

**Information on
the Statutory Frameworks applicable to
Entry and Residence
by Foreign Students, Academics and
Scientists**

Please note:

This English version is a translation of the German original (*Informationen zu den rechtlichen Rahmenbedingungen für Einreise und Aufenthalt von ausländischen Studierenden und Wissenschaftlern*) and is intended for information purposes only. In all cases of doubt or dispute, the German original shall prevail.

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1 Introduction

Questions of entry and residence are governed by the "Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners" – in short: Immigration Act – which came into force on 1 January 2005. The Immigration Act consists of various single acts, of which the Residence Act (for non-EU citizens) and the Freedom of Movement Act/ EU (for EU citizens) are most relevant in terms of entry and residence for foreign students and visiting academics and scientists. Statutory instruments govern the more specific details in many of the Act's areas of applicability. However, other laws, provisions and regulations may also be of relevance to the information presented here.

This information sheet reflects the status as of September 2007. Since the Immigration Act first came into force, a number of amendments have been made to the laws addressed here. Essentially, these are:

- Bulgaria and Romania joined the European Union on 1 January 2007. As with the "old new" members, e.g. Poland, the Czech Republic and Hungary, which joined the EU on 1 May 2004, certain transitional arrangements apply. While full freedom of movement is already granted, identity checks will continue to be made at the borders. In addition, Germany has also made use of the option provided by the Accession Treaty to continue to restrict the freedom of movement for workers as well as for cross-border services in certain sectors (building and construction, interior decorating, certain cleaning jobs) for a transitional period of two years. After that, a decision will be made as to whether the transitional regulations are continued for a further three to five years.
- The European Union updated its "Council Regulation (EC) No 539/2001 on the list of third countries whose nationals must be in possession of visas when crossing the external borders and the list of third countries whose nationals are exempt from that visa requirement". This means that nationals of Bolivia will need a visa as from 1 April 2007. On the other hand, nationals of Antigua and Barbuda, Bahamas, Barbados, Mauritius, Seychelles and St. Christoph and Nevis will not require visas as soon as the appropriate treaties between the European Union and the respective country come into force.
- A more extensive change came with the required implementation of 11 residence and asylum-related EU directives, which also affected the Residence Act and the Freedom of Movement Act/EU (Act on the Implementation of Residence and Asylum-Related Directives of the European Union of 19 August 2007). Amendments in the field of the Residence Act are the most extensive in this respect.

The implementation of these directives further harmonises the entry and residence conditions for third-country nationals and the asylum regulations within the EU, makes illegal immigration more difficult, and brings together the existing European legal instruments relating to the freedom of movement. The following changes are of particular significance for the entry and residence of foreign students, academics and scientists:

- Requirements for issuing visas for educational purposes (study or study preparation measures):
Applicants must prove that they have been admitted to a higher education institution and that they have adequate language skills.
- Living expenses (subsistence) for students: The amount of financial resources that a foreign student from a non-EU country must prove to have available each month has now been set by law at the same level as the maximum BAföG (educational assistance) level.
- Proof of sufficient financial resources (subsistence): EU students only need to state plausibly that they have the resources available to them and no longer need to document this.
- Students of minor age: To study in Germany, they must present a letter of consent signed by the person(s) responsible for their care and custody.

- Validity of the residence permit for educational purposes (study preparation and studying): The residence permit will be issued for at least one year and for no more than two years.
- Extended revocation option on residence permits for educational purposes: These residence permits can also be revoked if unauthorised gainful employment is taken up or if the studies do not make the expected progress.
- EU-wide mobility for foreign students: Persons resident as a student in another EU member state may, under certain conditions, also study in Germany.
- Residence permit for research: A special entry process is being established for qualified researchers. Researchers may work in Germany if a research institution that has been duly recognised employs the researcher. This also includes a component for raising the EU-wide mobility of researchers.
- Financial resources for researchers (subsistence): To be able to receive a residence permit for research in accordance with Section 20 Residence Act, proof of the availability of 1610.- euros per month is accepted as sufficient.
- Stricter conditions on the subsequent immigration of spouses: To prevent marriages of convenience or forced marriages, both spouses must be at least 18 years old and the immigrating spouse must be able to communicate in basic German.
- Extended subsequent immigration options for children: New residence titles based on EU law are considered here.
- No visa obligation for third-country family members related to EU citizens: If they hold a valid residence title from another EU country, a visa is not required for entry into Germany.
- Obtaining a settlement permit: Half the time spent studying in Germany is credited to the minimum residence term.
- New, permanent residence title: "EU Long-Term Residence Permit".
- Permanent right of residence for EU citizens and their family members: After five years of uninterrupted residence, EU citizens and their family members receive a right of residence that is independent of the continuing validity of the freedom of movement requirements.

