

Legal 500

Country Comparative Guides 2024

Germany

Corporate Immigration

Contributor



Deloitte Legal
Rechtsanwaltsgesellschaft mbH

Susanne Turner, L.L.M.

Partner, Attorney at Law | susturner@deloitte.de

Sonja Hoffmeister

Counsel, Rechtsanwalt (Attorney) and Migration Law Specialist (Fachanwalt für Migrationsrecht) | shoffmeister@deloitte.de

Isabel Landgraf

Manager, Rechtsanwalt (Attorney) | ilandgraf@deloitte.de

This country-specific Q&A provides an overview of corporate immigration laws and regulations applicable in Germany.

For a full list of jurisdictional Q&As visit legal500.com/guides

Germany: Corporate Immigration

1. What are the relevant government entities relating to immigration in your jurisdiction?

- German embassies and missions abroad
- Federal Employment Agency (Bundesagentur für Arbeit)
- Immigration offices
- Local town hall
- Federal Office for Migration and Refugees (BAMF)

The assignee applies for a visa at the German embassy or mission abroad. In some cases, this requires the prior approval of the Federal Employment Agency. After entry, the applicant registers with the local town hall. After registering at the local town hall, the applicant applies for their residence permit at the competent immigration office. The Federal Office for Migration and Refugees is rarely required for labour migration, but can be involved in the context of the mobile ICT Card.

2. What are the options available for sponsor-based employment in your jurisdiction and timelines involved in securing a work permit?

Germany has a uniform permit system. Thus, there are residence permits entitling to employment and residence permits not entitling to employment. The work permit is not necessarily a sponsor-based regime in the traditional sense, as it may be known from other jurisdictions (e.g. the UK).

There are several options of sponsor-based employment, for example, the Blue Card EU, specialist permit, permit for skilled worker with a university degree, permit for skilled worker with vocational training, ICT card, Mobile ICT card, residence permit for researcher, residence permit for privileged nationals, etc. The processing of residence permits for work purposes can take different lengths of time. Normally, processing times vary between 8 to 12 weeks from the time of application.

However, we generally recommend also filing an application for a national D visa for privileged nationals who could also directly apply in-country for residence permits as well, as there is a large backlog of appointments at the various local immigration offices. This can lead to considerable delays in processing which

could significantly impact the privileged national's start date of employment. With a national D visa, the employee can start working right away bridging the gap in time to an appointment at the local immigration office.

In addition, some German missions abroad currently have waiting time of several months for a visa appointment or a shortage of available appointments, which can also lead to delays and should be taken into consideration when planning a start date of employment in Germany.

3. What are the primary options available for unsponsored work and investment in your jurisdiction?

A primary option for unsponsored work is a capital share of at least 50 %, which gives the manager a significant influence on the company. In the case of a lower participation, it is necessary to consider whether the free arrangement of the activity regarding time, duration, scope and place, a performance-related salary, the assumption of a guarantee for the company's liabilities as well as the granting of loans to the company may, taken as a whole, lead to self-employment.

A third-country national may be granted a residence permit for the purpose of self-employment if

- a. There is an economic interest or a regional demand for the intended business,
- b. the activity is expected to have a positive impact on the economy and
- c. the financing of the implementation is secured through equity capital or a loan commitment.

Another option for unsponsored work is the opportunity card. The opportunity card is a residence permit for the purpose of seeking employment or completing programs for the recognition of foreign professional qualifications. It authorizes for employment for an average of no more than 20 hours per week and trial employment for no more than two weeks at a time, which

- must be qualified,
- must be aimed at training or
- must be suitable to complete the acceptance process to be admitted to a program for the recognition of foreign professional qualifications.

The opportunity card can be issued for foreign nationals with a recognized degree or recognized vocational qualification in Germany as recognized skilled workers or for foreign nationals who have achieved a minimum number of points. In both cases, further basic requirements, especially secured livelihood including sufficient health insurance coverage, must also be fulfilled.

