

DAAD

Deutscher Akademischer Austausch Dienst
German Academic Exchange Service

Information
on the Legal Framework Conditions for the
Gainful Employment
of foreign students, university graduates, scientists
and other academics

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1 Introduction

The possibilities to exercise gainful employment are regulated primarily by the Residence Act and the Employment Ordinance for foreign students, university graduates, visiting academics and other academics from non-EU states. For EU citizens, the EU law on the freedom of movement is relevant. Yet, other laws and ordinances as well can have effects on the subject matter described herein.

This information leaflet is not intended to be exhaustive and reflects the situation in **January 2017**. Although it has been drafted with the greatest possible care, liability for substantive correctness cannot be accepted.

We always appreciate information about new developments and possible additions. Contact: adenberg@daad.de

2 Possible gainful employment

A foreign national, who would like to take up gainful employment in Germany, generally requires a residence title, which permits the exercise of gainful employment.

Exceptions to this rule apply to nationals of the European Union (EU), the European Economic Area (EEA) and Switzerland. They enjoy the freedom of movement and have the same access to the labour market as Germans do. They do not require permission from the Federal Employment Agency to take up a gainful employment.

Foreign nationals from other states, who would like to take up gainful employment in Germany, require a residence title that permits the exercise of gainful employment. Such a residence title is issued by the Aliens' Authority, but the Federal Employment Agency must agree to the employment. This is an internal process of the authorities, so that the Aliens' Authority is the only point of contact for the applicant.

However, there are far-reaching exceptions from the requirement of the agreement by the Federal Employment Agency for foreign academics, so that an agreement or even a priority review is often not required anymore. The background of this is the intention of gaining more foreign, qualified and trained professionals for the German labour market in order to counteract a lack of trained professionals in Germany.

In general, Sec. 18 (1) of the Residence Act (*Aufenthaltsgesetz*, "AufenthG") applies, stating that the admission of employees from third countries into the German labour market is based on:

- the requirements of Germany as a business location,
- the conditions in the labour market, and
- the need to fight unemployment.

A concrete job offer must be on hand when applying for a residence permit. The residence permit may only be granted pursuant to Sec. 18 (2) of the Residence Act, if

- the Federal Employment Agency has agreed to the employment **or**
- it is determined by a legal act (e.g. Employment Ordinance – BeschV) or an interstate agreement that the exercise of gainful employment is permissible without the agreement of the Federal Employment Agency.

Besides the definition of the cases in which a residence title that permits employment can be granted without the agreement of the Federal Employment Agency, this legal act also determines the cases in which and on what conditions the Federal Employment Agency may agree to an employment.

An example of an exemption from agreement according to Sec. 2 Employment Ordinance (*Employment Ordinance*, "BeschV") would be the issuance of an "EU Blue Card" and the issuance of a residence permit to trained professionals with a domestic university degree or trained professionals with a recognised foreign university degree or one that is comparable to a German university degree, for the purpose of exercising an employment that is appropriate to the professional qualification. Furthermore, according to Sec. 5 Employment Ordinance, no agreement is required for employees working in the field of science, research and development.

Among the employments that are subject to agreement, it is differentiated between those that presuppose qualified occupational training and such that do not require occupational training. In case of the latter, agreements may be granted only for very specific employments, for

example, for seasonal workers in agriculture (Sec. 15a Employment Ordinance), au-pair workers (Sec. 12 Employment Ordinance) or household staff (Sec. 15c Employment Ordinance). In areas of employment that require qualified occupational training, agreements may be granted, e.g. to language teachers (Sec. 11 Employment Ordinance) or foreign nationals with occupational training obtained in Germany or comparable training (Sec. 6 Employment Ordinance).

In addition, there are rules for exceptions regarding the granting of the agreement for citizens of certain countries. Accordingly, the Federal Employment Agency may agree to employment of citizens of Andorra, Australia, Israel, Japan, Canada, the Republic of Korea, Monaco, New Zealand, San Marino and the USA, independent of the place of the employer's registration (Sec. 26 Employment Ordinance).