2 General Entry Provisions

In general, foreigners require a visa for entry into Germany. Exemptions to and relaxations of this requirement are only possible for certain ("privileged") foreigners. In general, the following applies: EU citizens and EAA nationals enjoy freedom of movement on the basis of the Act on the General Freedom of Movement for EU Citizens. Under this Act, they are protected against each and every form of discrimination on grounds of nationality.

When issued, visas are entered into the passport and allow both entry and temporary residence. Foreigners requiring a visa must always obtain the visa in their respective home country/country of residence before entering Germany. Responsibility for issuing visas lies with the German diplomatic missions abroad (as a rule the German Embassy or Consulate General) that have been duly authorised by the Federal Foreign Office. Some visas (the so-called Schengen visa) may also be issued by the diplomatic missions abroad of the other Schengen countries located at the foreigner's normal place of residence.

When visas are required, entry without a visa is not permitted and is consequently illegal.

The following group does not require a visa for entry; they are only required to present a valid travel document (as a rule, their passport):

- EU citizens: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom. In fact, citizens of these countries only require a valid ID card for entry.
- Nationals of European Economic Area countries (EAA): Iceland, Liechtenstein, Norway: here, too, a valid ID card is sufficient for entry.
- Third-country nationals (spouses and minor, single children) who are family members related to an EU citizen or an EAA national as long as these hold a valid residence title of another EU or EAA member state.
- Nationals of Australia, Canada, Israel, Japan, South Korea, New Zealand, Switzerland and the United States: For stays lasting longer than three months, they can apply for a residence title in Germany.
- Nationals of Andorra, Honduras, Monaco and San Marino do not require a visa as long as they do not intend to take up gainful employment. This means that students from these countries do not require an entry visa if no gainful employment is to be pursued before or after the studies. Study-integrated and approval-free jobs remain unaffected by this provision, since academic study is the main purpose of residence. For stays lasting longer than three months, they can apply for a residence title, even if they entered Germany without a visa.

If gainful employment as a (visiting) academic or scientist does not exceed three months within a period of 12 months, it will not be counted as gainful employment in the sense of the Residence Act. This means that nationals from Andorra, Honduras, Monaco and San Marino do not need visa for such work.

- Nationals of Argentina, Brazil, Brunei, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Malaysia, Mexico, Nicaragua, Panama, Paraguay, Singapore, Uruguay, Vatican City and Venezuela: For stays that are shorter than three months or during which no gainful employment requiring approval is planned, the nationals of the relevant country can enter Germany without a visa.

If employment as a (visiting) academic or scientist does not exceed three months, entry without a visa is also possible (*cf. above*).

It is not possible to extend these visa-free stays beyond three months. After completion of the three months, these persons must leave the country. If they wish to stay longer or to take up gainful employment in a job that requires approval, they must, as an absolute prerequisite, enter Germany on a national visa.

Nationals of Bolivia, who belonged to this group of privileged foreigners until recently, will need a visa as from 1 April 2007. While nationals of Antigua and Barbuda, Bahamas, Barbados, Mauritius, Seychelles and St. Christoph and Nevis will no longer need visas, as soon as treaties between the European Union and the respective country come into force.

- Researchers who have been accepted in another EU member state in accordance with the provisions of the EU Researcher Directive and who enter Germany within the scope of their research, as long as they otherwise work in a Schengen country, or who will pursue their research work in Germany for a maximum of three months within a period of twelve months.

If a visa is required, this can, depending on the length and purpose of the stay, be issued as a Schengen visa or a national visa.

2.1 Various types of visas

The Schengen visa is issued for short-term stays lasting up to three months per six-month period. A national visa is issued for longer stays planned to last more than three months.

Further differences exist within the two main categories based on the respective purpose of residence. For example, a Schengen visa is issued for visits, business and tourist trips. A national visa is issued, for example, for educational purposes, such as studying, or for the pursuit of gainful employment.

The German diplomatic missions abroad generally place information on the procedure for issuing a visa and on the documents that are required on their website. In many cases, application forms can already be downloaded from the homepage. The addresses of the missions abroad can be found on the website of the Federal Foreign Office: www.auswaertiges-amt.de/www/de/index.html.

2.1.1 Schengen visa

A Schengen visa

- is issued for a specific purpose of residence and for up to three months per six-month period;
- entitles the holder to travel freely and to stay in the territory of the Schengen countries (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Iceland, Luxembourg, Netherlands, Norway, Portugal, Sweden, Spain);
- cannot generally be extended or changed to another purpose of residence. Only in particular exceptions is an extension possible, e.g. when medical treatment is urgently needed;
- is issued by the diplomatic missions abroad of the Schengen countries.

