

Crash Course in Immigration Legislation 2011

Information on the new risks and discrimination

+++ Residence ban due to regulatory offenses

Until now, on the grounds of Art. 60 of the Aliens Police Act¹, one could be banned from residency in Austria only after committing repeated or serious regulatory offenses². Under the new regulations, committing a common or one-time regulatory offense is grounds for a residency ban. It is, however, necessary to consider other interests of individual under legal protection (esp. the right to respect a person's private and family life, Art. 8 ECHR). In practice, traffic offenses regulated by the Austrian Driving License Law (such as reckless driving), prostitution and one-time offenses of the Aliens Police Act or of the Settlement and Residence Act³ or through a simple breach of the Registration Act⁴, (Art. 53 of the government's bill).

+++ No postponing return through an appeal after being denied residency

Until now, appealing against a denial of residency resulted in postponing the legally prescribed date of return; this means that the person could remain in the country during the second instance and while the appeal was being reviewed by the Higher Administrative Court and/or by the Constitutional Court. Now, instead of deporting third-country nationals who are not (or no longer) permitted to stay in Austria (e.g., if one has not applied for an extension of the residency permit in time), the ruling not only requires the person to return to their country of origin, but it also bars the person from returning to Austria. Postponing one's return through appealing against the ruling to send a person back can be denied if: (1) the person's immediate departure is in the interest of the public order or security; (2) the third-country national has entered Austria despite being barred entry; or (3) there is a risk that the person may go into hiding in Austria. At the moment, in practice, detention pending deportation⁵ is commonly imposed on the grounds that there is a "risk that the person may go into hiding." It is to be expected that postponing the legally prescribed date of return will be denied because the authorities deem it to be a given that there is a risk of the person going into hiding.

+++ 18 Month ban from entering Austria⁶

The new ruling for persons to return to their countries of origin⁷, (which is sometimes the new ruling instead of deportation), affects to people whose residence in Austria is not (or no longer) legal, e.g. after having missed the deadline for extending one's permit. The new ruling entails a ban from entering Austria for a minimum of 18 months. (Previously, a way of complying with the law was to leave and then re-enter Austria after a short period of time). The new ruling barring entry for 18 months will tear families apart, e.g. if some members have already received citizenship and others have not.

+++ German before Immigration: difficulties to join family in Austria

It has become extremely difficult for those who seek to join their families in Austria: proof of A 1 level German language proficiency is required for the first application before entering the country—this only applies to cases where the application cannot be made from within Austria. This level can be reached by taking an average of 100 hours of German lessons. This does not apply to family members moving to Austria to join a high-income earner.

+++ Less time to acquire a higher level of language proficiency

New immigrants in Austria are required to sign an "Integration Contract". In the previous legislation, the applicant was given five years time to obtain a higher level of German language proficiency (A 2). Now, the time granted for learning will be reduced to two years. This especially affects family members. If a person is not able to pass the exam within two years, it is not possible to apply for an extension of the existing permit, which means they will be asked to leave the country. (Exceptions here are persons who are exceptionally highly qualified and their family members, such as Blue Card holders. In practice, these include researchers, persons in upper management, and family members of highly qualified persons if they hold a secondary education degree.)

+++ Permanent residence only with B 1 level of language proficiency

When this amendment is passed, it will be more difficult to receive a permanent residence permit (and for those not accustomed to studying, it will be nearly impossible), because one of the requirements will be proof of a B 1 level of German language proficiency. Depending on a person's previous knowledge of the language, it is necessary to take an average of 600 hours of German lessons to achieve this level. It is virtually impossible for people who are not accustomed to studying to pass the B 1 level exam (which is almost equivalent to the Matura--the general qualification for university entrance in Austria). This will increase the number of people who must apply for a series of limited residence permits. It is only possible to apply for a one-year permit at a time, and each application costs 110 EURO. Those who have already successfully completed "Module 1" of the Integration Contract (proof of A 2 level language proficiency) are required to apply for an extension every three years. The "need-oriented minimum social security," that is the access for those in need to social welfare benefits is restricted to persons with a permanent residence permit. This increases the barrier to accessing the social welfare system.

+++ Austrian Citizenship: Naturalization virtually impossible

It is now virtually impossible for those not accustomed to studying to obtain the Austrian citizenship, because the new language requirements are now B 1 (almost equivalent to the Matura--the general qualification for university entrance in Austria). (Depending on the person's learning skills, an average of 600 hours of German lessons are required for reaching this level; in comparison to the previous requirement of an A 2 level, which corresponds to an average of 200 hours of German lessons). The level of the German language certificate required when applying for Austrian citizenship is now twice as difficult to obtain than under the previous legislation. This also means an increase in the costs and time the applicant is required to obtain the certificate, which

makes this more difficult to acquire, and puts women with multiple burdens at a particular disadvantage.

+++ **Language certification no older than one year**

Proof of language proficiency may not be older than one year at the time of application; if this is the case, the exam must be repeated, which also means taking another class, extra study time, exam stress and course fees.

+++ **Reimbursement of costs for German classes is now the exception**

The costs incurred for obtaining the first Module (A 2 level German language proficiency) can be partly reimbursed (max. 50% according to the ordinance) only if the course AND the exam were successfully completed within the first year (although the time allotted for completing the first module is two years). There is no reimbursement for B 1 level courses required for receiving a longer-term residence permit; nor is there any reimbursement for the A 1 level courses.

+++ **The bottom line: "third-country nationals" hit hardest by the changes in legislation**

— Persons who "take" German lessons and have to bear the course fees and the loss of income for the time spent in courses (which affects practically everyone, regardless if they are taking an A 1 level German class for their first application, an A 2 level class for joining their families in Austria, or for a B 1 level class for a permanent residence permit or for citizenship).

— Persons who are not (or no longer) accustomed to studying and are therefore unlikely to pass the B 1 level German language proficiency exam (almost equivalent to the Matura--the general qualification for university entrance in Austria); for this reason, these people are also less likely to receive permanent residence in Austria, simultaneously denying them access to the basic benefits of the social welfare system ("new minimum social security").

— Persons who have had their driving license revoked for specific reasons (such as speeding or drunk driving) or have committed an offense of similar severity (such as driving after one's license has been revoked).

— Persons who have committed an offense of the Aliens Police Act, Settlement and Residence Act, or Registration Act (such as going somewhere for 4 days without registering one's whereabouts for this time; leaving the area for which the permit was granted).

Detailed information about the different levels of German language proficiency (A 1, A 2, B 1, B 2, C 1, C 2) can be found at: <http://europass.cedefop.europa.eu/LanguageSelfAssessmentGrid/de>

Legal terms in german:

- 1 Fremdenpolizeigesetz, FPG
- 2 Verwaltungsübertretungen
- 3 Niederlassungs- und Aufenthaltsrecht, NAG
- 4 Meldegesetz
- 5 Schubhaft
- 6 Einreiseverbot
- 7 Rückkehrentscheidung

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