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Germany – On Track to New ‘Fast Track’ Visa Applications?

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Even though the so-called ‘fast track’ application process is common in other countries, including the member states of the European Union (EU), the German authorities have been slow to warm to this idea.

However, times are changing, and the ground-work is being laid for a significant change in Germany’s immigration procedures. Indeed, several German ministries and authorities met this past autumn after an important study had been published and agreed with the implementation of a new fast track application for certain German visas.

Why This Matters

Processing times for German visas for the purpose of working in Germany as an employee or assignee are significantly high. Several other states have implemented a so-called ‘fast track’ application process for visas, especially for employees and assignees supposed to work in the destination country on short notice.

While this may be some time off, were Germany to implement a fast track procedure, this would offer a number of advantages to immigration professionals and global mobility managers with immigration responsibilities vis-à-vis their globally mobile employees into Germany. Fast track would help facilitate the movement of globally mobile employees into and out of Germany and help employers to deploy, with fewer delays and less red tape, their employees to Germany to attend to urgent and time-sensitive cross-border business matters.

Background

The German Ministry for Economic Affairs and Energy published in June 2014 an effectiveness analysis on the German legal framework for foreign specialists working in Germany.¹ In light of comparisons made with other EU member states, for example the Netherlands, the analysis has suggested the implementation of a fast track application process for Germany.

According to the effectiveness analysis, the average lead time for an appointment is 6.7 weeks. The average time for the decision process on the application itself is 7.2 weeks. The total average end-to-end processing time counted from scheduling an appointment until the issuance of a visa is almost 14 weeks.²

In a significant first step, the German government implemented in July 2013 a pre-approval process by the Federal Employment Agency (FEA) in terms of expediting the visa application process for employees and assignees. Usually, the FEA is involved internally by the German diplomatic missions for decisions on labor market access.

¹ The analysis can be found here (only) in German:
<http://www.bmwi.de/DE/Mediathek/publikationen,did=641160.html> .
² Ibid. See pages 83 and 84.

After the internal approval, a visa can be issued. Utilizing the pre-approval process precedes the decision by the FEA and, in fact, effectively phases it out. Companies can apply for a pre-approval decision letter first and the employee or assignee will be able to apply for the visa without the diplomatic mission having to involve the FEA again.

KPMG Note

Client experiences have revealed that utilization of the pre-approval process can significantly reduce the time involved for the decision process.

Taking Steps Toward Fast Track

The various responsible German ministries and authorities met this past autumn after the June 2014 analysis had been published and agreed with the implementation of an (additional) fast track application for visas.³ Applications would be processed on a priority and expedited basis in cases where the applicant is able to prove a pressing need to obtain a visa as soon as possible. Such priority treatment would be conducted with an additional government fee (unknown at this time). Currently, the government fee for a visa application is EUR 60 and no additional fee is charged for the pre-approval process by the FEA.

KPMG Note

Even though the fast track application process is common in other countries, the German authorities have not been amenable to adoption of the idea given the important principle of "equal treatment" that pervades German law and policy. Nonetheless, it may be possible that fast track processes would not conflict with this principle in situations where understandable and compelling reasons are forthcoming. The urgent need to obtain a visa for starting work in Germany by a specific deadline could be deemed an understandable and compelling reason.

It will be interesting to see how the fast track process will be formulated in concrete terms. On the one hand, the scope of the application will have to be determined, especially with due regard to the pre-approval process by the FEA. On the other hand, the effects on other visa applications and their processing times will have to be monitored in light of limited resources and staffing at Germany's diplomatic missions.

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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.

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³ Ibid. See page 184.