

## 1. Who needs a work permit ?

Any foreigner who is **not** in possession of a residence title that shows an addition to the effect that pursuing a gainful employment has expressly been permitted.

## 2. Who may obtain a work permit?

Anyone who

- has been in possession of a Aufenthaltsgestattung (permission to reside) for one year
- has been in possession of a Duldung (toleration of stay) for one year
- during the course of the past year was first in possession of an Aufenthaltsgestattung and then of a Duldung
- is in possession of a residence permit according to § 25 Abs. 3 bis 5 AufenthG (article 25, paragraph 3 to 5 of German residence act) or according to § 23 a AufenthG.

## 3. What do people need a work permit for?

- for any non-independent work in an employment relationship
- for company-based vocational training and traineeships
- for any self-employed gainful employment.

## 4. Who will grant a work permit?

The work permit must be **applied for by the foreigner** at the **Aliens Registration Office (Ausländerbehörde)** that is in charge of him. This authority may as well determine the duration, the nature of the professional activity and the limitation to one company. In case there are special circumstances (cf. 6b, 7b), those must be mentioned when the application is being made.

## 5. What will the Aliens Registration Office examine?

If the applicant is in possession of a **Duldung**, the Aliens Registration Office will examine,

- whether the foreigner **cannot be deported** for reasons which he is responsible for, e.g. if he is accused of having stated a false identity or nationality and

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- whether the foreigner has entered the country in order to get benefits according to the Asylbewerberleistungsgesetz (asylum seekers' benefits act).

## 6. Will the Bundesagentur für Arbeit (federal agency for employment) be involved in the decision making process by the Aliens Registration Office?

### a) Rule: consent required

The Aliens Registration Office will forward the application to the Agentur für Arbeit, in the Bezirk (district) in which the place of the applied employment is situated. They will examine the application and inform the Aliens Registration Office on the result. The Aliens Registration Office will then grant the work permit or they will issue a rejection letter.

### b) Exception: no consent required

The Bundesagentur für Arbeit will not take part in the decision made by the Aliens Registration Office, if a work permit is applied for, e.g. for the following activities:

- traineeships in the framework of the schooling, the studies and programmes funded by the EU
- activities of highly qualified persons (scientists etc.)
- activities of family members of the employer who are living with him
- activities which primarily serve the person's curing, reintegration or education (diseased or addicted persons, prisoners etc.; but not traumatized refugees, cf. 7b).

## 7. What will the Bundesagentur für Arbeit examine?

In all cases the Bundesagentur für Arbeit will investigate whether there are **Versagungsgründe (reasons for denial)**. This will be the case, for instance, if the employment relationship came into being on the basis of an illegal job procurement or recruitment, or if the foreigner is supposed to work as a subcontracted worker.

## a) Rule: priority check and investigation of working conditions

As a rule the Bundesagentur für Arbeit will investigate the following:

### 1) Priority check

- (a) There must not be any negative effects to the labour market because of the employment of foreigners. This can be determined by the Agenturen für Arbeit on the basis of certain criteria for certain industries, e.g. by the number of unemployed persons compared to the job vacancies

**and**

- (b) there is no privileged employee available for the concrete job:  
Especially Germans, nationals from EU countries and foreigners, who can pursue a gainful employment without any legal limitations, shall be privileged.

This will be examined in the following way:

The employer must prove his efforts to find a privileged employee. For this purpose he can entrust the competent Agentur für Arbeit with a job procurement order. They can propose a privileged employee for the actual job.

The employer can only reject that proposal if he has got special, objective and factually justified reasons, based in the employer's individual business interest, why it is the intention to employ a certain foreigner.

**or**

- (c) apart from the depicted examination of a particular case (cf. (a) and (b)) the Bundesagentur für Arbeit may determine **individual occupational groups and economic sectors**, in which the employment of foreigners is generally possible without an **examination of the individual case**.

## 2) Investigation of working conditions

The foreigner must not be employed under **working conditions** which are worse than those of a comparable German employee. In the process special attention will be paid on whether the legal regulations (laws on protection of employees, etc.) are being observed and whether the offered wage corresponds to the standard or local wage.

### b) Exception:

#### (1) No priority check

In certain exceptional cases the Bundesagentur für Arbeit does not need to carry out a priority check:

- Hardship provision:

Here, the overall circumstances of the individual case shall be decisive. In case of traumatized persons the intended employment has to be part of the therapy. A case of hardship can also be assumed as a consequence of special family circumstances or because of a reduction in earning capacity.

- continuation of an employment after one year with the same employer.

#### (2) No priority check and no investigation of working conditions

In certain exceptional cases the Bundesagentur für Arbeit does not need to carry out a priority check and an investigation of working conditions:

- training and employment of persons who have entered the country as minors and who are in possession of a residence permit. Being in an employment relationship presupposes a school-leaving qualification or the participation in a pre-vocational measure in Germany.
- employment in case of certain periods of pre-employment or previous long-term stay of persons who are in possession of residence permits.

If, in agreement with the Aliens Registration Office, a general consent has been given, the Agentur für Arbeit need not be involved.

## 8. What can be done if the Aliens Registration Office rejects the application?

At first an objection can be made against this. If this fails to succeed legal action can be taken at the competent administrative court. In some Federal States there won't be any objection procedure, there legal action can be taken immediately.

If it can be assumed that the employer would give the offered job to a different person before long, the action can be accompanied by an emergency application. This emergency application will have to be decided upon very soon by the administrative court without any hearing in court.

Details on this matter (objection or legal action, deadlines) can be taken from the **Rechtsmittelbelehrung** (instructions about a person's right to appeal) which will be annexed to the notice of rejection.

Stated: December 2005

## Advice on LABOUR LAW

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## ADVICE ON LABOUR LAW MATTERS (I)

### How do I get a work permit?

Brief description of the preconditions and of the procedure.



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