According to Sec. 36 (2), an "agreement fiction" applies with regard to the agreement by the Federal Employment Agency. The agreement to exercise employment is accordingly deemed granted if the Federal Employment Agency does not inform the competent office within two weeks from the submission of the request for approval that the submitted information is not sufficient for the decision on the agreement or that the employer has not provided the necessary information or not provided it in time.

Furthermore, there is the possibility of a "preliminary review" according to Sec. 36 (3): Already before the submission of the request for an agreement to be granted for employment, the Federal Employment Agency may agree or review in an exchange with the competent office, whether the conditions relating to the labour market are fulfilled for a later agreement if the employer has provided the necessary information for this and if the procedure is expedited thereby.

The following statements refer exclusively to foreign nationals, who are not citizens of the EU, the EEA or Switzerland. The statements are furthermore limited to the relevant provisions for the following groups of people: prospective students, students, university graduates, scientists and other academics.

2.1 Prospective students

People, who are staying in Germany to apply for an academic programme (Sec. 16 (1a) Residence Act), are not permitted to exercise a gainful employment (Sec. 16 (3) Residence Act).

2.2 Students attending preparatory courses and preparatory language courses

Participants in a preparatory language course and the attendees of preparatory courses are also prohibited from exercising employment outside of school holidays during the first year of their stay (Sec. 16 (3) sent. 2 Residence Act). During school holidays, employment within the scope of the activities described in 2.3.1.1 and 2.3.1.2 can be permitted. The decision is up to the Aliens' Authority. Exceptions may apply for citizens of Turkey based on the Association Agreement.

In the second year of the stay when preparing for academic studies, gainful employment may be exercised to the same extent as is permissible for students (see 2.3).

2.3 Students at domestic universities

2.3.1 Employment exempt from approval

Gainful employment is exempt from approval if it falls into one of the following categories.

2.3.1.1 Part-time employment based on 120 full/240 half-days

Foreign students at domestic universities can exercise employment that is exempt from approval if it does not exceed 120 full or 240 half-days in the calendar year (Sec. 16 (3) sent. 1 Residence Act). This right is documented in the residence permit. A half-day is assumed if the daily working time does not exceed four or five hours. This question is answered based on the regular working time of the other employees in the enterprise. If the regular working time of these persons is eight hours, the half day is counted as four hours of daily working time; if the regular working time is ten hours, the half-day is counted as five hours.

Even if the employment is not spread over a longer time but if it is exercised in one continuous period (e.g. during the semester breaks), only the working days or half working days are counted as employment times on which work was in fact performed. Weekends are therefore not counted for continuous employment periods.

Employees and the employer must check how much work without approval has already been performed in the current calendar year, so that the 120 full/240 half working days will not be exceeded. The employment periods must be documented in a suitable form.

As soon as this quota of approval-exempt days is used up, approval from the Federal Employment Agency and the Aliens' Authority will be required for further work (*cf.* 2.3.2).

2.3.1.2 Employment as a scientific or student assistant

Besides the 120 days that are exempt from approval, employment as a scientific or student assistant can be exercised without approval or time limitation. (Section 16.3.3 of the General Administrative Rules on the Residence Act) Student part-time jobs also include work that is limited to academic activities in the context of the discipline of the course of studies at university-related organisations (e.g. tutors in student residences).

The Aliens' Authority must be involved in spite of the exemption from approval, as it decides on each individual case whether and to what extent the job is a student or scientific assistant according to the legal definition. In case of difficulties in deciding this, the university is to be involved.

2.3.1.3 Work placements

Foreign students, who are registered at a German university in the domestic country and who would like to complete a work placement, must note the following:

No approval is necessary for work placements that are a mandatory part of the course of studies or necessary to reach the aim of the education (Sec. 15 Employment Ordinance). These work placements are also exempt from approval if they are paid, as they are part of the academic programme and are therefore covered by the purpose of the stay for "studies". According to the "Implementation instructions" of the Federal Employment Agency on the Employment Ordinance, this also applies to work placements at companies in preparation for final university exams. The normal quota of 120 approval-exempt working days is not affected by mandatory work placements or the drafting of the final paper at a company, i.e. they can be used additionally and independently thereof.

