

Overview on potential residence permits for scientists from third countries pursuant to the German Residence Act

Residence permit / purpose of residence¹	§ 16 Further education, language courses, school education	§ 18 Employment²	§ 19 Settlement permit for highly qualified foreigners	§ 20 Research
Target group / beneficiaries	(Language) students, prospective university students, university students, doctoral candidates ³	Foreign employees in general; in conjunction with § 5 of the Ordinance on Employment also for employment in science and research	Top-level personnel in business, science and research with outstanding professional qualifications, whose stay in Germany is of particular interest	Foreign researchers who want to carry out a research project in an officially approved research organisation; where applicable doctoral candidates ⁴
Conditions for granting a residence permit				
1. Minimum income ⁵	No ⁶	No	No minimum income required for researchers and for teachers or academic staff in key functions ⁷	Yes ⁸

¹ In addition to the residence permits listed here, it should be noted that Council Directive 2009/50/EC of 25 May 2009 ('Blue Card Directive') has yet to be transposed, i.e. there will be a new residence permit ('EU Blue Card') in the future. **NEW:** On 7 December 2011, the Federal Government adopted a draft law on the transposition of the 'Blue Card Directive' introducing, among others, a new minimum income threshold of 44.000 € p. a.; for shortage occupations such as STEM professionals or medical practitioners, the threshold will be 33.000 € p.a. (source: press release 162/2011 of the Federal Ministry for Education and Research (BMBF) dated 7 December 2011).

² This provision covers all employment in Germany and is therefore not specifically applicable to scientific professions. § 18(1) Residence Act stipulates that the admission of foreign employees shall be geared to the requirements of the German economy, according due consideration to the situation on the labour market.

³ If the dissertation is produced as part of doctoral studies (see the explanation to Art. 1 § 16 of the draft law, Bundestag document 15/420)

⁴ If they produce their dissertation as part of their research work for which a hosting agreement was concluded by the officially approved research organisation. This does not apply to foreigners whose research activities form part of doctoral studies (see § 20(7) no. 4). The wording of this provision is open to flexibility and interpretation, leading to inconsistent opinions of the foreigners authorities regarding the concept of 'doctoral studies'.

⁵ Generally, the granting of a residence permit presupposes the proof that the foreigner's livelihood is secure including adequate health insurance coverage for the time of his or her stay in Germany (see § 5(1) (1) in conjunction with § 2(3) Residence Act). § 2(3) gives details as to when livelihood is deemed secure.

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2. German language skills	In principle yes; generally, language skills assessment forms part of the university admission procedure ⁹	Usually not necessary	Usually not necessary ¹⁰	Usually not necessary
3. Other	Resident permit is issued only after admission to the university (exception: prospective students)	Concrete job offer	Concrete job offer	Approval of the research organisation by the Federal Office for Migration and Refugees (BAMF); hosting agreement between researcher and research organisation; where applicable declaration of assumption of costs by the research organisation
Duration / limitation	Limited duration: minimum 1 year, maximum 2 years	Limited duration	Unlimited duration	At least 1 year; in case of shorter residence period as researcher, limited to the duration of stay
Renewal	Possible, if purpose of residence has not yet been achieved; after successful completion of studies for up to one year for job search (§ 16(4) Residence Act)	Yes, if basic requirements are still met	Not required (duration unlimited)	Yes, in case of prolongation of the research project or if researcher is assigned to a new project
Employment	Max. 90 days or 180 half-days p.a., as well as student	Residence permit contains the permission to take up the	Possible without restrictions ¹²	Residence permit for researchers contains the

⁶ With regard to a resident permit pursuant to § 16, livelihood is deemed secure in accordance with § 2(3) sentence 5, if the foreigner has sufficient financial resources available to cover the monthly needs pursuant to §§ 13 and 13(a)(1) of the Federal Law on Educational Support, presently amounting to 659 €.

⁷ See § 19(2) no. 2 Residence Act. However, the minimum income stated in § 19(2) no. 3 Residence Act, amounting to the earnings ceiling of the statutory pension insurance scheme (presently 66,000 € p.a.), is applicable only to specialists and employees in key functions. **NEW:** Pursuant to the draft law on the transposition of the EU Blue Card Directive adopted by the Federal Government on 7 December 2011, the income limit for a full permanent settlement permit (*Niederlassungserlaubnis*) from the beginning, will be lowered to 48,000 € p. a. (source: press release 162/2011 of the Federal Ministry for Education and Research (BMBF) of 7 December 2011).

⁸ With regard to a residence permit pursuant to § 20 Residence Act, § 2(3) sentence 6 provides that an amount equivalent to two thirds of the reference amount within the meaning of § 18 of the Code of Social Law IV is deemed sufficient to cover living costs (presently 1,703.33 € in western Germany and 1,446.67 € in eastern Germany). In individual cases, a lower net income may be considered sufficient, if health insurance cover is adequate and if eligibility to social security payments is not applicable (see also the General Administrative Regulation No. 2.3.7 to the Residence Act).

⁹ For some degree courses, proof of English language knowledge may be sufficient (see § 16(1) sentence 4).

¹⁰ In practice, the foreigner's authorities may require proof of basic German language skills within their margin of assessment.

