

**DAAD**

**Deutscher Akademischer Austauschdienst  
German Academic Exchange Service**

**Information on the legal framework conditions  
for  
Immigration and Residence  
of foreign students and scholars**

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## Introduction

In this information leaflet, the most important rules of the right of residence are described as relevant for the issues of students and scholars entering and staying in the country. The topics are treated in a chronological order: from the time before entering the country to the stay for studies or research in Germany until the time after the completion of the studies or scientific project.

The information leaflet primarily addresses international offices and other points of contact at German universities that advise and assist in legal aspects relating to the right of residence. In addition, it can also be used by international students and academics of course, who would like to obtain information about the legal situation in Germany. For this reason, the text is also available in an English language version.

This information leaflet is not intended to be exhaustive and reflects the situation of **January 2017**. Although it has been drafted with the greatest possible care, liability for substantive correctness cannot be accepted.

We always appreciate information about new developments and possible additions. Contact: [adenberg@daad.de](mailto:adenberg@daad.de)

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## 1 Before entering the country: Apply for a visa?

In general, foreign nationals require a visa to enter Germany. Depending on the country of origin, the purpose of the stay and the planned duration of the stay, exemptions and simplification measures may be provided in respect of this requirement. This generally applies to: EU citizens and nationals of the European Economic Area (EEA) enjoy freedom of movement based on the Act on the General Freedom of Movement for EU citizens (EU Freedom of Movement Act) and they may enter the country without visa.

When a visa is granted, the visa appended in the passport permits both entry into the country as well as the preliminary stay. Anyone who needs a **visa** must always obtain it in their home country **before entering the country**. Responsibility for granting the visa lies with the German diplomatic missions (usually the embassy or consulate general) or, for some visa types (a so-called Schengen visa), with the diplomatic missions of the other signatory states of the Schengen Agreement at the place where the foreign national maintains his/her usual place of residence. A visa should be applied for at a **very early stage** before the planned entry into the country, which takes into account the possibility of long waiting or processing times.

If a visa requirement applies, entering the country without visa is not permitted and consequently illegal.

The following groups of people do not require a visa for entering the country if the conditions described below apply; for them, it is sufficient to merely have a valid travel document (usually a passport):

- EU citizens: EU Member States are Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Great Britain, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Spain, the Czech Republic, Hungary and Cyprus. For nationals of these countries, a valid national identity card or official ID is sufficient for entering the country.
- Members of the European Economic Area (EEA): Member States are Iceland, Liechtenstein and Norway. Here, too, a valid national identity card or official ID is sufficient for entering the country.
- Family members from third countries (spouses and underage, unmarried children) of EU citizens and nationals from EEA countries, provided that they have a valid residence title of another EU or EEA State.
- Nationals of Switzerland
- Nationals of Australia, Israel, Japan, Canada, South Korea, New Zealand and the USA. For a stay longer than three months, nationals of these countries can apply for the required permission to stay in Germany.
- So long as there is no intention to pursue gainful employment: Nationals of Andorra, Brazil, El Salvador, Honduras, Monaco and San Marino. This means that no entry visa is required for students from these countries if they do not intend to pursue gainful employment before or after the studies. Activities accompanying the studies that are exempt from approval remain unaffected by this rule, since the studies are the main purpose of the stay. If an occupation as a (visiting) academic does not exceed the time period of three months within one year, the occupation will not be considered gainful employment in the definition of residence law. Therefore, citizens of the mentioned countries do not need a visa for such work. For a stay longer than three months, a residence permit can also be applied for in Germany if the country was entered without a visa.
- If only a short stay is planned that does not exceed three months altogether and if there is no intention to pursue gainful employment: Nationals of the countries Antigua and Barbuda,

Argentina, Bahamas, Barbados, Brunei Darussalam, Chile, Costa Rica, Dominica, Grenada, Guatemala, Kiribati, Colombia, Malaysia, the Marshall Islands, Mauritius, Mexico, Micronesia, Nicaragua, Palau, Panama, Paraguay, Peru, the Solomon Islands, Samoa, Seychelles, Singapore, St. Kitts & Nevis, St. Lucia, St. Vincent & Grenadines, Timor-Leste, Tonga, Trinidad & Tobago, Tuvalu, Uruguay, Vanuatu, the Vatican City, Venezuela and the United Arab Emirates.

For nationals of the countries Albania, Bosnia-Herzegovina, Macedonia, Moldova and Montenegro, these rules apply to holders of biometric passports.

For nationals of Hong Kong, Macau, Serbia and Taiwan, these rules apply to holders of passports with particular characteristics.

