



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

**AIJA – London, September 2015 - Immigration Sub-Commission
“New job - yes, new country - yes, new visa – wait, new what?”**

Workshop F

National Report of AUSTRIA



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- 1. Does your jurisdiction permit the direct sponsorship of workers by employers?**
- 2. If yes, please briefly outline the options for a company to sponsor workers with timings.**

Given the fact that under Austrian law third-country citizens require work permits for all types of employment, direct sponsorship of workers is possible on a rather small scale.

Article 2 para 1 AuslBG¹ allows the prospective employer to submit an application in order to obtain a work permit for a certain employee. Work permits have to be applied for at the AMS² and can only be obtained after a labour market test. The labour market test can only be avoided in individual cases including cases of essential key personnel, university graduates or students and pupils who do not aim to work more than ten hours a week.

The Austrian authorities issue three types of work permits:

- Restricted work permit (*“Beschäftigungsbewilligung”* for one year)
- Work permit (*“Arbeitserlaubnis”* for two years)
- Unrestricted work permit (*“Befreiungsschein”* for five years)

The restricted work permit (*“Beschäftigungsbewilligung”*) is issued for a specific job and employer at a specific location. After having worked (using the restricted permit) for 1 year, the migrant can either get another restricted permit, or can apply for the real work permit (*“Arbeitserlaubnis”*), valid for one specific district within Austria and allowing the migrant to change employer. After 2 years, the work permit can be renewed.

After working legally for 5 years, the migrant can apply for the unrestricted permit (*“Befreiungsschein”*) and is then free to choose any job in any district of Austria for a period of 5 years. The application for a work permit and an unrestricted work permit can be submitted by the migrant on his own, but a company which supports the application, can move things more quickly and smoothly.

The easier and faster way to get a work permit in Austria is to apply for a Red-White-Red Card. But as will be shown in the answer to question 4, only a certain group of migrants is eligible for a Red-White-Red Card in the first place.

- 3. Is there any way to fast track such applications? If so, how quickly can this be done and is there a cost involved?**

As there is only one way to apply for a work permit, there is no official possibility to fast track the application.

¹ *Ausländerbeschäftigungsgesetz* (Act on the Employment of Foreign Nationals)

² *Arbeitsmarktservice* (Public Employment Service Austria)



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4. Are family members allowed to accompany the migrant?

The answer to this question depends on the migrant's citizenship.

a) If the migrant is a citizen of a member state of the European Union, Article 52 NAG³ is applicable.

It allows family members, who are not themselves citizen of a member state of the European Union, to accompany the migrant if

- they are spouses or registered partners; or
- they are aged 21 or less and related to the migrant or his spouse or registered partner in descending line; or
- they are related to a migrant, his spouse or registered partner in ascending line and the migrant, his spouse or partner are willing to take care of the family member; or
- they are in a long-term relationship with the migrant and are able to prove it.

If the related person does not belong to the group of people described above, such person could nevertheless be eligible to accompany the migrant, if the person has already been supported by the migrant or if the person has already lived in the same household with the migrant or if the person was in need of care due to serious health issues.

Due to the right of EU-citizens and their family members to move and reside freely within the territories of the EU Member States as set forth in Directive 2004/38/EC, Articles 51 – 54a NAG merely require such migrants to be employed or self-employed in Austria and to be able to support themselves and their families.

In order to maintain their status in Austria, family members of EU-citizens merely need to register with the residence authority within 4 months, should they desire to stay longer than 3 months. After 5 years of permanent (i.e. not interrupted for more than 6 consecutive months) and rightful residence, they can obtain a certificate of permanent residence and after 10 years they may apply for citizenship.

b) If the migrant is a third-country national, the family member can accompany him, in case that the migrant

- has a Red-White-Red Card; or
- holds a permanent residence permit within the EU and a certain quota of foreign citizens in Austria is not yet fulfilled.

