



SETTLEMENT and EMPLOYMENT of family members

Family members (from third countries) or other relatives of Austrians as well as family members of foreigners generally need a **residence title** to make their stay legal. Only in rare cases, family members of Austrians can invoke EU law and only need some **documentation**.

As a rule, **first applications** have to be filed at the Austrian embassies in the **country of residence**. The **applications** can also be filed in **Austria** with the competent authority (in Vienna Municipal Department 35) if persons are legally staying in Austria after a visa-free entry (family members of Austrians also with a visa) or if they are to be granted a residence title based on humanitarian reasons or according to Article 8 of the European Convention on Human Rights. When the legal residence ends, **in general** the granting of the residence title has to be awaited **abroad**. The decision of applications based on humanitarian reasons or according to Article 8 of the European Convention on Human Rights may in certain cases also be awaited in Austria.

It is **indispensable** to file **applications for prolongation before the expiry** of the last residence title. Applications filed too late are treated as first applications. It may happen that applicants have to leave Austria and wait abroad for the result of the proceedings. Moreover the periods for acquiring long-term residence titles or the citizenship start from the beginning.

General prerequisites for the granting of residence permits:

- Proof of an accommodation customary in place
proof of ownership, tenancy or subtenancy contract, (accommodation at close relatives: A binding confirmation of accommodation is sufficient.), etc.
- Proof of an all-risk health insurance
obligatory insurance, joint insurance, self-insurance, etc.
- Proof of sufficient means of subsistence
Guiding rates (2012) for the minimum pension are for singles € 814,82, for married couples € 1,221,68 and per child € 125,72. Attention: A total amount of regular expenses such as rent, loans, attachments, maintenance payments, etc. exceeding € 260,35 additionally raises the guiding rate.
- Non-existence of obstacles for granting
enforceable return decision in Austria or the EEA area, valid residence prohibition or return prohibition, pending proceedings to terminate residence, marriage or adoption of convenience, endangering the public order or safety, etc.
- Proof of appropriate knowledge of German
As of 1.7.2011 an appropriate knowledge of German has to be proved prior to settlement (level A1) as well as during further residence (level A2 within 2 years after settlement). for the residence title "long-term resident - EC" (Daueraufenthalt – EG) German on level B1 is required. Certain 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, etc.).
- Additional regulations for spouses and registered partners
Registered partners were made equal to spouses. Spouses/registered partners need to have completed their 21st year at the moment of filing the application.

Family community with third-country nationals

Spouses and **minor children** of nationals of third countries settled in Austria are **in general** entitled to the residence title “**Red-White-Red Card plus**”, if the general prerequisites are fulfilled, a quota place is available (for certain persons also without quota) and the reunifying person:

1. is entitled to asylum;
2. holds a residence title “Red-White-Red Card”, “Red-White-Red Card plus”, “EU Blue Card” or “long-term resident – EC” (Daueraufenthalt – EG).

However, if the reunifying person holds a **different** residence permit, the family members correspondingly receive a different residence title.

During the first 2 years the residence title “**Red-White-Red Card plus**” is generally issued for 1 year at a time. After that it is issued for 3 years if, apart from the granting prerequisites, also a knowledge of German on level A2 is proved. After 5 years of uninterrupted settlement the residence title “**long - term resident - EC**” (“**Daueraufenthalt – EG**”) can be granted, if the person continues to fulfil the granting prerequisites and proves German skills on level B1.

The residence title “**long - term resident - EC**” (“Daueraufenthalt – EG”) and “**Red-White-Red Card plus**” include the free access to the labour market. No additional permit is necessary for taking up employment. Persons with a different residence title generally need a licence according to the Employment of Foreign Nationals Act to take up employment (“employment permit” (Beschäftigungsbewilligung), “work permit” (Arbeitserlaubnis), “exemption certificate” (Befreiungsschein) etc.). Spouses and unmarried, minor children are entitled to the same licence as the reunifying person (work permit or exemption certificate) after one year of settlement.

Cessation of the family status

The family status can be lost due to various reasons. Then the persons can also remain in Austria if they themselves meet certain granting prerequisites:

If the family status ceases to exist within the first five years (e.g. divorce by mutual consent, reunifying person no longer in Austria, etc.) the persons can only remain in Austria if they themselves meet the above mentioned granting prerequisites. In case of violence in the family, divorce attributable to the reunifying person’s fault, death of the reunifying person, etc. certain granting prerequisites (e.g. income, etc.) do not need to be met.

