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Germany – Privileged Non-Visa Nationals System Extended, Harmonization with Schengen Timeframes

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flash Alert

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Germany's Ministry of the Interior released – with the consent of the Federal Council ("Bundesrat") – an amendment of the existing "privileged non-visa nationals" system, which generally allows nationals of select countries to obtain permits for a long-term stay in Germany upon arrival in Germany. This new amendment affects – among other countries – Brazilian nationals and nationals of El Salvador. Additionally, it decreases the time frame for filing in-country applications under this system from three months to 90 days – in full harmonization with the Schengen rules. These changes became effective as of April 9, 2015.¹

Finally, the German Ministry of the Interior also advised that non-visa nationals are required to enter Germany directly and not via other Schengen member states.²

Why This Matters

Brazilian nationals and nationals of El Salvador are now included in the "permit upon arrival scheme." They are entitled to apply for a residence permit upon arrival in Germany at the competent local immigration office ("Ausländerbehörde") for long-term stays exceeding 90 days. However, this is limited to a few purposes, for example, studying, intra-company trainings, and family reunions. If the purpose is to work in Germany as an assigned employee or a locally hired employee, an entry visa of the type "national visa" (so-called "type D") will still be required.

The harmonization with the Schengen time frames will solve uncertainties from the past as to whether the three months' time frame is different than the 90 days' time frame.

Background of Privileged Non-Visa Nationals System

Generally, the privileged non-visa nationals system encompasses two sub-categories listed in sec. 41 (I) on the one hand and sec. 41 (II) of the German Residence Regulation ("Aufenthaltsverordnung") on the other hand. Nationals of the following countries may apply for (combined) residence (and work) permits in-country upon arrival **for all purposes**:

- Australia;
- Canada;
- Israel;
- Japan;
- Korea, Republic of (South Korea);
- New Zealand;
- United States.

Extension of Privileged Non-Visa Nationals System

Under the terms of the amendment, nationals of the following countries may apply for residence permits in-country upon arrival **for all other purposes except working in Germany**:

- Andorra;
- Brazil;
- El Salvador;
- Honduras;
- Monaco;
- San Marino.

Extension of Privileged Non-Visa Nationals System: Brazil and El Salvador

Germany had agreed (in 1956 and in 1960, respectively) with Brazil and El Salvador per a verbal agreement on partially exempting Brazilian nationals and those of El Salvador from entry visa requirements. This verbal agreement has now been formulated into a legal construct taking into account the agreements' original terms that the nationals of these countries should not be exempt from entry visas in case they intend to work in Germany. By this Ministry of the Interior amendment, the German authorities removed any remaining ambiguity regarding the visa requirements for Brazilian nationals and those of El Salvador.

Requirement for Privileged Non-Visa Nationals to Enter Germany Directly

KPMG Law recently discussed with the Ministry of the Interior ("Bundesministerium des Inneren") whether privileged non-visa nationals need to travel to Germany directly or may travel to Germany by way of a different Schengen member state.³ The Ministry of the Interior confirmed that privileged non-visa nationals are required to enter Germany directly in case they intend to stay and work in Germany for more than 90 days. Otherwise, they likely face refusal upon entry in other Schengen states by the immigration authorities. In a worst case scenario, they may face administrative and penal sanctions according to the laws of these Schengen states.

Full Harmonization with Schengen Time Frames

The Schengen rules allow short-term stays within the Schengen Area for up to 90 days within a rolling period of 180 days ("90/180-days rule"). However, the German privileged non-visa national system has allowed individuals of the select countries to apply within a time frame of three months upon arrival in Germany. Theoretically, a privileged non-visa national would have been allowed to stay in Germany for more than 90 days – as three months may encompass more than 90 days – and apply on the last day for a (combined) residence (and work) permit, even though he/she was already required to leave the Schengen Area according to the 90/180-days rule.

KPMG Note

Companies assigning employees should be aware that the extension of the privileged non-visa nationals system to Brazilian nationals and those of El Salvador is not applicable to assignees themselves, but rather to nationals of these countries who are coming to Germany for certain purposes that are not work-related. This means, for example, that a Brazilian assignee will have to apply for an entry visa first, whereas his spouse may already travel to Germany and apply for a residence permit for the purpose of family reunion at a later point in time. Tiered relocation – which involves simultaneous relocation by assignees and family members – is generally challenging and, in a worst-case scenario, can lead to a cancellation of the assignment, because family members request to relocate simultaneously to Germany.

Footnotes:

- 1 See: BGBl. I 2015, page 599.
- 2 This discussion took place between representatives of KPMG and officials at the Department M I 3 of the Federal Ministry of the Interior on March 30 and April 1, 2015, and, additionally, on April 29, 2015.
- 3 Ibid.

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Please note the KPMG International member firm in the United States does not provide immigration services.

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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