



International Organization for Migration (IOM)



European Migration Network

# CHANGES OF IMMIGRATION STATUS AND PURPOSE OF RESIDENCE IN AUSTRIA



**Tamara Buschek-Chauvel, Haleh Chahrokh**

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REPUBLIC OF AUSTRIA  
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The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway. The National Contact Point Austria in the EMN is financially supported by the European Commission and the Austrian Federal Ministry of the Interior.

Tamara Buschek-Chauvel, Haleh Chahrokh

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# EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission by order of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC has constituted the legal basis of the EMN and National Contact Points (NCPs) have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union (EU) institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas. The EMN also has a role in providing such information to the wider public.

The NCP for Austria is located in the Research and Migration Law Department of the Country Office Austria of the International Organization for Migration (IOM) in Vienna, which was established in 1952 when Austria became one of the first members of the organization. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends and to develop and implement respective national projects and programmes.

The main task of the NCPs is to implement the annual work programme of the EMN including the drafting of the annual policy report and topic-specific focussed and main studies, answering Ad-Hoc Queries launched by other NCPs, carrying out visibility activities and networking in several forums. Furthermore, the NCPs in each country set up national networks consisting of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data. Exceptions might occur when existing data and information is not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Since the comparability of the results is frequently challenging, the EMN has produced a Glossary,

which assures the application of similar definitions and terminology in all national reports.

Upon completion of national reports, the European Commission with the support of a service provider drafts a synthesis report, which summarizes the most significant results of the individual national reports. In addition, topic-based policy briefs, so called EMN Informs, are produced in order to present and compare selected topics in a concise manner. All national studies, synthesis reports, informs and the Glossary are available on the website of the European Commission Directorate-General Migration and Home Affairs.

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# INTRODUCTION

This study presents the possibilities provided within the Austrian migration system for individuals to change their immigration status and purpose of residence. An overview is provided, including: all options provided for by law as well as existing restrictions defined in Austrian legislation, the underlying reasons for the laws and the goals pursued by legislators, and the only limited debate on the issue of status change that is currently taking place in the Austrian context. To be able to describe these items in detail, all pertinent categories of immigration as well as the corresponding residence titles and eligibility criteria will be presented. Lastly, a discussion will be devoted to the challenges in the area of status change faced both by authorities and by third-country nationals.

To facilitate the comparison of findings across the EU, this study is based on common specifications applied in all EU Member States and Norway.

The issue of changes in immigration status and the related possibilities for changing the purpose of residence is a relatively novel subject of investigation. More information is required concerning possible changes of residence status during a stay in an EU Member State and observations made in this regard in practice. For many EU Member States, no systematic overview of all options existing for individuals to change the purpose of residence and thus residence status is available, and no systematic presentation exists that would clarify how such changes impact the rights of third-country nationals residing in that particular EU Member State, even though this information is especially critical for such third-country nationals. In order to gain an overview of the flexibility and effectiveness of the individual systems of status change existing in each of the EU Member States, the European Migration Network (EMN) selected this topic for study in 2015.

The scope of this study includes all migrants holding a residence permit and not in an irregular residence situation, with the exception of third-country nationals whose application for international protection has been rejected. This study describes only those options for applying for a change of residence status that are available to third-country nationals in Austria,

without having to first travel back to their country of origin. This study specifically focuses on persons falling under any of these categories of immigration: family, education, research, EU Blue Card, highly qualified workers, employees, self-employed persons, owners of companies, seasonal employees, intra-corporate transferees, investors, category D Visa, asylum-seekers, victims of trafficking in human beings and holders of other residence titles. For each of these categories, the study discusses the options available within the Austrian migration system for individuals to change their residence status.

A statistical overview of the residence titles issued in response to a change of residence status is provided, which reveals no stable trends for Austria between 2010 and 2014. Rather, the figures vary sharply from one year to the next. Officials responsible for planning face a corresponding degree of uncertainty. One exception is the case where individuals change their residence status from a title based on paid employment to a residence permit for family, educational or other reasons. Here the number of cases where a change of status was granted remained small but stable within the period of 2010 to 2014 (refer to Table 1 in the Annex).

The study follows a common study template with a predefined set of questions developed by the EMN, in order to facilitate comparability of the findings across all Member States. Following the introduction and the description of the methodology applied, the first chapter provides a synoptic overview of the legal framework, the provisions introduced to simplify procedures in status change cases and the principal actors responsible for processing status change measures.