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	secondary/part-time job at the university or any other research organisation. These jobs must not jeopardize the purpose of the studies ¹¹	authorised employment.		permission to carry out the activities in the research project ¹³ specified in the hosting agreement and teaching/tuition activities.
Approval of Federal Employment Agency required	Yes, if employment falls outside the scope of above frame and if it is subject to the Agency's approval. In this case, also the approval of the foreigners authority is required.	In principle yes (see § 39 Residence Act), for academic personnel and scientific visitors in universities and research organisations approval is not required pursuant to § 5 of the Ordinance on Employment.	No, if employment falls within the scope of § 19(2) Residence Act (see § 3 Ordinance on Employment)	No; neither is the approval of the foreigners authority required (this also applies to joining spouses/partners and unmarried minor children. ¹⁴) NEW!
Residence/stay in another EU Member State	Up to 3 months freedom of movement in other Schengen States	Up to 3 months freedom of movement in other Schengen States	Up to 3 months freedom of movement in other Schengen States	Residence/stay (as researcher) for up to 3 months in the Schengen Area; after 3 months, a new hosting agreement in the respective MS or a residence permit is required ¹⁵
Family reunification (spouses and unmarried minor children)	The general conditions for the subsequent immigration of dependents and spouses are laid down in §§ 5, 29 and 30 Residence Act.		The spouse is entitled to obtain a residence permit ¹⁶	The spouse is entitled to obtain a residence permit for the purpose of family reunification (starting with a duration of at least 1 year) ¹⁷

¹¹ Student secondary/part-time jobs include work limited to academic activities for university-related organisations with the subject matter relating to the studies (e.g. tutors working in halls of residence run by the student services organisation, counselling activities of university associations, student committees or the World University Service). Problems of definition should be clarified with the participation of the university (see also the General Administrative Regulation No. 16.3.3 to the Residence Act).

¹² See § 9 Residence Act.

¹³ **NEW:** Pursuant to the draft law adopted by the Federal Government on 7 December 2011, the hosting agreement will no longer need to include a detailed specification of the research project.

¹⁴ See § 11(6) of the Law of 22.11.2011 implementing the EU provisions on residence permits and adapting national legislation to the EU Visa Code, which entered into force on 26 November 2011; or else see § 34(4) Ordinance on Residence .

¹⁵ If the relevant general conditions are met, there is a legal right to obtain a residence permit of another EU Member State.

¹⁶ See § 30(1) no. 3(a) Residence Act.

¹⁷ See §§ 27(4) and 30(1) no. 3(c) Residence Act.

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Access to the labour market for family members	Approval of Federal Employment Agency is required, unless the employment is exempt from approval pursuant to §§ 2-15 of the Ordinance on Employment; the provision laid down in § 16(3) Residence Act does not apply to family members of students ¹⁸	Yes, in correspondence to the labour market access granted to the foreigner who is joined. ¹⁹ Approval of Federal Employment Agency is required, unless the employment is exempt from approval pursuant to §§ 2-15 of the Ordinance on Employment.	Residence permit comprises entitlement to pursue economic activity	Residence permit comprises entitlement to pursue economic activity ²⁰ without a priority review by the Employment Agency ²¹
German language skills of spouse²² and/or children²³ required on arrival	Yes, where appropriate	In general, yes ²⁴	No ²⁵	No ²⁶
Parental benefits²⁷	No	Yes, unless residence permit was issued pursuant to § 18(2) Residence Act ²⁸	Yes	Yes
Child benefits²⁹	No	Yes, unless residence permit was issued pursuant to § 18(2) Residence Act ³⁰	Yes	Yes

¹⁸ See the General Administrative Regulation on the Residence Act of 26.10.2009, No. 29.5.2.6.

¹⁹ See § 29(5) Residence Act.

²⁰ See § 29(5) no.2 Residence Act (**NEW!**).

²¹ See the General Administrative Regulation on the Residence Act of 26.10.2009, No. 29.5.2.7.

²² In principle, proof of basic German language skills is required for spouses pursuant to § 30(1) sentence 1 no. 2 Residence Act.

²³ See § 32 Residence Act.

²⁴ However, this requirement may be waived in cases of little need for integration measures (e.g. proof of completed university studies).

²⁵ If the spouse is in possession of a residence permit pursuant to §§ 19-21 Residence Act and the marriage already existed at the time when he or she established their main ordinary residence in the Federal territory, the requirement of proof of basic German language skills is waived pursuant to § 30(1) sentence 2 no. 1.

²⁶ See § 30(1) sentence 2 no. 1.

²⁷ See § 1(7) of the Parenting Benefit and Parental Leave Act.

²⁸ See § 1(7) sentence 1 no. 2(b) of the Parenting Benefit and Parental Leave Act.

²⁹ See § 62(2) of the Income Tax Act.

³⁰ See § 62(2) no. 2(b) of the Income Tax Act.

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Fees	Residence permit valid up to 1 year: 100 €; validity > 1 year: 110 € ³¹	Residence permit valid up to 1 year: 100 €; validity > 1 year: 110 €	200 €	Residence permit valid up to 1 year: 100 €; validity > 1 year: 110 €
Alternative residence permit	Where applicable § 20 for doctoral candidates ³²	§§ 19 and 20	§18	§ 18; where applicable § 16 for doctoral candidates
Other	To qualify for a permanent settlement permit, only one-half ³³ of the residence periods pursuant to § 16 are taken into account; a residence permit for a purpose other than that specified in § 16(4) can only be obtained after leaving Germany.			Pursuant to § 10(1) sentence 1 no. 2 of the Nationality Act, it is difficult to obtain naturalisation on the basis of § 20 Residence Act

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³¹ Students receiving a scholarship from public funds for their residence are exempt from fees for obtaining a visa or a residence permit pursuant to § 52(5) Ordinance on Residence.

³² If they produce their doctoral dissertation within the framework of their research activity for which a hosting agreement was concluded with the research organisation.

³³ See § 9(4) no. 3 Residence Act.

