



Working Paper

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**- German Immigration Law:
Overview and Latest Developments -
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A. Overview

In Germany the immigration law was reformed with effect to January 1, 2005. Since then, the following principle applies: The responsible diplomatic representation abroad, respectively the foreigners authority ("*Ausländerbehörde*") solely is responsible for the applicant, which nevertheless reconciles with the Federal Employment Office ("*Bundesagentur für Arbeit*") (so called "one-stop-government"). The commencement of employment for qualified labour should be facilitated thereby. Moreover, the recruitment freeze in force with respect to foreign employees ("*Anwerbestopp*") has been replaced by a new flexible instrument.

However, nationals of the European Union (EU), member states of the European Economic Area (EEA) and Switzerland are not affected thereby. They are treated privileged in comparison to citizens of third countries, as a result of community law provisions, respectively due to bilateral agreements. Moreover, also transition regulations for citizens of the new central European and eastern European member states have to be considered. Finally, although not that far going, there are also privileges for certain (mostly industrial) states. As, therefore, the origin determines the preconditions and proceeding, the subsequent comments are structured as follows:

- Citizens of the European Union respectively the European Economic Area and citizens of Switzerland
- Citizens of the (new) central and eastern European member states
- Citizens of other privileged states
- Citizens of any other states

Furthermore, the possibilities for self-employment are specified.

The report finishes with a summary of the latest developments of German immigration law with a view to residence and work permit.

I. Citizens of the European Union and the European Economic Area / Switzerland

Special regulations are applicable for citizens of the European Union, the European Economic Area and Switzerland as a result of the provisions of the EU treaty, the EEA regulations, the Treaty establishing the European Economic Area and due to bilateral conventions.

1. Entry and residence

As far as entry and residence are concerned there are no limitations: According to Art. 18 EU Treaty any EU national is entitled to enter any member state and to stay there at will. In particular they do not require visa. EU-nationals, i.e. nationals of 25 member states at present (Belgium, Denmark, Germany, Finland, France, Greek, Great Britain, Ireland, Italy, Luxemburg, the Netherlands, Austria, Portugal, Sweden and Spain plus the following accession states Estonia, Latvia, Lithuania, Malta, Poland, Slovenia, Czech Republic, Slovakia, Hungary and Republic of Cyprus) – like the members of their family – therefore do only have to keep their passports or any accepted alternative documents with them and to produce any such document on request to the responsible public officials; they have to be in the possession of such document during their residence and in case of need they have to present or hand it out together with the certificate of residency right.

Since January 1, 2005 the EU nationals of the member states specified above only have to fulfill the obligation to register with the responsible resident's registry office (*"Meldebehörde"*). The resident's registry office will submit any information and supporting documents to the responsible foreigners authority. The latter may also request that the preconditions for the right to free movement of workers is proven as probable within an appropriate period of time.

The information required to establish the probability can be submitted to the responsible registry office when registration is made and shall be presented there – if required – the original document besides a certified translation.

On a par with EU nationals are the nationals of the states of the European Economic Area (Iceland, Lichtenstein, Norway); they also enjoy the freedom of movement and are solely obligated to get registered.

Finally, also Swiss nationals are entitled to move freely throughout the European Union and are also on a par with EU nationals (Freedom of Movement Act of June 21, 1999).

2. Taking up gainful employment

Citizens of the “old” EU member states that have been part of the European Union already before May 1, 2004 (Belgium, Denmark, Germany, Finland, France, Greek, Great Britain, Ireland, Italy, Luxemburg, the Netherlands, Austria, Portugal, Sweden and Spain), are – as a result of the provisions of community law – exempted from the obligation to apply for and obtain a “residence title for gainful employment”. A certificate of residency right respectively an EU residence permit is issued for them and the members of their family *ex officio*. There are no fees charged therefore.

3. Proceeding

As EU, EEA citizens or Swiss nationals do not require visa there is no application procedure required.

4. Summary

Other than in the case of nationals of non-European Union countries, EU nationals respectively nationals of the European Economic Area neither require visa for entering nor residence title for residing. Irrespective thereof, they are obligated

- to carry with them a valid passport or alternative documents and to produce those papers when entering;
- to register with the responsible registry office once entered into the country;
- to prove the right of residence on request before the responsible foreigners authority;
- to carry with them a valid passport or alternative documents as well as the official certificate of residency right which is to be granted *ex officio* and to produce respectively to hand out those documents if they are asked so;

which should be observed in order to avoid complications or delays.

