



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

**NEW JOB - YES, NEW COUNTRY - YES, NEW VISA – WAIT, NEW  
WHAT?**

**Immigration Law Sub-commission**

**National Report of GERMANY**

**Sachka Stefanova-Behlert (Berlin)  
Sebastian Klaus (Frankfurt), KPMG Law Germany**

General Reporter

Firuzah Ahmed, KINGSLEY NAPLEY LLP

[FAhmed@kingsleynapley.co.uk](mailto:FAhmed@kingsleynapley.co.uk)



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

The following comments deal solely with **third-country nationals** as nationals of the Member States of the European Union or the European Economic Area (EU/EEA nationals) are not subject to any immigration and employment restrictions in Germany and within the European Union. Further, no scenarios of third-country nationals accompanying EU/EEA nationals to Germany are covered below.

Working Session Title: “New job - yes, new country - yes, new visa – wait, new what?” Or to put it another way, when an individual is moving to a different country for a new job, what their employer needs to consider from an immigration perspective – and don’t forget the family!

### **1. Does your jurisdiction permit the direct sponsorship of workers by employers?**

Unlike some other countries, for example Canada, UK, the Netherlands, Germany does **not** apply the concept of employer’s sponsorship if employers wish to obtain residence permits for foreign employees in Germany for the purpose of employment. The main rule is that the employees themselves shall apply and take care of the residence and work permit procedures (in particular, the application for a temporary national entry visa or a combined residence and work permit). Germany follows the principle of ‘one-stop-government’ so the work authorization is usually approved by the Federal Employment Agency internally and forms part of the final temporary residence permit.

However, Germany applies indirectly the notion of sponsorship as

- Granting of a temporary residence permit for the purpose of employment requires in general the existence of a local employment contract with a German employer and thus his/her involvement prior to the application. There are very few exceptions from this general rule in which the Immigration authorities do accept foreign secondment agreements, e.g., in case of employee applicants from privileged countries (e.g., US, Canada, Australia, Israel, Japan, etc.) or in cases of intra-company transfers (e.g., international personnel exchange pursuant to Sec. 10 of the German Ordinance on the Employment of Foreigners or Sec. 29 para. 5 of the same regulation with regard to secondments from WTO countries);
- Many local Immigration authorities have set up special units (so called “**Companies Service Centers**”) to help employers support and administrate the application of their future foreign employees;
- Employers are entitled to conduct a preliminary examination by the Federal Employment Agency regarding the approval of the intended employment and thus to expedite the procedure for granting a residence permit for the purpose of employment in Germany (cp. Sec. 36 para.3 of the German Ordinance on the Employment of Foreigners)

### **2. If yes, please briefly outline the options for a company to sponsor workers with timings.**

See above

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

The current regulations do **not** provide explicitly for fast track procedures.



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

However, the application procedure may be expedited in practice, if:

- Employers are directly involved in the application procedure, e.g., by submitting the application on behalf of the employees (this is one of the services offered by the special units);
- Employers have made use of the preliminary examination procedure with the Federal Employment Agency in advance; or
- The type of the intended employment in Germany is privileged and exempted from the general requirement for an approval of the Federal Employment Agency (e.g., in case of Executive Employees; Board Members and other legal representative of companies; EU Blue Card applicants<sup>1</sup>, graduates from German universities etc.).

In the aforementioned cases, no fast track fees/costs are incurred.

Lastly, the German Government is currently discussing the introduction of fast track procedures in Germany.

#### **4. Are family members allowed to accompany the migrant?**

Yes, family members are allowed to accompany the migrants. As a general rule, the residence permit for family members is bound to the residence permit for the migrants and is only granted upon issuance of the residence permit for the (principal) migrant.

As a consequence, the residence permit for family members:

- Has the same duration term as the residence permit for the migrant;
- Gives family members unlimited access to the German labour market (cp. Sec. 27 para. 5 of the German Residence Act) and, thus, enables them to pursue employment, self-employment or any other economic activities regardless of the type of the residence permit of the (principal) migrant.

#### **5. If yes, what applications must be made for any dependant family members?**

As a general rule, the family members must file separate applications. Even if the residence permits for the family members are bound to the permits of the (principal) migrant, additional requirements must be fulfilled, in particular:

- Sufficient financial funds (e.g., incomes of the spouse);
- Sufficient accommodation;
- Sufficient health insurance coverage;
- Proof of marital status by presenting a marriage certificate / birth certificate.

---

<sup>1</sup> An applicant qualifies for a EU Blue Card in Germany under the following conditions: (i) he/she will pursue a highly qualified employment, (ii) he/she possesses a respective education (e.g., university degree) and (iii) his/her gross annual salary will not be below EUR 48.000 apart from some exceptions).



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

In addition, spouses of principal migrants are regularly required to prove special German language skills (skill level: A1) when applying for a residence permit. However, spouses of (principal) migrants applying for an EU Blue Card based entry visa or an EU Blue Card permit are exempted from this requirement. Further, spouses being in possession of a university degree themselves are also subject to exemption from the language requirements. Nevertheless, even spouses being exempted from the language skills requirements for the initial application are usually required to attend an integration course including language skill training in Germany upon arrival. If they fail to complete the integration course successfully, the renewal of their residence permits may be rejected.

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

The term “family member” refers to:

- Spouses;
- Civil union partners in case the civil union is registered in a statutory register, but **NOT** common law spouses;
- Children under 18 years old;
- Under extraordinary circumstances and subject to a separate examination other family members, e.g., parents in need of care.

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

See above (Sec. 27 para. 5 of the German Residence Act).

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

For children over the age of 18, the entitlement to enter and reside in Germany is granted separately from the rights of their parents. Thus, the Immigration authorities examine independently whether there is a reason to grant a residence permit. The family relationships are not sufficient in general.

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

The existing residence permits may be extended under the conditions of Sec. 34 and 35 of the German Residence Act. Usually, temporary residence permits for children are issued with a validity period until their 18<sup>th</sup> birthday. However, the Immigration authorities may extend – subject to a discretionary decision – such a residence permit in case the child is not eligible for a permanent residence status by that time (cp. Sec. 34 para. 2 of the German Residence Act).

Sec. 35 para. 2 of the German Residence Act sets forth specific requirements for obtaining a permanent residence status in case the child has been in possession of a temporary residence permit for at least five years, has sufficient command of the German language (advanced skill level: B1) and financial funds including health insurance coverage or is undergoing education or training which leads to a recognised school, vocational or higher education qualification.