

**DAAD**

Deutscher Akademischer Austausch Dienst  
German Academic Exchange Service

**Information on Legal Requirements for  
the Entry and Residence  
of Foreign Students, Academics and Scientists**

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# 1 Introduction

Issues relating to the right of residence are regulated in various laws and statutory instruments. Of particular relevance to the issues of interest to us here relating to the entry and residence of foreign students and visiting academics and scientists are the Residence Act (for foreigners who are non-EU citizens) and the EU Freedom of Movement Act (for EU citizens). European law, including, for example, EU regulations that have just come into force, also play a role. National statutory instruments relating to residence law, such as the Ordinance Governing Residence, govern more specific aspects of certain areas. However, other laws and regulations may also influence the subject matter described in the following.

This information sheet makes no claim to completeness and reflects the status as of August 2012.

## 2 Entry provisions

In general, foreigners require a visa to enter Germany. Depending on country of origin, purpose of residence and the planned length of stay, exemptions and visa facilitations are possible. The following generally applies: EU citizens and citizens of member countries of the European Economic Area (EEA) enjoy freedom of movement on the basis of the Act on the General Freedom of Movement for EU Citizens and may enter the country without a visa.

When the visa is issued, both entry and temporary residence are approved in the form of a stamp in the passport. Those who require a visa must always obtain this in their respective home country prior to entry. Responsibility for issuing visas lies with the German diplomatic agencies abroad duly authorised by the German Federal Foreign Office (as a rule, the Embassy or the Consulate General) and for some visas (so-called Schengen visa) also the diplomatic agencies of other Schengen states at the place at which the foreigner is usually resident.

If a visa is required, entry without a visa is not permitted and is thus illegal.

The following groups of persons do not require a visa for entry: they are merely required to present 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, Holland, Austria, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Spain, the Czech Republic, Hungary and Cyprus. For citizens of these countries, only a valid Identity Card is required for entry.
- Citizens of the European Economic Area (EEA): Member states are Iceland, Liechtenstein and Norway. Here, too, an Identity Card is sufficient for entry.
- Family members from third countries (spouses and minor single children) of EU and EEA citizens, as long as they hold a valid residence title for another EU or EEA state.
- Citizens of Switzerland
- Citizens of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the USA. Citizens of these countries may apply for a residence title for more than three months in Germany.
- If they do not intend to take up gainful employment: Citizens of Andorra, Brazil, El Salvador, Honduras, Monaco and San Marino. This means that students from these countries do not need an entry visa, if prior to and after studying, they do not intend to take up gainful employment. Study-integrated activities and those not requiring approval remain unaffected by this rule, since studying is the primary purpose of the stay. If a (visiting) research activity does not exceed a period of three months in a year, the activity will not be regarded as gainful employment in the sense of the Residence Act. This then means that citizens of the said countries do not require a visa for such activity. For a stay extending beyond three months, a residence title can also be applied for in Germany even if entry occurred without a visa.
- If only a short stay of up to three months is planned and in which gainful employment is not to be pursued: Citizens of the countries Albania (only holders of biometric passports), Antigua and Barbuda, Argentina, Bahamas, Barbados, Bosnia-Herzegovina (only holders of biometric passports), Brunei Darussalam, Chile, Costa Rica, Guatemala, Croatia, Malaysia, Mauritius, Macedonia (only holders of biometric passports), Mexico, Montenegro (only holders of biometric passports), Nicaragua, Panama, Paraguay, Serbia (under certain circumstances for holders of biometric passports), Seychelles, Singapore, St. Kitts and

Nevis, Taiwan (for holders of passports issued by Taiwan which contain a personal identification number), Uruguay, Vatican City und Venezuela.

For (visiting) research work not exceeding three months, entry without a visa is also possible (*see above*).

It is not possible to extend these stays beyond three months without a visa. After a period of three months, the holder must leave the country. If a longer stay or gainful employment requiring approval is planned, entry with a national visa is an absolute requirement. Holders of national passports, who do not require a visa to enter Germany, may not, on principle, stay in the federal territory for any longer than 90 days per six-month period. Moreover, they may not take up gainful employment during this time.

- Researchers registered in another EU member state in accordance with the provisions of the EU Researcher Directive and who enter Germany within the scope of their research, as long as they otherwise work in a Schengen state or conduct their research activity in Germany for a maximum of three months within a 12-month period.

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

#### **Excursus: New EU member states**

On 1st May 2004, ten countries joined the EU (Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic, Hungary and Cyprus). Romania and Bulgaria joined on 1st January 2007. As citizens of the European Union as defined in Article 21 of the Treaty on the Functioning of the European Union, the citizens of these countries enjoy freedom of movement within the entire EU. The freedom to provide services and the free movement of workers now applies to almost all new member states. Certain restrictions will apply only to Bulgaria and Romania until the end of 2013 (*cf. Information on the Legal Requirements Applicable to the Pursuit of Gainful Employment by Foreign Students, University Graduates, Scientists and Other Academics*).

