

February 18, 2015
2015-024

flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

Germany – Foreign Language Requirements for Trailing Spouses May Soon Be No More

by Sebastian Klaus and Thomas Wolf, KPMG Rechtsanaltsgesellschaft mbH, Germany (a KPMG International member firm)

As we reported in [Flash Alert 2015-023](#) (February 13, 2015), the German government put forward a proposal that would entail a significant amendment to German immigration law. The Federal Council, known as the Bundesrat (Parliament's upper chamber), has now proposed additional amendments.¹ Amongst others, the Federal Council is suggesting the abolition of the German language skills requirement for accompanying spouses of non-EU/EEA/Swiss nationals.

In this regard, the Federal Council is touching upon one of the most controversial regulations of the German Immigration Residence Act ("AufenthG").

Why This Matters

Immigration professionals and global mobility managers with responsibility over immigration matters related to their mobile employees assigned to Germany should take note that at some future point this German language requirement for husbands and wives joining their spouses working in Germany may no longer apply. This potentially will ease the administrative burdens tied to "trailing" spouses and make family unification smoother and easier.

General Background

Spouses of non-EU/EEA/Swiss nationals are required to acquire and demonstrate German language skills when applying for an entry visa or, if they are entry visa exempt for long-term stays, when applying for a combined residence and work permit in-country at the local immigration offices. However, currently some exemptions exist (which we discuss below).

Pursuant to a decision by the European Court of Justice (ECJ) (noted further below) this requirement has already been eroded somewhat. Now, the Federal Council is suggesting the abolition of the above-noted important requirement for immigration/family reunion matters involving spouses of foreign workers. This amendment by the Federal Council would remove the current rule that requires spouses of foreigner workers, if they are not exempt from the requirement, to obtain and demonstrate German language skills prior to their relocating to Germany.

German Language Skill Requirement Pursuant to Sec. 30 (I) and Sec. 28 (I) German Residence Act

Spouses of non-EU/EEA/Swiss nationals are required to demonstrate German language skills at level A1 of the Common European Framework of Reference for Languages.²

¹ See BR-Drs. 642/14(B).

² See Sec. 30 (I) Sentence 1 No. 2 of the German Residence Act.

This also applies to spouses of German nationals.³ In August 2007⁴, the language skill was implemented in the German Residence Act for the purpose of supporting the “integration” of spouses in Germany.

Required language skills have to be proven when filing the application for an entry visa or, in the case of visa exempt nationals for long-term stays, for a final combined residence and work permit.

Amongst others, the following exemptions from the language skill requirement exist⁵:

- The principal is in possession of or will be granted an EU Blue Card;
- The principal is a national of the following countries: Australia, Canada, Israel, Japan, New Zealand, South Korea, United States of America;
- The accompanying spouse will presumably be able to integrate without obtaining German language skills, for example, because he/she is in possession of a university degree that will support the spouse in his or her potential employment search in Germany.⁶

Amendments Proposed by the Federal Council

The Federal Council has proposed the abolition of the language skill requirement completely.⁷ In this regard, the Federal Council has made reference to the ruling of the ECJ in the case of Dogan (C-138/13). The ECJ stated that the German language skill requirement conflicts with the special treaties between the EU and Turkey and must be justified by some compelling reason, for example, the need for integration. According to the ECJ's ruling, this entails the possibility of waiving the requirement by the competent German authorities in cases of unusual harshness that should be avoided for accompanying spouses of Turkish nationals. However, such possibility does not exist under the current German Residence Act.

Subsequent to the ECJ's ruling, the Federal Foreign Office advised the German diplomatic missions to apply the guidelines from the ECJ's ruling for Turkish nationals and waive the legal requirement accordingly in cases of unusual harshness.⁸ The Higher Administrative Court of Berlin-Brandenburg, usually involved as an appellate court regarding visa rejections, has already pointed out that this approach is against the law, because an administrative order cannot affect binding legal requirements.⁹

The Federal Council also stressed that non-EU/EEA spouses of German nationals are disadvantageously treated in comparison to accompanying non -EU/EEA spouses of EU/EEA nationals (who do not have to demonstrate German language skills).

³ See Sec. 28 (I) Sentence 5 of the German Residence Act.

⁴ See BGBl. I 2007, pages 1970 et subsequentes.

⁵ See Sec. 30 (I) Sentence 3 of the German Residence Act.

⁶ The immigration authorities can apply the exemption in case the spouse is in possession of a university degree. Additionally, the university degree must be deemed “sufficient” such that the spouse can obtain employment in Germany. If that is the case, German language skills for the purpose of integration are not required – as integration is presumed due to the spouse's academic qualification.

⁷ See BR-Drs. 642/14(B), pages 2 and 3.

⁸ See:

<http://www.tuerkei.diplo.de/contentblob/1686038/Daten/5030768/fznachweisdeutschkenntnisseehegattennachzug.pdf>.

⁹ See press release of the court, dated January 30, 2015:

<http://www.berlin.de/sen/justiz/gerichte/ovg/presse/archiv/20150130.1700.401036.html>.

Next Steps

Because the initial amendment act proposal had been drafted by the German federal government, the Federal Council was subsequently entitled to comment on this proposal – this included the ability to propose amendments. Now, the draft of the amendment act including the suggested amendments of the Federal Council will be submitted to the lower chamber of Germany's Parliament, the Bundestag. The Bundestag is neither bound to the proposal of the government nor the suggestions of the Federal Council.

KPMG Note

It was only a matter of time before the abolition of the language skill requirement would be recommended. Since 2014, decisions by the ECJ and German administrative courts have given some indication that the language skill requirement may conflict with EU law. In addition, implementation and enforcement of the rules can be quite different depending on circumstances. By considering the amendments suggested by the Federal Council, the Parliament would redress several discrepancies and confusion tied to the nationality of an individual working in Germany and its relationship to family reunions and spouses who wish to join that individual in Germany, as well as the perceived and potential conflicts with EU laws. Moreover, addressing this issue could lead to a simpler process for obtaining initial entry visas / combined residence and work permits for spouses.

At the moment, if an existing exemption from the language skill requirement does not apply, spouses are required to attend a language course abroad lasting potentially several months. This requirement can make assigning employees with spouses to Germany difficult – for example, employees identified for such assignments, if they have spouses (with no German language skills), may de facto refuse the assignment because of the burden placed on their spouse or their unwillingness to be apart from their spouse.

* * * *

The information contained in this newsletter was submitted by the KPMG International member firm in Germany. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.