For each of the target groups defined in the study, the second chapter describes: the residence titles individuals may apply for, as well as the conditions having to be met in each case; the options for changing residence status, including any variable conditions that need to be met when applying for such a change; and which specific rights change as a result.

The third chapter proceeds to detail certain legal aspects of Austria's system for changing residence status and the policy goals pursued through the measures defined for changing status.

The study concludes with a chapter discussing the challenges and obstacles inherent in the Austrian system of residence status change.

The annex provides statistical data, a list of translations and abbreviations, a bibliography, as well as a list of the interviews conducted.

## METHODOLOGY

This study is based on common specifications applied in all EU Member States as well as Norway, in order to ensure findings that are comparable EU-wide.

The study is based largely on secondary research available at national level, including publications, previous studies and statistics, press releases and media reports, as well as internet sources. The main sources, however, are the legal provisions of Austrian law applying to foreigners as well as available related high court rulings. The bibliography in the annex gives a summary of the sources of information used. With regard to the legal and institutional framework in Austria, the most recent legal changes considered in this study are the amendments to aliens law which entered into force as of 20 July 2015.

As secondary research progressed, it became evident that little material is available on the subject of change of purpose in Austria. Consequently, to gather more complete information on certain details of practice, qualitative semi-structured interviews were conducted with experts in the field. Such individuals included: Judith Hörlsberger (Counselling Centre for Migrants), Dietmar Hudsky (Head of Department III/4, Residence, Civil Status and Citizenship Affairs, Federal Ministry of the Interior), Thomas Neugschwendtner (Attorney) and Peter Stark (Department III/5, Asylum and Immigration, Federal Ministry of the Interior).

The study was compiled by Tamara Buschek-Chauvel (Consultant, IOM Country Office for Austria) under the supervision of Julia Rutz (Head of Research and Migration Law, IOM Country Office for Austria). The legal research and interviews were carried out by Haleh Chahrokh (former Legal Associate, IOM Country Office for Austria). Data for the statistical annex were compiled and evaluated by Saskia Koppenberg (Research Associate, IOM Country Office for Austria). Special thanks go to Rainer Lukits (Legal Associate, IOM Country Office for Austria) for editing the draft study and Katerina Kratzmann (Head of Office, IOM Country Office for Austria) for providing comments.

# 1. CHANGES OF THE PURPOSE OF RESIDENCE TITLES IN THE CONTEXT OF THE AUSTRIAN LEGAL SYSTEM

In the Austrian legal system, various options are defined that allow aliens<sup>1</sup> in Austria to change their immigration status and the purpose of residence, by submitting an application for change of purpose. These options are described in detail below.

## 1.1 Overview of the legal framework

Any residence title<sup>2</sup> is issued only for one specific purpose (Schumacher et al., 2012:42). The purpose of residence in each case determines the scope of the right of residence. Individuals can apply to change the purpose of residence and thus their immigration status, by submitting an application for change of purpose.<sup>3</sup>

### *Procedures for change of purpose while a residence title is valid*

The normal procedure applied in Austria to change the purpose of a valid residence title during the validity period is specified in Art. 26 Settlement and Residence Act.<sup>4</sup> Specifically, foreigners wishing to change the purpose of residence while residing in Austria are required to make their request known to the authorities in Austria immediately (first sentence of Art. 26 Settlement and Residence Act). In order for the request to be granted, the applicant must meet the requirements for the requested

1 Art. 2 para 1 subpara 1 of the Settlement and Residence Act defines an “alien” as a person “who does not hold Austrian citizenship”.

2 The term “residence title” is used in this study as a general term to refer to the various types of residence permits.

3 The term “application for change of purpose” (*Zweckänderungsantrag*) is defined in Art. 2 para 1 subpara 12 Settlement and Residence Act as “an application, submitted during the period of validity of the current residence title, requesting a residence title with another scope of purpose to be issued”.

4 Federal Law Gazette (FLG) I No. 100/2005, in the version of FLG I No. 122/2015.

residence title and capacity has to be available under any applicable quota (second sentence of Art. 26 Settlement and Residence Act). Individuals are required to apply for any change of purpose by no later than the date on which the previous residence title expires.<sup>5</sup>

A foreigner meeting all the requirements is legally entitled to be granted the requested residence title (third sentence of Art. 26 Settlement and Residence Act), so that the application is approved and the requested residence title is issued. If the requirements are not fulfilled, the application is to be rejected; this has no effect on the individual's current right of residence (fourth sentence of Art. 26 Settlement and Residence Act).