Cessation of the family status after five years: Persons with the residence title “long-term resident - EC” (“Daueraufenthalt – EG”) 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.

These changed circumstances have to be reported to the Immigration, Citizenship and Registry Offices within one month, even if the granted residence title is still valid for a longer period. Otherwise you run the risk of being fined for late notification. Make sure you meet the mentioned prerequisites before the notification!!!

Family community with Austrians

Spouses and minor, unmarried children are entitled to a residence title **“family member“** (exempt from the general immigration quota fixed by the federal government), if the general prerequisites are met. This settlement permit is issued 2 times for 1 year each, after that for 2 years.

During the first 2 years the residence title **“family member“** is generally issued for 1 year at a time. After that it is issued for 3 years if, apart from the granting prerequisites, also a knowledge of German on level A2 is proved. After 5 years of uninterrupted settlement the residence title **“long-term resident – family member“** (**“Daueraufenthalt – Familienangehöriger“**) has to be granted, if the person continues to fulfil the granting prerequisites and proves German skills on level B1. It is necessary that the marriage has existed for at least 2 years.

While the family status is maintained and the settlement permit exists, the family members of Austrians are exempt from the Employment of Foreign Nationals Act and they have free access to the labour market in the entire federal territory. On application they can get an **“exemption certificate“** (Ausnahmebestätigung) at the AMS. This license is not necessary for taking up employment, but it is recommendable, as many employers ask for the same at the time of recruitment.

Cessation of family status:

The family status can be lost due to various reasons. Then the persons can also remain in Austria if they themselves meet certain granting prerequisites:

If the family status ceases to exist within the first 5 years after settlement (e.g. divorce by mutual consent, reunifying person no longer in Austria, etc.) family members can only remain in Austria if they themselves meet the granting prerequisites. In case of violence in the family, divorce attributable to the reunifying person's fault, death of the reunifying person, etc. certain granting prerequisites (e.g. income, etc) do not need to be met. In both cases a new residence title **“Red-White-Red Card plus“** is granted.

Cessation of the family status after five years: Persons with a residence title **“long-term resident – family member“** (**“Daueraufenthalt – Familienangehöriger“**) have to exchange the same for a **“long-term resident - EC“** (**“Daueraufenthalt – EG“**) and, thus, have still gained permanent residency. They 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.

Attention: Until you receive a residence title **“Red-White-Red Card plus“** or **“long-term resident – EC“** you need a licence to take up employment. If you still have a valid residence title, you are entitled to an **“exemption certificate“** (Befreiungsschein). This has to be applied for at and issued by the AMS before taking up work. If an employment relationship was started already in the time of family community, the work for the same employer can be continued without licence.

These changed circumstances have to be reported to the Immigration, Citizenship and Registry Offices within one month, even if the granted residence title is still valid for a longer period. Otherwise you run the risk of being fined for late notification. Make sure you meet the mentioned prerequisites before the notification!!!

Other relatives of Austrians

Other relatives (parents, grandparents, adult children, certain relatives, etc.) from third countries can, on application, be granted a quota-free **“settlement permit – relative”** (**“Niederlassungsbewilligung – Angehöriger“**) if the mentioned granting prerequisites are present. In any case the reunifying Austrian has to give a declaration of liability and the same has to be plausible (sufficient means of subsistence for the person applied for, after deduction of the income required for the core family).

During the first 2 years the **“settlement permit - relative”** is generally issued for 1 year at a time. After that it is issued for 3 years if, apart from the granting prerequisites, also a knowledge of German on level A2 is proved. After 5 years of uninterrupted settlement the residence title **“long - term resident – EC“** (**“Daueraufenthalt – EG”**) can be granted, if the person continues to fulfil the granting prerequisites and proves German skills on level B1.

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

The status of relative can be lost if the Austrian ceases to be **liable** for various reasons (e.g. divorce, death of the sponsor, etc.). In such cases these persons may only remain in Austria if **another** qualified EEA citizen or Austrian citizen can assume the liability or 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 should be filed. Make sure you check in advance whether you meet the mentioned prerequisites!!!

After obtaining 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 not yet permanent settlement permits and settlement of less than 8 years, the person should generally continue to meet the granting prerequisites.

Attention !!!

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, Municipal Department 35 (MA 35), the 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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