## ■ naturalization:

### ➤ Legal right (§ 10 StAG):

- ✓ 8 years legal residence (including student's time) (§ 10 StAG)
- ✓ 7 years with integration course (§ 10 III StAG)
- ✓ 6 years with special integration efforts such as language skills of B2 or more (§ 10 III StAG)

### ➤ under discretion (§ 8 StAG):

- ✓ 3 years if married to a German spouse
- ✓ shorter periods possible with public interest

# Further requirements for naturalization

- ✓ Subsistence must be secured without social welfare
- ✓ Giving up former citizenship
  - Exceptions if this is not possible or with unacceptable conditions
- ✓ no criminal record
- ✓ Language skills B1
- ✓ naturalization test

contact

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