



Mütze Korsch  
Rechtsanwalts-gesellschaft mbH

# German residence and work permit regulations

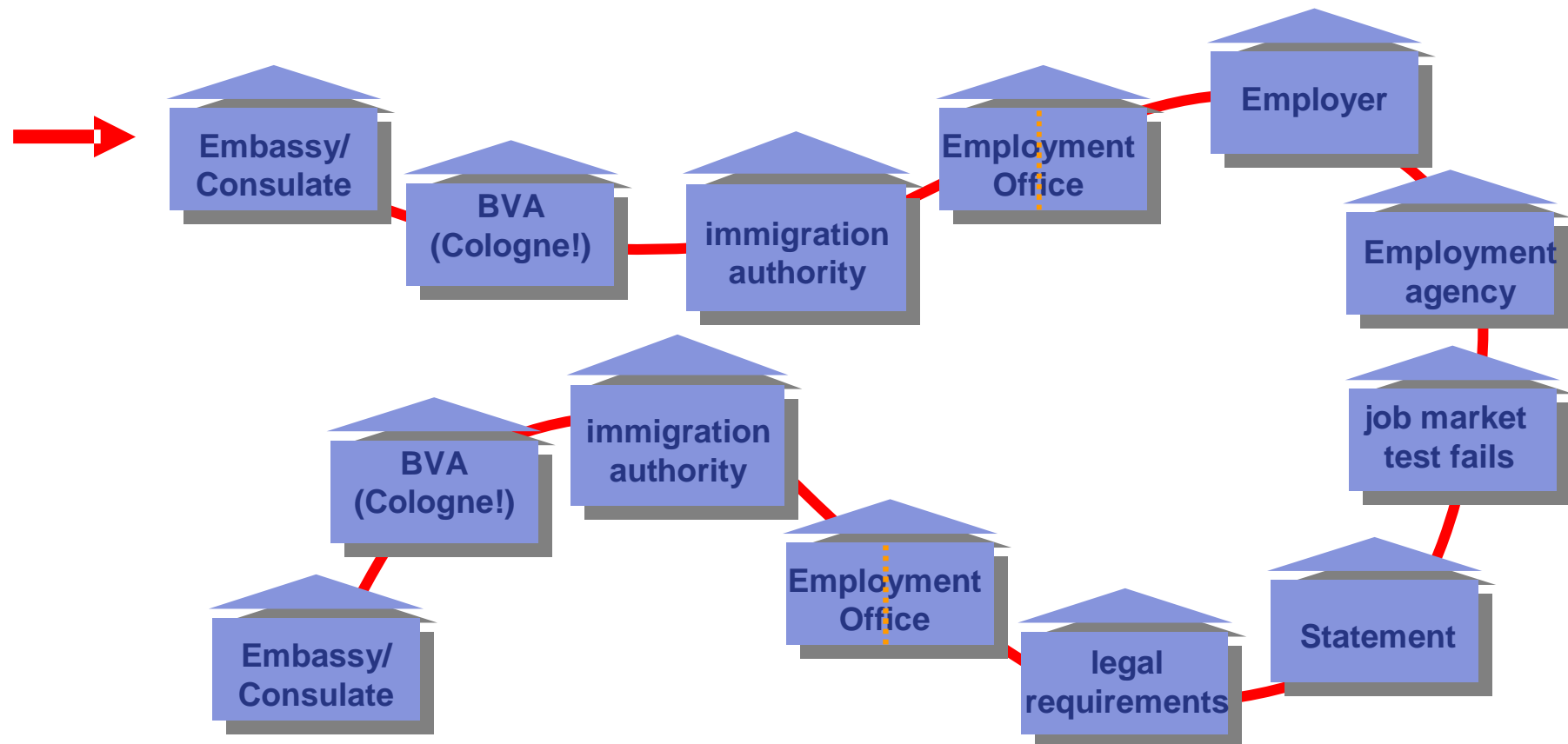
**Mütze Korsch Rechtsanwälts-gesellschaft mbH**

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IBA London / November, 16<sup>th</sup> 2007



**Proceedings:** „one-stop-government“ (!!!)





## **1. Proceedings - Example India**

Step 1: Rajesh Singh (MBA in IT from Bangalore) orally accepts job offer of Lanxess in Leverkusen.  
Commencement: ASAP!

Step 2: Rajesh Singh personally files an application for the respective visa with the German embassy in Neu Delhi. He produces: passport, employment confirmation of the employer, CV, photographs, references etc.

Step 3: The German Embassy submits the case to the Federal Administration Authority (Bundesverwaltungsamt - BVA) based in Cologne.