#### *Change of purpose in a renewal procedure*

Art. 24 para 4 Settlement and Residence Act allows an application for the renewal of a residence title to be combined with an application for change of purpose, during the period until a first-instance decision on renewal is issued. If the requirements for the new purpose of residence or residence title as requested are met, the authorities are obliged to comply with the request. In the event that the applicant does not meet the requirements, Art. 24 para 4 Settlement and Residence Act specifies that “a separate decision shall be issued on this matter and the previous residence title shall be issued with the same purpose of residence, provided that the requirements continue to be fulfilled”. The provision stated in Art. 24 para 4 Settlement and Residence Act thus takes priority over the one set forth in Art. 19 para 2 of that statute, namely that in each case only one purpose of residence may be applied for and in each case only one application may be made (Schumacher et al., 2012:197).

The conditions for certain cases of change of purpose are more specifically defined by law (→ refer to 3.1).

#### *Legal restrictions*

In a small number of cases Austrian law restricts or excludes any change of purpose.

5 Federal Ministry of the Interior, *Hinweise zur Asyl-, Niederlassungs- und Aufenthaltsstatistik, Fremdenpolizei und Visawesen*, Version 1.15 of 15 February 2012, p. 7, available at [www.bmi.gv.at/cms/BMI\\_Niederlassung/statistiken/files/Hinweise\\_zur\\_Asyl\\_Fremden\\_und\\_Settlement\\_and\\_Residence\\_Act\\_Statistik\\_Fremdenpolizei\\_und\\_Visawesen\\_v1\\_15.pdf](http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/Hinweise_zur_Asyl_Fremden_und_Settlement_and_Residence_Act_Statistik_Fremdenpolizei_und_Visawesen_v1_15.pdf) (accessed on 13 August 2015).

For one single residence title in Austrian legislation, any change of purpose is expressly ruled out. The specific case is that of persons holding a Temporary Residence Permit for providing social services, for whom any change of purpose of residence or change of residence title is excluded in the context of a procedure for changing the purpose of residence or for renewal of the residence title; the only exception here is the case of family members of Austrian, EEA or Swiss citizens when applying for a residence title Family Member (Art. 66 para 2 in conjunction with Art. 47 para 1 and 2 Settlement and Residence Act). Similarly, a Temporary Residence Permit for providing social services may not be issued within the framework of such a procedure to persons holding a residence permit with another scope of purpose or holding another residence title (Schumacher et al., 2012:165).

*Option to refrain from withdrawing a residence title*

Art. 28 para 5 Settlement and Residence Act requires the authorities to withdraw the residence title even during the period of validity if the holder no longer satisfies the special conditions for obtaining the title as specified in Art. 41ff Settlement and Residence Act. The authorities may refrain from withdrawing the title if, as the result of a procedure for changing the purpose of residence, the foreigner can be granted another type of residence title (Schumacher et al., 2012:184).

*Quota system and German skills*

German skills and/or available capacity under a quota are required for several residence titles which are granted for permanent settlement in Austria.

Art. 21a para 1 Settlement and Residence Act requires the applicant to provide evidence of a knowledge of German allowing “at least elementary use of the language”, at the A1 level of the Common European Framework of Reference for Languages.<sup>6</sup>

The above also applies when the individual wishes to obtain the residence title through a procedure for changing the purpose of residence

6 Council of Europe, *Common European Framework of Reference for Languages: Learning, Teaching, Assessment*, available at [www.coe.int/t/dg4/linguistic/source/framework\\_en.pdf](http://www.coe.int/t/dg4/linguistic/source/framework_en.pdf) (accessed on 17 August 2015).

(Art. 21a para 2 Settlement and Residence Act). Art. 21a para 1 Settlement and Residence Act specifies that the evidence provided must not be any older than one year.

Exceptions to this requirement are specified in Art. 21a para 4 Settlement and Residence Act, specifically minors below the age of 14 and persons who cannot be expected to meet this requirement due to their poor condition of health, in addition to family members of very highly qualified workers, of holders of an EU Blue Card, or of holders of a Permanent Residence – EU title whom were originally issued an EU Blue Card.