Foreigners who would like to come to Germany to take up a course of studies or a doctoral programme or who would like to complete a research stay or work as a visiting academic or scientist are strongly advised against entering Germany on a Schengen visa, because the residence title that is issued together with the visa cannot be extended or changed to another purpose of residence (*cf. above*), regardless of the short-term purpose of residence for which it was issued (tourist stay, visit or business trip). Foreigners must leave the country after the visa expires.

Depending on the length of the planned language course, the visa can be issued as a national or a Schengen visa to allow the holder to attend a language course (up to three months → Schengen visa, more than three months → national visa; *cf. above 2.1*). Foreigners who will be admitted to studies in Germany immediately after they complete the language course must state this when applying for the visa. A national visa for educational purposes (study preparation) is then issued for this purpose of residence. If the foreigner only applied for a Schengen visa or for a national visa to complete a language course (without subsequent study stay), then it cannot be changed into a residence title for educational purposes (studying). The foreigner must leave the country when the visa expires.

Foreigners who enter Germany on a Schengen visa must also be able to prove that they can cover their living expenses (subsistence) for the probable length of their stay in Germany.

2.1.2 National visa

A national visa

- is issued when a longer stay (more than three months) is planned or when the applicant intends to take up gainful employment;
- can be issued for between three months and up to one year, in exceptions also for a longer period; the visa's period of validity depends on the respective planned purpose of residence;
- only entitles the holder to stay in Germany;
- allows one transit trip (limited to five days) through the Schengen countries to reach the target country;
- can, as a German national visa, only be applied for at the German diplomatic mission abroad in whose area of jurisdiction the foreigner has his/her normal place of residence.

A national visa can also be issued in the form of a so-called dual visa (D+C visa). Such a dual visa is a national visa for a longer stay that is simultaneously valid as a visa for a short-term stay in the member states of the Schengen agreement. This means that holders of a dual visa who are waiting for their residence permit or settlement permit to be issued are also allowed short-term travel (up to three months) in the Schengen countries. To receive a dual visa, the applicant must state why it is necessary to travel to the other Schengen countries right from the first day of the visa's validity.

2.1.2.1 Applying to study

Foreigners are considered student applicants when they are interested in studying in Germany, but have not yet been admitted to a state (public) or state-recognised higher education institution, etc. The application for a study place can be combined with learning the German language or with collecting information on the range of study opportunities offered.

A national student applicant visa can be issued by discretionary decision, when

- the foreigner has not yet been admitted to a pre-study preparatory course (*Studienkolleg*) or a university;
- no compelling general grounds for refusal exist (for example, the lack of a required passport is a general ground for refusal);
- no other public interests conflict with this issue.

Student applicants must present the following documents for a national visa:

- adequate health insurance cover (cf. *Excursus "Health insurance"*);
- proof of sufficient financial resources (subsistence) to cover the visa's full period of validity;
- (for students of minor age), a letter of consent from the person(s) responsible for their care and custody.

Whether the prerequisites for admission to a specific education institution for a subsequent course of studies have been met will be checked on a case-by-case basis. It may then already be necessary to present the following documents together with the application for a student applicant visa:

- proof of a higher education entrance qualification that entitles the holder to study in Germany (or to attend a *Studienkolleg* pre-study preparatory course);
- proof of any academic achievements or qualifications gained to date.

Excursus: Health insurance

A health insurance policy must cover the following benefits to be considered adequate:

- medical and dental treatment
- medicines/drugs, dressing/bandages, health/medical aids
- hospital treatment
- medical rehabilitation
- pregnancy and childbirth

Persons with health insurance provided by a statutory (public) health insurance agency are in all cases considered to have adequate health insurance cover (Section 2, 3 Residence Act)

Over and above this, student applicants may already be required to present proof of financial resources (subsistence) for a subsequent study stay when they apply for a student applicant visa. This is a discretionary decision. In most cases, the proof of financial resources is only required by the foreigners authority in Germany, namely when the student applicant visa is changed into a residence title for the purpose of studying.

Excursus: Proof of financial resources

The proof of financial resources serves to document that the foreigner has sufficient financial resources to cover the subsistence costs and that these resources are initially available for the period of one year to ensure that the foreigner does not have to take recourse to any social security benefits in the host country during the stay. Third-country students and student applicants must prove that they have financial resources equal to the maximum BAföG educational assistance rate (Section 2, 3 Residence Act) available to them. As a rule, this currently amounts to 585 euros per month or 7,020 euros per year. However, experience has also shown that some foreigners authorities demand proof of higher financial resources. Since the level of the verifiable subsistence level is now directly governed by the Act, this should soon no longer occur.