## **2.1 Various types of visas**

The Schengen visa is issued for short-term stays lasting up to three months per six-month period. A national visa is issued for longer stays planned to last more than three months.

Further differentiations are made within the two main categories based on the respective purpose of the stay. For example, a Schengen visa is issued for visits, business and tourist trips. A national visa is issued, for example, for study purposes, or for the pursuit of gainful employment.

German diplomatic agencies abroad generally post information on their websites about the procedure for issuing visas and on the required documents. In many cases, application forms can be downloaded. The addresses of diplomatic agencies abroad can be found on the website of the German Federal Foreign Office: [http://www.auswaertiges-amt.de/DE/Laenderinformationen/DtAuslandsvertretungenA-Z-Laenderauswahlseite\\_node.html](http://www.auswaertiges-amt.de/DE/Laenderinformationen/DtAuslandsvertretungenA-Z-Laenderauswahlseite_node.html).

### **2.1.1 Schengen visa**

Since the EU Visa Code came into force on 5<sup>th</sup> April 2010, reference is sometimes made to the "standard visa" rather than the "Schengen visa".

The Schengen visa:

- is issued for a purpose-related stay of up to three months within a 6-month period from the date of entry;
- entitles the holder to travel freely and stay in the territory of the Schengen countries (Belgium, Denmark, Germany, Estonia, Finland, France, Greece, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Holland, Norway, Austria, Poland, Portugal, Sweden, Switzerland, Slovakia, Slovenia, Spain, the Czech Republic and Hungary);
- cannot generally be extended or changed for another purpose of residence. Only in exceptional cases is an extension possible, e.g. if medical treatment is urgently necessary;
- is issued by the diplomatic agencies of the Schengen states.

Foreigners wishing to come to Germany to study, complete a doctoral degree or for the purpose of research as a visiting academic or scientist are strongly advised not to enter Germany on a Schengen visa. The residence title that is associated with this visa cannot be extended or changed to another purpose of stay (*cf. above*), regardless of the short-term purpose of the stay for which it was issued (tourist stay, visit or business trip). Foreigners must leave the country after the visa expires.

To attend a language course, the visa can be issued as a national or a Schengen visa depending on the length of the planned language course (up to three months: Schengen visa, more than three months: national visa; *cf. above 2.1*). If the language course is to be followed directly by a course of study in Germany, this must be stated when applying for the visa. For this purpose, a national visa for the purpose of preparing for a course of study is then issued. If the foreigner only applied for a Schengen visa or a national visa to complete a language course (without a subsequent study stay), it cannot be subsequently changed into a residence permit for study purposes. The foreigner must leave the country when the visa expires.

Foreigners who enter Germany on a Schengen visa must also be able to prove they can cover their living expenses for the probable length of their stay in Germany.

### **2.1.2 National visa:**

A national visa

- is issued when a longer stay (over three months) is planned or when the applicant intends to take up gainful employment;
- can be issued for between three months and up to one year, in exceptions also for a longer period. The visa's period of validity depends on the respective planned purpose of stay;
- primarily entitles the holder to stay in Germany – according to the redrafted Art. 21 of the Schengen Implementation Agreement, however, a national visa also entitles its holder to a stay of three months in a 6-month period in the territories of the other Schengen member states; Under the Schengen law, the national visa for longer-term stays therefore has the same status as other national residence titles since it now also entitles holders to visa-free short-term stays in other Schengen states;
- as a German national visa, can only be applied for at German diplomatic agencies abroad, in whose administrative district the foreigner has his habitual place of residence.

### **Excursus: EU Visa Code**

The EU Visa Code, which has been in effect since 5<sup>th</sup> April 2010, is an EU directive (No. 810/2009) that guarantees uniform EU visa conditions for short-term stays. The Visa Code defines the procedures and requirements for the issuance of the visa for the purpose of travelling through the territory of the member states and for stays in this region not exceeding three months per six-month period.

It summarises all the legal instruments relating to visa decisions. It aims to create greater transparency and legal certainty and guarantee the equal treatment of applicants. For example, it specifies that reasons have to be given if a visa application is rejected and provides opportunities to appeal against a negative decision. Furthermore, the Visa Code explains the visa application procedure, lists the documents that have to be submitted and the fees that have to be paid, indicates how long the application procedure takes and for what reasons a visa may not be granted. To ensure the equal treatment of applicants in practice, a "Guidebook for the Processing of Visa Applications and Amendment of Issued Visas" with detailed instructions has been produced. This guidebook is available to all the consular staff in the member states and is also available online.

#### **2.1.2.1 Applying to study**

Foreigners are considered to be student applicants if they are interested in studying in Germany, but have not yet been admitted to a state or state-recognised higher education institution or a state or state-recognised pre-study preparatory course (*Studienkolleg*). The application for a study place can be combined with learning the German language or finding out about the range of study opportunities.

