

A Summary of the Immigration Act of July 30, 2004 (Press Report, 2004)

Abstract

After years of political conflict, the red-green government succeeded in passing a reform that made it easier for highly qualified migrants to immigrate, permitted the entry of certain others on humanitarian grounds, and allowed the children of migrants to join their families in Germany. At the same time, however, the reforms encouraged integration and made it easier to deport migrants who had been convicted of a crime. The new law took effect on January 1, 2005.

Source

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 no longer based on residence titles but rather on the purpose of residence (education, gainful employment, subsequent immigration of dependents, humanitarian grounds).
- Important duties are to be allocated to the new Federal Office for Migration and Refugees, which will supersede the previous Federal Office for the Recognition of Foreign Refugees:
 - The development and implementation of integration courses for foreigners and remigrants [*Spätaussiedler*];
 - The keeping of the Central Aliens Register;
 - The implementation of measures to promote voluntary return;
 - The carrying out of scientific research on migration issues (accompanying research);
 - The coordination of the circulation of information on labor migration between the foreigners' authorities [*Ausländerbehörden*], the Federal Employment Agency, and German diplomatic missions abroad.

2. Labor 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 either with such persons or later on 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). If these conditions are not met, an individual examination of the case will follow to

determine whether a general financial or specific regional interest exists, to investigate the effects on the economy, and to examine whether funding is secured.

- Possibility for students to remain in Germany for up to a year after the successful completion of their studies to seek 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 labor 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 upheld.
- The ban on recruitment is also to be upheld 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 states that have acceded [to the EU] have access to the labor market for qualified employment (according to the priority principle, that is, only insofar as no German or person enjoying equal status is available); priority over nationals from third countries (Residence Act, Section 39 (6)).
- The points system has been abolished.

3. Humanitarian Immigration

- Refugee status (refugee as recognized under the Geneva Convention) is also granted in cases where there is non-state persecution pursuant to the EU Asylum Qualification Directive (Residence Act, Section 60 (1)).
- Gender-specific persecution is recognized 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 in 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 offenses (grounds for denial from the EU Qualification Directive) and in cases of repeated or gross breaches of the obligation to cooperate (Residence Act, Section 25 (3)).
- Residence permit in cases where there are obstacles to deportation, so as to prevent 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 cases where there is misconduct on the part of the foreigner (e.g., attempt to disguise true identity).
- Suspension of deportation [*Duldung*] is retained as a "fine control" instrument (Residence Act, Section 60a).
- Hardship provision, excluding legal rights. At the request of a Hardship Commission established by a state [*Land*] government, the supreme state [*Land*] authority may order a residence permit to be issued to a person who is obliged to leave the country, and who has no chance of appeal, 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 states [*Länder*] (Residence Act, Section 23a).

4. The Subsequent Immigration of Children

- The current legal situation is to be maintained, with 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 for children of refugees recognized under the Geneva Convention, whereby such children are also allowed to enter the country as part of their family unit. Other conditions [for immigration] include a command of the German language or a "positive integration prognosis." If these conditions are not met, the age limit is 16, but there will also be a restrictive discretionary ruling, whereby the child's wellbeing and the family situation will be taken into consideration (Residence Act, Section 32).

5. Integration

- Introduction of the entitlement model for new immigrants who take up permanent residence in the Federal Republic (Residence Act, Section 44).
- Imposition of sanctions relating to the right of residence in cases where new immigrants fail to attend courses: Breach of obligation to attend courses is to be taken into account in decisions on extensions to residence permits (Residence Act, Section 8 (3)).
- Obligation for migrants already living in the Federal Republic for over 3 years to attend courses insofar as spots are available (Residence Act, Section 44a) – in the case of persons drawing Employment Benefits II [*Arbeitslosengeld II*] and particularly in the case of persons with special integration needs.
- Breach of the obligation to attend integration courses will result in a reduction in benefits for the period of non-attendance as a form of sanction under social law (Residence Act, Section 44a (3)).
- Integration courses for EU citizens insofar as spots are available (EU Act on the General Freedom of Movement for EU Citizens, Section 11(1)).
- The Federation bears the costs of the integration courses (Residence Act, Section 43 (3)).
- The costs of the integration courses for new immigrants (including remigrants) are to be estimated at € 188 million per year.
- The costs relating to the annual attendance of courses by approximately 50,000 to 60,000 foreigners already living in Germany amount to approximately € 76 million.
- Provisions will be made for course participants to contribute to course costs; contributions will be made on a graduated basis and will take financial status into account.
- The federal states [*Länder*] will bear costs of child care and social-outreach work.
- The Integration Course Ordinance [*Integrationskursverordnung*] takes effect on January 1, 2005.