Voluntary work placements, which are not a fixed part of the curriculum and therefore not an educational phase that is a part of the academic programme, are deemed gainful employment subject to approval to which the regulations on the employment of foreign nationals must be applied. Likewise, voluntary work placements completed without pay are subject to this approval requirement.

The first three months of a voluntary work placement can be covered by the approval-exempt 120 full or 240 half-days, if these have not already been used for other work. Approval from the Aliens' Authority and the Federal Employment Agency must be received in order to work for a longer period of time (*cf.* 2.3.2). Notice: Foreign nationals, who study at a foreign university and come to Germany for a work placement, are subject to different regulations (*cf.* 2.4.2).

2.3.2 Work subject to agreement

Employment, other than the possibilities described above, is usually subject to agreement and furthermore, it must also be permitted by the Aliens' Authority. In special cases, work that is exempt from agreement must also be approved by the Aliens' Authority (*cf.* 2.3.1.2) before the work may be exercised.

Long-term gainful employment exceeding the 120 full/240 half-days can only be permitted as part-time employment for students. Furthermore, this gainful employment may not alter the purpose of the stay, which is limited to studies and does not significantly complicate or delay reaching this purpose. The permission for this employment is controlled by the Aliens' Authority at its discretionary decision. An example requiring consideration may be if securing the foreign national's living expenses is threatened by circumstances that are outside of his/her and his/her relatives' responsibility and if the studies have been pursued in earnest thus far. As part of this process, the special difficulties that may occur for foreign nationals must be considered during the admission and completion stages of an academic programme. In this context, the university must confirm that successful completion can be expected.

If the Aliens' Authority has approved long-term employment, usually the Federal Employment Agency must also agree to the employment, insofar as the employment is not exempt from agreement pursuant to Sec. 2 to Sec. 28 Employment Ordinance.

Whether or not an agreement is granted depends on the requirements of Germany as a business location, the conditions in the labour market, and the need to fight unemployment. Furthermore, it must be checked whether there are any German employees or foreign nationals, who are treated equally to Germans with regard to employment, available (priority review). The Federal Employment Agency is bound by this generally applicable priority review with regard to foreign students. Thus, the agreement may only be granted for a concrete job if there are no suitable German applicants or applicants from an EU or EEA State, who are legally equal to a German applicant, available.

Violations of the rules on gainful employment by students may result in fines or even a residence permit being revoked.

2.4 Students at universities abroad

Students, who are enrolled at a foreign university, may take up gainful employment in Germany with exemption from an agreement only in exceptional cases, e.g. in the context of a job during

semester breaks or a work placement. Furthermore, they can only exercise employment with the approval of the German Federal Employment Agency.

2.4.1 Holiday job

The Federal Employment Agency does not need to agree to a residence title for students and pupils at foreign universities and technical colleges if the holiday job does not extend beyond three months within a period of twelve months and if the Federal Employment Agency has made the job placement itself (Sec. 14 (2) Employment Ordinance).

2.4.2 Work placements

Likewise exempt from an agreement (according to Sec. 15 Employment Ordinance) are work placements for a period of up to twelve months, which are conducted as part of an international exchange programme by associations, public law institutions or student organisations for students or graduates of foreign universities (e.g. DAAD, AIESEC, IAAS, ZAV). For this purpose, however, the employer must additionally obtain agreement from the Federal Employment Agency. It checks if all regulations under labour law are observed, cf. in relation to the ZAV information leaflet "Work placement approval":

<http://www.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mdk2/~edisp/16019022dstbai381815.pdf>

For a work placement that is part of a programme financially sponsored by the European Union (programmes within the scope of the "Programme for lifelong learning", e.g. ERASMUS, ERASMUS MUNDUS, LEONARDO DA VINCI, but also MARIE CURIE, etc.), no agreement from the Federal Employment Agency is required either (Sec. 15 no. 2 Employment Ordinance).