If these aspects are observed no difficulty should be arising with respect to the residence and work permit regulations, i.e. the residence permit for the purpose of taking up gainful employment is not affected. However, searching an employer still is left to the EU/EEA respectively Swiss nationals even under the application of the new regulations.

5. Further information

Cp. further information:

- General information: www.auswaertiges-amt.de; www.zuwanderung.de
- Further information: http://ec.europa.eu/employment_social/free_movement/index_en.htm;
<http://www.bern.diplo.de/de/Startseite.html>;

II. Nationals of central and eastern European member states

For nationals of central European and eastern European member states which became part of the European Union with effect to May 1, 2004 (so called “new” member states - Estonia, Latvia, Lithuania, Malta, Poland, Slovenia, Czech Republic, Slovakia, Hungary and Republic of Cyprus) it is to be differentiated as follows:

1. Entry and residence

As far as entry and residence are concerned there are no limitations: According to Art. 18 EU Treaty any EU national is entitled to enter any member state and to stay there at will. In particular they do not require visa.

Moreover, any EU citizen will be entitled to get a so called certificate of residency right ("*Bescheinigung über das Aufenthaltsrecht*") which would be given to him officially by the responsible foreigners authority. Further, he will have to keep his passport with him whilst crossing the border and to show it to public officials if he is asked so, s. also Freedom of Movement Act for EU Nationals ("*Freizügigkeitsgesetz-EU*") for further details.

2. Taking up gainful employment

However, transitory regulations take effect if the commencement of gainful employment is intended (except for the Republic of Malta and – under certain circumstances – the Republic of Cyprus). Such transitory regulations assure the stepwise implementation of the new law of the European Community; each and every member state is entitled to opt out from the full application of the freedom of EU nationals to move and work within the EU for a certain period of time:

- 1. Step: During the first two years after the accession date the “old” member states shall (continue to) apply the national regulations or the provisions of bilateral conventions in order to regulate the access for the citizens of the “new” member states to their labour markets.

- 2. Step: After these two years, the “old“ member states may adhere to their national work permit regulations for another three years.
- 3. Step: After the expiry of another three years, the “old“ member states are only allowed to stick to their national regulations or the provisions of bilateral conventions - for the period of seven years after the accession date - if there are grave disturbances or the danger of such disturbances is given for their labour markets.
- 4. Step: The regulations on the free movement of workers take effect in their entirety and apply to the nationals of all EU member states not later than after seven years.

According to the 2-3-2-formula, it has only been very recently that Germany has made use of its right to opt out for another 3 years. Hence, nationals from the accession states will have to apply for a work permit in compliance with the old national regulations as laid down in §§ 284 subs. of the German Social Security Code III. Basically, these nationals are not entitled to work in Germany unless they do have an authorization to do so, unless otherwise agreed upon in a bilateral agreement.

This authorization is granted in the form of a “work permit EU” (*“Arbeitsgenehmigung-EU”*).

3. Proceeding

The citizens of central and eastern European countries do not require visa either; any EU national is entitled to enter a member state and to stay there at will. No application is required therefore; solely a registration with the residents’ registry office should be made within short time.

However, there are limitations – as already laid down – with respect to the intended commencement of a gainful employment, which also takes effect with respect to the proceeding: As for the “new” member states the new law concerning foreigners, respectively the provisions of the respective employment regulation is not applicable, in general the “double responsibility” remains in existence: For the grant of a residence title a foreigners authority is deemed competent, whereas a work permit is granted by the Federal Employment Office. As the nationals of the “new” member states, however – as already specified – may enter without visa and reside in the EU without limitations the application with the foreigners authority does not apply, so that solely one application has to be filed with the locally responsible employment office.

An important part of the proceeding is the examination, if and to what extent privileged employees, i.e. EU, EEA respectively Swiss nationals are available, see § 284 para 3 Social Security Code III in comparison with § 39 para 2 - 4, 6 Residence Act. Thereby it is to be considered that the employees from the member states profit from the community preference, i.e. they have to be treated privileged compared to citizens of so called third countries.