6. Security Aspects

- Introduction of a deportation order (Residence Act, Section 58a), which can be issued by the supreme state [*Land*] authorities and, in the case of a special federal interest, by the Federation on the basis of a "threat prognosis based on facts." Legal redress is 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), greater security should be ensured by the implementation of specific measures: the person in question will be

obligated to report to the authorities on a periodic basis, restrictions will be placed on [his/her] freedom of movement, and bans on communication backed up by appropriate penalties will also apply [in his/her case] (Residence Act, Section 54a).

- As a new provision, the smuggling of people into the Federal Republic of Germany will now constitute compelling grounds for deportation in the case of persons who receive non-suspended prison sentences for such offenses (Residence Act, Section 53 (3)).
- Regular expulsion when facts justifiably lead to the conclusion that a foreigner belongs to or has belonged to an organization that supports terrorism or supports or has supported such an organization; membership and supportive acts in the past are relevant insofar as they still form the basis of a present danger (Residence Act, Section 54 (5)).
- Introduction of regular expulsion for the leaders of banned organizations (Residence Act, Section 54 (7)).
- Introduction of discretionary expulsion for "intellectual incendiaries" (e.g. agitators in mosques) --> Residence Act, Section 55 (2), no. 8.
- Introduction of a standard request for information on any anti-constitutional activities prior to the issuance of a settlement permit (Residence Act, Section 73 (2)) as a residence title of unlimited duration and prior to the decision on naturalization.

7. EU Citizens

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

8. European Harmonization

- 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 the supplementation of the provisions pursuant to Article 26 of the Schengen Implementation Agreement are to be implemented.

9. Asylum Procedure

- The status under the Residence Act of those holding so-called "minor asylum" 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. Holders of so-called "minor asylum" are to have unimpeded access to the labor market – such as was previously granted only to persons entitled to asylum.
- Prior to the issuing of a settlement permit to persons entitled to asylum and to holders of so-called "minor asylum," an assessment is to be made as to whether the situation in the country of origin has changed (Residence Act, Section 26 (3)).
- Individual decision-makers will no longer have the option of departing from their obligation to follow instructions, and the Office of the Federal Commissioner for Asylum Matters is to be abolished. This will speed up proceedings and lead to the standardization of the decision-making process.
- 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 proceedings, will be referred in future to the follow-up application procedure (Asylum Procedure Act, Section 23 (2)).

- In the future, so-called "minor asylum" is to be ruled out as standard procedure when foreigners leave their country of origin in the absence of any persecution and subsequently suffer persecution solely on the basis of (subjective) post-flight conditions that they themselves create (Asylum Procedure Act, Section 28 (2)).

- Foreigners who enter the country illegally without applying for asylum and who, upon the establishment of their illegal entry, cannot be placed in custody pending deportation and deported or expelled directly from custody are to be distributed among the respective federal states [*Länder*] prior to the decision on the suspension of deportation or the issuance of a residence title (Residence Act, Section 15a).

10. Remigrants [*Spätaussiedler*]

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

- The Integration Course Ordinance [*Integrationskursverordnung*] takes effect on January 1, 2005.

11. Coming into Effect and Timetable

- After the passing of a cross-party resolution by the German Bundestag on July 1, 2004, and the granting of Bundesrat approval on July 9, 2004, the Immigration Act was executed by the Federal President on July 30, 2004, and announced in the *Federal Law Gazette* [*Bundesgesetzblatt*] on August 5, 2004.

- The authorizations on the decree of statutory ordinances take effect the day after the announcement. The essential portions of the authorizations pertain to regulations on the implementation of the Immigration Act, on the shaping and implementation of the integration courses, and on the acceptance of employment within the framework of the legal ban on recruitment. The federal government will immediately work out the necessary draft ordinances and will become engaged in proceedings when certain ordinances require the approval of the Bundesrat, so as to ensure that the ordinances pertaining to the execution of the Immigration Act on January 1, 2005, are applied in a timely manner.

- Additional parts of the Immigration Act take effect on September 1, 2004. This will have a particular impact on the allocation of tasks in the area of integration to the Federal Office for Migration and Refugees. In the future, the Federal Office for Migration and Refugees will function in this area above all as a center of expertise. The necessary measures to effect this transition will be undertaken quickly.

- Additionally, as of September 1, 2004, individual decision-makers in the Federal Office for Migration and Refugees will no longer have the option of departing from their obligation to follow instructions in matters of asylum, and the Office of the Federal Commissioner for Asylum Matters is to be abolished. This will speed up proceedings and lead to the standardization of the decision-making procedure.

- The main aspects of the Immigration Act, and particularly the regulations that form the basis of decisions envisaged by the Alien Act, take effect on January 1, 2005.

Source: Zuwanderungsgesetz, ZuWG (Press Report, 2004),
www.aufenthaltstitel.de/stichwort/zuwg.html

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