Pursuant to Art. 13 Settlement and Residence Act, the total number of residence titles to be granted subject to a quota is defined each year in a statute known as the Settlement Regulation.<sup>7</sup> Changing the purpose of a valid residence title is also subject to the quota requirement specified in Art. 13 Settlement and Residence Act, provided that the title applied for is subject to a quota when issued upon first application (Art. 12 para 1 subpara 2 Settlement and Residence Act).

The overall quota is broken down into six sub-quotas and according to provinces. One of the sub-quotas expressly concerns cases where holders of a Settlement Permit – Dependant request the purpose of residence to be changed to that of a Red-White-Red Card Plus, in order to take up employment (Art. 13 para 2 subpara 3 Settlement and Residence Act).<sup>8</sup>

Other residence titles that are subject to the quota requirement of Art. 13 Settlement and Residence Act and that are relevant for the group of individuals under study here include: the Settlement Permit – Gainful Employment Excepted (Art. 44 para 1 Settlement and Residence Act); the Red-White-Red Card Plus for family members of sponsors who are third-country nationals and hold a Red-White-Red Card Plus, except in cases of highly qualified workers, skilled workers, other key workers, university

7 Each year the Federal Government, in consultation with the Main Committee of the National Council, issues what is referred to as the Settlement Regulation, defining the annual number of residence titles subject to quota requirements; 2015 Settlement Regulation, FLG II No. 361/2014.

8 Refer to: Regulation of the Federal Government defining the number of residence titles subject to quota and the maximum numbers of work permits for temporarily employed aliens and harvest workers for the year 2015 (2015 Settlement Regulation, *Niederlassungsverordnung*), FLG II No. 361/2014, available at [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009059](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009059) (accessed on 13 August 2015).

graduates and researchers (Art. 46 para 1 subpara 2 Settlement and Residence Act); as well as the Settlement Permit for family members of sponsoring third-country nationals who hold a Settlement Permit – Dependant or a Settlement Permit (Art. 46 para 4 Settlement and Residence Act).

#### *Responsible authorities*

The authorities in Austria are responsible for cases involving changing the purpose of residence (first sentence of Art. 26 Settlement and Residence Act), which according to Art. 3 para 1 Settlement and Residence Act are the governors of the provinces. Competence in geographical terms is determined based on the foreigner's current, intended or most recent place of residence (Art. 4 para 1 Settlement and Residence Act).

## **1.2 Simplified procedures compared with first applications**

No provisions exist which expressly simplify procedures for having the purpose of a residence title changed, as compared with first applying for a title. The items below are worthy of mention in general.

#### *Submission of applications for residence titles pursuant to the Settlement and Residence Act in Austria*

Unlike with the first application for a title, individuals can apply for a change of purpose in Austria and stay in the country while the procedure is pending.

#### *Existing file on the foreigner – fewer documents to be submitted*

When a foreigner first applies, a file is opened, for which in general the same documents are required as when applying for a change of purpose. The documents already available in the foreign applicant's file (e.g. birth certificate, certificates of marital status, excerpt from police records, etc.) are not collected a second time, provided they have been well documented and retained. In addition, no new copy of a rental agreement needs to be presented if it is clear from the Central Register of Residents that the



foreigner's place of residence has not changed. This item applies both in the case of applying for renewal and for a change of purpose.<sup>9</sup>

*Application period*

Art. 2 para 1 subpara 12 Settlement and Residence Act specifies that foreigners can only apply to have the purpose of residence changed during the validity period of a residence title. In addition, pursuant to Art. 24 para 4 Settlement and Residence Act, an application for change of purpose can be made together with an application for renewal, until the decision is issued. Art. 26 Settlement and Residence Act specifies that persons wishing to change the purpose of residence during their stay in Austria must notify the authorities of this intention “immediately”. Anyone not informing the authorities of a change of purpose of residence without unnecessary delay commits an administrative offence (Art. 77 para. 1 subpara 1 Settlement and Residence Act) and is punishable with a fine of between EUR 50 and EUR 250.

