



## EU-Enlargement Labour Market Access and Right of Residence

The seven years' **transition period** regarding the **free movement of workers in the EU** has already **expired** for the member states which acceded to the European Union on 1 May, 2004: **Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic and Hungary**. Since 1 May, 2011, workers of these states (and their family members<sup>1</sup>) enjoy **completely free movement of workers** and, therefore, **do not need any permit** for taking up employment. A confirmation of exemption may be applied for at the Public Employment Service Austria (AMS) although such confirmation is not necessary for taking up employment.

For citizens of the member states **Bulgaria and Romania**, which acceded on 1 January, 2007, the **transitional rules** remain unchanged and in force. As a rule, the citizens of these states are therefore not yet allowed to be employed without permit!!!

### For citizens from Bulgaria and Romania some things have become easier:

Certain persons are exempt from the Act on the Employment of Foreigners (Ausländerbeschäftigungsgesetz) due to their particular personal status (e.g. spouses, registered partners or children of Austrians, etc.) and do not need any permit. Certain occupations (e.g. spiritual adviser, university assistant, diplomat, etc.) as well as some occupations requiring full compulsory social insurance (e.g. nurses in private homes, distributors of advertising material and deliverers of daily newspapers or periodical publications) do not require any permit either. Pupils and students are entitled to an "employment permit" (Beschäftigungsbewilligung) without labour market examination up to a certain number of weekly working hours. In addition, certain skilled workers obtain an "employment permit" more easily in currently 67 professions (see below) or in the field of health and hospital care. They are also given preference when granting "quota employment permits" (Kontingentbewilligungen).

### Moreover, the following persons are granted a "confirmation of free movement" (Freizügigkeitsbestätigung) and are entitled to freely choose their workplace all over Austria:

- All citizens of the mentioned states who on the day of accession or after were or still are legally employed and were admitted to the regular labour market for at least 12 months without interruption (e. g. by means of "employment permit" (Beschäftigungsbewilligung), "exemption certificate" (Befreiungsschein), "long-term resident - EC" (Daueraufenthalt-EG), "Red-White-Red Card plus" etc.).
- All citizens of the mentioned states who meet the requirements for an "exemption certificate" (Befreiungsschein) (e.g.: 5 years legal employment within the last 8 years, former spouse or registered partner or child of an Austrian, etc.)
- All citizens of the mentioned states who have permanently settled in the Federal Territory for the last 5 years and have a regular income from legal gainful employment.
- Spouses (also registered partners) and children until the age of 21 (or older, if maintenance is provided) of the persons mentioned above, if they have a common legal residence with them in Austria.

A "confirmation of free movement" is issued on application by the regional offices of the Employment Service. Already existing work authorizations (e.g. "exemption certificate", "long-term resident - EC", etc.) remain valid and do not have to be exchanged for a "confirmation of free movement".

#### Notes:

1. Family members (regardless of their nationality) are spouses (also registered partners), legitimate or illegitimate children (including stepchildren and adopted children) if they have not yet attained the age of 21 or if they are still provided maintenance, as well as parents and parents-in-law as long as they are provided maintenance.
2. Other relatives (regardless of their nationality) are, for example, partners or other relatives who can prove a close relationship to the reunifying person and are provided maintenance.

“Confirmation of free movement” for Bulgarian and Romanian citizens who are spouses/registered partners or minor children of third-country nationals:

Such persons are also entitled to a “confirmation of free movement”, if the third-country national they are related to holds a valid residence title “Red-White-Red card plus”, “EU Blue Card”, “long-term resident – EC” (Daueraufenthalt – EG), “settlement permit – unrestricted” (Niederlassungsbewilligung – unbeschränkt) or “proof of settlement” (Niederlassungsnachweis) or is eligible for asylum, and if they have a legal joint residence in Austria.

However, if the third-country national they are related to fulfils the requirements for an “exemption certificate” (Befreiungsschein), the mentioned family members are only entitled to a “confirmation of free movement” after one year of settlement.