In the process of approving the issue of a visa (Section 31 Para. 1 Ordinance Governing Residence), the inspection carried out by the foreigners authority is generally limited to an inquiry with the Central Register of Foreigners. Whether the requirements for admission to a specific educational facility are fulfilled and proof of financial resources for residence for the purpose of study exists will then only be checked on a case-by-case basis if an appropriate check in the federal territory is considered necessary on the basis of information from the German diplomatic agency abroad.

According to Section 31 Para. 1 Sentence 3 Residence Act, the approval of the foreigners authority is considered to have been given if no contrary notification is submitted to the German diplomatic agency abroad within a no-response deadline of three weeks and two working days. In all cases, the conditions that the applicant is qualified for admission, has secure financial resources and holds a passport have to be fulfilled. The no-response deadline does not apply if the foreigners authority has to undertake additional checks and verifications. The no-response deadline does not prevent the foreigners authority from expressly issuing its approval prior to the deadline in order to accelerate the issue of the visa on a case-by-case basis.

A national student applicant visa can be issued by discretionary decision if

- the foreigner has not yet been admitted to a pre-study preparatory course (*Studienkolleg*) or a university;
- no compelling general grounds for refusal exist (a general ground for refusal, for example, is the lack of a required passport);
- no other public interests oppose such a decision.

Student applicants must present the following documents to obtain a national visa:

- adequate health insurance cover (cf. *Excursus "Health insurance"*),
- proof of sufficient financial resources to cover the visa's full period of validity, and
- (for students of minor age), a letter of consent from the person(s) responsible for their care and custody.

If a check is carried out to see if the prerequisites for admission to a specific education institution for a subsequent course of studies have been met, it may then already be necessary to present the following documents together with the application for a student applicant visa:

- proof of a higher education entrance qualification that entitles the holder to study in Germany (or to attend a *Studienkolleg* pre-study preparatory course),
- proof of any academic achievements gained to date.

#### **Excursus: Health insurance**

Adequate health insurance policy must cover the following benefits:

- medical and dental treatment
- medicines/drugs, dressing/bandages, health/medical aids
- hospital treatment
- medical rehabilitation
- pregnancy and childbirth

Persons with health insurance provided by a statutory (public) health insurance agency are in all cases considered to have adequate health insurance cover (Section 2 Para. 3 Sentence 3 Residence Act).

Over and above this, student applicants may already be required to present proof of financial resources for a subsequent study stay when they apply for a student applicant visa. This is a discretionary decision. In most cases, proof of financial resources is only required by the foreigners authority in Germany if the student applicant visa is changed into a residence permit for the purpose of applying to study or studying.

#### **Excursus: Proof of financial resources**

The proof of financial resources serves to document that the foreigner has sufficient financial resources to cover subsistence costs initially for the period of one year to ensure that the foreigner does not have to take recourse to any social security benefits in the host country. Third-country students and student applicants must prove that they have financial resources equal to the maximum *BAföG* educational assistance rate (Section 2 Para. 3 Sentence 5 Residence Act) (currently 659 euro a month, in other words 7,908 euro a year). The valid amount is published annually by the German Ministry of the Interior in the German Federal Gazette.

Proof of financial resources can be provided (cf. No. 16.0.81/16.0.8.2 of the General Administrative Guidelines on the Residence Act) **either** by

- stating the income and assets of the parents **or**
- by submitting a declaration of commitment to the foreigners authority or to the diplomatic agency abroad promising to pay the foreign student's cost of living **or**
- by depositing a security payment in a blocked account in Germany **or**
- by depositing an annually renewable bank guarantee at a financial institution (bank) in Germany **or**

- by presenting a scholarship/grant paid from German public funds, or a scholarship/grant awarded by a funding organisation duly recognised in Germany, or a scholarship/grant paid from public funds in the country of origin, if the Federal Foreign Office, the German Academic Exchange Service or another German scholarship/grant-awarding organisation was responsible for assigning the student a place at the German university.

Not in all cases, each of the above-listed financing options is accepted.

If the foreigner who has entered Germany on a national visa for the purpose of applying to study decides, during the information and orientation stay, and especially after admission to a higher education institution, to stay for a longer period, the foreigners authority may change the provisional residence title issued together with the national visa into a residence permit for the purpose of preparing to study or to study. Proof of admission to an education institution and the documents which have not yet been required for the visa application (*see above*) must now be presented at the latest.

The national visa for student applicants is issued for a three-month period of validity. The foreigners authority can extend it by six months in the form of a residence permit. This is subject to the condition that the student applicant proves that he or she has been admitted to a study programme or has been accepted to a pre-study German language course or a pre-study preparatory course (*Studienkolleg*) within this period. This means that the maximum stay for the study application process is nine months. This length of stay as a student applicant prior to pre-study preparatory measures is not added to the length of stay of study preparation measures, such as language courses, foundation courses or preparatory internships.

### 2.1.2.2 Study preparation and studies

According to the Law on Foreigners, foreigners are considered to have student status when they have been admitted to study at a state or state-recognised higher education institution (university, university of education, art college and university of applied sciences) or at a comparable education institution, a vocational institution or a state-recognised pre-study preparatory course = *Studienkolleg*.