Furthermore, according to Sec. 15 no. 5 Employment Ordinance, work placements for up to one year during an academic programme at a foreign university that are completed after the fourth semester within the academic field of the studies in agreement with the Federal Employment Agency are exempt from approval.

2.5 Graduates of German universities

Foreign graduates of a German university have nearly unrestricted access to the German labour market and they are in a better position compared to other non-EU citizens. For foreign nationals, who have successfully completed their university studies in Germany, the residence permit can be extended for up to 18 months pursuant to Sec. 16 (4) Residence Act for the purpose of searching for a job that is appropriate to the degree obtained. If they find a suitable job during this period, the residence permit until that date can be changed over into a residence permit for the purpose of employment (Sec. 18 Residence Act).

2.5.1 Requirements for the job obtained

Agreement from the Federal Employment Agency for granting this residence permit is not required according to Sec. 2 (1) no. 3 Employment Ordinance, insofar as it is appropriate to the acquired qualification.

2.5.2 Possibilities for gainful employment during the search for a job

For the extension of the residence permit for the purpose of searching for a job, it must be verified that living expenses are secured, which means for most foreign university graduates that they must be in gainful employment during their job-hunting phase. Therefore, gainful employment without restrictions is permitted during the job-hunting phase (Sec. 16 (4) sent. 2 Residence Act).

The purpose of the stay will not be changed when a job is taken up merely to secure living expenses, during the period of searching for employment that is appropriate to the qualification.

If the stay has been financed by scholarships and if the scholarship holder has undertaken to return to his/her home country upon the completion of his/her education, no residence permit for searching for employment is to be granted upon the successful completion of an education in Germany. A limited, practical occupational activity in the field of the acquired qualification for a period of at most two years, however, can be approved to improve future opportunities for work in the home country. These cases should be rather rare in practice, as DAAD scholarship agreements do not include provisions on return obligations.

2.5.3 Long-term perspectives in Germany

Sec. 18b of the Residence Act states that foreign graduates of German universities can even attain a permanent residence permit, meaning a right of residence without limitation in terms of time, on the following conditions: Besides the usual requirements for a permanent residence permit (German language skills, secured living expenses, etc.), it is required that the foreign national has held a residence title pursuant to Sec. 18, 18a, 19a or Sec. 21 Residence Act for the past two years, holds an employment appropriate to his/her degree and has paid mandatory or voluntary contributions to the statutory pension insurance for at least 24 months.

2.5.4 Access to the labour market for graduates of German schools abroad

Graduates of German schools abroad with a recognised or a German university degree or comparable foreign university degree, or qualified occupational training attained in the domestic country in a state-approved or comparably regulated occupation requiring training are granted a residence title without agreement pursuant to Sec. 7 Employment Ordinance.

2.6 (Visiting) scientists and researchers

For researchers or scientists, who would like to come to Germany, there are different possibilities under residence laws that are respectively linked to advantages for the academics:

2.6.1 Employment as a (guest) academic at universities and research institutions

Agreement from the German Federal Employment Agency is not necessary (Sec. 5 Employment Ordinance) for the issuance of a residence permit for the exercise of an employment pursuant to Sec. 18 Residence Act to

- academic personnel at universities and research institutions in research and teaching, and personnel of research and development institutions,
- visiting academics at a university or a public law research institution or a research institution primarily financed by public funding or a similar research enterprise managed in a private legal form,
- engineers and technicians as technical staff in a research team of a visiting academic **or**
- teaching staff at public schools or state-approved private schools,

- teaching staff for language courses at universities.

Foreign academics, who have not established an employment contract with a university or research institution, can receive a residence permit for the purpose of employment if there is a “public interest in their employment” due to their special expertise and if the Federal Employment Agency agrees to the employment (*cf.* 2.7).