*Application for change of purpose automatically becomes an application for renewal*

In practice, even when an individual applies only for a change of the purpose and not for renewal of the residence title that the individual holds, the authorities assume that the person wishes not only to have the purpose changed for the remaining validity period of the title but also that the person probably wishes to have the residence title renewed. Unless the foreigner states otherwise, an application for change of purpose usually implies an application for renewal.<sup>10</sup>

The authorities initially verify whether the foreigner meets the requirements for having the purpose changed. If that is the case, the requested residence title with the altered purpose is issued. In the event that the application for change of purpose is refused, a decision is subsequently taken on whether to renew the previous residence title. The foreigner is entitled to reside within the territory of Austria for the duration of the

9 Interview with Dietmar Hudsky, Head of Department III/4, Residence, Civil Status and Citizenship Affairs, Federal Ministry of the Interior, 25 August 2015; interview with Thomas Neugschwendtner, Attorney, 14 September 2015.

10 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

procedure while retaining the same legal status, along with the associated rights and obligations.

Similarly, if the procedure for changing the purpose of residence is still pending upon expiry of the valid residence title, the authorities continue to process the case, now as a renewal procedure in combination with a change of purpose.

### **1.3 Main actors involved in designing measures related to changes of purpose**

In the area of migration, procedures based on administrative law are mainly controlled by three regulatory institutions: the Federal Ministry of the Interior, the Federal Ministry of Labour, Social Affairs and Consumer Protection, and the Federal Ministry for Europe, Integration and Foreign Affairs. While the Federal Ministry of the Interior regulates immigration and the residence status of third-country nationals as well as temporary residence, the Federal Ministry of Labour, Social Affairs and Consumer Protection oversees labour market access, albeit here of an increasingly diminishing and highly specific group of workers. The Federal Ministry for Europe, Integration and Foreign Affairs is responsible for procedures involving the issue of visas, for development aid policy and integration measures. Interaction and coordination among these institutions are defined in federal acts. The Federal Chancellery acts as an intermediary under certain circumstances.

The authorities and institutions that play a leading role in Austrian aliens law also play a part in developing the rules that allow third-country nationals to change their residence status, i.e. to change the purpose of their residence. This applies foremost to the Federal Ministry of the Interior, which as a rule is the institution that prepares legal amendments in this area. In its capacity as legislative institution, the Austrian Parliament subsequently adopts the amendments and measures. Where the dimensions involved are related to labour market policy and the legal aspects of employing foreigners, the Federal Ministry of Labour, Social Affairs and Consumer Protection is a relevant actor playing a significant role. In matters concerning (former) asylum-seekers or persons entitled to residence for humanitarian reasons, the Federal Office for Immigration and Asylum also

plays an important role.<sup>11</sup> Since January 2014 the Federal Office for Immigration and Asylum is the competent authority responsible for decisions on whether to grant a Residence Permit for Individual Protection to persons whose application for asylum has been refused; this is set forth in Art. 58 para 1 in conjunction with Art. 57 of the Asylum Act.<sup>12</sup>

#### **1.4 National debate and dissemination of information on options for changing the purpose of residence**

In the view of an expert with the Federal Ministry of the Interior, changes in immigration status and the purpose of residence involve neither any specific legal aspect nor any significant political aspect. Rather the matter is seen merely as an aspect of procedural law for which provision needs to be made. The issue of changing the purpose of residence is not considered a priority topic in Austria and is rarely the subject of debate. Isolated discussions take place on whether the Red-White-Red Card system achieves its objectives,<sup>13</sup> in particular with regard to the general barriers as well as specifically in the case of university graduates from third countries who wish to remain in Austria after graduation to pursue employment. The small percentage of non-EU nationals who remain in Austria after graduation is also a subject of international comparisons by the media, which correspondingly conclude that Austria ranks among the countries least successful in holding on to international students. It is claimed that the barriers to remaining in Austria after university are too high (→ refer to 3.2).

The common channels of communication used by these institutions, in particular the websites [help.gv.at](http://help.gv.at), [migration.gv.at](http://migration.gv.at) and that of the Federal Ministry of the Interior, include pages that explain in detail the legal framework described in this study. Yet no focus is found on the topic of changing the purpose of residence, nor is any specific information provided.