**Annex: List of occupations according to the exceeding regulations for skilled workers (Fachkräfteüberziehungsverordnung)**

opticians, joiners and cabinetmakers, construction equipment and crane operators, construction machine technicians, building locksmiths, building tinsmiths, building engineers with medium education, building engineers with higher education, joiners, concrete workers, floorers and composition floor layers, roofers, data processing engineers with medium education, data processing engineers with higher education, lathe operators, electricians and electrical fitters, electrical engineering technicians, development and process engineers, vehicle assemblers, butchers, airport workers and dispatchers, chamfers, restaurant cooks, glaziers, GWH-plumbers, heating technicians, heating technicians with medium education, heating technicians with higher education, ladders, coffee and food makers, calculators, motor mechanics, art metalworkers, plastics processing workers, varnishers, agricultural machine assemblers, agricultural machine engineers, payroll accountants, ventilation plumbers, mechanical engineers with medium education, mechanical engineers with higher education, engineering technicians, machine fitters, bricklayers, cabinetmakers, pavers, tilers, project and service technicians, tyre fitters, locksmiths, blacksmiths, blacktop roofers, welders, service station workers, service technicians with medium education, service technicians with higher education, high-voltage current technicians with medium education, high-voltage current technicians with higher education, stonemasons and stone sculptors, plasterers, civil engineers, traction unit drivers, sales technicians, insurance intermediaries and brokers, material testers, toolmakers and cutmakers, carpenters

## RIGHT OF RESIDENCE

### Preconditions:

On the basis of the Directive on Free Movement<sup>3</sup> the citizens of the mentioned states are entitled to reside in Austria for more than three months, if they

1. are employed or self-employed in Austria, or
2. possess sufficient means of subsistence and comprehensive health insurance for themselves and their family members<sup>1</sup> so that during their residence they will not need any social benefits, or
3. education is the main purpose of their residence, including vocational training at a public or a legally recognized private school or education facility and the preconditions of point 2 are met.

### **Notes:**

3. The Directive on Free Movement does not only apply to all 27 EU states but also to Iceland, Liechtenstein, Norway and Switzerland. Also Austrians can benefit from the Directive for their family members if they themselves lived in one of those countries for more than three months in accordance with the Directive and then returned to Austria. Transitional rules for Romanian and Bulgarian citizens only apply to the access to the labour market but not to the right of residence.

## **Confirmation of registration and confirmation of long-term residence:**

All citizens of the mentioned states (also family members<sup>1</sup> and other relatives<sup>2</sup> originating from EU states) need a **“confirmation of registration” (Anmeldebescheinigung)**<sup>4</sup> issued by the Immigration, Citizenship and Registry Offices (MA 35), if they are residing in Austria for more than 3 months. The same has to be applied for at the Immigration, Citizenship and Registry Offices (MA 35) within 4 months of the entry. If the preconditions mentioned above are met, the authority will issue such confirmation.

After five years of legal and uninterrupted residence in the Federal Territory these citizens acquire a right to long-term residence, whether or not they continue to fulfil the above mentioned preconditions. On application and after checking the residence period they have to be granted a **“confirmation of long-term residence” (Bescheinigung des Daueraufenthaltes)** immediately. An absence due to certain reasons and up to a certain time does not interrupt the legal residence. Certain persons can also obtain this confirmation before the expiry of this 5-years' period.

**As a rule** the above mentioned preconditions have to be fulfilled until the right to long-term residence is obtained. The right of residence of family members and other relatives continues to exist also in case of divorce or annulment of the marriage, death or emigration of the reunifying person.

These changed circumstances (cessation of family status) as well as the cessation of the above mentioned prerequisites have to be communicated to the authority. Make sure you meet the mentioned prerequisites before the notification!!!

## **Residence cards and long-term residence cards:**

Third-country nationals who are family members of EU citizens entitled to residence need a **“residence card” (Aufenthaltskarte)** issued by the Immigration, Citizenship and Registry Offices (MA 35) if they are staying in Austria for more than 3 months. The same has to be applied for at the Immigration, Citizenship and Registry Offices (MA 35) within 4 months of the entry. If the preconditions mentioned above are met, the authority will issue such confirmation for a period of five years or for the planned period of a shorter stay.

Third-country nationals who continue to meet the above mentioned preconditions acquire the right to long-term residence if they are residing legally and without interruption in the Federal Territory for five years. On application and after checking the preconditions they have to be granted a **“long-term residence card” (Daueraufenthaltskarte)**<sup>5</sup> for a period of ten years. The application has to be filed before the validity of the “residence card” expires. An absence due to certain reasons and up to a certain time does not interrupt the legal residence. Certain persons can also obtain this confirmation before the expiry of this 5-years' period.