It is not possible to extend these stays beyond three months without a visa. The country must be left after three months. If a longer stay or gainful employment subject to approval is intended, it is a mandatory requirement to enter into the country with a national visa. Holders of national passports of states that do not require a visa for entering into Germany, may generally not stay in the national territory for longer than 90 days per half-year without a visa. In addition, they may not take up gainful employment during this period.

- Researchers, who are approved in another EU Member State according to the EU Directive on a specific procedure for admitting third-country nationals for the purposes of scientific research and who enter Germany in the context of their research, provided that they work otherwise in a Schengen State or pursue their research activity in Germany for a maximum of three months during any twelve-month period.
- You can find an updated overview of the visa requirement here: [http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/StaatenlisteVisumpflicht\\_node.html](http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/StaatenlisteVisumpflicht_node.html)
- On the website of the Ministry of Foreign Affairs at [www.diplo.de/visa](http://www.diplo.de/visa), you can find answers to the most frequently asked questions about this topic, including the respectively current visa regulations for all countries.

## 1.1 Different types of visa

If a visa is required, it can be issued as either a Schengen visa or a national visa depending on the length and purpose of the stay.

The Schengen visa is issued for a short stay of up to three months per half-year. A national visa is issued for a planned longer stay of more than three months.

Further differentiations are made within these two main groups depending on the respective purpose of the stay. A Schengen visa is issued, for example, for visits, business or touristic stays. A national visa is issued, e.g. for academic studies or taking up gainful employment.

The German diplomatic missions usually provide information on their homepages about the process of visa issuance and the required documents. Applications can often be directly downloaded from the homepage. You can find the addresses of diplomatic missions on the website of the Ministry of Foreign Affairs: [http://www.auswaertiges-amt.de/DE/Laenderinformationen/DtAuslandsvertretungenA-Z-Laenderauswahlseite\\_node.html](http://www.auswaertiges-amt.de/DE/Laenderinformationen/DtAuslandsvertretungenA-Z-Laenderauswahlseite_node.html).

### 1.1.1 Schengen Visa

The Schengen visa

- is valid for a stay with a designated purpose for a time period of up to 90 days per 180-day period;
- entitles the holder to free travel and staying within the sovereign territories of the Schengen States (all EU Member States except for Great Britain, Ireland and Cyprus);
- can normally not be extended or redesignated for a different purpose of the stay. An extension is possible only for special exceptions, e.g. if medical treatment is urgently required;
- is issued by the diplomatic missions of the Schengen States.

Foreign nationals, who want to complete higher education studies or a doctorate in Germany, or who would like to complete a research or visiting academic appointment, are urgently advised against entering the German federal territory on a Schengen visa. The absent possibility for extension applies regardless of the purpose for which the short-term visa was issued (e.g. tourist, visitor or business stay); foreign nationals must exit the country when the visa expires.

For participating in a language course, the visa can be issued depending on the duration of the planned language course as a national or Schengen visa (up to three months: a Schengen visa, for more than three months: a national visa). If there is an intention to start academic studies straight after the language course, it is mandatory to specify this in the visa application. For this purpose of the stay, a national visa for the purpose of preparing for academic studies can then be issued. If merely a Schengen visa or a national visa for the completion of a language course (without subsequent stay for academic studies) was applied for, this cannot be converted into a residence permit for the purpose of academic studies. The foreign national must exit the country on expiration of the visa.

Likewise, anyone entering the country on a Schengen visa must verify that their living expenses are covered for the duration of an expected stay in the Federal Republic.

### 1.1.2 National visa

A national visa

- is issued when a longer stay (more than three months) is intended or if gainful employment is to be taken up;
- can only be issued for a validity period from three months to one year or also for a longer period in exceptional cases. The visa's validity period depends on the respectively intended purpose of the stay;
- primarily authorises a stay in Germany. The holders of a national visa, however, can move freely in the sovereign territory of all Schengen States, for a maximum of three months within a period of six months since the date of initial entry into the country. A national visa therefore also includes a Schengen visa at the same time;
- can generally be requested only from the German diplomatic mission in the official district of which the foreign national maintains his/her usual place of residence.

#### 1.1.2.1 Application for academic studies

Foreign nationals are considered to be prospective students if they are interested in studying in Germany but have not yet been admitted to a public or state-approved university or a public or state-approved preparatory course. The application for academic studies can be tied to learning the German language or guidance on the range of courses offered.

Within the scope of the approval procedure for the issuance of the visa (Sec. 31 (1) Residence Ordinance), the Aliens' Authority usually limits its review to a query of the Alien's Central Registry – it is only checked to see whether the requirements for access to a certain educational institution and the proof of sufficient funds regarding the study visit are met in individual cases when a corresponding review covering the federal territory is deemed necessary based on the information from the German diplomatic mission.