This proceeding usually lasts 4 to 8 weeks once all documents have been submitted.

4. Summary

EU nationals from the accession states neither require visa for entering nor residence title for residing. Irrespective thereof, they are obligated

- to carry with them a valid passport or alternative documents and to produce those papers when entering;
- to register with the responsible registry office once entered into the country;
- to prove the right of residence on request before the responsible foreigners authority;
- to carry with them a valid passport or alternative documents as well as the official certificate of residency right which is to be granted ex officio and to produce respectively to hand out those documents if they are asked so;

which should be observed in order to avoid complications or delays.

Should they also wish to work they would have to apply for a “work permit EU” with the local employment office at the location where the applicant is going to be employed. During the examination of the employment market they are considered preferentially in comparison to nationals of third countries.

5. Further information

Cp. further information:

- General Information: www.auswaertiges-amt.de http://ec.europa.eu/employment_social/free_movement/index_en.htm;
- Further Information: <http://www.auswaertiges-amt.de/diplo/de/Infoservice/FAQ/EU-Erweiterung/Uebersicht.html>; <http://europa.eu.int/eures/home.jsp?lang=de>

III. Citizen of so called privileged states

Citizen of so called privileged states enjoy a simple or in case they are subject to both circumstances – even a double privilege.

1. Entry and residence

On the one hand, due to a so called “*Positivliste*” (positive list) nationals of certain countries (e.g. Argentina; Israel; Japan; Canada; Korea, USA) are exempted from the general obligation to apply for a visa before crossing the external borders of the European Union, cp. www.auswaertiges-amt.de for details.

2. Taking up gainful employment

On the other hand there is an exemption from the recruitment freeze: nationals of certain countries (Andorra; Australia; Israel; Japan; Canada; Monaco; New Zealand; San Marino; USA) may be granted a residence permit for the purpose of taking up an employment, without having fulfilled the preconditions as laid down in Section IV, cp. § 34 of the employment regulation of November 22, 2004 (“*Beschäftigungsverordnung*” – hereafter: BeschV). Nationals of these countries can be admitted for any kind of occupation, unless privileged employees from the European Union, the European Economic Area and Switzerland are available. However, for certain regulations the preconditions mentioned there do still apply – such as for § 27 BeschV. With respect to the preconditions for the commencement of gainful employment there are insofar no other particularities to be regarded, so that it is referred to the comments made in Section IV in order to avoid anticipation and repetition.

3. Proceeding

The same applies to the proceeding to reach a residence permit for the purpose of taking up gainful employment.

4. Summary

Australian, Israelis, Japanese, Canadian, New Zealanders, South Korean and US Americans are exempted from the general obligation to apply for a visa before crossing the external borders of the European Union; they are allowed to apply for the required residence title after having entered.

The same applies to nationals of certain states (Andorra; Australia; Brazil; Bulgaria; Chile; Croatia; Hong Kong; Malaysia; Mexico; Singapore and South Korea) as they may also apply for a residence title for the purpose of employment after having entered Germany. Nevertheless, the proceeding should be commenced as early as possible and pressed ahead in order to avoid unnecessary delays. Unless proceedings are finished in due time, i.e. prior to the date of commencement of work, the applicant indeed is permitted to enter anyway but not to take up any employment; insofar there is no privilege.

The application is granted only, if an occupation is concerned which does not require approval – e.g. professional and further trainings; highly qualified persons, executives, activities of commercial character; short-term deployments – or a grant is possible due to certain preconditions – like seasonal work; household helps; IT-experts; executives and specialists; international labour exchanges. As there are no differences insofar with respect to nationals of third countries, they will be specified below.

5. Further information

Cp. further information:

- General information: www.auswaertiges-amt.de; <http://www.auswaertiges-amt.de/diplo/de/Infoservice/FAQ/VisumFuerD/Uebersicht.html>
- List of states not required to have visa for entering :
<http://www.auswaertiges-amt.de/diplo/de/WillkommeninD/EinreiseUndAufenthalt/StaatenlisteVisumpflicht.html>
- German representations abroad:
<http://www.auswaertigesamt.de/diplo/de/Laenderinformationen/DtAuslandsvertretungen-Laenderauswahlseite.jsp>

IV. Other nationals

For citizens of other states of so called third countries the following applies:

1. Entry and residence

Citizens having no EU or EEA nationality nor the nationality of a privileged country and who want to stay in Germany for more than 90 days, to work or study in Germany do require visa. They have to apply for such visa before entering.