³ *Niederlassungs- und Aufenthaltsgesetz* (Austrian Settlement and Residence Permit Act)



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Family members of third-country nationals who intend to reside or settle in Austria for a period of more than 6 months require a residence title (i.e. permission to stay for more than 6 months) corresponding to their residence purpose. For stays of up to 6 months no residence title shall be granted. Instead, a visa must be applied for if necessary.

In case of third-country nationals, the following requirements must be met for any residence title:

- Adequate means of subsistence;
- Health insurance coverage;
- Adequate accommodation according to local standards.

Excursus: Red-White-Red Card

The Red-White-Red Card is a new flexible immigration scheme Austria has introduced in 2011. It aims at a more flexible immigration of qualified third-country personnel and their families, who wish to settle permanently in Austria, according to personal and labour market criteria without fixed quota. It entitles to residence and employment only with a certain employer.

The most important requirements are qualification, work experience, age, language skills, offer of employment according to the qualification and minimum remuneration.

The following persons are eligible for a Red-White-Red Card:

- Very highly qualified workers;
- Skilled workers in shortage occupations;
- Other key workers;
- Graduates of Austrian universities and colleges of higher education;
- Self-employed key workers.

5. What applications must be made for any dependant family member?

The family member has to submit the application personally in his or her home country at the foreign authority competent to decide in these matters (embassy, consulate). The consular representation abroad shall examine the application for completeness and correctness and then forward it to the competent authorities in Austria.

In some cases the application can be made at the competent residence authority in Austria:

- Family members of Austrian nationals after lawful entry and during their lawful residence;
- Children within 6 months after birth, if the mother holds a valid residence title;
- Family members entitled to enter without a visa, during their permitted stay without a visa.



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6. Who are deemed to come within the description “family members” in immigration law in your jurisdiction?

According to Article 2 para. 1 NAG the migrant’s spouse, registered partner and unmarried minors including adoptive and step children are considered as family members. Some Articles of the NAG also mention other relatives (in ascending or descending line) for whom it is possible to accompany the migrant in some (rare) cases, as mentioned above.

7. What rights do family members have to employment, self-employment or other activities in your jurisdiction?

It depends again on the migrant’s citizenship and the residence permit the family member gets. A family member of a migrant who is an EU-citizen has free access to the Austrian job market, no matter if the family member is an EU-citizen itself or not.

A family member of a migrant who is not an EU-citizen can get a Red-White-Red Card plus, which entitles to residence and unlimited labour market access, if the migrant has a Red-White-Red Card or a Red-White-Red Card plus. The family member also obtains a Red-White-Red Card plus in case the migrant holds a permanent residence permit and a certain quota of foreign nationals in Austria is not yet fulfilled.

The Red-White-Red Card plus entitles the family member to seek employment without any limitations and also to be self-employed. It is issued for 12 months and entitles its holder to fixed-term residence. After 12 months a settlement permit (“*Niederlassungsbewilligung*”) may be applied for, which would be granted for another 12 months. After this term, the settlement permit would be issued for a period of 3 years.

In every other case the migrant needs to have an explicit permission to work, either for a period longer than 6 months (“*Beschäftigungsbewilligung*”) or for a period up to 4 months (“*Entsendebewilligung*”).

8. What of family members, e.g. children, who are over the age of 18?

Family members who do not belong to the group described under question 6 of this paper, have no rights to a residence permit in Austria, independent of their age. All other family members, except for spouses or registered partners, are only eligible for a residence permit until the age of 18.

However if the migrant is a citizen of a member state of the European Union and the family member is related to the migrant or his spouse or registered partner in descending line (i.e. children, grand children etc), he or she can obtain a residence permit until the age of 21.



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9. What of family members who will reach the age of 18 whilst the migrant is employed and sponsored in your jurisdiction?

As mentioned before, persons who are related to an EU-citizen or his spouse or registered partner in descending line can obtain a residence permit in Austria up to the age of 21.

Family members, with the exception of spouses or registered partners, of persons who are not EU-citizens can obtain a residence permit only up to the age of 18.

After reaching that age, the family member has to meet the requirements for a residence permit on his own to be eligible for one.