Pursuant to Sec. 31 (1) sent. 3 Residence Ordinance, the approval of the Aliens' Authority is deemed granted if no notice to the contrary is received from the German diplomatic mission within a period of absent objection, which is three weeks and two workdays. The requirements of eligibility for admission, secured financing and holding a passport must be fulfilled in all cases. The period of absent objection does not hinder the Aliens' Authority from granting explicit agreement before the end of the period to accelerate the issuance of the visa in individual cases.

A national visa for the purpose of applying to an academic programme can be granted by way of a discretionary decision (Sec. 16 (1a) Residence Ordinance), if

- the foreign national has not yet been admitted to preparatory courses or university;
- no mandatory regulatory reasons for refusing agreement are given (a regulatory reason for refusal is, e.g. absence of the required passport);
- other public interests are not opposed.

For receiving a national visa, the student applicants must provide the following documentation:

- sufficient health insurance (*cf. Excursion on "health insurance"*),
- sufficient living expenses to cover the duration of the entire validity period of the visa, and
- (for underage students) the permission from the person(s) having the care and custody over the applicant.

If it is reviewed in the individual case whether the conditions for access to a certain educational institution are fulfilled for subsequent studies, it may already be necessary that the following documentation is presented in the application for a visa for a student applicant:

- proof of a qualification for admission to higher education, that enables admission to academic studies in Germany (or attendance of a preparatory course),
- proof of any studies completed thus far.

#### **Excursion: Health insurance**

Sufficient health insurance coverage must include the following services:

- medical and dental treatment,
- supply of pharmaceuticals, wound dressings, therapeutic and aid products,
- hospital treatment,
- medical services for rehabilitation,
- services during pregnancy and birth.

Anyone who has health insurance from a statutory health insurer has sufficient health insurance coverage in any case (Sec. 2 (3) sent. 3 Residence Ordinance).

In addition, proof of sufficient funds for a subsequent academic stay may already be requested in the application for a student applicant visa. This is a discretionary decision. The proof of sufficient funds is mainly only required by the Aliens' Authority in the federal territory when the conversion of a student applicant visa into a residence permit for applying to an academic programme or for attending an academic programme is requested.

#### **Excursion: Proof of sufficient funds**

The proof of sufficient funds is intended to demonstrate that sufficient resources to finance sustenance are available initially for the duration of one year so that no welfare benefits of the host state need to be used during the stay. Students as well as student applicants from third states must give proof of their resources in the amount of the maximum rate of German student loan system ("BAföG") (Sec. 2 (3) sent. 5 Residence Ordinance) (currently in January 2017 €735 per month, thus €8,820 per year). For each calendar year, the applicable amount is published by the Federal Ministry of the Interior in the Federal Bulletin.

Proof of sufficient funds can be provided (cf. Sec. 16.0.8.1/16.0.8.2 of the General Administrative Terms on the Residence Ordinance) by:

- demonstration of the income and asset situation of the parents **or**
- a formal declaration to the Aliens' Authority or diplomatic mission stating that the living expenses will be assumed for the foreign student **or**
- payment of a security deposit to a frozen account in Germany **or**
- deposit of a bank guarantee from a financial institution in the federal territory, which must be renewed each year, **or**
- scholarships financed from German public funds or scholarships from a sponsorship organisation accredited in Germany or scholarships from public funds of the country of origin if the Ministry of Foreign Affairs, the Deutsche Akademische Austauschdienst or

another German organisation funding the scholarship has made the referral to the German university.

Not all options for providing proof of sufficient funds will be accepted in all cases. Often, the authorities insist on opening a frozen account and on the payment of the corresponding security deposit.

The national visa for student applicants is issued for a validity period of three months. It can be extended as a resident permit for six months by the Aliens' Authority. This is tied to the requirement that the student applicant gives proof of admission to an academic programme or admission to a German language course in preparation for academic studies or a preparatory academic course within this time period. The maximum length of stay for applying to an academic programme is thus nine months. This residence period as a student applicant prior to admission to a course in preparation for academic studies is not counted towards the length of stay for the course preparing for academic studies such as language courses, preparatory courses or preparatory work placements.

If the foreign national, who entered the country on a national visa for academic application, decides during the information and guidance stay, particularly upon admission to an academic programme that he/she wants to extend his/her stay, the Aliens' Authority can change the preliminary residence title associated with the national visa into a residence permit for academic preparation or academic studies. Proof of admission to an educational institution and documentation that is not yet demanded in the application for the visa (*see below*) must be submitted at this point in time.

