



New opportunities? German Skilled Immigration Act

by Maria Kozhuharska

Do you have specific skills or qualifications when it comes to work? You want to have a stable job in Germany but you are not an EU citizen and until now you encountered some challenges? Check this article to find out how the situation has changed.

Prior to March 1st, 2020, migration in Germany in order to work as a foreign national was not so easy, as the immigration rules for skilled workers was restricted only to people with educational qualifications (a university or college degrees). The new German Skilled Immigration Act¹, which came into force at the beginning of March 2020, put on an equal footing with university graduates these skilled workers who have vocational qualifications.

The new law mainly intends to implement Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment². Therefore, it gets rid of the discriminatory restrictions on jobs for non-German / EU citizens, which state that people from outside the EU can only get jobs German and EU citizens are unable to do. From now on there won't be any checks as to whether an applicant from Germany or the EU is available for the specific job. The Federal Employment Agency will still verify the employment conditions but if you are a skilled worker with vocational, non-academic training from a non-EU country, the process of finding a job now requires less effort. What other problems might you face?

1. Who can work in Germany according to the new act?

You can legally migrate into Germany for employment if you are:

A) with German university degree or with a recognized or comparable degree. Please, note that in order for your degree to be recognized, you may need to pass subsequent examinations. According to IRC Germany (International Rescue Committee), the country's chamber of Commerce will likely need to approve any relevant certificates and make sure they're equal to those you can get in Germany.

¹ Fachkräfteeinwanderungsgesetz could be found here:

<https://www.buzer.de/s1.htm?g=Fachkraefteeinwanderungsgesetz&f=1>

² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0050>

B) with a German vocational training qualification (or with a recognized or comparable qualification) and the training lasted at least two years. In that case you will also be considered as a skilled worker and as such, the law now simplifies your labor market access, if you have met the following conditions:

- you must have your foreign qualification officially recognized by the relevant authority in Germany. If you want to check whether your qualification suits the requirements in order to be recognized, you can access an information portal set up by the German Labor Ministry on the ["Make it in Germany" website](#)
- you should have a job contract/offer from an employer in Germany, in your field of professionalism;
- If you are above 45 years old, you will need proof either that you meet the financial requirement to earn a minimum of €3,685 per month in your German job, or that you possess adequate retirement funds³.

The recognition process will be finished within three months after all the necessary documents have been provided and the work visa will be issued four weeks later.

You will be given a residency status for the duration of your contract (up to four years). While before the act came into force residence permit applications had to be filed by the foreigner in person, according to the new law the employer can file the application on behalf of the applicant (which will cost additional EUR 411 fee) in order to accelerate the procedure. After these 4 years you will also be able to apply for a permanent residence permit.

Moreover, the new act stipulates that you can bring your family members (spouses and children) with you, as you will need to prove that you have the financial means to support them and provide them with an adequate living condition.

C) with a qualification lower than vocational training – in that case you are not considered as a skilled worker, so you need to find a job offer from an organization or employer based in Germany who will be willing to train you and ensure you obtain a professional certificate in two years.

D) If you don't have a formal qualification as a skilled worker (a German, recognized or comparable university degree or vocational training qualification), but you possess substantial practical professional knowledge within the information and communication technology sector, you can also benefit from the advantages of the new act. In order to be granted an approval and a residence permit for the purposes of qualified employment, you need to have at least three years of professional experience in the respective sector with a certain minimum income + sufficient knowledge of German.

E) If your qualification does not completely meet the requirements of a German qualification and cannot be recognized, you can come to Germany with a visa for Training and Skill

³ Section 18b (1): after the foreigner's 45th birthday, the amount of the salary corresponds to at least 55 percent of the annual contribution assessment limit in general pension insurance, unless the foreigner can provide evidence of an adequate pension scheme.



Development, under the condition that you have the necessary German language skills, A2 level according to the Common European Framework of Reference for Languages. The training also includes attending a German language course in preparation for vocational training. The course can be either general or occupation-related.

A visa as this one leads to a residence permit valid for 18 months, extendable for another 4 months, and the possibility to apply for a residence permit for training, study or work, by the end of its validity. The residence permit also entitles you to pursue employment independent of the vocational training up to ten hours a week.

