

# Changes in the common law in 2012, highly skilled - the EU Directive

## Information from the immigration office (not official)

### Implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment:

The aim of aforementioned Directive of the European Union is to unify the conditions of entry and residence for highly skilled workers from third countries in Europe and to facilitate. Germany, like other European - states is also interested in hosting well-educated people and to allow them to live and work here temporarily or permanently.

#### 1. § 16 of the Residence Law - training

Before starting the training in Germany, the application for a **visa** at the German embassy of home country is obligatory. Granting visa is guided by § 6 paragraph 4 in conjunction with § 16 of the Residence Law. As soon as all the required documents have been presented in the Embassy, the immigration authority, which is the local responsible institution for the intended place of stay in Germany, will be involved through Foreign Office on Visa procedures. It will be checked whether the conditions exist to grant a residence permit under § 16 of the Residence Law. These include:

- Proof of sufficient financial resources either in the form of a bank proof of the income or proof of an undertaking;
- Verification of identity, usually verified by passport
- Controlling whether the grounds for expulsion exist (e.g. for an unauthorized re-entry after deportation)
- Validity of the passport,
- Admission to the course through the appropriate training institution,
- Health insurance,
- Housing.

The foreigner can enter Germany with the three months granted visa. Within the validity period of this visa, the residence permit at the Immigration Office must be requested. The residence permit according to § 16 of the Residence Law can be granted for the purpose of study or for the preparatory measures. It should be noted that the duration **of preparatory measures should not exceed two years**. The residence permit is basically granted for certain time limit. The period of limitation depends on the period for which funding is secured. An extension is possible in each case, if the purpose of residence – i.e. the study – still not has been achieved. However, there is a statutory limit within which the study should be completed. If the preparatory action is not completed within two years, especially not providing the required language certificate, the residence usually has to be ended. This applies even if the preparatory measures were completed at another educational institution, unless the necessary conclusion was reached. Then, it can again not be assigned for a study preparatory course at any other educational institution.

In addition to the residence permit for the purpose of studying, a residence permit reference the application for study for a period of up to nine months may be granted, this includes a secured funding, since in this residence permit, employment is not allowed.

In the first year of preparatory measures stay, work is permitted only during the holidays. Otherwise a **work** of up to 120 days or 240 half days per year is permitted. The old system had stated these 90 days or 180 half days per annum. This change is particularly good for those who are dependent on additional income to finance their studies. It is also permitted for students to practice student jobs at the educational institution, or other academic organizations without any time restrictions. However, the maximum permissible duration of Studies must not be exceeded.

Internships that are prescribed as part of training or are considered necessary to achieve the training objectives will not be credited from the times of the permitted work during the studies.

The **permissible duration of study** is based on the average duration of studies in the respective course. The average duration of study is determined by the respective educational institution and the immigration authorities to be informed. Taking into account the special problems of foreign students this average duration of study may be exceeded by three semesters. Hours of study preparation are not reckoned.

If the permissible duration of study is exceeded, the foreign student must demonstrate this through the documentation from the educational institution, that the study can be achieved in the foreseeable future. If not can be proved that the study will be successfully completed within a maximum period of 10 years, the residence is terminated. Besides, the residence can be terminated early if the student cannot demonstrate sufficient progress in his studies. In particular, the possibility of employment whilst studying must not cause the study period to be exceeded. Key decision criteria are therefore the average duration of studies specifically documented in the study, the study results so far achieved and the assessment of the academic institution that in which period of time the study can be successfully completed.

On the other hand, it may be possible to complete a second training after successfully completion the first training, though this can usually be completed within the above ten-year period and based on the same subject which is relevant to the true career, for example, a master training after the bachelor degree or a doctorate.

**A different course of study, field of study or the study institution** is always a change of purpose of the residence, which may be permitted only under strict conditions. A different course of study or area of study is usually only possible within the first 18 months of study. After that, a change is merely possible if the study can be completed within a reasonable timeframe of (10 years period). In particular, proving that the academic achievements so far obtained could be credited to the new study. Furthermore, an assessment of the study institution is required to certify that the intended new course can be completed in a reasonable time. Here also the academic achievements are to be valued. If this cannot be proved and the previous program is not continued, the stay is terminated.

A change in the purpose of residence, e.g. § 18 employment, cannot be considered as a rule. In the case of the study discontinuation, the departure and undertaking are visa procedures with the respective German embassy is necessary, unless there is a right to stay, e.g. § 19a (Blue Card), § 28 (family reunification to a German).

In summary, it can be said that, the legislature has facilitated conditions for residence to study-permitted activity, time to search job - The need for studies to be undertaken quickly with the essential significance, that all are still a basic requirement of the state towards the foreign students.