### 1.1.2.2 Academic preparation and studies

Pursuant to the residence law, foreign nationals are considered students if they are admitted to academic studies at a state or state-approved institution of higher education (university, teaching college, art college, university of applied sciences, etc.) or a comparable educational institution, a university of cooperative education and a state-approved provider of preparatory courses.

A visa for a stay for the purposes of academic studies is regularly granted in the form of a national visa because a longer stay is intended (longer than three months).

Students must fulfil the following conditions to receive a national visa for preparation for studies or to enter an academic programme:

- admission to an accredited educational institution with the main purpose of obtaining a professional qualification. Proof of admission to the academic programme is provided by submission of the admission notice from the university. For this purpose, a conditional admission is sufficient (Sec. 16 (1) Residence Act). Proof of admission can be substituted by the following (cf. Sec. 16.1.1.1.1 to 16.1.1.1.3 of the General Administrative Terms on the Residence Ordinance):
  - a reservation on the academic programme of the educational institution,
  - a confirmation of application or
  - a certificate from the university or the institution offering preparatory courses, which states that personal attendance of the foreign national at the place of the institution of higher education is required to make a decision on the application for admission. The certificate must confirm that the applicant's application for admission has been reviewed and there is a reasonable expectation of his/her admission,
- sufficient health insurance (cf. *Excursion on "health insurance"*),
- proof of sufficient funds (cf. *Excursion on "Proof of sufficient funds"*),

- Proof of skills in the language of education; this is not required if the language skills have already been considered in the admission decision or if they are to be attained through measures in preparation of the studies (Sec. 16 (1) Residence Act),
- for underage students: permission from the person(s) having the care and custody over the applicant, and
- if applicable, proof of studies completed to date.

The German residence law provides that the visa (and later the residence permit) for purposes of academic studies is issued by way of a discretionary decision. However, the European Court of Justice determined in its judgement of 10/09/2014 in the Alaya case (C-491/13) that a student visa must be issued if the conditions for the issuance set forth in the “EU Student Directive” (2004/114/EC) are fulfilled. In that case, therefore, a right to the issuance of a student visa is established.

The national visa for the purpose of a study visit can be issued

- with a validity period of three months,
- **or** with a validity period of one year if the Aliens’ Authority was involved in the visa process (*cf.* 1.2).

If the stay is financed by a scholarship, the validity period of the visa must regularly be set according to the term of the scholarship, provided that it does not exceed one year.

### 1.1.2.3 Exercise of gainful employment: scientific work

Foreign (visiting) academics require a national visa for entering the country for a planned scientific stay of more than three months in the federal territory (*exceptions: cf.* 1). The visa is required, regardless of whether or not the agreement of the Federal Employment Agency is necessary for a residence title to exercise gainful employment (*cf. Information on the legal framework conditions for the practice of gainful employment for foreign students and scholars*).

(Guest) academics must provide the following documentation to receive a national visa:

- proof of a concrete job offer,
- proof of secured living expenses, e.g. by submission of an employment contract or scholarship approval (*see below*),
- sufficient health insurance.

Living expenses are deemed secured if they can be financed without using public funds. Family allowance, children’s allowance, child-raising allowance, parents’ allowance or public funds that are based on contribution payments or that are granted to finance the stay (e.g. scholarships) remain outside of consideration in this regard.

The national visa for the purpose of a visiting academic stay is usually issued with a validity period of three months. Thereafter, the visa can be converted to a residence title for a longer term (residence permit).

### 1.1.2.4 Research purposes

According to Sec. 20 Residence Act, a visa can be granted for research purposes. This, however, does not apply to foreign nationals whose research work is part of their doctoral studies (Sec. 20 (7) no. 4 Residence Act).

To apply for a visa, researchers must submit the following documents:

- a valid hosting agreement for conducting a research project with a research institute,
- a statement from the research institute that it will assume the costs of public offices,
- proof of sufficient health insurance, and
- proof of secured living expenses.

The research institute must be accredited in Germany pursuant to Sec. 20 (1) Residence Act so that the special admissions procedure for researchers in Germany will be conducted. The accreditation is granted to public or private institutions on request if they conduct research in the country (Sec. 38a (1) Residence Ordinance). The application can be filed in writing to the Federal Office for Migration and Refugees (BAMF). The Office publishes the list of accredited research institutes online at [www.bamf.de](http://www.bamf.de) (Sec. 38e Residence Ordinance).

The research institute must undertake in writing to assume the costs that would be incurred by public offices for up to six months after the end of the hosting agreement for the foreign researcher's living expenses in the case that the stay is impermissible or deportation is ordered (Sec. 20 (1) Residence Act). This can be dispensed with if the work in the research institute is predominantly financed by public funds or if a special public interest is held in the research project (Sec. 20 (2) Residence Act).