The proof of financial resources can be provided (No. 16.0.8 of the Provisional Administrative Guidelines on the Residence Act) **either** by

- stating the income and assets of the parents,

- **or** by submitting a declaration of commitment (a formal payment guarantee) to the foreigners authority or to the diplomatic mission abroad promising to pay the foreign student's cost of living,
- **or** by depositing a security payment in a blocked account in Germany,
- **or** by depositing an annually renewable bank guarantee at a financial institution (bank) in Germany,
- **or** by presenting a scholarship/grant paid from German public funds, a scholarship/grant awarded by a funding organisation duly recognised in Germany, or a scholarship/grant paid from public funds in the country of origin, if the Federal Foreign Office, the German Academic Exchange Service or another German scholarship/grant-awarding organisation was responsible for placing the student at the German university.

Not all federal states accept each of the above-listed financing options.

If the foreigner who has entered Germany on a national visa for educational purposes (student applicant) decides, during the information and orientation stay, and especially after admission to a higher education institution, to stay for a longer period, the foreigners authority may change the provisional residence title issued together with the national visa into a residence permit for educational purposes (study preparation or studying as such). This is also the point when, at the latest, the proof of admission to an education institution and the documents which were still required for the visa application (*see above*) need to be presented.

The national visa for student applicants is valid for three months. The foreigners authority can extend it by six months in the form of a residence permit. This is subject to the condition that the student applicant proves that he or she has been admitted to studies or has been accepted to a pre-study German language course or a pre-study preparatory course (*Studienkolleg*) within this period. This means that the maximum length of residence for the study application process is nine months.

2.1.2.2 Study preparation and studies

According to the Law on Foreigners, foreigners are considered to have student status when they have been admitted to a course of studies at a state (public) or state-recognised higher education institution (university, university of education, college of art or music, or university of applied sciences = *Fachhochschule*), or to a comparable education institution, or to a higher vocational institution (university of cooperative education = *Berufsakademie*, or to a state-recognised pre-study preparatory course = *Studienkolleg*).

A visa for educational purposes (student visa) is normally issued as a national visa (Type D), because the student intends to complete a longer stay (of more than three months). However, it is also fundamentally possible to issue the student visa as a so-called dual visa (Type D+C) . This makes it possible for the holder to travel to the other Schengen countries right from the visa's first day of validity (*cf. 2.1.2*).

Students must fulfil the following prerequisites to receive a national visa for the purpose of studying:

- admission to a duly recognised education institution primarily for the purpose of gaining a professional/vocational qualification. The proof of admission is met by presenting the higher education institution's admissions letter. Conditional admission is accepted. The admissions letter may be substituted by a

- letter from the education institution confirming the student's pre-registration status for a study place,
- letter confirming applicant status, or
- letter from the university or the pre-study preparatory course (*Studienkolleg*) stating that the decision on the admissions application requires the personal presence of the foreigner at the university. This letter must confirm that the applicant's admissions application has been checked and that there are reasonable grounds for expecting the applicant to be admitted.
- adequate health insurance cover (cf. Excursus "Health insurance")
- proof of sufficient financial resources (cf. Excursus "Proof of financial resources"),
- proof of knowledge of the language of instruction; this is not required, if the language skills were already considered in the admissions decision or if the language skills are to be acquired through pre-study preparation measures.
- (for students of minor age) letter of consent from the person(s) responsible for the student's care and custody, and
- proof of any academic achievements or qualifications gained to date.

The national student visa can be issued

- with a validity of three months
- **or** with a validity of one year, if the foreigners authority was not involved in the visa process (cf. 2.2).

If the stay by the foreign student is financed with a scholarship/grant, the period of validity for the visa is normally issued in accordance with the length of the scholarship/grant, as long as the scholarship/grant term does not exceed one year.

2.1.2.3 Teaching or research work

Foreign (visiting) academics and scientists require a national visa for entering Germany for a planned teaching or research stay lasting more than three months (*exceptions cf. 2*). A visa is required regardless of whether the approval of the Federal Employment Agency for the residence title for the purpose of the respective gainful employment is required or not (cf. *Information on the Statutory Frameworks applicable to the Pursuit of Gainful Employment by Foreign Students, Academics, and Scientists*).

As a rule, (visiting) academics and scientists must present the following documents to receive a national visa:

- Proof of a concrete job offer (entry for the purpose of applying for a job in Germany is not possible),
- proof of secure financial resources (subsistence), e.g. by presentation of an employment contract or a scholarship/grant award letter
- proof of adequate health insurance cover (cf. Excursus "Health insurance").

Secure financial resources (subsistence) are considered as given when foreigners can pay their living expenses without having to take recourse to public funds. Child benefit/allowance, supplementary child benefit, child-raising allowance, parenting benefit or public funds that are based on contribution payments or that are awarded to facilitate a stay (e.g. scholarships or grants) are not considered.

The national visa for a (visiting) academic or scientist stay is normally issued with a validity of three months. Subsequently, the visa can be extended or changed into a longer-term residence title (e.g. residence permit).

