



## **4th Biennial Global Immigration Law Conference: London 19 - 20 November 2009**

### **CURRENT EUROPEAN IMMIGRATION SCENE**

#### **Germany – 2009 Changes in Immigration Law**

Although Germany is still not officially considered as a country for immigrants, it increasingly feels a lack of skilled personnel and the need for a globalized workforce. Thus it ever so often considers opening its borders for qualified labor in order to attract highly skilled workers. With the onset of the financial crisis and its effects on the labor market, the public discussion on possible changes of immigration laws aimed to attract more foreign workers has been quieted down. Nevertheless the government has liberalized the laws on the employment of foreign workers this January, following a political announcement made in July 2008. While the changes have been introduced nearly unnoticed by the greater public, HR professionals and immigration lawyers already feel the effects of the recent changes that transformed Germany even more into an attractive target location for corporate immigration.

#### **The Changes in Detail:**

##### **A. University Trained Specialists**

As most effective change appears the new category that enables all university trained specialists to enter the German labor market after a labor market check – provided that the university or polytechnic degree is internationally recognized or comparable to a German degree. The intended occupation also needs to relate to the vocational qualification. This requirement refers to all occupations, which usually call for an academic education and for which the skills acquired at university are at least of partial value. With this important change, companies may now recruit or delegate newly hired foreign academics of any specialization. Please note, however, that the job conditions including salary have to be comparable to the average employment conditions of a German employee and a labor market check is still required prior to the employment.

##### **B. Graduates of German Overseas Schools**

The new ordinance also privileges the graduates of German overseas schools. They are now eligible to receive a residence permit to begin a qualified vocational training. Qualified vocational training is defined in section 25 of the ordinance as a professional training of at least 3 years. Those graduates of German overseas schools who are already holding a vocational degree are now eligible to receive a residence permit for job purposes without a prior labor market test.



Thus graduates of German overseas schools can now be safely be recruited directly abroad as they should be receiving the visa/residence permit within a short 2 to 4 weeks.

**D. Specialists in IT / Telecommunications without University Degree**

Especially in the field of IT and Telecommunications, many specialists do not have a corresponding university degree but received their vocational training from private institutions that offer a system of different qualification courses. The new law now allows them to receive a residence/work permit as IT Specialists if the presented qualifications equal a university degree in quality. Although it is still uncertain what will be accepted as equaling a university degree, it is to be expected that a full time course of three years should generally be sufficient as well as a number of courses in conjunction with a considerable job experience.

**E. Specialists with a German University Degree**

The changed law also implements the existing provisions of the Ordinance on the Accessibility of University Graduates into the new ordinance. As before, graduates of German universities are entitled to access the German labor market without a prior labor market check.

**F. Executive Staff and Specialists**

Even under the existing provisions, it has been possible to issue a residence/work permit to executive staff or specialists of a company residing in Germany. With the new law, these permits can be issued without a prior labor market test. The change has been expected for some time, as it was obvious that company specific know-how required by executive staff or specialists cannot be found on the regular labor market rendering the labor market test a useless and time consuming formality. The change is nevertheless important to daily practice as it cuts 4-6 weeks of the processing times previously common.

**G. University Graduates Including Family Members Originating from the New EU Member States**

Beginning January 1, 2009, university graduates with a citizenship of any of the new EU member states as well as their accompanying family members have free access to the German labor market for all occupations related to their field of study.

**H. Intra-company Transfer for Internal Trainings**

A newly added section within the ordinance on employment also introduces a new visa category. In order to appreciate the introduction of this new category, one needs to understand some basics of German visa laws.



Visa Basics:

With regard to visa validity terms, Germany differentiates between the Schengen-Visa limited to 90 days which can be issued by any consulate or embassy without involvement of local authorities, the visa waiver program, which applies to visitors of certain nationalities, and the national visa, that can be extended and transformed into a residence permit and always requires the approval of the local foreigner's office as well as mostly an approval by the labor authority.

Generally foreigners are only allowed to work in Germany when the nature of work (and often even the employer and work location) is expressly stated in the visa or residence permit. While many types of occupations can be legalized by approval of the labor authority within a national visa or resident permit, the occupations that can be performed on the basis of a Schengen Visa or under the visa waiver program are limited as only few occupations are not regarded as work if performed less than 90 days within a 12-month period. Thereby even short term visitors and those covered by the visa waiver program are forced to apply for a national visa or a resident permit if they intend to work in Germany (unless the type of work falls into one of the few exceptions to the rule). In January Germany introduced a new exception in the form of the *intra-company transfer visa for the purpose of internal trainings*. Now all types of employee trainings and knowledge transfer within a group of companies can be performed on the basis of a Schengen Visa or under the visa waiver program. While this appears to be a mere formality in terms of categories, it nevertheless shortens the application times considerably (from up to 2 months to 2 weeks) as no other authority than the consulate or embassy is involved for the issuance of a Schengen Visa respectively allows the performance of group internal trainings under the visa waiver program.

The internal training at a group company is defined as assignments that enable foreign employees to enlarge their individual proficiency, knowledge and skills or adapt to changing vocational requirements in order to achieve an occupational development. According to a ministry spokesman, this does not, however, include assignments where – for example as part of an outsourcing project – data are collected or requirement analyses are made or assignments at a worksite that does not belong to the group. Thus operations for third parties or at third party sites are not permitted under this category.



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## **Conclusion**

While the German labor market still remains tightly closed for unskilled labor, it has become considerably easier to obtain a permit for professionals with an academic background and for skilled personnel of international operating groups. The recent changes that enable all workers of professions requiring an academic education to obtain a permit for a specific job offer grant more flexibility to employers and enable them to recruit internationally. In essence, the German labor market for academically trained employees is now as open as the labor markets of countries that operate a point-based system.

Furthermore, the abolition of the formerly requested labor market checks for employees of multinational groups with a group specific knowledge considerably shortens the application procedure for assignments to Germany. While in the past one had to expect up to 8 weeks, the time now to be expected is cut in half, again granting more flexibility to internationally operating groups. Thus the recent changes in German immigration law – although not openly discussed by the government – appear to be potent means of attracting highly skilled labor to one of the strongest economies in the world.