A visa for study purposes is normally issued as a national visa (Type D), because the student intends to stay for a longer period (of more than three months).

Students must fulfil the following prerequisites to receive a national visa for the purpose of studying:

- admission to a duly recognised education institution primarily for the purpose of gaining a professional/vocational qualification. The proof of admission is met by presenting the letter of acceptance from the university. Conditional admission is accepted (16 Para. 1 Residence Act). Proof of admission can be replaced (cf. No. 16.1.1.1.1-16.1.1.1.3 of the General Administrative Guidelines on the Residence Act) by
  - a letter from the education institution confirming the student's pre-registration status for a study place,
  - letter confirming applicant status, or
  - letter from the university or the pre-study preparatory course (*Studienkolleg*) stating that the decision on the admissions application requires the personal presence of the foreigner at the university. This letter must confirm that the applicant's admissions application has been checked and that there are reasonable grounds to expect that the applicant will be admitted,
- adequate health insurance cover (cf. *Excursus "Health insurance"*),

- proof of financial resources (cf. *Excursus "Proof of financial resources"*),
- proof of knowledge of the language of instruction; this is not required if the language skills were already considered in the admissions decision or if the language skills are to be acquired through pre-study preparation measures (Section 16 Para. 1 Residence Act),
- for students of minor age: consent from the person(s) responsible for the student's care and custody, and
- proof of any academic achievements gained to date.

A national student visa can be issued

- with a validity of three months
- **or** with a validity of one year if the foreigners authority was involved in the visa process (cf. 2.2).

If the stay by the foreign student is financed with a scholarship/grant, the period of validity for the visa is normally issued in accordance with the length of the scholarship/grant, as long as the scholarship/grant term does not exceed one year.

### **2.1.2.3 Pursuit of gainful employment: academic work**

Foreign (visiting) academics and scientists require a national visa to enter Germany for a planned research stay lasting more than three months (*exceptions cf. 2*). A visa is required regardless of whether the approval of the Federal Employment Agency for the residence title for the purpose of gainful employment is required or not (cf. *Information on the Legal Requirements Applicable to the Pursuit of Gainful Employment by Foreign Students, University Graduates, Scientists and Other Academics*).

As a rule, (visiting) academics and scientists must present the following documents to obtain a national visa:

- proof of a concrete job offer,
- proof of secure financial resources, e.g. by presentation of an employment contract or a scholarship/grant award letter (*see below*),
- adequate health insurance cover (cf. *Excursus "Health insurance"*).

Secure financial resources are considered as given if foreigners can pay their living expenses without having to resort to public funds. Child benefit/allowance, supplementary child benefit, child-raising allowance, parenting benefit or public funds that are based on contribution payments or that are awarded to facilitate a stay (e.g. scholarships or grants) are not considered.

The national visa for a (visiting) academic or scientific stay is normally issued with a validity of three months. Subsequently, the visa can be extended or changed into a longer-term residence title (e.g. residence permit).

### **2.1.2.4 Research purposes**

The implementation of the EU Researcher Directive into national law created the residence purpose of "research" (Section 20 Residence Act). However, the regulation is not applicable to foreigners whose research activity is part of a doctoral programme (Section 20 Para. 7 Residence Act).

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

- a valid admissions agreement for carrying out a research project with a research institution (*see below*),
- statement from the research institution committing itself to cover any costs that arise for public bodies (*see below*),
- adequate health insurance cover (cf. *Excursus "Health insurance"*) and
- proof of secure financial resources (*see below*).

According to Section 20, Para. 1 Residence Act, the research institution must be duly recognised to carry out the special admissions procedure for researchers in Germany. Public and private institutions receive this recognition on application if they carry out research in Germany (Section 38 a Para. 1 Ordinance Governing Residence). The application can be submitted in writing to the Federal Office for Migration and Refugees (BAMF). The BAMF publishes the list of duly recognised research institutions on the internet at [www.bamf.de](http://www.bamf.de) (Section 38 e, Ordinance Governing Residence).

The research institution must agree in writing to cover any costs that may arise for public bodies for up to six months after the end of the admissions agreement (Section 20 Para. 1 Residence Act) in connection with the researcher's livelihood during an unauthorised stay and with his deportation. This is not the case if the activities of the research institution are financed primarily with public funds or if there is a particular public interest in the research project (Section 20 Para. 2 Residence Act).

According to Section 2 Para. 3 Sentence 6 Residence Act, the subsistence level for a stay for research purposes is considered as given if the researcher receives a monthly sum equal to two thirds of the salary as defined in Section 18 of the 4th Social Code – SGB IV. At present this corresponds to a salary of 1,750 euro per month in the west of Germany and 1,493.33 euro for former East Germany. The Federal Ministry of the Interior must announce the required subsistence level income for researchers in each calendar year by 31<sup>st</sup> December of the previous year by publishing it in the Federal Gazette (*Bundesanzeiger*).