According to Sec. 2 (3) sent. 6 Residence Act, the living expenses for the stay for research purposes are deemed secured if the researcher has a monthly sum available that amounts to two-thirds the reference value in the definition of Sec. 18 SGB IV [Social Security Code, Book IV]. At this time, this is equal to a monthly sum of €1,984 in the old federal states and a sum of €1,773 per month (2017) in the new federal states.

If the stay serves for research purposes, a certain measure of EU-wide mobility is permitted. Someone who is admitted in a different Member State of the EU according to the provisions of the EU Researcher Directive, can receive a visa to conduct parts of his/her research project in Germany. If the period of the stay is longer than three months, the stay in Germany must be hosted by an accredited research institute (*see above*) with which a hosting agreement has been agreed. Anyone, who works in a signatory state of the Schengen Agreement can enter Germany without a visa and apply for any residence permit that may be required. For a period of three months within twelve months, gainful employment is also permitted without a visa (*cf. 1*). Even if a visa were necessary for entering the country based on the researcher's nationality, this is waived if he/she otherwise works in a signatory state of the Schengen Agreement or if the gainful employment does not extend beyond three months.

## 1.2 Agreement of the Aliens' Authority on the issuance of visas

If a visa requirement applies, a visa according to Sec. 31 Residence Ordinance generally requires prior approval from the Aliens' Authority if the stay is expected to last longer than 90 days, if the foreign national intends to take up gainful employment, or if the foreign national's data must be transferred to national security authorities.

The Aliens' Authority at the planned place of the stay is responsible in this regard. The approval in the case of a security check is deemed granted if the Aliens' Authority does not object to the issuance of the visa within 10 days after the query was transmitted (no-response period). If visas for academic study or research purposes are not already exempt from approval (see *below*), the no-response period is three weeks and two working days.

There are some exceptions from this mandatory agreement, however. The following are exempt from agreement:

- foreign nationals, who have been recommended for studies by a German research organisation or a German public office and who receive a scholarship in relation to this office in Germany (Sec. 34 sent. 1 no. 3 Residence Ordinance). Thus, besides scholarship holders, whose scholarships are funded with public resources, there are also those whose scholarship is received from private sponsors for example, who are exempt from the agreement if said conditions are fulfilled.
- Academics, who are referred by German research organisations or a German public office for a research activity and receive a publicly financed scholarship in this context (Sec. 34 no. 1 Residence Ordinance);
- visiting academics, teaching staff, academic employees, engineers and technicians in the team of a visiting academic, if they begin work upon an invitation from the university or a research institute of public law or such that are primarily financed from public resources (Sec. 34 sent. 1 no. 2 Residence Ordinance);
- researchers, who have made a hosting agreement with a research institute recognised by the BAMF [Federal Office for Migration and Refugees] (Sec. 34 sent. 1 no. 4 Residence Ordinance);
- spouses or civil partners accompanying and following the applicant on his/her stay, as well as underage, unmarried children of this group of people (Sec. 34 sent. 3 Residence Ordinance)
- Under certain conditions: graduates of German schools abroad and of schools abroad subsidised by German funding (Sec. 34 sent. 1 no. 5-7 Residence Ordinance).

For all other groups of people, the agreement from the Aliens' Authority is obtained first in the process described above, so that the issuance of the visa may take a little longer.

## 2 Arrived in Germany: Apply for a residence permit?

Citizens of the EU, the EEA and Switzerland do not require a residence permit; they are merely subject to the general obligation to register with the residents registration office in the same way that applies to Germans as well. The registration must be entered within the first few days or weeks after arrival depending on the local regulations.

If foreign nationals from third countries plan a stay beyond the validity period of the visa, this stay must be approved. This requires a residence permit. Foreign nationals, who have entered the country on a national visa and plan a longer stay, must have the preliminary permit to enter and reside in the country changed **before it expires** into a permit granting permission for a (longer) stay in the country (or another title for a longer term).

Also, foreign nationals, who are permitted to enter the country without a visa, must apply for a residence permit within three months if they intend to stay for longer than three months.

The local Aliens' Authority in Germany is responsible for granting and, if applicable, extending the residence titles for all non-EU nationals.

The Residence Act recognises the following residence titles for longer terms:

- the limited residence permit (Sec. 7 Residence Act),
- the unlimited permanent residence permit (Sec. 9 Residence Act),
- the unlimited permission for permanent residence in the EU (Sec. 9a Residence Act),
- the residence title for qualified trained workers seeking jobs that is limited to six months (Sec. 18c Residence Act),
- the limited EU Blue Card (Sec. 19a Residence Act).