- Step 4: The BVA contacts the immigration authority in Cologne (responsible for Rajesh Singh's future place of residence).
- Step 5: The immigration authority Cologne asks the employment office Leverkusen whether the work permit will be granted.
- Step 6: Employment Office Leverkusen: the department "Permission" submits the documents to the department "Job placement".
- Step 7: The agent sends the form for the job description to Lanxess and asks for the instruction to search an employment.



Step 8: After return of the filled-out form the agent searches within a period of 4 weeks (!) for suitable privileged applicants from the German respectively EU job market and delivers such information to Lanxess (labour market test).

The job placement fails as the candidates either are not English-speaking or do not have the status of MBA.

Step 9: The agent submits a statement to the department “Permission”.

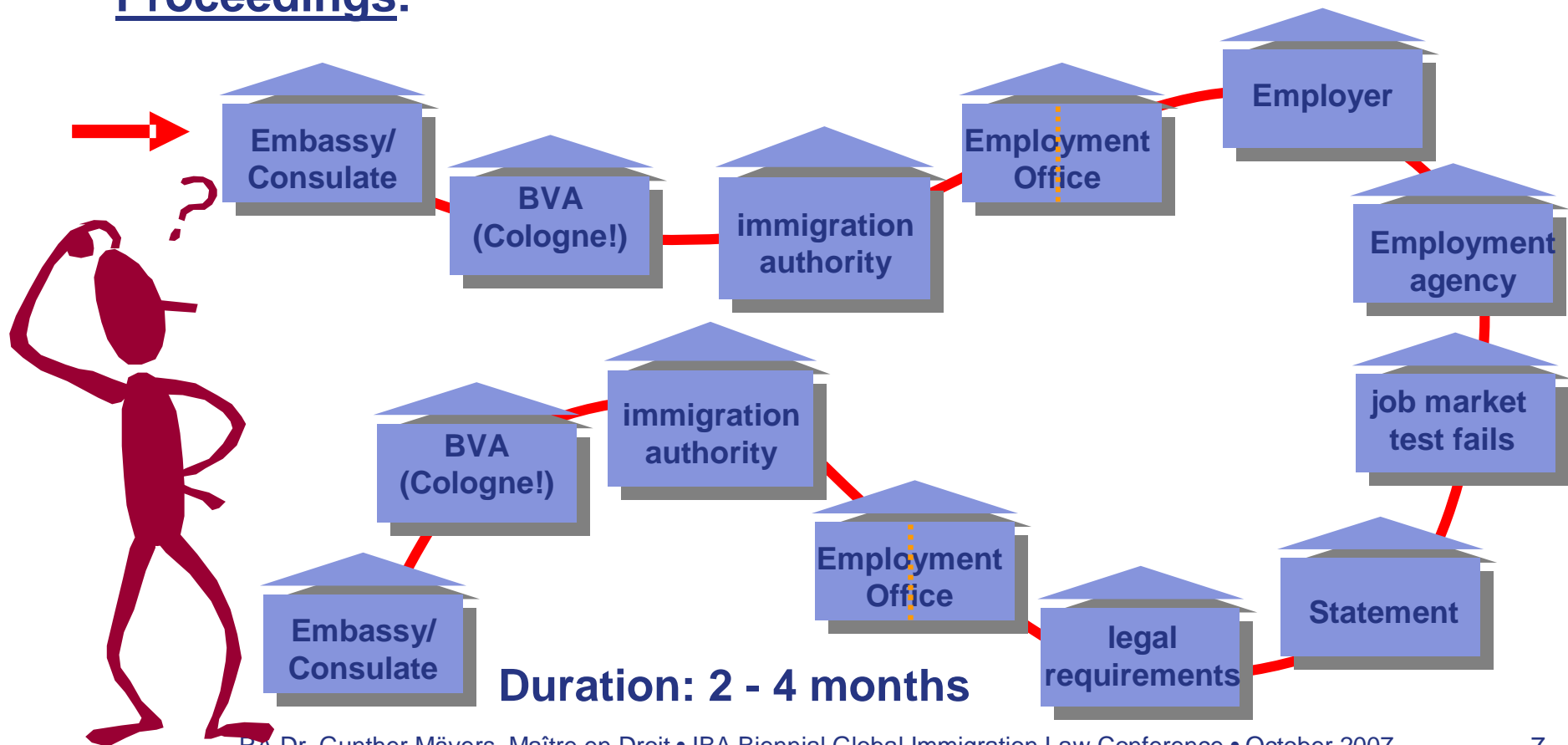
Step 10: The department “Permission” checks the legal requirements.



