

## Details of the Immigration Act

### 1. New structures

- **Reduction of the number of residence titles to two.** In place of the residence title for exceptional circumstances, the residence title for specific purposes, the limited residence permit, the unlimited residence permit and the right of unlimited residence, the Act now provides for only two residence titles: The **(limited) residence permit** and the **(unlimited) settlement permit**. The new residence legislation is based no longer on residence titles, but on **purposes of residence** (education, gainful employment, subsequent immigration of dependents, humanitarian grounds).
- Important duties are to be allocated to the new **Federal Office for Immigration and Refugees**, which will supersede the previous Federal Office for the Recognition of Foreign Refugees (Residence Act, Section 75):
  - Development and implementation of integration courses for foreigners and repatriates;
  - Keeping the Central Aliens Register;
  - Implementation of measures to promote voluntary returns;
  - Scientific research on migration issues (accompanying research);
  - Coordination of information on labour migration between foreigners authorities, the Federal Employment Agency and German diplomatic representations abroad.

### 2. Labour migration

- The Act provides for **highly qualified persons** to be granted permanent residence from the outset; such persons may receive a settlement permit immediately (Residence Act, Section 19). Family members who enter Germany with such persons or subsequently are entitled to take up gainful employment (Residence Act, Section 29).
- Promotion of the settlement of self-employed persons. As a general rule, **self-employed persons** are to receive a residence permit if they invest at least 1 million euros and create at least 10 jobs (Residence Act, Section 21).

- Possibility for **students** to remain in Germany for up to one year after successfully completing their studies, for the purpose of seeking employment (Residence Act, Section 16 (4)).
- The previous dual approval procedure (work/residence) is to be replaced by an internal approval procedure. The foreigners authority is to issue the work permit together with the residence permit in a single act, subject to internal approval from the labour administration, Residence Act, Section 39 (1) (**one-stop government**).
- The ban on the recruitment of **unqualified persons and persons with low qualifications** is to be maintained (Residence Act, Section 39 (4)).
- The ban on recruitment is also to be maintained for **qualified persons**, subject to an **exemption**: A work permit may be issued in justified instances, when there is a public interest in an individual taking up employment (Residence Act, Section 18 (4)).
- Nationals of **acceding states** have access to the labour market for qualified employment (according to the priority principle, that is, only insofar as no German or person enjoying equal rights is available); **priority over nationals of third countries** (Residence Act, Section 39 (6)).
- The **points system** has been abolished.

### **3. Humanitarian immigration**

- Refugee status (refugee recognised under the Geneva Convention) is also granted in case of **non-state persecution** pursuant to the EU Asylum Qualification Directive (Residence Act, Section 60 (1)).
- **Gender-specific persecution** is recognised according to the following formulation (Residence Act, Section 60 (1)):
 

"When a person's life, freedom from bodily harm or liberty is threatened solely on account of their sex, this may also constitute persecution due to membership of a certain social group."
- **Improved status for persons enjoying subsidiary protection**, though not for persons who have committed violations of human rights or similar serious criminal offences (grounds for denial from the EU Qualification Directive) and in case of repeated or gross breaches of duties to cooperate (Residence Act, Section 25 (3)).
- Residence permit in case of obstacles to deportation in order to avoid successive suspensions of deportation, if the **obligation to leave the country cannot be fulfilled within 18 months** (Residence Act, Section 25 (5)). **No residence title** in case of **misconduct** on the part of the foreigner (e.g. attempt to disguise true identity).

- **Suspension of deportation** is retained as a "fine tuning" instrument (Residence Act, Section 60a).
- Hardship provision, excluding legal rights. At the request of a Hardship Commission established by a Land government, the supreme Land authority may order a residence permit to be issued to a person who is obliged to leave the country unappealably, by way of derogation from the usual conditions pertaining to the issuance and extension of permits. A **Hardship Commission** may be set up at the discretion of the respective Länder (Residence Act, Section 23a).

#### **4. Subsequent immigration of children**

- The current legal situation is to be maintained, according due consideration to the directive on the subsequent immigration of dependents: Subsequent immigration is permitted up to the **age of 18** for children of persons entitled to asylum and of refugees recognised under the Geneva Convention, whereby such children are also permitted to enter the country as part of their family unit, other factors being a command of the German language or "positive integration prognosis" - age limit otherwise: **16**, plus **restrictive discretionary ruling**, whereby the child's wellbeing and the family situation are to be taken into consideration, however (Residence Act, Section 32).

#### **5. Integration**

- Introduction of the **entitlements model for new immigrants** who are to take up permanent residence in the Federal Republic (Residence Act, Section 44).
- Imposition of sanctions relating to right of residence in case of failure of new immigrants to attend courses: Breach of obligation to attend courses to be taken into account in decisions on extensions to residence permits (Residence Act, Section 8 (3)).
- **Obligation for foreigners already living in the Federal Republic** insofar as places on courses are available (Residence Act, Section 44a) [persons drawing employment benefit II and persons with special integration needs].
- Breach of this obligation to attend integration courses to be punished with a reduction in benefits for the duration of non-attendance as a sanction under social law (Residence Act, Section 44a (3)).

- Integration courses for **EU citizens** insofar as places are available (EU Act on the General Freedom of Movement for EU Citizens, Section 11(1)).
- **The Federation bears the costs of integration courses** (Residence Act, Section 43 (3)).
- The **costs** of the integration courses for new immigrants (including repatriates) are to be estimated at € 188 million per annum.