2. Taking up gainful employment

The approval of foreign labour – according to § 18 para 1 Residence Act – is guided by the requirements of the German economic location, the circumstances of the labour market as well as the need to efficiently fight unemployment taken into consideration; however, the international contracts stay here untouched. Basically, a foreigner can be given a title of residency to practice an employment, if the Federal Employment Office has approved or through a legal regulation, or if an international agreement is certain that the practicing of employment without the approval of the Federal Employment Office is acceptable. According to § 18 para 5 Residence Act, another general condition is to present a definite offer for work.

a) General preconditions

In general a residence title for the purpose of taking up an employment is only granted if:

1. the consent of the Federal Employment office is given or such consent is not required due to regulations or bilateral agreements,
2. the examination of the labour market indicates that this job can not be filled from the German respectively EU/EEA labour market, and
3. a concrete job offer of usual working conditions is concerned.

With respect to the obtainment of residence permits it is differentiated between foreigners living abroad and those already residing in the federal territory. For the first group the employment regulation of November 22, 2004 (“*Beschäftigungsverordnung*”, hereafter: “*BeschV*”) is applicable, whereas for the second group the regulation on employment procedure of November 22, 2004 (“*Beschäftigungsverfahrensverordnung*”, hereafter: “*BeschVerfV*”). The provisions of the latter will not be explained hereinafter as the applicants are mostly living abroad.

b) Employments that do not need an approval

The admission of employment for a practical training or studying does not need an approval under certain conditions.

High-qualified people also do not need the approval of the Federal Employment Office. The high qualified are those according to the legal definition of § 19 para. 2 Residence Act especially for:

1. Scientists with special theoretical knowledge;
2. Teachers or professors of high standards or scientific assistants as high-standard people or;
3. Specialists and executives with a special job experience, who earn a salary of at least double the income limit for the assessment of contributions of the social health insurance (therefore at present: 7.125,- € gross per month = 85.500,- € gross per year).

Furthermore, executives / managers also do not need an approval according to § 4 BeschV, defined as follows:

1. Executives with complete authorization or “*Prokura*” (No. 1);
2. Members of the organ of a legal person, who are authorized to represent legally (No. 2);
3. Associates of a trading company or members of another trading partnership (GmbH; KG; GmbH & Co. KG), as long as they have been appointed by law, rules or by a contract of a company, in order to represent the trading partnership or the business management (No. 3); or
4. Executives of a company also active outside Germany for an employment at the level of a board of directors, management and a management board or for an occupation in other leading positions that are of essential importance for the development of a company (No. 4).

Certain activities of a commercial character can also be performed without an approval; this applies according to § 6 BeschV for:

1. People who are employed abroad in a commercial division by an employer whose domicile is in the home country (No. 1) or
2. People who hold meetings or negotiations in the home country for an employer whose domicile is abroad, or who conclude contracts or purchase merchandise for exportation (No. 2)

For most of the groups of the pre-mentioned case, the legislator assumes that there are no detrimental implications to worry about concerning the special nature of the occupation, there are even “complementary employment effects” to be expected.

It is to note that when the conditions of the following groups of the case are at hand before entering the country, it is recommended to contact the German foreign agency. It is as well recommended to present the significant documents in the respective national language and also translated into German.

c) Requirement for approval for non-qualified occupational groups

In certain groups of the case, the Federal Employment Office can approve on practicing an employment without possessing a qualified apprenticeship:

Season occupations, theatrical assistance, au-pair occupations, home help, domestic staff abroad, cp. individually §§ 18 subs. BeschV).

d) Requirement for approval for qualified occupational groups

The previous so-called green-card regulation for IT specialists has expired since 31.12.2004. Instead, § 27 para. 1 No. 1 BeschV provides for professionals – who own a university degree or a higher education or similar qualifications – the approval for a title of residency to practice an employment which can be given, if by employing them, there exists a special public interest. Another condition is that the foreigner is not to be employed under more disadvantageous conditions than those of a German employee.