11 Interview with Peter Stark, Federal Ministry of the Interior, 10 September 2015.

12 FLG I No. 100/2005, in the version of FLG I No. 70/2015.

13 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

## 2. RESIDENCE CATEGORIES, RELATED ELIGIBILITY CRITERIA AND OPTIONS FOR STATUS CHANGE

The granting of residence titles is subject to general requirements, which are listed in Art. 11 Settlement and Residence Act:

- No valid entry ban, exclusion order or return decision by another EEA Member State or Switzerland;
- No enforceable return decision, unless the foreigner departed from Austria at least 18 months earlier;
- No marriage, registered partnership or adoption of convenience for the purpose of residence exists;
- The legal period of residence has not been exceeded;
- No final conviction for evasion of border controls or illegal entry within the last twelve months;
- No endangerment of public interests or impairment of Austria's relations with other countries;
- Legal entitlement (agreement or property) to adequate accommodation by local standards;
- Coverage by a health insurance providing benefits in Austria and covering all risks;
- Secure means of subsistence;
- With a renewal application, completion of module 1 of the Integration Agreement.<sup>14</sup>

In addition to the general requirements, special requirements also have to be met, depending on the purpose of residence.

The following section discusses the specific categories of third-country nationals, the residence titles in each case, the conditions for obtaining the title upon first application as well as the options for changing residence

14 For more details on the Integration Agreement, refer to: Federal Chancellery of Austria, *Integrationsvereinbarung*, available at [www.help.gv.at/Portal.Node/hlpd/public/content/12/Seite.120500.html](http://www.help.gv.at/Portal.Node/hlpd/public/content/12/Seite.120500.html) (accessed on 5 November 2015).

status, including the accompanying requirements and consequences, wherever applicable to the particular category.

## 2.1 Family

### 2.1.1 Definition

Family members as defined in Art. 2 para 1 subpara 9 Settlement and Residence Act are:

- Spouses age 21 and older at the time of application;
- Registered same-gender partners age 21 and older at the time of application;
- Unmarried minor children including adopted children and stepchildren (up to the age of 18).

### 2.1.2 Residence titles and related eligibility criteria

Austrian aliens law provides for several types of residence title for family members. The residence title that needs to be requested depends on the sponsor's title.<sup>15</sup> Here the following cases need to be distinguished:

- Sponsor is an Austrian citizen;
- Sponsor is a citizen of a Member State of the EU or the European Economic Area (EEA) or of Switzerland and that individual does not exercise the right of residence for more than three months as accorded under Community law or under the EC-Switzerland Agreement on the free movement of persons;
- Sponsor is a third-country national and is legally entitled to reside in Austria.

Varying conditions apply depending on the particular residence title that family members are eligible to apply for. The possible residence titles for family members and the applicable eligibility criteria in each case are discussed below.

15 "Sponsors" (*Zusammenführende*) as defined in Art. 2 para 1 subpara 10 Settlement and Residence Act are third-country nationals lawfully residing in Austrian territory from whom a right specified in that Federal Act is derived.

### *Red-White-Red Card Plus*

The Red-White-Red Card Plus (RWR Card Plus) entitles third-country nationals to settlement for a specified period and allows unrestricted access to the labour market (Art. 8 para 1 subpara 2 Settlement and Residence Act).

An RWR Card Plus can be issued to the family members specified in Art. 46 Settlement and Residence Act.

This type of permit can also be granted in the cases described in the following.

Art. 47 para 4 Settlement and Residence Act entitles family members of sponsors holding a Settlement Permit – Dependant to obtain an RWR Card Plus. The sponsor here is specified in Art. 47 para 1 Settlement and Residence Act as an Austrian, EEA or Swiss national permanently residing in Austria who has not exercised the right of residence based on Community law or on the EC-Switzerland Agreement on the free movement of persons.

Family members must comply with the general requirements for obtaining a title. In addition, capacity under a quota must be available, while written confirmation by the competent regional office of the Public Employment Service Austria as specified in Art. 20e para 1 subpara 1 Act Governing the Employment of Foreigners<sup>16</sup> is also required.

Art. 50 para 1 Settlement and Residence Act specifies the option of granting an RWR Card Plus to family members of third-country nationals holding a Permanent Residence – EU residence title from another Member State, provided the sponsor now has an RWR Card and the family member meets the general requirements for obtaining the title.

Similarly, pursuant to Art. 50a Settlement and Residence Act family members of individuals holding an EU Blue Card from another Member State can obtain an RWR Card Plus, upon proof that the sponsor's family members had previously resided as such in the other Member State and where they satisfy the requirements for obtaining the title.

Under Art. 56 para 3 in conjunction with Art. 57 Settlement and Residence Act, an RWR Card Plus can also be issued to unmarried partners from third countries living in de facto unions and to their family members, where evidence of a permanent relationship is provided.