2.6.2 Residence for the completion of a research project (Sec. 20 Residence Act)

Pursuant to Sec. 20 Residence Act, a foreign researcher has a right to be issued a residence permit for the purpose of research if he/she has concluded a hosting agreement with a research institution for conducting a certain research project and if his/her living expenses are secured, which is verified if the monthly income/stipend amounts to presently €1,984 (old federal states) or €1,773 (new federal states).

The research institute must undertake in writing to assume the costs that may possibly be incurred by public offices for the living expenses of the researcher for up to six months after the end of the hosting agreement in the case of an impermissible stay and his/her deportation. This is to be disregarded, if the work of the research institute is predominantly financed by public funds. An exception can be made if there is a special public interest in the research project.

A “research institution” according to Sec. 38a Residence Act is a public or private institution that engages in research in the domestic country. Besides Max-Planck institutes, branches of Fraunhofer-Gesellschaft or similar, this also includes university institutes. These can file a corresponding application for recognition with the Federal Office for Migration and Refugees (BAMF) to be able to participate in the researcher admission procedure.

The permission for exercising gainful employment, which is also included in the “researcher residence permit”, applies in general to both the research activity at the research institution specified in the hosting agreement as well as teaching work. A labour market review is not conducted, since the involvement of the Federal Employment Agency is not required.

The residence permit for research enables EU-wide mobility within certain limits (Sec. 20 (5) Residence Act). For example, researchers, who are approved in another EU Member State according to the provisions of the EU Researcher Directive, must be granted a residence permit for conducting part of their research project in Germany. For a maximum stay of 90 days per year, no agreement from the German Federal Employment Agency for the exercise of employment as part of their research project is required for these third-country researchers from other EU Member States.

The “researcher residence permit” is generally not applicable to people whose research work is part of their doctoral studies, since they are usually counted as students whereby they fall under Sec. 16 Residence Act. Doctoral candidates, however, can benefit from a residence permit pursuant to Sec. 20 Residence Act if they perform their doctoral work within the scope of a research activity, for which there is a hosting agreement with a research institution. In this case, however, the required monthly minimum income (see above) must be verified.

2.6.3 Permanent residence as highly qualified employee (Sec. 19 Residence Act)

Highly qualified employees can, pursuant to Sec. 19 Residence Act, obtain a permanent residence permit immediately and without agreement from the Federal Employment Agency (Sec. 2 (1) no. 1 Employment Ordinance) if the integration forecast is positive. A permanent residence permit is a right of residence without time limitation, which entitles the holder to exercise gainful employment.

Highly qualified persons are considered to be, e.g.

- academics with special expertise (professors and institute directors), and
- teaching staff and academic employees with high-level function (head of academic project and working groups).

These groups of people do not have to verify a minimum income.

2.7 Other academics

For foreign academics, who are not graduates of German universities and who would not like to work exclusively in the academic field in Germany, there are also various attractive possibilities to obtain a residence title for employment purposes and to obtain permanent residence permits after a certain time in Germany. Furthermore, there is the possibility to continue to gain professional qualifications as a foreign academic in Germany.

2.7.1 Residence for the search of employment (Sec. 18c Residence Act)

According to Sec. 18c of the Residence Act, a foreign national, who has a German or recognised foreign or foreign university degree that is comparable to a German university degree and whose living expenses are secured, can be granted a residence title for up to six months to search for a job that is appropriate to his/her qualification. During this time, there is no entitlement to hold gainful employment. This makes the goal more possible, e.g. going to job interviews in person.

2.7.2 Residence for exercising a highly qualified employment (Sec. 19a Residence Act)

According to Sec. 19a of the Residence Act, foreign trained professionals can receive a special residence title, called the “EU Blue Card”, for an employment stay in Germany. The condition is that the foreign national holds a German or a recognised foreign or foreign university degree that is comparable to a German university degree. Alternatively, at least five years of professional experience can also be sufficient as a verified comparable qualification.

