

August 5, 2015  
2015-098

**Germany – Immediate Effect for Important Amendments to Immigration Law**

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

## flash Alert

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

Legislative procedures have now been completed and important amendments to Germany's immigration law became effective starting 1 August 2015.<sup>1</sup> We reported extensively on these changes in previous issues of *GMS Flash Alert*.<sup>2</sup>

Of particular note is the fact that the proposed amendment regarding foreign language requirements for accompanying spouses was not adopted. Nevertheless, a 'hardship' provision was adopted and this provides an additional exemption from the foreign language requirement for accompanying spouses.

### Why This Matters

These amendments are the most significant amendments to Germany's immigration rules since 2012. Even though the legislation's main focus was on humanitarian stays and deportations, the amendments do also include important changes relating to business trips and international assignments of staff and accompanying spouses to Germany, which we further describe below.

### Extension of Permissible Activities for Business Travelers

Non-European Union (EU)/European Economic Area (EEA)/Swiss nationals may enter Germany as part of the Schengen Area in accordance with the Schengen rules for short-term stays for up to 90 days within a rolling period of 180 days based on a Schengen type C visa<sup>3</sup> or Schengen visa waiver status<sup>4</sup>. Neither a Schengen type C visa nor the Schengen visa waiver status allows gainful employment in Germany; this is subject to a work authorization from the German authorities and thus only touristic or other comparable non-gainful activities (for example, attending a language course) are allowed.

There are limited activities that are treated by law as not amounting to a gainful activity and may therefore be performed on a Schengen type C visa or Schengen visa waiver status. Amongst others, these include:

- Undertaking meetings and negotiations in Germany for an employer situated abroad, proposing contracts, closing a deal in Germany, or overseeing the completion of a contract.
- Establishing, overseeing (in terms of auditing), or supervising a local entity of the foreign employing entity.

In the past, these activities were only treated as non-gainful activity if they did not exceed three months within one year. This time limit has now been revised. Business travelers may now perform the above-listed activities within each time period allowed under the Schengen rules (e.g., 90 days within a rolling period of 180 days) for travel to Germany.

## Job Seeker's Visa

The trial phase for the Job Seeker's Visa, which was initially due to run until July 31, 2016, has been abolished. This now means that, even after July 31, 2016, non-EU/EEA/Swiss nationals may visit Germany for up to six months for the purpose of seeking employment based on a Job Seeker's Visa. If an individual finds employment in Germany within six months, he or she will be allowed to apply for a combined residence and work permit (including an EU Blue Card) in-country without having to apply for a new entry visa.

## Hardship Provision Regarding Foreign Language Requirements for Accompanying Spouses

Spouses of non-EU/EEA/Swiss nationals are still regularly 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. It was proposed that this requirement would be eliminated in its entirety, however, a hardship provision was adopted instead. The hardship provision will empower German diplomatic missions and immigration offices to exempt spouses from demonstrating language skills if, for example<sup>5</sup>:

- the spouse has a difficult medical condition;
- the spouse's cognitive ability is below average;
- attending a language course would require extraordinary efforts in terms of travel costs and distances; or
- language courses are not available within the broader vicinity.

The hardship provision will apply in addition to existing exemptions. The most common existing exemptions are:

- 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 accompanying spouse in his or her potential employment search in Germany.<sup>6</sup>

## KPMG Note

From a global mobility perspective, the amendments regarding the permissible business traveler activities and the hardship provision for foreign language requirements for accompanying spouses are of particular importance. Business travelers intending to perform the described activities no longer have to differentiate between the time limits arising from the Schengen rules and those arising from German immigration law. They may now perform these activities for the relevant period provided by the Schengen rules on short-term stays in Germany. The hardship provision can be used to enable spouses who fail to acquire foreign language skills due to personal, financial, or organizational reasons, to apply for a visa or combined residence and work permit for the purposes of a family reunion without acquiring and demonstrating these skills. It is important to note that the exemption shall only cover hardship situations and it is expected that a strict approach will be taken.

*Footnotes:*

- 1 See: BGBl. 2015 I (Federal German Law Gazette, Vol. I, 2015), pages 1386 *et sequens*.
- 2 For further details, see the following issues of *GMS Flash Alert*: [2015-023](#) (13 February 2015) and [2015-024](#) (18 February 2015).
- 3 If they are citizens of a country listed in Annex I of EU Regulation No. 539/2001.
- 4 If they are citizens of a country listed in Annex II of EU Regulation No. 539/2001.
- 5 See the comments from Bundestag, BT-Drs. 18/5420, page 26.
- 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.

\* \* \* \*

*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.

*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>.