4. What are the requirements for becoming a sponsor of employment-based migrants and what are the role and reporting duties of sponsors?

Since permits under German immigration law are not sponsored in a formal sense but are tied to a concrete job offer/employment contract, such a formal job offer would be the crucial requirement. The offer and its conditions must meet certain requirements, as must the background/experience of the foreign third-country national in question, in order for a residence permit to be granted for work purposes.

The sponsor must be a German company with a company number and an actual place of business in Germany. The employer must fulfil some reporting obligations to the authorities, e.g. in case of early dismissals or certain changes in working conditions.

5. Are applications filed electronically, or paper base? Is a physical visa/work permit document issued or is an electronic approval issued?

In most cases, the applications can be filed electronically (via email or through an online form). In each case, in-person appointments are necessary (see below), which require some paper-based documents. Most documents issued by the authorities are still paper based and needed in original (e.g., work permit pre-approvals).

The visa and the residence permits are issued as paper-based documents and cannot be approved just electronically. Final residence permits are issued by the national printing agency in a hard card format (much like an ID).

6. Is an in-person attendance/interview required as part of the visa/work permit application process? Is an individual required to enrol their biometrics (digital photo, fingerprint scan) as

part of the visa/work permit process?

Yes, for all applicants older than 6 years, a personal interview is required for the visa appointment and the appointment at the local immigration authorities to convert the visa into a "final" permit that can be valid for several years. During these appointments, the biometric data of the applicants is also collected.

7. What persons qualify as dependants? Can dependants work based on their dependant visa status? Are there any restrictions?

Dependents are the spouse and the underage children. Additional family members can currently only join the family in cases of special hardship. In addition, parents of third-country nationals who have been granted an EU Blue Card, ICT Card, or residence permit for employment as a senior executive, manager, or company specialist, scientist, guest scientist, engineer or technician in a research team or teacher after March 1, 2024, may receive a dependent residence permit as well. This also applies to parents of the spouse if they live in Germany.

For a positive decision on the applications, it is important that the livelihood including sufficient health insurance and sufficient living space for the entire family is secured without support from the German state.

The spouse is generally expected to acquire German language skills before entering Germany. When applying for a visa, it should therefore already be possible to present a language certificate of the lowest level A1. There are exceptions to this requirement, for example if the skilled worker fulfils the requirements for the EU Blue Card.

Family members can work due to their family member status and have an unrestricted right to work in Germany.

8. What is the general time frame and processes for obtaining permanent residence and citizenship for sponsored and unsponsored business-related immigration?

The time frame for obtaining permanent residence is usually 5 years for most residence permit types. EU Blue Card holders may qualify earlier. If they hold an A1 German language certificate, applications can be made after 27 months and for B1 certificate holders after only 21 months of continuous employment and contribution to the social security system and German pension system.

Spouses of permanent residence permit holders with former EU Blue Card, can obtain a permanent residence permit after 3 years if they are employed on a minimum basis of 20 hours/week, hold a B1 German language certificate and have obtained general knowledge of the legal and social system in Germany.

The German Citizenship Law was revised and came into force in June 2024. Previously the German citizenship could be applied for after 8 years of living in Germany and required German language skills, among other things. For those with notable commitment to integration (for example through extraordinary voluntary work), applications for German citizenship were possible after 6 to 7 years.

With the revised law, the citizenship can be applied for after 5 years of living in Germany and for people with notable commitment to integration after 3 years.

9. What productive type activities can a business visitor undertake and for how long?

No productive work activities can be performed on a business trip.

Standard business travel usually includes activities such as:

- attending meetings and conferences,
- promoting sales/ services through presentations to potential clients or similar,
- conducting business negotiations,
- negotiating and signing contracts,
- attending trade fairs/trade shows in order to promote products or services – not including direct sales activities,
- attending a job interview.

The following activities are not classed as standard business travel activities:

- providing consultancy services of any kind,
- maintaining and repairing equipment,
- touring as a professional speaker.