**Spouses:** permitted, reference §§ 5, 30 Residence Law;

**Employment of spouse:** if permitted, § 29 Residence Act, usually only with the approval of the Federal Employment Service

## **2 .What's next after successful completion of the training?**

Whoever wants to stay in Germany after graduation, but still has no concrete job offer, now has the opportunity to look for a job offer corresponding his training for a period of 18 months. During this time an employment, even if it does not meet the qualifications is permitted (§ 16 Para 4 Residence Law).

For admission to work, there are various legal options to examine case by case and decide. It cannot be said if a residence permit or other options would always be cheaper. This can be decided only on particular circumstances. There it is to be noted that, an appointment with the immigration authority is recommended as soon as there is an appropriate vacancy.

**Common requirements for granting of a residence permit is, the living cost is secured, sufficient living space is available, coverage of health insurance, no reasons opposed to public safety and public regulations, and the pass is valid. This applies to all residence permits.**

A residence permit for the purpose of **employment (§ 18 Residence Act)** may be granted if the previous reason - § 16 education - is omitted, meaning that the study was successfully completed or in accordance to § 16 (4) which is part of the job search an appropriate position is found. The permit requires the approval of the Federal Employment Service, unless an exemption to the agreed profession is regulated by decree. Since this regulation is subject to changes, an individual assessment is here required. In this case, constellation (prior authorization according to § 16 (1) or § 16 (4) of the Residence Law, successful completion of training) departure prior to the application for the permit is not required. The residence is outfitted with a resolving condition. In the first two years, employment is permitted only at a designated company, self-employment is not permitted, and the right of residence expires one month after termination of employment. **The employment must be in reasonable proportion to the education degree** in contradiction to employment in the context of § 16 (4) of the Residence Law.

A residence permit according to § 18 of the Residence Law can also be an alternative to a residence permit according to § 16 (1), if there is a promotion that is associated with paid scientific activity.

**Spouses:** permitted, reference § § 5, 30 (1) No. 3 d.e Residence Law

**Employment of spouse:** permitted, § 29 paragraph 5 of the Residence

A residence permit as a **researcher with § 20 Residence Law** - may be granted if the applicant has an effective hosting agreement to carry out a specific research project with a recognized research institution e.g. TU Ilmenau. Generally this application has to be done from abroad. The scheme is not applicable, if for example the research is already part of a doctoral program. The length of stay depends on the duration of the research.

**Spouses:** permitted, § 5, 30 (1) No. 3c Residence Law

**Employment of spouse:** Permitted, § 29 par 5 No. 2 of the Residence Law

There would also be the possibility that as a graduate from a German university to pursue **self-employment** in Germany (**§ 21 Residence Law**). However, the proposed activity must be independent as researchers or scientists, associated with the knowledge or the business acquired in the training. This permit is limited to a maximum of three years. After that can settlement permit – i.e. a permanent residence permit be granted, this is when the business was successfully accomplished, and the living cost for him including his family members is guaranteed. The application is possible to be submitted after successful completion of training (§ 16 Residence Act) without the prior departure.

**Spouses:** permitted, reference § 5, 30 (1) sentence 2 No. 1 of the Residence Law

**Employment of spouse:** permitted, § 29 Abs. 5 No. 1 Residence Law

With the amendment to **§ 19a Residence Act 2012, the EU Blue Card** was introduced. Object and purpose of these regulations to the EU Blue Card is to meet the demand for skilled workers in the German labor market. The granting of EU Blue Card requires a specific offer of employment by an employer in Germany or signing of an employment contract with a domestic employer.

Promoting the objectives of the high skilled Directive includes promotion of intra-European mobility, especially third-country nationals are by this rule addressed who enter directly from a third country, as well as third-country nationals who already reside with an EU Blue Card in an EU Member State .

With respect to this regulation, highly qualified individuals and professionals in certain occupations are specifically to be recruited from abroad. But the provisions of § 19a also engages students in German universities that want to take up an activity after successful completion of their study in Germany, as well as immigration from a third country.

These are especially engineers of the technical field. In addition to the general requirements for a residence permit, a salary of at least **46,400 €** (as of January 2013) is demanded, and amongst the mathematicians, computer scientists, natural scientists, engineers and physicians currently it is equivalent to at least **36,192, - €**, provided that this to be acknowledged by the Federal employment Agency. Subject to the approval of the Federal Employment Agency, this however; applies only to the employment of the applicants with foreign university degrees; the feasible minimum wage is annually adjusted.

This permit is issued for the first issue of a maximum period of four years. In the first two years, when **changing the employer, approval of the foreigners' authority is required**. This edition is issued on a regular basis that employment is permitted only with the registered company, self-employment is not permitted. This requirement shall not apply after two years of appropriate work.