The residence permit for research purposes facilitates, within certain bounds, EU-wide mobility. Researchers who have been admitted to another EU Member State under the provisions of the EU Researcher Directive receive a visa to carry out part of their research project in Germany. If the stay lasts longer than three months, the stay in Germany must take place with a duly recognised research institution (*see above*) with which an admissions agreement has been concluded. Researchers who otherwise work in a Schengen country can enter Germany without a visa and can, as necessary, apply for the required residence permit in the country. For a period of three months within a 12-month period, employment without a visa is also permitted (cf. 2). Even if a visa were actually needed for entry on account of nationality, this would be waived if the researcher otherwise works in a Schengen country or if the employment or work does not exceed three months.

## **2.2 Visa issue approval by the foreigners authority**

If a visa is obligatory, the prior approval of the foreigners authority must be obtained if the stay is expected to last more than three months, if the foreigner wishes to take up gainful employment or if the data relating to the foreigner has to be submitted to the security authorities.

Responsibility lies with the foreigners authorities at the planned place of residence. In the event of a security check, approval is deemed as having been given if the foreigners authority does not object to the issue of the visa within 10 days of the request being sent to the foreigners authority (no-response deadline). If the visa for study or research purposes are not already approval-free (*see below*), the no-response deadline is three weeks plus 2 working days.

There are exceptions to this approval requirement. Exempt from approval are:

- Foreigners whose study place has been arranged by a German science or research organisation or by a German public body. This organisation or public body must also be able to award scholarships/grants paid from public funds. In connection with the arrangement of this study place in Germany, the foreigner must receive a scholarship/grant on the basis of an award process that is also used for the award of public funds (Section 34 No. 3 Ordinance Governing Residence). This means that not only scholarship/grant holders whose grants are financed from public funds but also those persons who, for example, receive their scholarship/grant from private sponsors are exempted from the said conditions as long as the specified conditions are met.
- Academics and scientists whose scientific activity has been arranged by a German science or research organisation or by a German public body and who, in connection with this, receive a scholarship/grant in Germany financed from public funds (Section 34 No. 1 Ordinance Governing Residence);
- Visiting academics and scientists, teaching staff, and research assistants, and engineers and technicians working in the team of a visiting academic or scientist, if they take up their work at the invitation of a university or of another largely public-funded research institution (Section 34 No. 2 Ordinance Governing Residence);
- Researchers who have concluded an admissions agreement with a research institution recognised by BAMF (Section 34 No. 4 Ordinance Governing Residence);
- Accompanying spouses or civil partners and the minor, single children of these groups of persons.

All other categories of individuals need the approval of the foreigners authority as described above before the visa is issued, which means that the procedure can take a little longer.

### 3 Residence

EU citizens and EEA citizens require no residence permit; these individuals are now only required to register with the registration authorities, a requirement that also applies to Germans. Depending on the local laws, registration must occur within the first few days or weeks of arrival. Any documents to prove that freedom of movement requirements have been met can be presented to the registration authority. For a stay lasting longer than three months, the following documents are required:

- proof of adequate financial resources and
- proof of adequate health insurance cover.

Adequate financial resources must be documented to ensure that no social security benefits from the host member state need to be claimed during the stay. EU/EEA students must generally provide credible proof that they have financial resources equal to the maximum educational assistance rate – *Bafög* – at their disposal (this currently amounts to 659 euro per month). In most cases, a written statement by the student is considered adequate. (Visiting) academics or scientists can generally meet the requirement by proving that they have an employment contract or are financed with a scholarship or grant. In addition, students must also present proof that they have been admitted to or are registered at a duly recognised education institution for the purpose of gaining a professional/vocational qualification.

If other third-country foreigners plan a stay that extends beyond the visa's period of validity, this stay must be authorised. In such cases, a residence permit or settlement permit is required. Foreigners who entered Germany on a national visa and plan a longer stay must have the temporary entry and residence permit included in their visa changed into a longer-term residence title before it expires.

"Privileged" foreigners who are allowed to enter Germany without a visa must also apply for a residence permit for a stay exceeding three months within three months of their arrival in Germany.

The local foreigners authority in Germany is responsible for issuing and, if necessary, extending the residence title for all non-EU nationals.

The Residence Act provides for the following longer-term residence titles:

- the temporary residence permit
- the permanent settlement permit
- the permanent EC long-term residence permit
- NEW: the "residence title enabling qualified specialists to look for employment" which is limited to 6 months (Section 18c Residence Act)
- NEW: the temporary "EU Blue Card" (Section 19a Residence Act)

Foreigners from third countries who hold a valid longer-term residence title issued by one of the contracting parties to the Schengen Agreement are free to stay in the territory of the other Schengen countries for up to three months with this document and a valid travel document.

<b>Excursus: Electronic residence title</b>
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In the past, the residence titles issued by the foreigners' authorities (residence permit, settlement permit, EC long-term residence permit) have been attached to passports in the form of an adhesive label.