Foreigners from third countries, who are holders of a valid long-term residence title issued by one of the signatory states of the Schengen Agreement, can move freely within the sovereign territory of the other Schengen states for up to three months based on this document and a valid travel document.

### **Excursion: The electronic residence title (eAT)**

The residence titles granted by the Aliens' Authorities (resident permit, permanent residence permit, permanent residence in the EC, etc.) used to be added into the passport as a sticker.

With effect from 1 September 2011, the "electronic residence title" in the format of a credit card with additional electronic features was introduced. Since the manufacturing process is more elaborate and takes longer, applications should be filed at a very early stage, before the residence title expires or the visa-free short-term stay ends. The fees for the initial issuance of a residence permit with a validity period of up to one year currently amount to €100. The fees for certain groups of people, such as students or academics with scholarships from public funds are intended to be waived (Sec. 52 Residence Ordinance).

The cardholder's biometric details (photo, fingerprints), collateral clauses on the residence title and personal data are stored on a chip. The chip also contains an electronic proof of identity.

The eAT is also used for certificates concerning a right of residence (residence card for citizens of third states, family members of EU nationals and certificates concerning the right to permanent residence for EU citizens), which used to be issued as separate documents in paper format in the past.

More information about the electronic residence title can be found, in particular on the website of the Federal Office for Migration and Refugees ([www.bamf.de](http://www.bamf.de)).

## 2.1 The residence permit

The residence permit is granted for a limited term. It can be made subject to conditions and be extended. The validity period depends on the purpose of the stay. The law differentiates in particular between the following purposes:

- education (academic studies, language courses, school attendance, other education, search for employment after studies);
- gainful employment (employment, self-employed work and job seeking);
- reasons recognised under international law, humanitarian or political reasons;
- family reasons (e.g. subsequent immigration of spouse or children);
- special rights to residence (e.g. for formerly German nationals)

## 2.2 The various purposes of residence in particular

The following description discusses the purposes of stays for education, gainful employment and family reasons in more detail, as these represent the typical purposes of stays for students and (visiting) academics.

### 2.2.1 Residence for the purposes of studies

A residence permit for the purpose of academic studies can be granted for applying to an academic programme, to attend courses in preparation for studies and for studies at a state or state-approved university or comparable educational institution. Furthermore, a residence permit can also be granted only for attending a language course without further intention of studying as the case may be.

Should the three months during which the visa to apply for an academic programme is valid have not been long enough to obtain comprehensive guidance, a resident permit for application to an academic programme can be issued. The conditions for a stay as a student applicant are the same ones as for the issuance of a visa for the purpose of applying to an academic programme (*cf. 1.1.2.1*). If the foreign national who entered the country on a national visa for academic application decides during the information and guidance stay to study in Germany, in particular upon admission to an academic programme, the Aliens' Authority can convert the preliminary residence title associated with the national visa into a resident permit for academic preparation or studies. Proof of admission to an educational institution and documentation that is not yet demanded in the application for the visa must be submitted at the latest at this point in time at the latest.

The duration of the stay for student applicants is limited to a total of nine months (three-month visa + max. six-month resident permit).

The validity period of the resident permit is not to exceed two years for measures in preparation for academic studies – such as attendance of preparatory courses or a language course in preparation of studies. A resident permit for measures in preparation for academic studies can be extended to a resident permit for academic studies.

To obtain a resident permit for academic studies, admission to a university, sufficient health insurance and sufficient funds for academic studies must be proven – in the same way as for the visa (*cf.* 1.1.2.2).

The validity period of the resident permit is at least one year and is not to exceed two years. It can be extended for at least one year respectively up to a maximum of two years, if the purpose of the stay has not been fulfilled yet but if this is still possible within an appropriate time period. The extension of the resident permit is thus made dependent on a proper schedule of studies. Furthermore, a resident permit can even be revoked if the studies are not successful. It must be noted that the resident permit needs to be extended before the expiration of the respective validity period. In the case of an absence from Germany for more than six months (e.g. during a phase of studies abroad or a longer period of field research), the resident permit will expire if no certificate concerning an extended period for re-immigration was issued by the Aliens' Authority.

The EU Student Directive enables third-country foreign nationals, who hold a residence title for the purpose of academic studies that was issued by another EU Member State, to obtain a resident permit in Germany for the same purpose. The condition for this is that the foreign national is obligated within the scope of his academic programme in Europe to complete a part of his/her studies in another European country or that he/she wants to continue or supplement his/her studies in Germany, which were already started in another Member State. For this purpose, the student needs to participate in an exchange programme of the European Union or he/she must have been admitted to as a student in the state of the (first) place of studies for at least two years.