2.1.2.4 Research purposes

The implementation of the EU Researcher Directive into national law created the independent residence purpose of "research". But it is still unclear how, in practice, this will be delineated from the general purpose of gainful employment, i.e. the question of who under what conditions receives which residence title when the employment involves teaching or research work. It is clear, however, that certain jobs do not fall under the research definition. This includes, inter alia, research work that is part of a doctoral programme (Section 20, 7 Residence Act).

To apply for a visa, researchers must present the following papers and documents:

- An effective admission agreement for carrying out a research project with a duly recognised research institution (*see below*),
- Statement by the research institution committing itself to cover any costs that arise for public bodies (*see below*),
- Adequate health insurance cover (*cf. Excursus "Health insurance"*), and
- Proof of secure financial resources (subsistence) (*see below*).

As specified in Section 20, 1 of the Immigration Act, the research institution must be duly recognised as an institution for carrying out the special admissions procedure for researchers in Germany. Public and private institutions that perform research in Germany receive this recognition on application (Section 38 a, 1 Residence Regulation). The application can be submitted in writing to the Federal Office for Migration and Refugees (BAMF). The BAMF publishes the list of duly recognised research institutions on the internet at www.bamf.de (Section 38 e, Residence Regulation).

According to Section 20, 1 Residence Act, the research institution must commit itself in writing to cover any costs that arise for public bodies up to six months after the end of the admissions agreement to cover the foreigner's subsistence and maintenance costs resulting from the foreigner being unlawfully resident or being deported. This requirement should be waived where the activities of the research institution are financed primarily from public funds or where there is a particular public interest in the research project (Section 20, 2 Residence Act).

According to Section 2, 3 Residence Act, the subsistence level for a stay for research purposes is considered as given when the researcher receives a monthly sum equal to two thirds of the salary as defined in Section 18 of the 4th Social Code – SGB IV. At present this equates to a salary of 1610 euros per month in western Germany. The Federal Ministry of the Interior must announce the level of the required subsistence level income for researchers in each calendar year by 31 December of each year by publishing it in the Federal Gazette (*Bundesanzeiger*).

The residence permit for research purposes facilitates, within certain bounds, EU-wide mobility. So researchers who have been admitted in another EU Member State under the provisions of the EU Researcher Directive receive a visa for carrying out part of their research project in Germany. If the stay lasts longer than three months, the stay in Germany must be completed with a duly recognised research institution (*see above*). Researchers who otherwise work in a Schengen country can enter Germany without a visa and can, as necessary, apply for the required residence permit in the country. For a period of three months within a 12-month period, employment without a visa is also permitted (*cf. 2*). So even if a visa were actually needed for entry on account of nationality, this would be waived if the researcher otherwise works in a Schengen country or if the employment or work does not exceed three months.

2.2 Visa issue approval by the foreigners authority

Where a visa is obligatory, the prior approval of the foreigners authority must be obtained for the visa issue if the stay is expected to last more than three months or if the foreigner would like to take up gainful employment or if the foreigner is subject to a security check.

Responsibility lies with the foreigners authority at the planned place of residence. In the event of a security check, approval is deemed as having been given if the foreigners authority does not object to the issue of the visa within 10 days of the request being sent to the foreigners authority (no-response deadline). If the visas for educational or research purposes are not already approval-free (*see below*), the no-response deadline is three weeks plus 2 working days.

Exceptions. The following are exempted from the approval requirement:

- Foreigners whose study place has been arranged by a German science or research organisation or by a German public body. This organisation or public body must also be able to award scholarships/grants paid from public funds. In connection with the arrangement of this study place, the foreigner must receive a scholarship/grant in Germany for which an award process is used that is similar to that used for the award of public funds. (Section 34 No. 3 Residence Regulation).
This means that the circle of privileged scholarship holders has been extended. It not only includes scholarship/grant holders now whose awards are financed from public funds, but also exempts those from the approval requirement who, for example, receive their scholarship/grant from private sponsors, as long as the above specified conditions are met.
- Academics and scientists whose teaching or research stay has been arranged by a German science or research organisation or by a German public body and who, in connection with this, receive a scholarship/grant in Germany financed from public funds.
- Visiting academics and scientists, teaching staff, and research assistants, and engineers and technicians working on the team of a visiting academic or scientist, if they take up their work at the invitation of the university or of another public research institution.
- Accompanying spouses or (civil) partners and their minor, single children.
- Foreigners wishing to work for up to a maximum of three months for which they receive a scholarship or grant paid from public funds.

All other categories need the approval of the foreigners authority as described above before the visa is issued, meaning that it can take a little longer.