F) a student

If you are a foreigner who has been granted a residence permit for the purpose of full-time or part time study at a state university, at a state-recognized university or at a comparable educational institution, you are entitled to pursue employment which may not exceed a total of 120 days or 240 half days a year, as well as to carry out student secondary activities. As during the first year of your studies you will have the so-called preparatory measures (a preparatory language course or a visit to a preparatory college), the right to work does not apply to this first year of preparatory measures, except during the holiday season.

You can also begin a vocational training and get a residence permit to attend a vocational training course, instead of continuing with some of the studies, or you can get a job as a qualified professional while still studying or receiving vocational training. After completing the vocational training course in Germany, you can apply for a permanent settlement permit upon a period of two years in the country.

G) an Athlete or coach – if you are above 16 and have a salary of at least 50 per cent of the income threshold of the statutory pension insurance, you can also apply for a visa, which visa will permit you to come to Germany and obtain a residence permit for employment. The approval of the German Federal Employment Agency will not be required⁴.

2. Can I come to Germany to look for:

A) a job

According to the law, if a residence permit has been issued for the purpose of performing a specific job, the pursuit of another job is prohibited unless the competent authority has permitted the pursuit of the other job. This can be very restrictive in case the foreigner finds that he/she doesn't like the job for which he/she has already come in another country. Therefore, if you would like first to come into Germany in order to seek and find employment with vocational training or professional qualifications, you can apply for a Jobseeker Visa, with

⁴<https://www.schengenvisa.info.com/news/germany-to-introduce-long-term-esports-visa-by-march-2020/>



which you will be granted a 6-months resident permit if you meet with the following requirements:

- qualification, which should be recognized by the German authorities;
- proof of permanent accommodation;
- proof that you can support yourself for the duration of your stay in Germany as no state support will be provided;
- German language skills - at least a B1 level of the Common European Framework of Reference for Languages (skilled workers with a university degree can work for a trial period of ten weeks in their chosen profession without having to show any special language proficiency);
- medical insurance.

The visa permits its holder to work for a maximum of 10 hours within a week as a trial period, during which you and your potential employer can find out if you are suitable for each other.

B) an apprenticeship - you can be granted a residence permit for the purpose of looking for an apprenticeship position to carry out qualified vocational training if you meet the following conditions:

- you have not yet reached the age of 25;
- your livelihood is secured (you should be able to support yourself financially);
- you have a school-leaving certificate from a German school abroad or a school leaving certificate which grants a person with the right to receive higher education;
- you have good German language skills (B2).

The residence permit is issued for up to six months. Unfortunately, this residence title does not entitle you to gainful employment or to pursue secondary employment, but after two years at your apprenticeship position in Germany, you can apply for a permanent residence status.

C) a study place – you can also be issued a residence permit for up to nine months when applying for a study, but, as in the previous case, you are not allowed to work during that time.

3. Can I work in Germany, if I am a refugee or an asylum seeker?

If you have requested or received international protection in another Member State, under the stipulations of this new law you can migrate to Germany only in 3 cases: to start a training, to continue your studies or your research.

You will be able to apply for a temporary residence permit in Germany, if you have been:

- enrolled in higher education for at least 2 years in another EU country and
- accepted by a German university to complete your studies/pass a training or by a research institution or organization to conduct research.

With this permit, you could only stay in Germany until you finish your university course or research. Asylum-seekers cannot apply. Residence title is not needed if your research is short-term mobility and does not exceed a duration of 180 days within a period of 360 days.

If you are currently in Germany without a residential status but cannot be deported for some reasons (for ex. illness), you are allowed to start training, if you:

- have been working at least 35 hours a week for 18 months (it doesn't have to be only in Germany);
- are able to support yourself;
- have sufficient command of the German language (B2 level);
- have not committed a criminal offense.