Based on a new EU Directive<sup>1</sup>, which must be implemented by May 2018, further simplification procedures will be introduced for students and researchers from non-EU States. For example, for semesters abroad in other EU States, it is no longer required to apply for a visa before applying and – within the scope of EU programmes or university and college partnerships – a separate resident permit is not required either.

## **2.2.2 Residence for the exercise of gainful employment: academic work**

Anyone, who comes from a third country and wants to take up gainful employment in Germany, requires a resident permit that permits the exercise of gainful employment (Sec. 18 Residence Act). It is likewise issued by the Aliens' Authority but the Federal Employment Agency must agree to the employment in many cases. This is an internal process of the authorities, so that the Aliens' Authority is the only point of contact for the applicant. If in doubt, it is recommended to also consult the information on legal working conditions for advice (*cf. DAAD information leaflet "Information on the legal framework conditions on gainful employment for foreign students, university graduates, scientists and other academics"*).

The resident permit for the exercise of gainful employment does not require approval pursuant to Sec. 5 of the Employment Ordinance if work as a (visiting) academic is concerned. To obtain the resident permit, the (visiting) academic – as is also the case for a visa for a stay as a visiting academic – must prove a concrete job, sufficient health insurance and secured living expenses (employment contract, scholarship).

The validity period of the resident permit can be at most up to three years on initial issuance and extension; primarily, however, this depends on the planned duration of employment. The maximum validity period may only be fully utilised by the Aliens' Authority if the purpose of the stay (working as a visiting academic) is expected to continue even after the expiration of the limited resident permit.

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<sup>1</sup> Directive on the conditions for immigration and residence of third-country citizens for purposes of research or studies, completion of a work placement, participation in a volunteer service, student exchange programmes or educational projects, and the working as an au-pair (new version)

### 2.2.3 Residence for research purposes

The resident permit for research purposes (Sec. 20 Residence Act) does not require the agreement of the Federal Employment Agency according to the EU Researcher Directive.

The resident permit for research purposes is granted for at least one year. If the research project requires a shorter period of time, however, the validity period will be limited to the duration of the research project.

## 3 Can the family follow later?

Spouses and underage, unmarried children of a foreign national from a third country can obtain a resident permit for family reasons. The person whom family members intend to follow must stay in Germany legally, i.e. he/she must hold a valid residence title. In addition, sufficient residential space must be available for the family. Lastly, the family's living expenses must be secured: the residence permit for family reasons can be refused if the person whom family members intend to follow is reliant on welfare benefits for the sustenance of the family. For the calculation of the family's financial requirements, the current standard rates used are those of the "Unemployment Benefits II" pursuant to the second book of the Social Security Code (SGB II); rent and ancillary costs will be added in any case, as will the costs for health and nursing care insurance. The family's financial requirement that is calculated this way is compared to their income, which also takes any scholarships into consideration. Living expenses are deemed secured if the income is at least as much as the financial requirement.

Special regulations apply to family members of EU and EEA citizens: The Directive on the General Freedom of Movement for EU Citizens grants family members (spouses and children below the age of 21 years) of EU and EEA citizens a right of residence, even if the family members do not have the nationality of an EU or EEA Member State. Whether or not a visa is required for entering the country is dependent on the regulations that apply to people with the respective nationality, unless they hold a valid residence title of another Member State of the EU or the EEA (*cf.* 1).

These family members of EU and EEA citizens, who are nationals of a third country, are issued a resident card for family members of EU citizens by the authorities (Sec. 5 (1) EU Freedom of Movement Directive). Any proof of the conditions for the spouse's freedom of movement being established can be submitted to the competent residents' registration office.

### 3.1 Subsequent immigration of spouses

Subsequent immigration of spouses is permitted if the foreign national from a third country whom the spouse follows

- holds a permanent residence permit,
- holds a permit for permanent residence in the EC (*cf. Excursion on "European" residence titles*),
- holds a residence permit for research purposes,
- has held a residence permit for at least two years for which the extension or conversion into a permanent residence permit is not excluded,

- holds a resident permit pursuant to Sec. 38a Residence Act (*cf. Excursion on “European” residence titles*) and the marriage was established prior to this (in another EU Member State),
- holds a residence permit, the marriage was already established prior to this, and the duration of the stay is expected to be longer than one year (these two conditions can be waived by a discretionary decision for as long as a residence permit is held), **or**
- he/she holds an “EU Blue Card” (Sec. 19a Residence Act).