3 Residence

As part of the measures to establish equality with German nationals, the EU Residence Permit for EU citizens and EEA nationals has been abolished. Now, this circle of persons is only required to register with the authorities, a requirement that also applies to Germans. Depending on the local laws, this registration must be made within the first few days or weeks of arrival. Any documents to prove that the freedom of movement requirements have been met can be presented to the registration authority (*Meldebehörde*). If the stay is going to last longer than three months, the following documents are required:

- proof of adequate financial resources (subsistence), and
- proof of adequate health insurance cover.

Adequate financial resources must be documented to ensure that no social security benefits from the host member state need to be claimed during the stay. EU/EEA students must generally provide credible proof that they have financial resources equal to the maximum educational assistance rate – Bafög – at their disposal (this currently amounts to 585 euros per month). In most cases, a written statement by the student is considered to be adequate. (Visiting) academics or scientists can generally meet the requirement by proving that they have an employment contract or are financed with a scholarship or grant. In addition, students must also present proof that they have been admitted to or registered at a duly recognised education institution for the purpose of gaining a professional/vocational qualification.

If other third-country foreigners plan a stay that extends beyond the visa's period of validity, this stay must be authorised. A residence permit or settlement permit is required for this. Foreigners who entered Germany on a national visa and plan a longer stay must have the temporary entry and residence permit included in their visa changed into a longer-term residence title before it expires.

"Privileged" foreigners who are allowed to enter Germany without a visa must also apply for a residence permit for a longer stay (more than three months) within three months of their arrival in Germany. For shorter stays of up to three months, "privileged foreigners" do not need a residence permit. It is generally not possible for nationals of certain countries only to apply for the longer-term residence title once they are in Germany. This means that they can only enter Germany without a visa for stays that are shorter than three months and, otherwise (in the case of a longer planned stay), need a national visa that can be changed into a residence permit in Germany (*cf.* 2).

The foreigners authority at the place of residence in Germany is responsible for issuing and, as the case may be, extending the residence title for all non-EU nationals.

The Residence Act only provides for two different longer-term residence titles now:

- the temporary residence permit
- the permanent settlement permit.

Foreigners from third countries who hold a valid residence title issued by one of the contracting parties to the Schengen Agreement (for Germany this means a residence permit or a settlement permit) are free to stay in the territory of the other Schengen countries for up to three months with this document and a valid travel document (e.g. a passport).

3.1 Residence permit

The residence permit is a temporary residence title. The residence permit can be issued subject to conditions and can be extended. The residence permit is issued in connection with the respective purpose of residence. The law differentiates between the following purposes:

- educational purposes (education and training, studies, language courses, school education, other education and training, searching for a job after graduating from a German university),
- gainful employment (jobs, self-employment),
- international law, humanitarian or political grounds,
- family reasons (e.g. spouses or children joining their partner/parent(s) already in Germany – known as subsequent immigration),
- special residence rights (e.g. for former Germans).

The following information covers the purposes of residence – education and training, gainful employment, and family reasons – in greater detail, because these reflect typical residence purposes for students and (visiting) academics and scientists.

3.1.1 Residence for educational purposes

A residence permit for educational purposes may be granted to engage in pre-study preparatory measures, to apply for a study place, and to study at a state (public) or state-recognised university or comparable education institution. Furthermore, a residence permit may possibly also be issued for attendance of a language course, even without the intention of studying in Germany.

If the three months of visa validity are not enough to prepare everything for an application, a residence permit for study application may be issued. The prerequisites for a student applicant stay are similar to those for issuing a visa for the purpose of applying to study (cf. 2.1.2.1). If the foreigner has entered Germany on a national visa for the purpose of applying to study and decides during the information and orientation stay and, in particular, after being admitted to studies, to stay longer in Germany, the foreigners authority can change the temporary residence title issued together with the national visa into a residence permit for educational purposes, i.e. for studying or for engaging in pre-study preparatory measures. This is when, at the latest, proof of admission to an education institution and the documents that had not yet been requested during the visa application process need to be presented.

The length of the stay for student applicants is limited to a total of nine months (three months with the visa plus a maximum of six months with the residence permit).

The validity of the residence permit for pre-study preparatory measures – such as attendance of a pre-study preparatory course (*Studienkolleg*), for example, should not exceed two years. A residence permit for pre-study preparatory measures can be changed into a residence permit for the purpose of studying.

As in the case of a visa, proof of admission to a university, adequate health insurance cover and adequate financial resources must also be proven to obtain a residence permit for studying (cf. 2.1.2.2).

The residence permit is valid for at least one year and must not exceed two years. It can be extended each respective time by at least one year and up to two a maximum of two years if the purpose of residence has not yet been fulfilled, but is still possible within a reasonable amount of time. This means that the extension of the residence permit depends on the student making proper progress along the study pathway. In addition, the residence permit may be revoked in no proper academic progress is made. It is important that the holder of

the student visa ensures that the residence permit is extended prior to the expiry of the respective period of validity.