- Step 11: The employment office Leverkusen gives its internal consent to the immigration authority Cologne with a view to the residence title for the purpose of gainful employment.
- Step 12: The immigration authority Cologne also gives the go-ahead.
- Step 13: Steps 4, 3 and 2 reversed (!).
- Step 14: Finally, Rajesh Singh can pick-up his “residence title for the purpose of gainful employment” at the Embassy, fly to Germany and start to work.



Proceedings:





## 2. Acts and regulations

- § EU Regulation No. 1612/68 on the free movement of workers throughout the European Community of 15.10.1968 / Art. 18, 39 EU Treaty
- § Act on the entry and residence of the nationals of member states of the European Economic Area of 30.07.2004 („Aufenthaltsgesetz/EWG“)
- § Freedom of Movement Act for EU nationals of 30.07.2004 („EU-Freizügigkeitsgesetz“)
- § Act 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 („Zuwanderungsgesetz“)
- § Employment Regulation of 22.11.2004 (“Beschäftigungsverordnung”)
- § Regulation on employment procedure of 22.11.2004 (“Beschäftigungsverfahrensverordnung”)





### **3. Basics of German immigration law**

- § every employee who is not of German nationality in the sense of Art. 116 GG (Basic Constitutional Law) or a national from an European Union or European Economic Area (EEA) member state requires a residence title
- § basically a residence title must be obtained before entering Germany as a “visa”
- § since 1<sup>st</sup> January 2005 residence and work permit are granted together as a “residence title for the purpose of gainful employment” by the immigration authority – in case of need after the Federal Employment Office agreed thereto internally („one-stop-government“)
- § the German representation abroad (Embassy or Consulate), in whose administrative district the applicant is resident, is deemed competent for the grant of visa



#### 4. Privileges for EU nationals

- § privilege of free movement and of free movement of workers throughout the EU (Art. 18, 39 EU Treaty; EU-Directive 2004/38)
- § therefore they neither require visa nor residence title, but are obligated to prove identity (§§ 2 IV, 8 FreizügigG/EU)
- § a “certificate of residency title” is granted ex officio (§ 5 I FreizügigG/EU)
- § a “certificate of residency title EU” is granted ex officio to family members not being EU nationals (§ 5 II FreizügigG/EU)
- § the competent immigration authority may ask for the establishment of probability regarding the preconditions for free movement (§ 5 III FreizügigG/EU)
- § further information: [http://ec.europa.eu/justice\\_home/fsj/freetravel/wai/fsj\\_freetravel\\_intro\\_de.htm](http://ec.europa.eu/justice_home/fsj/freetravel/wai/fsj_freetravel_intro_de.htm)



## **5. Privileges for EEA (European Economic Area) nationals**

- § nationals of the EEA also have the privilege of free movement in the throughout the European Union (AufenthaltsG/EWG) and are also treated equal compared to EU citizens (EEA-Convention)
- § they neither require visa nor residence title, but are obligated to prove identity (§§ 2 IV, 8 FreizügigG/EU)
- § a “certificate for residency title” is going to be issued ex officio (§ 5 I FreizügigG/EU)
- § a “certificate for residency title EU” is granted ex officio to family members not having EU nationality (§ 5 II FreizügigG/EU)
- § the competent immigration authority may ask for the establishment of probability regarding the preconditions for free movement
- § further information: <http://www.europa.eu.int>



## **6. Privileges for Swiss nationals**

- § Swiss have the privilege of free movement throughout the European Union and are also treated equal compared to EU nationals (Freedom of Movement Act of 21.06.1999)
- § therefore, they neither require visa nor residence title, but are obligated to prove their identity
- § a certificate for residency right will be issued ex officio
- § a „work permit EU“ is granted ex officio to family members not being of EU nationality (§ 5 II FreizügigG/EU)
- § the competent immigration authority may ask for the establishment of probability regarding the preconditions for free movement
- § further information: <http://www.bern.diplo.de/de/Startseite.html>



## **7. No overall privileges for nationals of the “new” EU member states yet**

- § Privilege 1: they do not require visa because of the freedom of movement within the EU (Art. 18 EU Treaty)
- § but up to now no Privilege 2: nationals from the “new” EU member states are still not granted employees’ freedom of movement partially throughout the European Union; so called “2+3+2-transitory regulation“ does apply
- § therefore still no freedom of movement for workers – i.e. taking-up an employment is permitted only with the consent of the Federal Employment Office
- § permission will be granted as a “work permit EU“ (§ 284 SGB III)
- § Further Information: <http://europa.eu.int/eures/home.jsp?lang=de>