The spouse immigrating subsequently must be able to communicate in German at least in a rudimentary way. Furthermore, both spouses must have reached the age of 18. Spouses of researchers and holders of a permanent residence permit for highly qualified people (*cf. 4.2*) and of people with the legal standing of a person entitled to a long-term stay in another Member State of the EU (*c. Excursion on “European” residence titles*) do not have to fulfil these conditions. Spouses of holders of an “EU Blue Card” do not have to prove any language skills. The proof of language skills is waived in other respects, e.g. if the spouse is not entitled to participate in an integration course pursuant to Sec. 44 Residence Act (this applies for example, if the stay is only of a temporary nature, as is the case for many students and visiting academics – and thus their spouses, too) or if the foreign national may enter Germany without a visa for longer stays by virtue of his/her nationality (*cf. 1*).

## 3.2 Subsequent immigration of children

Underage, unmarried children, who have not reached the age of 16, receive a resident permit if both parents or the parent with sole custody rights hold a residence title and the child relocates the centre of his/her life to Germany together with his/her parents. Underage, unmarried children, who have reached the age of 16, receive a residence permit if they – in addition to the aforementioned conditions – have command of the German language or if it seems assured that integration will be easily possible.

## 4 Staying in Germany?

### 4.1 After the completion of studies – working in Germany

For university graduates, meaning foreign nationals who have successfully completed their university studies in Germany (e.g. with a Bachelor’s or Master’s degree or a doctorate degree), the resident permit can be extended for up to 18 months to find employment. During this time, gainful employment is permitted without restrictions. The job found for reason of which a residence permit for the purpose of employment (Sec. 18 Residence Act) can be granted must be appropriate to the qualification of a university graduate (*cf. DAAD information leaflet “Information on the legal framework conditions of gainful employment for foreign students, university graduates, researchers and other academics”*). If such a job is found, a residence permit for the exercise of gainful employment can be issued.

### 4.2 Unlimited right of residence: the permanent residence permit

The permanent residence permit is an unlimited residence title. This residence title is unlimited in time and region, and may only be provided with a collateral clause in special cases that are stipulated by law.

The permanent residence permit automatically entitles the holder to exercise gainful employment.

This residence title can be issued regularly if the foreign national, who has held a residence permit for five years, has secured his/her living expenses and has sufficient residential space for himself/herself and his/her family. In addition, he/she must have paid the mandatory or voluntary contributions to the statutory pension insurance for at least 60 months, have sufficient German language skills, and have knowledge of the legal and social order as well as living conditions in the national territory, and he/she must be permitted to hold employment (insofar as he/she is an employee). Furthermore, no reasons relating to public security and order may oppose the grant of the permit (Sec. 9 (2) Residence Act).

Graduates of German universities can receive a permanent residence permit at an earlier time if they have held a residence title for employment for two years (besides fulfilling the regular conditions), hold a job that is appropriate to the degree, and have paid the mandatory or voluntary contributions to the statutory pension insurance for at least 24 months (Sec. 18b Residence Act).

Holders of an EU Blue Card can likewise receive a permanent residence permit at an earlier time if they have exercised a qualified profession for at least 33 months (besides fulfilling the regular conditions), and have paid the mandatory or voluntary contributions to the statutory pension insurance during that period. The period is shortened to 21 months if German language skills of level B1 are proven (Sec. 19a (6) Residence Act).

Highly qualified employees can receive a permanent residence permit immediately if the integration prognosis is positive (Sec. 19 Residence Act).

Highly qualified persons are considered to be:

- academics with special expertise (professors and institute directors), and
- teaching staff and academic employees with high-level function (head of academic project and working groups).

The permanent residence permit therefore opens the prospect of permanent residence to foreign university graduates, academics and scientists.

#### **Excursion: “European” residence titles**

The conditions for inner-European mobility for citizens of third countries, who are entitled to permanent residence, have been improved through the introduction of two “European resident titles” in the year 2007.

For this purpose, the permit for permanent EU residence (Sec. 9a Residence Act) was introduced for one thing, whereby foreign nationals with third-country citizenship are given a permanent outlook in Europe. The permit for permanent EU residence is granted under similar – but not identical – conditions as the permanent residence permit, but there are no special rules for highly qualified persons. Instead, the permit for permanent EU residence includes the right to move onward to another Member State, where the holder of the “German” permit for permanent residence in the EU must be granted a permit according to the national law of the respective Member State.

The “counterpart” is a permanent residence permit pursuant to Sec. 38a. The “residence permit for holders of long-term residence permits in other Member States of the European Union” is

granted to such foreign nationals, who hold a permit for permanent EU residence from another EU Member State and would now like to stay in Germany for longer than three months.