The implementation of the EU Student Directive (2004/114/EC) makes it possible for third-country nationals who hold a residence title for studying issued by another EU member state to receive a residence permit for the same purpose in Germany. To qualify for this the foreign student must be obliged, within the scope of a degree programme taken in Europe, to complete part of the studies at an education institution in another European country, or the student must want to continue or complement studies in Germany that had already been started in another member state. This means that the student must either be taking part in a European Union exchange programme or must have been admitted as a student in the country of the (first) place of study for at least two years. In addition, the student must, by presenting suitable documents, prove this. Once the conditions have been met, the foreign student must be issued with a residence permit for the purpose of studying, as long as the student has secure financial resources (subsistence), adequate health insurance cover and has been admitted to a higher education institution.

The residence permit for university graduates, i.e. foreigners who have successfully completed their studies in Germany, can be extended by up to one year for the purpose of looking for a job in Germany. On the one hand, this job must be appropriate to the university degree and, on the other, must be a job which may be filled by foreigners (*cf. Information of the Statutory Frameworks applicable to the Pursuit of Gainful Employment by Foreign Students, Academics and Scientists*). If a job that fulfils the requirements is found, the residence permit issued for the purpose of looking for a job can be changed into one for the pursuit of gainful employment.

3.1.2 Residence for working in teaching and research

Third-country foreigners wishing to work in Germany need a residence permit which allows the pursuit of gainful employment. This is also issued by the foreigners authority, although in many cases the Federal Employment Agency must give its approval to the issue of such a permit. This takes place internally within the authorities (one-stop government), which means that the foreigners authority in question is the only office to which the applicant must go. The Immigration Act has linked up the residence and employment law provisions even more closely than in the past. This is why we recommend that, if in doubt, the information on the employment law provisions is also consulted (*cf. Information of the Statutory Frameworks applicable to the Pursuit of Gainful Employment by Foreign Students, Academics and Scientists*).

According to the relevant statutory instrument, the residence permit for engaging in gainful employment does not require the approval of the employment authorities if the work involves teaching and research. To obtain the residence permit, the (visiting) academic or scientist must, just as for stays by this group, present proof of a concrete job offer, of adequate health insurance cover, and of adequate financial resources (employment contract, scholarship/grant).

The residence permit may be valid for up to a maximum of three years on first issue and on extension; alternatively, the planned length of the employment contract will serve as a basis. The timeframe of maximum validity may only be used in full by the foreigners authority if the purpose of residence (teaching or research stay by a visiting academic or scientist) is likely to extend beyond the expiry date of the temporary residence permit.

3.1.3 Residence for research purposes

As set out in the EU Researcher Directive, the residence permit for research purposes does not require the approval of the employment agency (*cf.* 3.1.2).

The residence permit for research purposes is issued for at least one year. If the research project requires less time, the term of validity will be limited to the length of the research project.

3.1.4 Residence for family reasons

Spouses and minor, single children of third-country foreigners may receive a residence permit for family reasons. The foreigner to whom the spouse or child(ren) is/are subsequently immigrating must be legally resident in Germany, which means that the foreigner must hold a residence permit or a settlement permit. Furthermore, sufficient living space must be available for the family. Finally, the family must have sufficient financial resources at its disposal. The residence permit for family reasons can be refused if the foreigner, to whom the family members are moving, is reliant on social security benefits for the maintenance of the family. To this end, the contributions made by the family members to the household budget will be taken into account.

The right of residence for spouses and minor, single children only applies as long as the main foreigner (e.g. student or visiting academic or scientist) personally holds a residence permit.

Family members whose nationality is different to that of the main foreigner are subject to the respective entry and residence provisions that apply to the respective nationality of these family members, i.e. privileges regarding the visa requirement and similar aspects.

Special rules apply for the family members of EU citizens and EEA nationals who have the right of freedom of movement. The Act on the General Freedom of Movement for EU Citizens grants the family members (spouses and children under 21 years of age) of EU citizens and EEA nationals a right of residence, even if the family members are not citizens of an EU member state or nationals of an EEA country. Whether a visa is required for entry or not is based on the provisions which apply to persons with the respective nationality, unless they hold a valid residence permit of another EU member state or EEA country (*cf.* 2). Such third-country family members who are related to EU citizens and EEA nationals are issued *ex officio* with an EU Residence Permit. Any documents required to prove the fulfilment of the requirements for the spouse's freedom of movement can be presented to the relevant registration authority (*Meldebehörde*). Furthermore, proof of adequate living space for the family must be provided.