After 33 months, a permanent residence permit in the form of a settlement permit (§ 9 of the Residence Act) will be granted, if in this period a corresponding activity has taken place, appropriate insurance benefits (pension, long-term care) were made and the further grant requirements of § 9 are met (including language skills). This period is again reduced to 21 months, when language skill at level B1 is detected. Spouse can enter the country without German language skills and can pursue paid employment. Similarly, children are entitled to a residence permit. Furthermore, after 18 months, this residence permit will already be entitled to a mobility throughout Europe (except the UK, Ireland and Denmark – as there the highly skilled - Directive has not been implemented, the national legislation is there current).

**Spouses:** permitted, reference § 30 (1) sentence 2 numbers 1, sentence 3 No. 5 of the Residence Law

**Employment of spouse:** permitted, § 29 par 5 No. 2 of the Residence Law

### **3. permanent residence permit:**

In addition to the regulations on the EU Blue Card (§ 19a Residence Act) , with the amendment to 01.08.2012, a settlement permit for **the graduates of German universities** was also made.

The settlement permit for **the graduates of German universities (§ 18b Residence Law)** may be given if a study in Germany has been successfully completed, a two years right of residence under § 18 - Employment, 19a - EU Blue Card or 21 - Self-employed Residence exist, the workplace is in accordance to the degree, at least 24 months contributions is paid to a pension scheme and the requirements of § 9 para 2 sentence 1 No. (Secured livelihood) 2, No. 4-9 (including German language, housing, allowed employment, etc.) are present. Income limits are not provided here. The income merely needs to cover the essential expenses.

Thus, graduates of German universities on a license under § 18 or § 21 of the Residence Law after 24 months (basic German language skills) or as an already holder of an EU Blue Card are to obtain permanent resident status pursuant to § 18b Residence Law after 21 months-German knowledge level B1.

**Spouses:** permitted, § 5, 30 (1) No. 3a Residence Law

**Employment of spouse:** permitted, § 29 (5) No. 1 of the Residence Law

The residence permit for **highly skilled workers (§ 19 Residence Act)** may be granted to person where a particular public interest consists reference their residence in Germany. This is particularly true for the top academic executives and the ones with technically outstanding qualifications as well as teachers and scientific employees in prominent positions. The scientists are, e.g. who have a special skill or knowledge of particular significance in a particular subject area. The prominent position amongst teachers is given to university professors and institute directors. Scientific staffs in exceptional positions are persons who conduct the research independently with the responsible

departments, projects and working groups. In presence of the said conditions, this residence permit may be issued directly usually requiring the approval of the Federal Employment Agency.

**Spouses:** permitted, § 30 (1) sentence 2 No. 1 of the Residence Law

**Employment of spouse:** permitted, § 29 (5) No. 1 of the Residence Law

The general **settlement permit pursuant to § 9 of the Residence Law** can be granted if the applicant has a five year residence permit, the living cost is secured, at least 60 contributions were paid into a pension scheme, there are to be no relevant breaches of security and regulations, the undertaken work by the applicant is allowed, has sufficient language skills, has a basic knowledge of the legal and social regulations and has enough living space. For German universities graduates, half of the study period can be credited.

With a residence permit according to § 19a of the Residence Law (EU Blue Card) a settlement permit may be granted after 21 months (German knowledge B1). In contrast to the EU Blue Card residence, this residence permit is not entitled to free movement within the EU.

**Spouses:** permitted, reference § § 5, 30 (1) No. 3a Residence Law

**Employment:** permitted, § 29 (5) No. 1 of the Residence Law

A permanent residence permit, which entitles you to free movement within the EU is the EC **permanent residence permit (§ 9a Residence Act)**. The grant conditions essentially correspond to those of § 9 of the Residence Act. Amongst others, there could greater demands on a fixed and regular income be made.

There are several ways to obtain a temporary or permanent **residence permit**. Which way is correct, depends on **the personal situation**. In addition to the professional situation, the family situation is also ever considered. Inquiries on spouse unification, marriage at Inn or abroad, a right of residence of the spouse and children, the right to employment of spouses, etc., is regulated differently for different residence permits.

Only one individual solution can be found as part of a conversation in the immigration office. Here however, all relevant facts must be carried forward and to also be possibly made believable.

In any case, make sure that an application is made for a residence permit **before the expiration of the previous permit**. If a request is made for a residence permit after the expiry of the previous residence permit, you must usually leave only again and apply through the German Embassy in your home country. Also in termination of studies i.e. without college degrees – a change for the right to a residence permit for the employment purpose as a rule is not possible. Also the right of residence pursuant to § 16 (1) ends immediately upon termination of studies. All students from third countries have the obligations where the permit is only valid to study at the TU Ilmenau.

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