10. Can remote work be carried out from your country?

From an immigration law point of view, a work permit (and therefore visa or residence permit) is required when the work is carried out from inside the German territory.

Germany has no special remote work permits or visas.

Therefore, without a corporate sponsor, the options of working remotely are extremely limited.

11. Are there any productive work / revenue generating activities that can be carried out as a visitor and without the need for a work permit? If so, what activities and for how long?

No, there aren't any activities that can be carried out as a visitor and without the need for a work permit. Third-country nationals generally require a work permit for sponsored and unsponsored work (exception: business travel activities as above-mentioned).

12. Is there a remote work or nomad visa category in your jurisdiction? If not, how likely is it that this will be implemented in future?

There is no specific remote work or nomad visa. At the moment, there are no remote work permit categories planned.

13. How easy is it to switch visa categories/jobs/employer from within country? And/or if made redundant, can the individual regularise their stay in another capacity and what is the timeframe allowable?

In general, it is possible to switch between residence permit categories and between employers and jobs. Usually, as the permits are bound to one employer and job/offer, switching employers/jobs requires a new application and has to be approved by the immigration office. This also applies to the change of categories, as the authority must check whether the legal requirements for the change of legal basis are met.

Since November 2023, holders of the EU Blue Cards do no longer require an approval by the immigration office, if they want to change their workplace. However, they must still notify the authority of any change of employer/job/employment circumstances within the first 12 months of their employment as an EU Blue Card holder. The authority can suspend the change for 30 days and review it during this time.

The timeframe depends on the appointment situation at the responsible immigration office, on average it may take up to 8 – 12 weeks. In case of redundancy or job loss, the immigration office could also issue job search residence permits, allowing the holders to stay in

Germany to look for a new employment. The duration of such a permit is at the discretion of the authorities.

14. What common issues or concerns may arise for employers under business immigration in your jurisdiction?

The appointment situation and processing times at German consulates and embassies abroad varies greatly and depends on the situation in the country itself, so delays may occur.

The same can apply to the immigration offices and their ability to allocate and respond to appointments at short notice. This delays the procedure and can also have a negative impact on workers.

15. Is there a fast track process / certification that business can obtain to expedite visa / permit processing?

In 2020, a fast-track procedure was introduced for workers with a local employment contract. The requirements are that the employer has concluded a corresponding contract with the competent immigration office, that a processing fee of currently €411 is paid and that the application is related to a residence permit for which the procedure is applicable (for example, skilled worker, company specialist, IT specialist, etc.).

16. What are the recent trends, both political and social that have impacted your jurisdiction with regard to immigration policy and law?

The war in Ukraine has affected immigration policy and law in our country. A special residence title for Ukrainian citizens who fled to Germany before the war in Ukraine has come into force (residence permit for temporary protection). With this residence title, Ukrainian citizens receive a legal residence title in a relatively uncomplicated manner and promptly receive a work permit that does not contain any restrictions.

In addition, the growing shortage of qualified professionals with vocational training has had an impact on immigration policy. Thus, the access of foreign skilled workers with vocational training was facilitated with the Skilled Workers Immigration Act.

In principle, Germany should be made attractive as a business location, especially for qualified skilled workers, by making the immigration process as simple as

possible. This also includes making it as easy as possible for their relatives (partners, children) to enter the country. Furthermore, the recognition of foreign vocational training should be further simplified.

Recent changes are currently being implemented by the German government's law for further development of skilled labour immigration which is intended to improve Germany's attractiveness for the immigration of skilled workers from all over the world.

17. Are there any new and / or anticipated changes impacting immigration law and / or policy in your jurisdiction?

The family reunification of skilled workers from third countries – that is, all countries except the states of the EU, the European Economic Area and Switzerland – is also to be facilitated. In order to make immigration to Germany more attractive for skilled workers, proof of German language skills was waived when their families join them. The regulation is limited to skilled workers.

Well-integrated foreigners who are merely tolerated in Germany should be able to obtain a right to stay more easily.