3.1.4.1 Subsequent immigration of spouses

The subsequent immigration of spouses is possible if the third-country foreigner to whom the spouse is moving

- holds a settlement permit,
- has an EU Long-Term Residence Permit (*cf. Excursus "European" residence titles*),
- holds a residence permit for research purposes,
- has been in possession of a residence permit for at least two years and extensions have not been ruled out by any collateral clause and the subsequent issue of a settlement permit has not been ruled out by any rule of law,

- holds a residence permit as defined by Section 38 a (*cf. Excursus "European" residence titles*) and the spouses were already married in an EU member state in which the foreigner has the status of a long-term residence holder, **or**
- holds a residence permit, the spouses were already married at the time it was issued, and the term of residence will probably exceed one year.

The spouse subsequently immigrating to join the foreigner must be able to communicate in basic German. Furthermore, both spouses – i.e. the married couple – must be 18 years of age or older. Spouses of researchers and of settlement permit holders for highly-skilled workers (*cf. 3.2*) as well as persons with the legal status of a long-term residence holder in another EU member state (*cf. Excursus "European" residence titles*) do not need to meet these conditions. In some cases, the language proficiency requirement can be waived, for example, if the spouse does not have the right to take part in an integration course as defined by Section 44 Residence Act (this is the case, for example, when the stay is only of a temporary nature, as is the case for many students and visiting academics and scientists, and so also for their spouses) or if the foreigner is allowed to enter Germany without a visa on account of nationality, even for stays that are not deemed to be short stays (cf. 2).

In exceptions, the subsequent immigration of spouses may be allowed when the foreigner to whom the spouse is moving holds a residence permit. The other conditions may be waived to prevent cases of particular hardship. However, this decision is at the discretion of the authorities.

3.1.4.2 Subsequent immigration of children

Minor, single children who have not yet turned 16 years of age receive a residence permit if both parents or the single parent responsible for their care and custody hold(s) a residence permit, a settlement permit or an EU Long-Term Residence Permit (*cf. Excursus "European" residence titles*) and the child relocates its central focus of life to Germany together with its parents or its single parent responsible for the child's care and custody. Minor, single children who have turned 16 years of age receive a residence permit if they – additionally to the above-specified conditions – have a command of the German language or it appears certain that they will be able to integrate easily.

The minor, single children of a foreigner who holds a residence permit as set out in Section 38 a (*cf. Excursus "European" residence titles*) receive a residence permit as long as the family unit already existed in an EU member state in which the foreigner has the legal status of a long-term residence holder.

3.2 Settlement permit

The settlement permit is a permanent residence title. This residence title has no time limits or geographical restrictions and may only be subjected to a collateral clause in special cases governed by law.

The settlement permit automatically entitles the holder to take up and pursue gainful employment.

This residence permit can normally be granted when the foreigner has been in possession of a residence permit for five years, and has sufficient living space personally and for the family. Furthermore, the foreigner must have made compulsory or voluntary contributions to the statutory pension scheme for at least 60 months, must have an adequate knowledge of the German language as well as of the legal and social system and way of life in Germany, and

must be allowed to work (if the foreigner is an employee). Furthermore, no public security or public order reasons must speak against this (Section 9, 2, Residence Act).

Highly-qualified foreigners can receive a settlement permit immediately and without the approval of the Federal Employment Agency if the integration prognosis is positive.

Highly-qualified workers include

- academics and scientists with specialist subject knowledge (chaired professors and institute directors),
- teaching staff and academic/scientific staff in key positions (heads of research and scientific project groups), and
- specialists, professionals and executive staff with particular career or professional experience (receiving a gross income which is at least twice as high as the income limit for the assessment of contributions of the statutory (public) health insurance scheme. At present, this is set at 85,500 euros in total).

This means that the settlement permit opens up the prospect of permanent residence for foreign academics and scientists.

Excursus: "European" Residence Titles

Much as the implementation of the EU directives included a component to facilitate European mobility for students and researchers, the opportunity for inner-European mobility is also to be created for third-country nationals holding long-term residence titles.

To this end, an EU Long-Term Residence Permit was introduced that opens up a longer-term prospect in Europe for third-country nationals. The EU Long-Term Residence Permit is issued under similar – but not identical – conditions to the Settlement Permit, and does not include special rules and regulations for highly-qualified workers. However, the EU Long-Term Residence Permit does include the right to migrate to another member state, where the holder of a "German" EU Long-Term Residence Permit is to be issued with a residence title in accordance with the respective national law.

The "counterpart" to this is a residence permit issued in accordance with Section 38 a Residence Act. The "Residence Permit for Long-Term Residence Holders in other EU Member States" is issued to those foreigners who hold an EU Long-Term Residence Permit in another EU member state and who would like to spend more than three months in Germany.

These two residence titles are not actually meant for students, academics or scientists. However, since it is not impossible for a third-country student, academic or scientist to hold such a residence title, these have been included here.

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This information sheet only aims to provide an overview and so makes no claim to completeness. Although it has been compiled with the greatest possible care, no liability can be accepted for the correctness of the content.

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