The same applies for graduates, who own an university degree or a higher qualification, who are also granted a residence title for the purpose of employment, if there is a public interest in employing them due to their professional knowledge; cp § 27 para 1 No. 2 BeschV.

Furthermore, under certain conditions, specialists can also be given the approval for a residence title. According to § 28 BeschV, it applies for:

- Executives and other people, who – by practicing their occupation – above all dispose of a special and specific corporate knowledge (specialists) of a company in the country for a qualified employment in this company (No. 1) or
- Executives for an employment at a common company based on international agreements (No. 2)

Under certain conditions, a residence title for taking up employment for up to 3 years is also considered within the scope of an international personnel exchange. Compared to the previous regulation, the time limit for the employment residency of 2 years has been extended to 3 years, and the 3-year stoppage has been cancelled. In such cases,

examining the market of employment can be dispensed with, as in the scope of exchange by sending people to foreign companies or to corporate groups abroad, so that the German employment market is relieved herewith. A renewed exchange should be approved after an appropriate period of time of residency abroad.

Moreover, in reasonable cases, a residence permit for an employment can be given, if there is a public, particularly a regional, economical or a labour-market political interest; cp. § 18 para. 4 clause 2 Residence Act. According to previous experiences, it is to expect that the exceptional statement of facts will be used restrictively.

3. Proceeding

Unless nationals of privileged states are concerned, the residence permit is to be obtained by means of a visa before entering into Germany. The responsible diplomatic representation abroad, respectively the foreigners authority ("*Ausländerbehörde*") solely is responsible for the applicant, which nevertheless reconciles with the Federal Employment Office. Since January 1, 2005 residence and work permits are granted in the form of one residence title for the purpose of gainful employment ("*Aufenthaltstitel zur Ausübung einer Beschäftigung*"), which is granted by the foreigners authority, respectively after the Federal Employment Office has agreed thereto with one permission if required so ("*one-stop-government*").

It is recommended to apply personally at the German diplomatic agency – if necessary – in order to be able to give explanations on the submitted documents, or to find out which documents are possibly needed. Usually the following documents should be submitted for insertion in the files:

- curriculum vitae;
- copy of the identification card / passport;
- photograph;
- document of apprenticeship;
- document of profession;
- information on the announced employment, especially description of the job;
- information on the spouse and children, if necessary.

The decision on the approval to practice an employment is made by the Federal Employment Office, where the place of employment of the person concerned is located. The place of employment is the place where the company's domicile is situated or where the head office of an employer is situated. Concerning employments at various work

places, the company's domicile is the place where the corresponding payroll accounting of the employer is found.

Consent is given for the duration of the employment, though for the period of three years, see § 13 para 2 BeschVerfV (cp. § 44 BeschV). However, it is common practice to give such consent at first for the period of one year only, regardless of the intended duration of the employment relationship.

The approval to practice an employment can be limited in regard to

- the job-related occupation;
- the employer;
- the district of the Federal Employment Office;
- the situation and the allocation of the working hours.

This proceeding usually lasts 4 to 8 weeks once all documents have been submitted.

4. Summary

Citizens of non-privileged states, i.e. citizens neither having EU or EEA nationality nor the nationality of privileged country – have to apply for a visa with the responsible German representation abroad before entering into Germany. The application is to be filed with the responsible German representation abroad which will submit it to the German authorities.

The application is granted only, if an occupation is concerned which does not require approval – e.g. professional and further trainings; highly qualified persons, executives, activities of commercial character; short-term deployments – or a grant is possible due to certain preconditions – like seasonal work; household helps; IT-experts; executives and specialists; international labour exchanges.

5. Further information

Cp. further information:

- General information: www.auswaertiges-amt.de; <http://www.auswaertiges-amt.de/diplo/de/Infoservice/FAQ/VisumFuerD/Uebersicht.html>
- List of states required to have visa for entering: <http://www.auswaertigesamt.de/diplo/de/WillkommeninD/EinreiseUndAufenthalt/StaatenlisteVisumpflicht.html>

- German representations abroad:
<http://www.auswaertigesamt.de/diplo/de/Laenderinformationen/DtAuslandsvertretungen-Laenderauswahlseite.jsp>

V. Self-employment

If self-employment is intended the following regulations apply:

1. Entry and residence

The status of self-employment does not cause any particularities with a view to the preconditions for entering and residing in Germany. The nationality shall be decisive solely, insofar it is referred to the preceding comments.

