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The German Green Card Is Blue

Highly skilled employees now are a lot more likely to obtain residence titles for Germany. On August 1, 2012, the German law implementing Council Directive 2009/50/EC of May 25, 2009, on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, came into force.

In the course of this implementation, the legislator not only inserted Sec. 19a in the German Residence Act, but also used this as an opportunity to amend the preconditions for the granting of other residence titles.

General: Visa and Residence Permit

German law of residence differentiates between a Schengen visa, a national visa and a residence permit.

A Schengen visa entitles its holder to stay within the Schengen countries up to three months within a period of six months. Longer stays (e.g., in order to work or to study) require a national visa. Such a visa will be applied for with a German consulate in the foreign country. The national visa is valid for three months. After the foreigner has entered

Germany, he not only must register with the registration office, but also must apply for the corresponding residence permit with the local foreigners' office.

U.S. citizens and citizens of a few other countries do not require a visa, neither for a short trip nor in case they intend to work or study in Germany. If they wish to stay in Germany for more than three months or to work, they may directly apply for the residence permit with the local office after having entered the country. However, most other third-country nationals will have to apply for a visa in order to enter Germany and then apply for a residence permit.

Temporary and Permanent Residence Permit

German Right of Residence makes another distinction: It differentiates between a temporary and a permanent residence permit. However, contrary to the U.S. green card, a permanent residence permit only may be applied for directly in a few cases. The main requirement is that the applicant has lived in Germany for several years on a temporary residence permit. For example, a foreigner who holds a residence permit as being self-

employed – comparable with a U.S. E-2 investor visa – may apply for a permanent residence permit after three years.

New: EU Blue Card

The EU Blue Card is a residence title for highly qualified foreigners, particularly for those who graduated from university. In contrast to several other residence titles, foreigners who meet the preconditions are entitled to be granted the Blue Card. The authorities involved have no further discretion.

Requirements

Provided that the applicant complies with the general requirements for the granting of a residence title, an EU Blue Card will be issued if the applicant can show that he is highly qualified, i.e., he has a German university degree, one which was awarded by a foreign university and is accepted in Germany or a university degree which is comparable to a German degree. In certain cases, it might suffice to show professional experience of at least five years.

In addition, the applicant must submit an employment contract or a binding employment offer in which a

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gross annual compensation of at least EUR 44,800 (for 2012) is agreed upon. Certain other professions (scientists, mathematicians, engineers, doctors and IT specialists) require only a compensation of EUR 34,944 (gross, for 2012).

As a rule and comparable to Labor Certification in connection with a U.S. H-2B visa, the German Federal Employment Agency is involved and must check whether there are German or privileged foreign workers available. However, in case the annual compensation amounts to at least EUR 44,800, Labor Certification is waived. The same is true if the compensation is between EUR 34,944 and EUR 44,800, provided the applicant graduated from a German university.

Family Members

Regarding right of residence, the spouse of an EU Blue Card holder is allowed to immediately work in Germany without having to prove knowledge of the German language, requiring the consent of the Department of Labor or being restricted to certain professions.

Validity

When granted for the first time, the EU Blue Card generally is valid for a maximum of four years. If the employment contract is temporary, the EU Blue Card will be issued for the duration of the contract plus three months.

Permanent Residence Permit – “German Green Card” for EU Blue Card Holders

After 33 months, the holder of an EU Blue Card may be granted a permanent residence, i.e. settlement permit, if he complies with the general preconditions for it being granted – e.g. adequate knowledge of the German language, a basic knowledge of the legal and social system and the way of life in the Federal territory of Germany. The qualifying period is reduced to 21 months if the foreigner can prove German language proficiency level B1. With other employment based temporary residence permits, the period is five years. As mentioned above, it is three years for self-employed persons.

An applicant with a university degree but no exceptional skills will need Labor Certification and will have to wait years

until he might be granted an EB-3 green card for the U.S. In contrast to this, an EU Blue Card applicant may not only come to Europe and be able to work and earn a living within just a few weeks or months. He may also be granted permanent residency before he would be allowed to enter the U.S. on a green card.

Of course, and particularly with highly qualified persons, getting a job is rarely the only reason for aspiring to legal permanent residency in the U.S. Time will tell whether the European regulations really are in direct competition with the U.S. immigration law, whether the EU Blue Card reduces labor deficit in Europe and, perhaps, also the time applicants for U.S. green cards have to wait until the cards become available.

By the way, foreigners who have legally lived in Germany for eight years may apply for German citizenship. However, as a rule with exceptions, they will have to abandon other citizenships – which is another matter altogether. **P**