On 1<sup>st</sup> September 2011, the "electronic residence title" was introduced in credit card format with additional functions. Because these permits are more difficult to produce, applications should be submitted well in advance before a valid residence title or the visa-free, short-term stay expires. A residence permit that is valid for up to one year currently costs 100 €. For certain groups of persons, such as students or researchers or scientists with scholarships financed from public funds, exemptions from these fees are possible (Section 52 Residence Act).

The biometric characteristics of the cardholder (photo, fingerprints), collateral clauses to the residence title and personal data are stored on a chip. The chip also contains an electronic identity function and allows the user to use an electronic signature.

The new procedure also applies to certifications about right of residence (residence card, the long-term residence card for EU citizens and the residence permit for citizens of Switzerland) which were previously issued as independent paper documents.

You can find out more about the electronic residence title on the website of the Federal Office for Migration and Refugees ([www.bamf.de](http://www.bamf.de)).

### **3. Residence permit**

The residence permit is a temporary residence title. It can be issued subject to conditions or be extended. The residence permit is issued in connection with the respective purpose of residence. The law distinguishes between the following purposes:

- educational purposes (studies, language courses, school education, other education and training, searching for a job after studying)
- gainful employment (employment, self-employment) and (NEW) looking for a job
- international law, humanitarian or political grounds
- family reasons (e.g. spouses or children joining their partner/parent)
- special residence rights (e.g. for former Germans)

The following information takes a closer look at the purposes of residence – education and training, gainful employment, and family reasons – because these reflect typical residence purposes for students and (visiting) academics and scientists.

#### **3.1.1 Residence for study purposes**

A residence permit for study purposes may be granted for the purpose of applying for a study place, engaging in pre-study preparatory measures, and studying at a state or state-recognised university or comparable education institution. Furthermore, a residence permit may also be issued only for attendance of a language course, even without the intention of studying in Germany.

If the three months of visa validity for the purpose of applying for a study place are not enough for appropriate preparation, a residence permit for the purpose of applying for a study place may be issued. The prerequisites for a student applicant stay are the same as the conditions for issuance of a visa for the purpose of applying to study (*cf. 2.1.2.1*). If the foreigner who has entered Germany on a national visa for the purpose of applying to study decides, during his information and orientation stay, and especially after admission to a higher education institution,

to study in Germany, the foreigners authority may change the provisional residence title issued in connection with the national visa into a residence permit for the purpose of preparing to study or to study. Proof of admission to an education institution and the documents which have not yet been required for the visa application (see above) must now be presented at the latest.

The length of the stay for student applicants is limited to a total of nine months (three months visa + max. six months residence permit).

The validity of the residence permit for pre-study preparatory measures – such as attendance of a pre-study preparatory course (*Studienkolleg*), for example, should not exceed the validity period of a residence permit of two years. A residence permit for pre-study preparatory measures can be changed into a residence permit for the purpose of studying.

As in the case of a visa, admission to a university, adequate health insurance cover and adequate financial resources must be proven to obtain a residence permit for studying (cf. 2.1.2.2).

The residence permit is valid for at least one year and should not exceed two years. It can be extended by at least one year and up to a maximum of two years if the purpose of residence has not yet been fulfilled but is still possible within a reasonable amount of time. This means that the extension of the residence permit depends on the student making proper progress along the study pathway. Moreover, the residence permit may even be revoked if no proper academic progress is made. It is therefore important that the holder of the student visa ensures that the residence permit is extended prior to the expiry of the respective period of validity.

The implementation of the EU Student Directive makes it possible for third-country nationals who hold a residence title for studying issued by another EU member state to receive a residence permit for the same purpose in Germany. To qualify for this, the foreign student must be obliged, within the scope of a degree programme taken in Europe, to complete part of the studies at an education institution in another European country, or the student must want to continue or to complement studies in Germany that had already been started in another member state. To do this, the student must either be taking part in a European Union exchange programme or have been admitted as a student in the country of the (first) place of study for at least two years. This must be proven with appropriate documents. Once these conditions have been met, the foreign student must be issued with a residence permit for the purpose of studying, as long as the student has secure financial resources, adequate health insurance cover and has been admitted to a higher education institution.

The residence permit for university graduates (i.e. foreigners who have successfully completed their university studies in Germany (for example with a Bachelor's or Master's degree) can be extended by up to 18 months for the purpose of looking for a job (until 1<sup>st</sup> August 2012, this job seeking phase was not allowed to exceed one year); since 1<sup>st</sup> August 2012, gainful employment is allowed during this period without restriction. The job that is found, upon the basis of which the residence permit for the purpose of gainful employment can be issued (Section 18 Residence Act) must be appropriate to the graduate's qualification (cf. DAAD's "*Information of the Legal Requirements Applicable to the Pursuit of Gainful Employment by Foreign Students, Academics and Scientists*"). If such a job is found, the residence permit for university graduates can be changed into one which allows the pursuit of gainful employment.