2. Taking up gainful employment

For self-employment the preconditions specified above do not apply; however § 21 Residence Act includes certain restrictions for the grant of residence permits with a view to self-employment. In the sense of this Act, residence permits may only be granted if:

- there is a higher economic interest or a certain local requirement;
- the activity is expected to have positive effects on the economy and
- the financing of the implementation is assured by equity or promised credit.

The preconditions mentioned under n^o 1 and 2 shall be regarded as compiled if at least an amount of 1.000.000,- € is invested and 10 jobs are created. Furthermore, the following criteria are given, inter alia, for the assessment of the preconditions: carrying capacity of the business idea; entrepreneurial experiences of the foreigner; amount of the capital investment. In order to be in the position to assess the foreigners authority regularly asks for an experts' statement with a competent authority, e.g. with the local Chamber of Industry and Commerce.

A residence permit for the purpose of self-employment may be granted by the foreigners authority according to § 21 para. 2 Residence Act if there are privileges due to bilateral conventions, like for Japan and the USA.

3. Proceeding

The application for a residence permit for the purpose of self-employment is to be filed with the responsible foreigners authority; i.e. with the authority situated nearest to the (future) place of residence of the applicant. There are numerous other regulations to be considered which will not be specified herein – like the registration with the Chamber of Industry and Commerce on the basis of trade law.

4. Summary

Besides the residence for the purpose of a dependant employment the foreign national may also be granted a residence for an economic self-employment in the federal territory if certain conditions are met. Before such permit is granted it is examined explicitly whether an acceptable business idea is presented and financing is assured sufficiently.

B. Latest Developments

Since the commencement of the Residence Act in January 2005, the following developments and events can be reported exemplarily:

I. Support of the integration of foreign residents

The fundamental idea of the new law concerning foreigners is to provide more support for the integration of foreigners, which has now been regulated by the Residence Act.

In Germany, there have been numerous initiatives for the integration of foreign nationals all times. With the Migration Act and the integration regulation (*"Integrationsverordnung"*) enacted out of it, this objective has finally been regulated by law. The integration course consists of a German language and an orientation course, under certain circumstances both obligation and entitlement to participate is given. The language training offers a basic and a continuative course of same duration – all in all 600 hours. Foreigners shall acquire sufficient knowledge in the German language.

The orientation course comprises 30 lessons and shall give also important information about the everyday life, legal order, culture and history of Germany, This course focuses on the value of democratic political system, principles of the rule of law, equality, tolerance and religious freedom. This also includes basic knowledge on the rights and obligations of citizens in order to facilitate the interaction with authorities and other public institutions.

With the termination of the course, every participant of the course receives a certificate of attendance if he/she participated that regularly that a success of the course is possible and the learning success is not endangered by dropout or frequent absence. Finally, the participants have to pass a final examination.

II. Maintenance of the separation of the employment markets from Eastern Europe

As laid down before, for citizens of the central- and eastern-European member states which joined the European Union as of May 1, 2004 (Estonia, Latvia, Lithuania, Malta, Poland, Slovenia, Czech Republic, Slovakia, Hungary and Republic of Cyprus), there are indeed no limitations with respect to entry and residence but for the intended

commencement of gainful employment. Due to the additional articles of the EU contracts the implementation of the regulations concerning the access to the employment markets is made stepwise (so called „2+3+2-formula“), cp. also above and in particular attachments V to XIV of the Act of Accession.

In the meantime most of the “old” EU member states have lifted the restrictions regarding the access to their employment markets after the first two years. Nevertheless, Germany – as well as Austria – maintains these restrictions, whereby this will not be possible that easily any longer after (date). From this date on it has to be founded that disturbances will be caused on employment market or at least the danger thereto in order to adhere to the restrictions. By today’s standards, it is very likely that citizens of the new member states will have free access to the German employment after expiry of a further 3 years.