In any other case in which you have requested or received international protection, even if you meet the above requirements to be considered as a skilled worker, you will not be eligible for this work visa. This is another jumble of the German legislation, which deviates from the claim of the common policy for equality and fostering employment. The fact that people who have already obtained their vocational qualification after training for at least 2 years and who cannot enjoy the benefits of the new act only because they were already forced to arrive on EU territory due to other reasons is not only discriminatory. It does not profit either side: refugees and asylum-seekers are locked in a country they prefer not to be and Germany still falls short of skilled workers.

What it more, even if the new law aims to facilitate the procedure of employing skilled workers, very often its stipulations lead to the reverse effect, especially in relation to the recognition of qualifications since Germany has a unique dual system of vocational training and it could be hard for foreigner's qualification to be equivalent to German ones⁵.

Further, the law imposes the requirements of sufficient language skills before entering the country, which could be a great challenge and investment for people living outside of Germany and unsure whether their applications will be approved. Meanwhile, asylum seekers who are already situated in Germany and fairly integrated cannot enjoy the benefits of this law.

Therefore, the new Skilled Labour Immigration act, by which adoption the German Government sought to close the economic gaps caused by the lack of skilled professionals, cannot fulfill its initial aim. Even if so recently adopted, the law needs to be amended in order to fit the current economic situation - a purpose, which provoked the suggestion of a possible "shift" from the asylum system to a specialist-visa-type system when the law was drafted in 2019⁶. This shift would have given asylum-seekers whose applications had been rejected the chance to obtain a right to stay as skilled professionals⁷. Instead, even if they are already

⁵ As a comparison, such equivalence examinations are lacking in other immigration countries such as the USA, Australia, Canada.

⁶ Draft of a skilled worker immigration law BT-Drs. 19/8285 of March 13, 2019, p.71: <https://dip21.bundestag.de/dip21/btd/19/082/1908285.pdf>

⁷ A Shift in the Security Paradigm: Global Challenges: Is Europe Ready to Meet Them; Ramirez, J. Martin, Biziewski, Jerzy; ISBN 978-3-030-43253-9; p.161.



situated in Germany, they must first return back to their home countries and apply from the German embassies there, which can lead to a lot of “nerve-racking situations” in the words of Marlene Thiele, project managers at the Network for Integrating Refugees of the Association of German Chambers of Industry and Commerce⁸.

However, if your asylum claim has been rejected and you are still in Germany, you may have a chance to obtain a legal residence permit, according to so-called “three plus two” principle: if you spend three years in training at a state-recognized certified training programme in Germany and then another two years working in the profession for which you have trained, according to the regulations related to the suspension of removal (Duldungsregelungen) you have the possibility to apply for a residence permit.

4. What if you have already obtained an asylum, have a refugee status or subsidiary protection in another Member State but want to live in Germany? In that case you must have been living legally in the country which has recognized you as a refugee for an uninterrupted period of five years with a stable and regular source of income and health insurance (even though the willingness to move may not be so decisive when you already have a regular income). After these 5 years you can apply for the **EU long-term residence permit**, which is a permanent residence title which permits you to live in any EU member country, except for Denmark, Ireland and the United Kingdom, and to enjoy the same treatment and rights as nationals in certain areas, including access to education, employment and vocational training.

For example, if you have been living in Italy for at least 5 years and have one of the following permessi: Permesso per Motivi di Lavoro, Permesso per Asilo Politico or Permesso per Protezione Sussidiaria, and you have a stable income, you can apply for the Permesso UE per Soggiornanti di Lungo Periodo, or EU long-stay permit⁹.

5. What before these 5 years?

If you are willing to move to Germany and you don't fulfill the requirements for a EU long-term residence permit, you can search for a voluntary service or apprenticeship position in Germany, after which you can apply for a work position. As an organization who supports refugees in their secondary migration, we can collaborate with you in this action. We have developed an alternative, inner-European path of legal secondary migration for education and training purposes (voluntary service, training) for young refugees in the Italian-German context. Through this project, we specifically facilitate mobility from a first country of arrival (Italy) to a second country (Germany) and thus offer the refugees a long-term and sustainable

⁸ In an interview with EURACTIV news and policy portal.

⁹ <https://www.refugee.info/italy/documents-it/work-permits-permessi-per-motivi-di-lavoro?language=en>



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