### **3.1.2 Residence for the pursuit of gainful employment: academic work**

Foreigners from a third country wishing to take up gainful employment in Germany require a residence permit that entitles them to pursue gainful employment (Section 18 Residence Act). This is also issued by the foreigners authority, although in many cases the Federal Employment

Agency must approve the employment. This occurs internally within the authorities ("one-stop-government"), which means that the foreigners authorities is the only office to which the applicant needs to go. We recommend that, if in doubt, the information on residence permit provisions are also consulted (cf. DAAD's *Information on the Legal Requirements Applicable to the Pursuit of Gainful Employment by Foreign Students, University Graduates, Scientists and Other Academics*).

The residence permit for the pursuit of gainful employment does not require approval under the terms of Section 5 of the Employment Regulation if this is academic work carried out by a (visiting) researcher or academic. To obtain the residence permit, the (visiting) academic or scientist must present proof of a concrete job, of adequate health insurance cover, and of adequate financial resources (employment contract, scholarship/grant), as is the case with a visa for a research stay for a visiting academic or scientist.

The residence permit may be valid for a maximum of three years after being issued for the first time and after extension; above all, however, it is based on the planned length of the employment contract. The foreigners authority may only grant the maximum length of validity if the purpose of residence (academic work by a visiting academic or scientist) is likely to extend beyond the expiry date of the temporary residence permit.

### **3.1.3 Residence for research purposes**

As set out in the EU Researcher Directive, the residence permit for the purpose of research (Section 20 Residence Act) does not require the approval of the Federal Employment Agency (cf. 3.1.2).

The residence permit for research purposes is issued for at least one year. If the research project takes less time, the term of validity will be limited to the length of the research project.

### **3.1.4 Residence for family reasons**

Spouses and minor, single children of third-country foreigners may receive a residence permit for family reasons. The foreigner to whom the spouse or child(ren) is/are subsequently immigrating must be legally resident in Germany, which means that the foreigner must hold a residence permit or a settlement permit. Furthermore, sufficient living space must be available for the family. The family must also have adequate financial resources at its disposal: The residence permit for family reasons can be refused if the foreigner, to whom the family members are moving, relies on social security benefits to support his/her family. To calculate the family's needs, the current standard rates of "Unemployment Benefit II" according to the Second Book of the Social Code will be considered; rental and additional expenses and the costs of contributions towards health and nursing care insurance also have to be taken into account. The family's requirements which are determined in this way are compared to the income, including grants or scholarships. If the income exceeds requirements, the family's livelihood is deemed to be secured.

The right of residence for spouses and minor, single children only applies as long as the main foreigner (e.g. student or visiting academic or scientist) personally holds a residence permit.

Family members whose nationality is different to that of the main foreigner are subject to the respective entry and residence provisions that apply to the respective nationality of these family members, i.e. privileges regarding the visa requirement and similar aspects.

Special rules apply for the family members of EU citizens and EEA nationals who have the right of freedom of movement: The Act on the General Freedom of Movement for EU Citizens grants

the family members (spouses and children under 21 years of age) of EU citizens and EEA nationals a right of residence, even if the family members are not citizens of an EU member state or nationals of an EEA country. Whether a visa is required for entry or not is based on the provisions which apply to persons with the respective nationality, unless they hold a valid residence permit of another EU member state or EEA country (*cf.* 2).

Such third-country family members who are related to EU citizens and EEA nationals are issued *ex officio* with an EU residence permit. Any documents to prove that the spouse's freedom of movement requirements have been met can be presented to the responsible registration authority. Furthermore, proof of adequate living space for the family must be provided.

#### **3.1.4.1 Subsequent immigration of spouses**

The subsequent immigration of spouses is possible if the third-country foreigner to whom the spouse is moving,

- holds a settlement permit,
- has an EU Long-Term Residence Permit (*cf. Excursus "European" residence titles*),
- has a residence permit for research purposes,
- has been in possession of a residence permit for at least two years and an extension has not been ruled out by any collateral clause or the subsequent issuance of a settlement permit has not been ruled out by any rule of law,
- has a residence permit according to Section 38 a Residence Act (*cf. Excursus "European" residence titles*) and marriage already existed in an EU member state in which the foreigner has the status of a long-term residence holder,
- holds a residence permit, the marriage already existed at the time the permit was issued, and the term of residence will probably exceed one year (these two requirements may be waived at the discretion of the authorities as long as a residence permit exists) **or**
- has a temporary "EU Blue Card" (NEW: Section 19a Residence Act).