## **8. Little privileges for citizens of so called privileged states**

- § Privilege 1: exemption from the visa obligation if external borders of the EU are crossed due to a „positive list“ for certain third country citizens (e.g. Australia; Israel; Japan; Canada; Republic of Korea; USA) as well as for citizens of Argentina, Brazil, Chile, Mexico, Singapore and Turkey etc. as tourist or for short term work purposes
- § Privilege 2: citizens from Andorra, Australia, Israel, Japan, Canada, Monaco, New Zealand, San Marino and the USA may be granted a residence title for the purpose of any employment (§ 34 BeschV) regardless of the different categories
- § but nationals from the accession states have to be taken into account preferentially in comparison to nationals of any third country
- § further information: <http://www.auswaertiges-amt.de/diplo/de/WillkommeninD/EinreiseUndAufenthalt/Uebersicht.html>



## **9. No privileges for nationals of non-privileged third countries**

§ a residence title for the purpose of gainful employment is only granted if:

1. Federal Employment Office agrees or such consent is not required due to regulations (BeschV; BeschVerfV) or bilateral conventions;
2. the examination of the employment market shows that a job offer may not be filled by the German employment market including EU and EEA nationals (labour market test) and
3. there is a concrete job offer with usual working conditions (draft employment contract should be attached)

§ regarding the application proceeding see example above

§ further Information: <http://www.auswaertiges-amt.de/diplo/de/WillkommeninD/EinreiseUndAufenthalt/Uebersicht.html>



## **10. Categories for the recruitment of third-country nationals**

- § **Highly qualified persons** (§ 19 AufenthG; § 3 BeschV)
- § **Executives etc.** (§ 4 BeschV) - no consent of the labour office needed
- § **Short-term deployments** (§ 11 BeschV) - up to 3 months within 1 year
- § IT-specialists (§ 27 n° 1 BeschV) - approx. 2.500 per year
- § Academics (§ 27 n° 2 BeschV) - up to 3 years, no job market test
- § Executive staff and specialists (§ 28 BeschV) - depends on the case
- § **Intra-company transfer** (§ 31 BeschV) - up to 3 years, no job market test
- § Permission according to §§ 18, 39 II AufenthG
- § in any case a concrete job offer is required (§ 18 V AufenthG)
- § **Self-employment** (§ 21 AufenthG)





**a. In particular: Highly skilled (§ 19 AufenthG / § 3 BeschV)**

§ The highly 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 to the health insurance scheme (therefore at present: 7.125,- € gross per month = 85.500,- € gross per year- !!!)

§ NB: high-qualified people do not need the approval of the federal employment office and shall be granted a settlement permit

§ NB: still (!) ongoing discussion as to the reduction of the threshold with regard to SME and younger applicants



**b. In particular: Executives (§ 4 BeschV)**

§ for the following groups no consent of the labour office to take up gainful employment is needed

1. Executives with complete authorization or “Prokura” (No. 1)
2. members of the organ of a legal entity, who are authorized to legally represent the company (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)
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)



**c. In particular: Short-term deployments (§ 11 BeschV)**

no consent of the labour office is needed with view to the grant of a residence title to persons who are sent to Germany for a period of up to three month, within an overall period of twelve months, in order to

1. set up and install, to give operation instructions, to maintain or repair machinery, plants and programs of electronic data processing which have been provided by the employer for commercial purposes;
2. inspect or receive instructions for the operation of machinery, plants and other equipment acquired;
3. remove used and acquired plants for the purpose of reconstruction in the residence country of the employer;
4. install, remove and attend to company-owned stands at trade fairs or to those for foreign companies which are residing in the residence country of the employer;
5. take part in a company training course in the context of export and licence agreements.



**d. In particular: Intra-company transfer (§ 31 BeschV)**

§ For an employment for a period of up to three years the consent for the grant of a residence title can be given without a priority check as laid down in § 39 para 2 sentence 1 no. 1 and 2 Residence Law

1. if, within an intra-company transfer inside a worldwide-acting company or group company, skilled labour is concerned who provides university degree or higher education or similar qualifications;
2. if an employee of a worldwide-acting company or group company who is working abroad must necessarily be transferred to the inland establishment of the company or group company in order to ensure the preparation of a project abroad, if the employee is responsible for the realization of the project abroad and provides a qualification which is comparable to the qualification of skilled German workers and he/she, moreover, provides a specific and, above all, a company-related knowledge.



