

January 27, 2016
2016-016

flash Alert

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

Germany – Changes to Visa Application Procedures for National Entry Visas

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The German government broadly extended procedural rules that exclude the immigration offices from considering the visa applications of an assignee's accompanying family members. Furthermore, the government introduced additional options for expediting visa applications. These changes took place due to an amendment-regulation that became effective December 29, 2015¹ and will apply to every application for national entry visas filed on December 29, 2015 or later.

Why This Matters

The streamlined and expedited visa application procedures could be of particular benefit for an assignee's accompanying family members.² Up to December 28, 2015, the visas of accompanying family members (spouses, registered same-sex partners and minor, unmarried children) required the internal approval of the local immigration offices. Therefore it could take 8–12 weeks for processing to be complete from the day of filing the visa application. However, in the most expeditious scenario, the assignee's visa could be issued within 1–2 weeks. As a result, assignees and family members often had to relocate to Germany separately.

If a visa applicant had a relevant "previous stay" (see below for details), the local immigration office also had to be involved. Thus, an assignee's visa application could take regularly 8–12 weeks in the past for processing to be complete. With the amendment-regulation the government introduced the possibility for expedited procedures in such scenarios.³

This will have the effect of getting assignees and their family members into Germany more quickly in many cases.

Background

Since 2013, the German government has ushered in several measures to streamline and expedite the visa applications of non-European Union(EU)/European Economic Area (EEA)/Swiss nationals who require a national entry visa for long-term stays in Germany. Until June 2013, national entry visas always required approval from the local immigration office (the office that would be responsible later on for the in-country process pertaining to obtaining a combined residence and work permit).

Now the government has done away with the approval process of the local immigration offices in respect of visa applications for non-EU/EEA/Swiss nationals, in most cases.⁴

Introduction to German Visa Application Procedures and Other Authorities Involved in the Process

Assignees to Germany regularly need to apply for a national entry visa in advance to their assignments. Only nationals of Australia, Canada, Israel, Japan, New Zealand, South Korea, and the United States may apply directly for a combined residence and

work permit in-country upon arrival. Applications for national entry visas must be filed at the German diplomatic mission abroad which is being responsible for the district where the assignee's usual place of residence is at the time of the visa application.

The issuance of national entry visas can be subject to the approval of two other authorities: the Federal Employment Agency ("Bundesagentur für Arbeit") and the local immigration office (which is responsible for the assignee's future place of residence in Germany).

Not all employment-related national entry visas require the approval of the Federal Employment Agency. Generally, the following are exempt from the Federal Employment Agency's approval:

- Executive employees;
- Applicants who are eligible for an EU Blue Card ("Blaue Karte EU") and in particular, those who earn more than EUR 49,600 gross⁵ annual salary.

KPMG Note

If the Federal Employment Agency needs to be involved, it will be advisable to apply for a so-called pre-approval decision prior to the assignee's visa application.⁶ By presenting the pre-approval decision, the German diplomatic mission will not have to involve the Federal Employment Agency again.

Visas usually subject to approval from the Federal Employment Agency can be issued on the basis of a pre-approval within 1–2 weeks counted from the day of filing the visa application. This is the same processing time that regularly applies to the issuance of visas which do not require approval from the Federal Employment Agency.

The local immigration offices were involved on occasion with the assignee's visa application process **in cases of relevant previous stays**, because:

- he / she already resided in Germany and obtained a combined residence and work permit ("Aufenthaltserlaubnis"), German EU Blue Card ("Blaue Karte EU"), settlement permit ("Niederlassungserlaubnis"), or German EU long-term residence permit ("Erlaubnis zum Daueraufenthalt-EU"); or
- he / she obtained a temporary suspension of deportation ("Duldung") or temporary stay due to an asylum application process ("Aufenthaltsbestimmung"); or
- he / she was deported from Germany.