**As a rule** the above mentioned preconditions have to be fulfilled until the right to long-term residence is obtained. The right to residence of family members only continues to exist also in case of divorce or annulment of the marriage, death or emigration of the reunifying person if: those persons themselves meet the above mentioned preconditions and under certain other conditions (e.g. minimum time of marriage, minimum time of residence, etc). If they do not meet these preconditions, proceedings to terminate their residence may be opened against them. If the residence is not terminated, they will be granted a “settlement permit – unrestricted” (Niederlassungsbewilligung-unbeschränkt).

The family members have to communicate these circumstances, for example divorce, death or emigration of the reunifying EU citizen, to the authority. Make sure you meet the mentioned prerequisites before the notification!!!

### **Notes:**

4. Persons who have already registered according to the Registration Act before 1 January, 2006, and since then have legally resided in the Federal Territory do not need any confirmation of registration. Their valid registration is considered a confirmation of registration.
5. “Long-term residence cards” (Daueraufenthaltskarten) issued before 1.1.2010 remain valid as “residence card” (Aufenthaltskarte). Thus the above conditions still have to be met until the right to long-term residence is obtained. It is, therefore, recommendable after 5 years of residence and if the above preconditions are met to immediately file a new application for a “long-term residence card” and thus acquire the right of long-term residence.

## Other relatives<sup>2</sup> from third countries:

Other third-country relatives may obtain a **“settlement permit – relative” (Niederlassungsbewilligung-Angehöriger)**, which is exempt from the general immigration quota, if the prerequisites for granting a residence title are fulfilled. In any case the reunifying EU citizen has to make a declaration of liability.

As a rule, the first application has to be filed abroad. After a visa-free entry or in certain cases the application can also be filed in Austria (MA 35). Applications for prolongation have to be filed with the Immigration, Citizenship and Registry Offices at the latest before the expiry of the settlement permit. Applications filed after the expiry are treated as first applications.

As of 1.7.2011 an appropriate knowledge of German has to be proved before settlement (level A1) as well as later during residence (level A2 within 2 years). For the residence title “long-term resident – EC” (Daueraufenthalt-EG) German skills of level B1 are required. Some persons, however, are exempt from this obligation (e.g. minor children, etc.) or this obligation is considered fulfilled (completion of a certain level of school education).

During the first 2 years the **“settlement permit – relative” (“NB – Angehöriger“)** is issued for 1 year at a time. After that it is granted for 3 years if, apart from the granting prerequisites, also German skills on level A2 are proved. After 5 years of uninterrupted settlement, the residence title **“long-term resident - EC“** can be granted, if the granting prerequisites are still met and German skills on level B1 are proved.

The residence title **“long-term resident - EC“** also includes the free access to the labour market. If persons with a **“settlement permit – relative” (“NB – Angehöriger“)** want to work before receiving the residence title **“long-term resident - EC“ (“Daueraufenthalt – EG“)** they have to change from their existing **“settlement permit – relative”** to a **“settlement permit” (“Niederlassungsbewilligung“)**. Prerequisites for a change are an **authorization** according to the **Employment of Foreigners Act** and an available **quota place**. Due to rigid access regulations such change is very difficult.

The status of relative can be lost at any time, if the EU citizen ceases to be **liable** for various reasons (e.g. divorce, death of the reunifying person, etc.). In such cases these persons may only remain in Austria, if **another** qualified EEA citizen or Austrian can assume the liability or if they themselves continue to meet the granting prerequisites (e.g. by employment). In such cases the Immigration, Citizenship and Registry Offices should be contacted and maybe an application for a further residence title has to be filed. Make sure you meet the mentioned prerequisites before the notification!!!

After receiving the residence title “long-term resident - EC” (“Daueraufenthalt – EG”) these persons have gained permanent residency and can only be expelled due to certain criminal offences. In case of still restricted settlement permits and settlement of less than 8 years, the person should generally continue to meet the granting prerequisites.

**Note:** Since the provisions at hand have been presented in a very abridged version, we kindly ask you to contact the Immigration, Citizenship and Registry Offices (MA 35), the Employment Service (AMS) or the Beratungszentrum für Migranten und Migrantinnen in order to obtain more detailed information. We refer to the fact that in spite of careful examination mistakes can happen, therefore no guarantee for details contained in this information can be assumed.

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