III. Support of the migration of intellectually gifted persons

Another objective pursued with the reform of the migration law, the increase in the immigration number of intellectually gifted persons, could not be reached to the extent expected. One can say so, already after 1.5 years since the commencement of the reformation. This is mainly ascribed to the quite rigid requirements of the Employment Regulation (*“Beschäftigungsverordnung”*); whereby efforts are made in order to ease these restrictions. Insofar, no details have been published by now besides the subsequent press release, therefore the further developments are to be expected.

Press release ddp of August 4, 2006:

Berlin (ddp).The big coalition plans to ease the migration of highly qualified foreigners. Dieter Wiefelspütz, the spokesman of the SPD parliamentary party said: “In principle, we are in agreement that we have to offer more attractive regulations to highly qualified persons” (literal translation) to the «Berliner Zeitung» (Friday), according to the advance report. The present provisions of the migration law would be too restrictive and bureaucratic. The Interior Minister Mr. Wolfgang Schäuble (CDU) supports this intention. A spokeswoman of the ministry told the newspaper that “the minister thinks that the legal requirements should be eased in order to facilitate the commencement of employment for highly qualified and self-employed persons.” According to the newspaper the Ministry of Interior proposes adaptations of the migration law but only for young foreigners. The income limit could be reduced to 1 ½ of the income limit for assessment of contribution to the health insurance for them, which would be € 64,000.

The Dortmund newspaper "Ruhr Nachrichten" (Friday issue) reports that remarkable easements are planned also for the present regulations requiring foreign investors to prove that they will invest at least one million € and create 10 jobs. Last year only 900 of such top executives took up residence in Germany.

DIHK president Mr. Ludwig Georg Braun proposed the introduction of a point system according to the Australian or Canadian system. Therefore points are given for the qualification, professional experience and language skills of the applicant. Braun explained to the "Berliner Zeitung" that this instrument would enable the policy to determine the number of annual labour migration according to requirements and to recruit top executives then. Moreover, this system could be implemented fast, unbureaucratically and application-oriented. Braun pointed out that Germany has to become more attractive for highly qualified foreigners and innovative self-employees". The legal barriers still are too high with respect to the regulations in force.

IV. Work permit for residents of third countries being related by marriage

With the judgment dated March 30, 2006 the European Court of Justice stated its position to the question whether a spouse of an EU national who is residing in a third country shall have free access to the employment market of the European Union. According to this judgment which was given during a preliminary ruling procedure, the spouse of an EU national shall be free to access the employment market as long as husband and wife are working in the same member state.

In the case this decision is based on, a Yugoslavian national, who was married to a Luxembourg and applied for a work permit to be able to take up an employment in Luxembourg. The wife of the applicant was doing a professional training and an internship in Belgium. After the Luxembourg Department of Labour refused to grant the respective work permit, the case was, with respect to the Community Regulation No. 1612/68, presented in an administrative court proceeding before the European Court of Justice. According to Clause 11 of this Regulation the spouse of an EU national who performs work dependently or independently is entitled to practice any profession in the territory of this member state.

Irrespective of, whether the practical training of the wife is regarded as an occupation in the sense of Clause 11 Regulation no. 1612/68 the European Court of Justice stipulates that the right to access the employment market may only be derived from the occupation

of the spouse if he performs his work in the respective member state. The gainful employment of the EU national and his/her spouse residing in a non-European country, must take place in the same member state. But in this case, this was definitely not applicable as the wife performed her practical training in Belgium while her husband wanted to work in Luxembourg. The refusal of the work permit has also been made on the basis of regulation 1612/68 and justifiably so.

Attachment

Overview on the legal regulations in force

- Ø Regulation (EWG) no. 1612/68 on the free movement of workers throughout the European Community of 15.10.1968
- Ø Law on the entry and residence of the nationals of member states of the European Economic Area dated 30.07.2004 („Aufenthaltsgesetz/EWG“)
- Ø Freedom of Movement Act for EU nationals from 30.07.2004, BGBl. 2004 I, 1950 subs. („EU-Freizügigkeitsgesetz“)
- Ø Law on the regulation and limitation of immigration and on the regulation of the residence and the integration of EU nationals and foreigners of 30.07.2004, BGBl. 2004 I, 1950 subs. („Zuwanderungsgesetz“)
- Ø Employment Regulation 22.11.2004 (“Beschäftigungsverordnung”)
- Ø Regulation on employment procedure of 22.11.2004 (“Beschäftigungsverfahrensverordnung”)

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