Furthermore, changes of requirements regarding the EU Blue Card have gotten into effect on 18 November 2023, lowering the salary threshold for obtaining the Blue Card EU significantly and allowing IT-specialists without recognized University degree to obtain a Blue Card EU as well.

Moreover, since March 2024 foreigners with two years of professional experience in combination with a professional or university degree, recognized by the state in the country of origin, entitles foreigners to work in non-regulated professions. Previously this only applied to IT-specialists. In addition, access to the labour market for nursing assistants was created and an option for short-term employment was additionally introduced in June 2024, so that companies can respond more easily to fluctuating personnel needs.

Temporarily enabled family reunion visa for parents and in-laws of skilled workers and the introduction of the opportunity card have been implemented in June 2024 as well, which allows visa for job seekers if they fulfil certain criteria such as qualifications or a required amount of points through professional experience, language skills, age of the applicant and previous residence in Germany.

18. How do you see technology developing and evolving to support immigration process in the future?

As many immigration offices and authorities in Germany are still in the process of implementing working with digital files, there is still great potential for technological development in the public sector.

The visa application form for a Schengen visa or national D-visa can be filled out online but must be brought as a printout to the application appointment.

At several of Germany's missions abroad, Belgrade, Kolkata or São Paulo for instance, applications for the EU Blue Card are now being accepted online. Online applications for the visa procedure shall be expanded in the future.

19. What are the Right to Work requirements in your jurisdiction?

Every employer who hires third-country nationals must make sure that the third-country national has a valid work permit and must keep a copy of it on file. In addition, certain changes in the job or working conditions must be reported to the authorities, as well as early terminations. Similarly, the employee must ensure that he or she is in possession of a valid and correct residence permit and must also inform the authorities of early terminations.

20. What are the types of civil and criminal penalties employers may face for non-compliance with immigration rules i.e. employing an individual who does not have the Right to Work?

If an employer violates the principle that a foreigner may only be employed with a residence and work permit, this can result in a fine of up to €500,000.

In the event of persistent repetition, the act is punishable and may be punished with imprisonment of up to three years or a fine.

The same applies if more than five foreigners are employed without authorization.

If, in addition to the unauthorized employment, significantly worse working conditions than usual are granted, this may result in an imprisonment of up to five years.

21. Are there labour market testing requirements in your jurisdiction and if so, what do they involve?

There are no quotas. The Federal Employment Agency is generally required by law to undertake a labour market testing if third-country employees from countries that do not belong to the European Union (EU) or the European Economic Area (EEA) – are to be employed. As a rule, the labour market review consists of the so-called priority review and the review of employment conditions. However, the priority review generally does not apply to skilled-workers and privileged nationals anymore due to the shortage of skilled workers in Germany.

When performing the priority review, the Federal Employment Agency reviews all persons registered as unemployed or seeking work to determine whether so-called "preferred" employees are available to fill the position. Preferred applicants are domestic applicants as well as applicants from EU or EEA countries. After that the employment conditions are checked, which includes salaries and working hours.

22. Are there quota requirements, restrictions or a cap on the numbers of foreign nationals hired per company in your jurisdiction?

No, there aren't such restrictions on the numbers of foreign nationals hired per company. Only in the case of a posting as a personnel exchange, one employee of the domestic part of the company must be posted abroad for each foreign employee coming to Germany. This relieves the German labour market.

23. Are there any exit procedures in your jurisdiction, if an individual is departing permanently?

Every person (including Germans and EU citizens) who leaves Germany permanently must deregister at the local town hall. If the third-country national holds a residence permit with the main purpose of employment and terminates it early, this must usually be reported to the immigration office.

24. Are there any requirements for medical certificates or vaccinations for your jurisdiction?

Residence permits and visas are only granted if the applicant can prove that they have sufficient health insurance comparable to the German statutory health

insurance. No special vaccinations are currently required.