Applications of accompanying family members never required the approval from the Federal Employment Agency, but always the approval from the local immigration offices. The local governments of some federal states granted general approvals as part of the visa application procedures involving accompanying spouses, same-sex partners, and minor children of an assignee. These federal states were Baden-Württemberg, Berlin, Bremen, Hamburg, and Lower Saxony ("Niedersachsen"). Practically speaking, these visas for accompanying family members intending to live in the aforementioned federal states could be fairly simply processed since no approval from the immigration office was required.

Further Expedited Visa Application Process for Assignees

On the basis of the new amendment-regulation, the local immigration offices will still be involved in cases regarding the relevant previous stay of an assignee. However, the local immigration office now needs to request the German diplomatic mission abroad be involved in the visa application process within 10 days upon notification of the filed visa application. If the immigration office does not raise this request to the German diplomatic mission, the latter may decide on the visa application without the approval from the immigration office.

Further Expedited Visa Application Process for Accompanying Family Members of Assignees

For the visa applications of accompanying family members (spouses, registered same-sex partner, and minor, unmarried children) the immigration offices typically will no longer be involved if the following criteria are met:

- The assignee's visa application procedure does not require approval from the immigration office;
- The spouse's or the same-sex partner's visa application procedure does not require approval from the immigration office because of a relevant previous stay in Germany;
- The spouses or same-sex partners are already married at the time the visa applications are filed;
- The visa applications are filed shortly after each other (what the amendment-regulation describes as being a "temporal connection").⁷

If the spouse's or the same-sex partner's visa application requires approval from the immigration office because of a relevant previous stay, the immigration office will be able to request within 10 days the involvement of the German diplomatic mission in the visa application procedure. If such a request is not raised, the German diplomatic mission will be entitled to decide on the visa applications of the spouse or the same-sex partner and accompanying minor, unmarried children on their own.

KPMG Note

Given these new streamlined and expedited visa application procedures, Germany could become an even more attractive host country for assignments. In the past, assignees may have been put off by or even rejected assignments to Germany or perhaps cancelled them shortly after they had begun, because their family members had to relocate separately. But even after the amendment-regulation became effective, separate relocation may still be required if the German diplomatic mission requires a verification process regarding foreign civil status documents (for example, in cases of Indian marriage and birth certificates).

Additionally, assignees having a relevant previous stay in Germany tended to be the sort of employees that companies only sent if the special expertise of the assignee was unavoidably required. The longer visa application process due to the involvement of the local immigration offices often led companies to offer assignments to staff without any relevant previous stay, as their visas would be available sooner. The new framework still entitles immigration offices to request their involvement in the visa application process of those assignees, but it will not be a mandatory involvement anymore. Therefore, a relevant previous stay should not be a deal-breaker for companies.

Next Steps

KPMG Law will provide further information on the practices of the local immigration offices with regard to typical scenarios that could lead to requests for involvement of the immigration offices or with regard to immigration offices that will regularly raise these requests.

Footnotes:

- 1 See "Verordnung zur Änderung der Aufenthaltsverordnung und der AZRG-Durchfuehrungsverordnung" dated December 18, 2015, that became effective on December 29, 2015 ("amendment-regulation"); published in Federal Law Gazette ("Bundesgesetzblatt") of December 28, 2015 (BGBI. 2015 I, page 2467).
- 2 See: Sec. 31 (1) Sentence 2 of the German Residence Regulation ("Aufenthaltsverordnung").
- 3 See previous footnote.
- 4 See the revised Sec. 31 of the German Residence Regulation, implemented on the basis of "Achte Verordnung zur Änderung der Aufenthaltsverordnung" dated February 27, 2013; published in Federal Law Gazette ("Bundesgesetzblatt") of March 4, 2013 (BGBI. 2013 I, page 351).
- 5 This salary level is adjusted annually, see our GMS [Flash Alert 2015-153](#) (December 29, 2015).
- 6 The application must be filed by the German host company or by authorized third-party providers of the same, such as KPMG Law.
- 7 The term "temporal connection" signifies the involved German authorities can exercise some discretion; notwithstanding, the applications do not have to be filed on the same day.

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