The spouse subsequently immigrating to join the foreigner must be able to communicate in basic German. Furthermore, both husband and wife must be 18 years of age or older. Spouses of researchers and of settlement permit holders for highly-skilled specialists (*cf.* 3.2) as well as persons with the legal status of a long-term residence holder in another EU member state (*cf. Excursus "European" residence titles*) do not need to meet these conditions. The spouses of EU Blue Card holders do not have to prove a knowledge of the language. In some cases, the language proficiency requirement can be waived, for example, if the spouse does not have the right to take part in an integration course as defined by Section 44 Residence Act (this is the case, for example, if the stay is only of a temporary nature, as with many students and visiting academics and scientists, and so also for their spouses) or if the foreigner is allowed to enter Germany without a visa on account of his/her nationality, even for stays that are not deemed to be short stays (*cf.* 2). 2).

#### **3.1.4.2 Subsequent immigration of children**

Minor, single children who have not yet turned 16 years of age receive a residence permit if both parents or the single parent responsible for their care and custody hold(s) a residence permit, a settlement permit, the "EU Blue Card" or an EU Long-Term Residence Permit. (*cf. Excursus "European" residence titles*) and the child relocates its central focus of life to Germany together with its parents or its single parent responsible for the child's care and custody. Minor, single children who have turned 16 years of age receive a residence permit if – in addition to the above-specified conditions – they have a command of the German language or it appears certain that they will be able to integrate easily.

Minor, single children of a foreigner, who has a residence permit according to Section 38 a (cf. *Excursus "European" residence titles*), receive a residence permit as long as the family unit already existed in an EU member state in which the foreigner has the legal status of a long-term residence holder.

### 3.2 Settlement permit

The settlement permit is a permanent residence title. This residence title has no time limits or geographical restrictions and may only be subject to a collateral clause in special cases governed by law.

The settlement permit automatically entitles the holder to pursue gainful employment.

This residence title can be granted in the normal way if the foreigner has been in possession of a residence permit for five years, his livelihood is secured and he has sufficient living space for himself and for his family. Furthermore, the foreigner must have made compulsory or voluntary contributions to the statutory pension scheme for at least 60 months, have an adequate knowledge of the German language as well as of the legal and social system and way of life in Germany, and must be allowed to work (if the foreigner is an employee). Furthermore, no public security or public order reasons must speak against this (Section 9, Para. 2 Residence Act).

Since 1<sup>st</sup> August 2012, graduates of German universities may receive a settlement permit if they (in addition to the usual conditions) have owned a residence title entitling them to work for two years, have a job that is appropriate to their qualification and have paid compulsory or voluntary contributions into the statutory health insurance scheme for at least 24 months (NEW: Section 18b Residence Act).

Since 1<sup>st</sup> August 2012, holders of an EU Blue Card may also receive a settlement permit if they (in addition to the usual conditions) have pursued a qualified occupation for at least 33 months and have paid compulsory or voluntary contributions into the statutory health insurance scheme for the same period. This period is reduced to 21 months if proof of a command of the German language (Level B1) can be provided (NEW: Section 19a Para. 6 Residence Act).

Highly-qualified specialists may receive a settlement permit immediately if the integration prognosis is positive (Section 19 Residence Act).

Highly qualified individuals include

- academics and scientists with specialist subject knowledge and expertise (chaired professors and institute directors) and
- teaching staff and academic/research staff in senior positions (heads of research and scientific project and work groups).

This means that the settlement permit opens up the prospect of permanent residence for foreign graduates, academics and scientists.

#### **Excursus: "European" residence titles**

With the introduction of two "European residence titles" in 2007, the conditions for inner-European mobility for third-country nationals holding long-term residence titles were improved.

On the one hand, the EU Long-Term Residence Permit was introduced (Section 9a Residence Act), offering third-country nationals the possibility of staying in Europe on a longer-term basis. The EU Long-Term Residence Permit is issued under similar – but not identical – conditions to the Settlement Permit, however there are no special rules and regulations for highly-qualified specialists. However, the EU Long-Term Residence Permit does include the right to migrate to another member state, where the holder of a "German" EU Long-Term Residence Permit is to be issued with a residence title in accordance with the respective national law.

The "counterpart" to this is a residence permit issued in accordance with Section 38 a Residence Act. The "Residence Permit for Long-Term Residence Holders in other EU Member States" is issued to those foreigners who hold an EU Long-Term Residence Permit in another EU member state and who would like to spend more than three months in Germany.

### **3.3 New residence titles: Job seeking and EU Blue Card**

With the Act Implementing the EU Directive on Highly Qualified Workers, which came into effect on 1<sup>st</sup> August 2012, two new residence titles were introduced: The "residence title entitling qualified specialists to look for a job" (Section 18c Residence Act) and the "EU Blue Card" (Section 19a Residence Act). According to these provisions, qualified specialists are, under certain circumstances, offered residence permits that are valid for up to six months for the purpose of looking for appropriate employment and to pursue gainful employment for a period of up to four years. For more details, read DAAD's *"Information on the Legal Requirements Applicable to the Pursuit of Gainful Employment by Foreign Students, University Graduates, Scientists and Other Academics"*.

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This information sheet merely aims to provide an overview and therefore makes no claims to completeness. Although it has been compiled with the utmost possible care, no liability can be accepted for the correctness of the content. We are grateful for any information about new developments and possible additions.