25. Are there any language requirements for your jurisdiction?

The language requirements depend on the different residence permit types:

No language skills are required to apply for an EU Blue Card.

Skilled workers are to be granted a permanent settlement permit if they have a sufficient command of the German language (Level B1).

A third-country national shall be granted a permanent settlement permit if the foreigner has a sufficient command of the German language (Level B1)

To ensure language ability for vocational training, foreigners are required to furnish proof that they have a sufficient command (B1) of the German language, if their command of the language required for the vocational training has not been tested by the educational institution and is not to be acquired in a preparatory German language course.

Generally, a foreigner's spouse is to be granted a temporary residence permit if the spouse is able to communicate in the German language at least on a basic level (Level A1).

From 31 December 2022, spouses of highly skilled foreign workers qualifying for work permits as Specialists, highly qualified professionals are no longer required to present proof of German basic language proficiency level A1 for the visa/residence permit applications. Previously, only spouses of EU Blue Card holders are exempted from the language requirement. See below list of the work permit types where the language requirements for spouses are waived:

- § 18g Abs. 1 AufenthG – EU Blue Card
- § 19 AufenthG – ICT Card
- § 19b AufenthG – Mobile ICT Card
- § 18a Skilled workers with vocational training qualification
- § 18b Skilled workers holding a university degree
- § 18c Absatz 3 Permanent settlement permit for skilled workers
- 19c Absatz 1 AufenthG i.V.m. § 3 BeschV – Work permits as leading executive, managers and specialists
- § 21 AufenthG – Permit for self-employment

- § 18d AufenthG – Scientist, as a visiting scientist, as an engineer or technician on a visiting scientist's research team, or as a faculty member

26. What are the government costs associated with a typical employment based visa?

The processing fee is €80 for Schengen visas and €75 for national visas (for longer stays). Issuance of a residence permit, an EU Blue Card or an ICT Card costs €100. The fees for the fast-track procedure for skilled workers are 411€.

27. Is a local contract of employment required in order to obtain a work based visa or work permit? Are there salary or other thresholds to be met?

Some work-related visas/residence permits require a local contract, but there are also opportunities for people who are formally posted. A foreign worker must generally be paid a salary comparable to that of other workers with similar jobs and professional backgrounds in Germany.

In addition, for some types of permits, such as the EU Blue Card, there are certain salary thresholds that must be met. In 2024, the threshold for an EU Blue Card is € 45,300 or €41,041.80 for shortage occupations, IT-Specialists, and freshly graduated EU Blue Card applicants.

28. What are the maximum periods of stay for individuals on an employment based visa / work permit?

In the case of an ICT-Card secondment, the stay can usually be up to 3 years. In the case of local employment contracts, there are no restrictions. Other secondments vary depending on social security agreements. However, permits must be renewed before their expiry date. Permanent residence permits must be renewed together with the person's passport.

29. Does your jurisdiction allow dual nationality?

The law on dual citizenship has been revised and allows dual citizenship since June 2024.

30. What are the most positive aspects of your immigration system compared to the rest of the

world?

The German Immigration Act was amended in 2020 and is being adjusted again with the current Law on Further Development of the Skilled Immigration Act and takes better account of the need for foreign skilled workers than before.

For professions in high demand in the natural sciences and technology, the requirements for applying for certain permits are relaxed.

In addition, German residence law generally leaves room for the authorities to make exceptions in individual cases, for example if a longer stay abroad becomes unavoidable, which would generally lead to the expiry of the permit.

Contributors

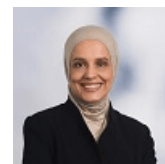
Susanne Turner, L.L.M.
Partner, Attorney at Law

susturner@deloitte.de



Sonja Hoffmeister
Counsel, Rechtsanwalt (Attorney) and
Migration Law Specialist (Fachanwalt für
Migrationsrecht)

shoffmeister@deloitte.de



Isabel Landgraf
Manager, Rechtsanwalt (Attorney)

ilandgraf@deloitte.de

