

Working Paper

GERMAN IMMIGRATION LAW

- Business Visa -

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I. Entry

EU citizen and citizen of the EEA (European Economic Area) member states as well as Swiss nationals are not obligated to obtain a visa before entering. By European regulations resp. international conventions they are entitled to enter and reside without any restrictions

Other nationals are basically obligated to obtain a residence permit for any stay in Germany, unless they are holding the nationality of states the European Union has exempted from the obligation to obtain visa under certain conditions. These citizen do not require a visa for visitor's stays of up to three months during any six-month period and are allowed to enter directly with their passports. This e.g. applies for nationals of the following states: Argentina; Israel; Japan; Canada; Korea, USA.

II. Requirements of granting a business visa

The grant of a business visa is regulated in the provisions of § 6 Residency Law as well as by the regulations of the Schengen Implementation Convention and the implementing regulations issued thereupon. The member states of this convention are Belgium, Denmark, Germany, France, Finland, Greek, Italy, Island, Luxemburg, the Netherlands, Norway, Austria, Portugal, Sweden and Spain. For the time being the provisions of the Schengen Convention are not or solely partially applicable for the new member states that have joined the European Union since May 1st, 2004 (Estonia, Latvia, Lithuania, Malta, Poland, Slovenia, Czech Republic, Slovakia, Hungary and Republic of Cyprus) and since January 1st, 2007 (Bulgaria, Rumania).

Under certain circumstances and a foreigner can, on the basis of these regulations, be granted a Schengen Transit Visa or a Schengen Visa permitting stays in the signatory states of the convention for a period of up to three months. The visa for short-term stays can also be granted for several stays for a period of validity of up to 5 years; provided that the duration of stay does not exceed a period of three months within a 6-month period, counting from the first day of entry.

The applicant must be in possession of a valid passport and, if required so, hold a valid visa unless there is an exemption from the duty to obtain visa. He/She moreover is obligated to produce such documents upon request in order to substantiate the purpose and circumstances of his/her stay. Which documents are required in the particular case depends on the possible risk of illegal immigration and the respective conditions.

The visa may only be granted if the presence of the foreigner is not affecting or endangering the interests of the Federal Republic of Germany. In order to make a decision on the application the personal interests of the applicant and humanitarian issues shall be considered as well as the security interests of Germany and the Schengen partners and the prognosis made by the representation abroad for the traveller's willingness and possibility to return. Therefore for each application the individual case shall be examined. The applicant shall moreover prove that his/her stay in the Federal Republic of Germany is financially secured. Above all he/she may be dependent on the use public funds for his/her stay in Germany. If he/she is not in the position to finance his/her trip and stay from own funds a host residing in Germany may assume liability for any costs arising from the visitor's stay in Germany, including the costs for possible medical treatments. The German foreigners' registration offices at the place of residence of the person inviting shall be responsible for the recording of such a declaration of commitment. Moreover, as a result of a decision of the European Council a travel health insurance with a sum insured of € 30,000 is required for all Schengen states. Such insurance should preferably be effected by the applicant in his home country, but can also be effected by the person inviting. In any case it should be effected in due time so that the policy or an equivalent certificate – preferably in German or English language – can be submitted when the application is filed.

The accession to the Schengen territory shall be denied if the applicant is registered by the Schengen information system for denied entry.

Third country nationals holding a visa which is not limited in space (visits and business stays of up to three months during a six-month period as well as transit and airport visas) and which is issued by a state which has implemented the Schengen acquis to its full extent, are allowed to stay in the other states fully implementing the Schengen convention within the scope of validity and in compliance with the purpose of visa; they are also not subject to controls when crossing internal frontiers.

III. Proceeding

In general, the following information will have to be presented when applying for the business visa with the German representative office abroad:

- passport valid for the period of the planned stay and 3 months thereafter;
- application form for a “Schengen visa” in duplicate;
- 2 biometrical photographs;
- official affidavit of support, e.g. confirmation to cover the costs of immigration and emigration (“Verpflichtungserklärung”);
- letter of the inviting person or company confirming and supporting the planned stay;
- documentation about the financial situation of the applicant (copies of the bank account statements of the last 6 months);
- certificate about the residential status of the applicant;
- certificate about health insurance coverage for all Schengen countries for the planned period of stay;
- proof of hotel reservation and airline reservation and one copy

This is solely an exemplary listing; the responsible representation abroad should definitely be asked which further documents are possibly required. In principle the applicant’s personal appearance is required when the application is filed; in spite of this applicants have recently been enabled to file applications online. However, one should make use of this online proceeding only if applications are filed repeatedly and if it is for sure that the requirements are fulfilled due to the fact that during online proceedings it is not possible to answer possible questions of public authorities, which might cause delay in proceedings.

The fee for a so called national visa (residence permit applies for Germany only, long-term residence of more than three months – e.g. studies – is intended) amounts to € 30. For applicants who intend to stay in Germany for a period of more than 90 days and who want or have to enter another Schengen state during the first three months of residence already it is possible to obtain a so called “hybrid visa“. The fee for such hybrid visa amounts to €60. The fees for a Schengen visa (residence permit applicable for 15 Schengen States, duration of stay up to 90 days) amounts to €60 as well.

The proceeding regularly lasts 2 to 10 days once the application is filed; however, the proceeding can also take shorter or – e.g. during the high travel season – longer in particular cases. Finally it shall be pointed out that there is no right to obtain a visa; the grant is rather subject of the discretionary approval by the responsible authority which is obligatory.

IV. Inadmissibility of taking-up employment

In practice very often no attention is paid to the fact that there is no right to take-up gainful employment (i.e. for taking up dependent employment) deriving from a visitor’s visa which is granted e.g. on the occasion of a business trip. The term „employment“ is not defined by law. However, § 84 para 1 sentence 2 German Commercial Code („Handelsgesetzbuch“) includes according to prevailing opinions a first indication for an attempt of a definition. Hereafter, self-employed is a person who basically can arrange his/her work (occupation) and who can independently determine his/her working hours. An employed person and therefore personally dependent is a person who cannot do so, and who - for this reason - is commonly classified as an employee, unless he/she is working for another person on the basis of a private-law contract.

Against this background any activities implying such dependent employment are not admitted. This particularly applies for, but is not limited to the following activities:

- Participation in trainings;
- Organisation of training courses for the transfer of knowledge;
- Participation in the operational business, resp. in production;
- Performance of services

Accordingly, the following activities are admitted:

- Participation in meetings;
- Conducting negotiations;
- Purchase of goods;
- Conclusion of contracts with German business partners

If it is unclear whether the intended activity is still covered by a visitor's visa or the prior acquisition of a residence permit for the purpose of gainful employment is obligatory already it is recommended to contact the responsible foreigners' registration office. In each individual case the office will, if so required, contact the employment office which is responsible for the internal approval of the intended employment.

The contempt of the aforesaid restrictions is especially problematic if the country was entered with a visitor's visa in order to take-up a gainful employment at a later date. Insofar the sanctions against such commencement of work without a residence title for the purpose of gainful employment have recently been tightened with lasting effect.

IV. Summary

In principle a visa must be obtained before entering, unless there is an exemption from such duty to obtain visa for certain citizen. For stays exceeding the period of three months a visa must be obtained in any case. A visitor's visa does not imply an entitlement to take-up gainful employment. On the other hand conducting negotiations as well as the participation in meetings are allowed; an involvement respectively taking-part in the daily business should be avoided in any case – at least externally. If no attention is paid thereto the administrative fines of up to € 50,000 can be imposed; in individual cases the person concerned can be expelled from the country and an (re-)entry ban can be imposed.

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