The costs pertaining to the annual attendance of courses by around 50,000 to 60,000 foreigners already living in Germany amount to approx. € 76 million.

Provision is made for contributions by those attending the courses on a graduated basis according to their financial status.

- **Länder** bear costs of child care and support from social education authorities.

## 6. Security aspects

- Introduction of a **deportation order** (Residence Act, Section 58a), which can be issued by the supreme Land authorities and, in the case of a special federal interest, by the Federation on the basis of a "evidence-based threat assessment". Legal redress only possible via a single appeal to the Federal Administrative Court.  
If deportation cannot be effected on account of obstacles to deportation (torture, death penalty), enhanced security is to be provided by **obligations to report** to the authorities on a periodic basis, **restrictions on freedom of movement** and **bans on communication** backed up by appropriate penalties (Residence Act, Section 54a).
- **As a new provision**, the **smuggling of people** into the Federal Republic of Germany constitutes a compelling ground for deportation in the case of persons receiving **non-suspended custodial sentences for such offences** (Residence Act, Section 53 (3)).
- **Regular expulsion when facts justifiably lead to the conclusion that a foreigner belongs to or has belonged to an organisation which supports terrorism or supports or has supported such an organisation; membership and supportive acts** in the past are relevant insofar as they form the basis for a currently prevailing danger (Residence Act, Section 54 (5)).

- Introduction of regular expulsion for **leaders of banned organisations** (Residence Act, Section 54 (7)).
- Introduction of **discretionary expulsion for "intellectual incendiaries"** (e.g. agitators in mosques):

Section 55 (2), no. 8.

"(2) A foreigner may be expelled pursuant to Section 1 in particular, if he or she

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- 8. a) publicly, at a meeting or by disseminating literature, endorses or promotes a crime against peace, a war crime, a crime against humanity or terrorist acts of comparable importance in a manner conducive to disturbing public safety and order or
  - b) incites hate against sections of the population or calls for violence or arbitrary measures against the same in a manner conducive to disturbing public safety and order or attacks the human dignity of others by insulting, maliciously disparaging or slandering sections of the population."
- Introduction of a **standard request** for information on any anti-constitutional records prior to issuance of a **settlement permit** (Residence Act, Section 73 (2)) as a residence title of unlimited duration and **prior to** the decision on **naturalisation** (Public Prosecution Act, Section 37).

## 6. EU citizens

- In order to implement the **freedom of movement** within the European Union, **residence permits will be abolished for EU citizens**. In future, EU citizens will merely be required to register with the registration authorities, in the same manner as Germans. EU citizens are to receive certification confirming their right of residence (EU Act on the General Freedom of Movement for EU Citizens, Section 5).

## 7. European harmonisation

- The **EU directives** on the granting of **temporary protection** and the **recognition of decisions** by other member states to **return persons to their country of origin** and the directive on supplementation of the provisions pursuant to Article 26 of the Schengen Implementation Agreement are to be implemented.

## 8. Asylum procedure

- The residence **status** of those having **what is called "asylum status according to the Geneva Convention"** ("kleines Asyl") will be brought into line with the status of persons entitled to asylum (Residence Act, Section 25). Both groups will initially receive a limited residence title which can become permanent after three years if the appurtenant conditions continue to be met. Persons having "asylum status according to the

Geneva Convention” are to have **unimpeded access to the labour market** - such as was previously granted only to persons entitled to asylum.

- Prior to issuing a settlement permit to persons entitled to asylum and holders of “asylum status according to the Geneva Convention”, it is to be assessed whether the situation in the country of origin has changed (Residence Act, Section 26 (3)).
- **The system whereby individual decision-makers are not obliged to follow instructions is to be abolished, as is the office of Federal Commissioner for Asylum Matters.** This will speed up the procedures and lead to a standardisation of decision-making practice.
- Asylum seekers who apply for asylum at border authorities or foreigners’ authorities but who subsequently go underground without filing a formal application for asylum, thereby delaying the beginning of their asylum procedure, will be referred in future to the follow-up application procedure (Asylum Procedure Act, Section 23 (2)).
- In future, the asylum status according to the Geneva Convention is to be ruled out as standard procedure when the foreigner leaves his or her country of origin in the absence of any persecution and subsequently gives rise to persecution only as a result of (subjective) post-flight reasons which they themselves create (Asylum Procedure Act, Section 28 (2)).
- **Foreigners who enter the country illegally without applying for asylum** and who, upon their illegal entry being established, cannot be placed in custody pending deportation and deported or expelled directly from custody are to be **distributed among the respective Länder** prior to the decision on the suspension of deportation or issuance of a residence title (Residence Act, Section 15a).

## **9. Repatriates**

- **Introduction of proof of a knowledge of the German language for repatriates' family members as a prerequisite for inclusion in the admission notice (basic knowledge), Federal Act on Refugees and Expellees, Section 9 (1).**

## **10. Entry into force and timetable**

- **Final consultation in the Mediation Committee on 30 June 2004. The Mediation Committee's resolution was adopted in the Bundestag on 2 July 2004 and in the Bundesrat on 9 July 2004.**
- **Entry into force on 1 January 2005.**

- **Following provisions to enter into force ahead of the actual Act (on the day following promulgation): Renaming of “Federal Office for the Recognition of Foreign Refugees” as “Federal Office for Immigration and Refugees”, abolishment of the system whereby individual decision-makers are not obliged to follow instructions, and abolishment of the office of Federal Commissioner; authorisation to adopt ordinances having the force of law to implement the Immigration Act.**