Furthermore, the foreign national must give proof that he/she receives a salary of at least two-thirds of the annual contribution assessment threshold of the general pension insurance. How much this is exactly is determined each year in December by the Federal Ministry of the Interior and it is published in the Federal Bulletin for the following calendar year. At this time, the minimum salary is about €50,800 (west) or €45,600 (east). In this case, no agreement from the Federal Employment Agency is required according to Sec. 2 (1) no. 2a. For certain professions without sufficient applicants (physicians, “STEM jobs” and IT specialists), a minimum income of 52% of the contribution assessment threshold is already enough, meaning €39,624 (west) or €35,568 (east) (Sec. 2 (2) Employment Ordinance). In this case, agreement from the German Federal Employment Agency is not required if the foreign specialist holds a domestic university degree.

After 33 months, the holders of an “EU Blue Card” can furthermore apply for a permanent residence permit, thus a right of residence without time limitation. To the extent that they have German language skills of at least language level “B1”, the application can even be filed as soon as after 21 months.

2.7.3 Residence for exercising another qualified occupation (Sec. 18 Residence Act)

If the pursued employment does not fulfil the requirements for the issuance of an “EU Blue Card”, for example, because the required minimum salary is not reached, a residence permit for the purpose of employment according to Sec. 18 Residence Act can be issued on certain

conditions. It must be possible to fill the job vacancy with a foreign national according to the legal regulations.

2.7.4 Residence for the purpose of continued education (Sec. 17 Residence Act)

People who, as (aspiring) managers, would like to complete a work placement or corporate further training placement in Germany, can be granted a residence permit pursuant to Sec. 15 (4) Employment Ordinance without the agreement of the German Federal Employment Agency if they receive a grant for the work placement that is financed by public German funds, or funds of the European Union or an international inter-state organisation (so-called "government interns"). A manager is a person, who has completed an academic programme at a technical college or university or who holds a similar international degree.

Otherwise, employment for the purpose of further training is subject to agreement. Such an agreement, however, can be granted if a programme is completed that is comparable to those that are offered with public sponsorship and if the working conditions and amount of the grant are equivalent to comparable offers from public German funds. Under special conditions (scholarship holders are additionally provided with continuing education without the restrictions to the domestic labour market applicants face; it is in the employer's operative interest to employ a foreign applicant), even the priority review can be omitted.

2.8 Spouses of academics and students

Family members of foreign, trained professionals can be granted agreement for the exercise of employment according to Sec. 30 of the Residence Act in conjunction with Sec. 32 (1) of the Employment Ordinance if they have been staying in the federal territory for three months with a residence title. Agreement to employment pursuant to Sec. 2 (1) (highly qualified professionals, EU Blue Card, university graduates), Sec. 3 nos. 1-3 (managerial staff), Sec. 5 (science, research, development), Sec. 14 (1) (volunteer service), Sec. 15 nos. 1, 2 (work placements), Sec. 22 (special professional groups) or for training in a state-approved profession requiring training, is not required (Sec. 32 (2) Employment Ordinance).

Spouses of students require the agreement of the Federal Employment Agency for the exercise of an employment, insofar as the employment is not exempt from agreement pursuant to the Employment Ordinance. The special possibilities of gainful employment for students are linked to the student's status and cannot be transferred.

In general, the following applies to the employment of foreign national's family members:

spouses of foreign nationals may generally only work in Germany if the foreign national for whom the spouse immigrated subsequently, is entitled him/herself to gainful employment or if the marital community has been established legitimately within the federal territory for at least two years, and an extension of the residence permit of the foreign national whom the spouse follows is not precluded for any reason.

The date on which the residence title is issued to the partner immigrating subsequently is decisive for the evaluation of the question as to whether the foreign national immigrating subsequently is entitled to gainful employment. If the foreign national whom the spouse follows holds a residence permit, which permits him/her the exercise of gainful employment at this point in time, the partner immigrating subsequently is also permitted to work; whereas it is sufficient if both are granted a residence title with a corresponding entitlement at the same time. The entitlement to exercise a self-employed profession can also be granted if the foreign

national whom the spouse follows is not entitled to exercise a gainful self-employed profession but if he/she is entitled to exercise employment.