**e. In particular: Self-employment (§ 21 AufenthG)**

§ a residence title for the purpose of self-employment is granted if:

1. there is a higher interest or a special regional need;
2. positive effects are to be expected on the economy out of the self-employment and
3. financing / realization assured by private equity / promise of credit

§ whereby the preconditions of no. 1 and 2 are fulfilled generally if at least 1.000.000 € (!) is invested and at least 10 jobs (!) are created

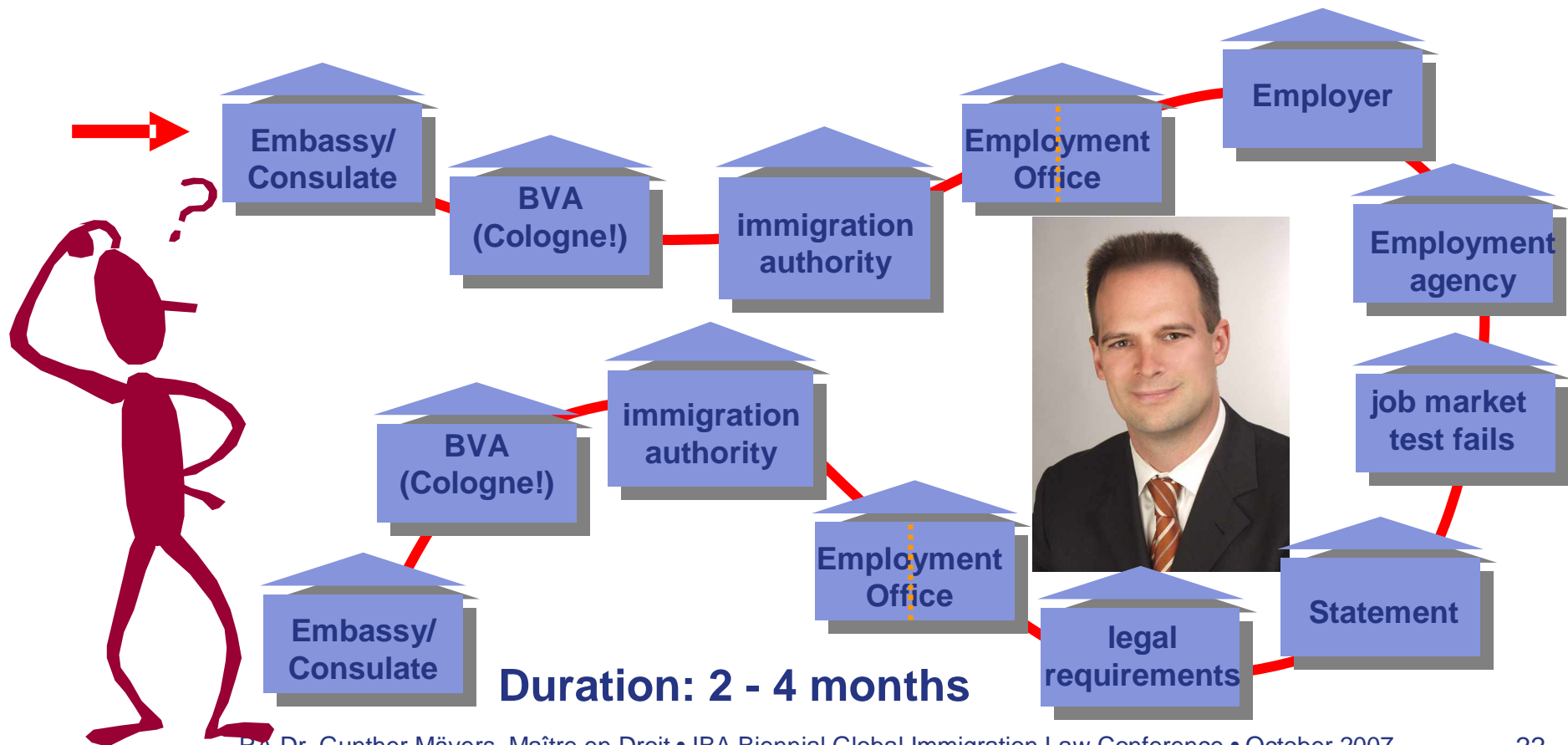
§ in other respects the following criteria have to be met: business plan; entrepreneurial experiences; contribution for innovation & research

§ in addition to that, applicants older than 45 years require a sufficient provision for old age pension

§ NB: ongoing discussion as to the reduction of the above threshold



## Once again: Proceedings





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## German residence and work permit regulations - Overview





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# German residence and work permit regulations

Many thanks for your attention!

For further information:

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