16 FLG I No. 218/1975.

The sponsor in this case is either an EU or EEA or Swiss citizen entitled to residence under European Union law, or an Austrian citizen who has exercised the right to reside in another EEA Member State or in Switzerland and afterwards returned to reside permanently in Austria.

Family members must comply with the general requirements for obtaining a title. Capacity under a quota must also be available, as well as written confirmation by the competent regional office of the Public Employment Service Austria as specified in Art. 20e para 1 subpara 1 Act Governing the Employment of Foreigners.

Art. 21a Settlement and Residence Act specifies that, when applying for an RWR Card Plus as their first title, third-country nationals are required to demonstrate “a knowledge of German allowing at least elementary use of the language” (i.e. A1 level of the Common European Framework of Reference for Languages) prior to entry.<sup>17</sup>

#### *Residence title Family Member*

The residence title Family Member entitles holders to settlement for a specified period (Art. 8 para 1 subpara 8 Settlement and Residence Act) and to unrestricted access to the labour market.<sup>18</sup>

Art. 47 para 1 Settlement and Residence Act specifies the option of issuing a residence title Family Member in cases where the sponsor is an Austrian, EEA or Swiss citizen who permanently resides in Austria. The sponsor may not have exercised the right of residence for more than three months, as accorded to that person either under Community law or under the EC-Switzerland Agreement on the free movement of persons. To obtain this residence title, family members must meet the general requirements (Art. 47 para 2 Settlement and Residence Act). These requirements include evidence of German skills prior to entry and completion of module 1 of the Integration Agreement (Art. 14a and 21a Settlement and Residence Act).

17 Exceptions to this requirement include family members of individuals holding an RWR Card for very highly qualified workers or an EU Blue Card, or a Permanent Residence – EU residence title where the sponsor previously held an EU Blue Card. Minors below the age of 14 and persons with mental health issues are also exempted.

18 Austrian Federal Chancellery, *Aufenthaltsstitel “Familienangehöriger” – Antrag*, available at [www.help.gv.at/Portal.Node/hlpd/public/content/12/Seite.120401.html](http://www.help.gv.at/Portal.Node/hlpd/public/content/12/Seite.120401.html) (accessed on 10 November 2015).

### *Settlement Permit*

The Settlement Permit, which is issued for a specified period, entitles holders to pursue gainful self-employment (Art. 8 para 1 subpara 4).

Art. 46 para 4 Settlement and Residence Act specifies the option of issuing a Settlement Permit to family members of third-country nationals if they satisfy the general requirements, capacity is available under the quota for family reunification, and the sponsor holds a Settlement Permit or Settlement Permit – Dependant. German skills must be demonstrated already when first applying (Art. 21a Settlement and Residence Act).

### *Settlement Permit – Dependant*

A Settlement Permit – Dependant entitles the holder to settlement for a specified period but does not allow access to the labour market (Art. 8 para 1 subpara 6 Settlement and Residence Act).

Such a residence title is not limited to the nuclear family but can also be issued to family members in the wider sense as specified in Art. 47 para 3 Settlement and Residence Act.

The sponsor in this case must, pursuant to Art. 47 para 1 Settlement and Residence Act, satisfy the same criteria as in the case of the residence title Family Member (→ see above under Residence title Family Member). Family members must comply with the general requirements for obtaining a title. Additional requirements include the sponsor's declaration of liability and evidence of German skills prior to entry (Art. 21a Settlement and Residence Act).

### *Settlement Permit – Gainful Employment Excepted*

Pursuant to Art. 8 para 1 subpara 5 Settlement and Residence Act, the Settlement Permit – Gainful Employment Excepted entitles holders to settlement for a specified period but not to pursue gainful employment.

The Settlement Permit – Gainful Employment Excepted can be issued to family members if they meet the general requirements for obtaining a title. This residence title is granted on condition that the recipient demonstrates German skills on entry (Art. 21a Settlement and Residence Act) and completes module 1 of the Integration Agreement. Art. 46 para 5 Settlement and Residence Act additionally requires the sponsor to be entitled to freedom of establishment under a legal instrument of the European Union (EU) and thus hold a Settlement Permit. The sponsor may



also hold a Settlement Permit – Gainful Employment Excepted, where either: that person complies with the general requirements for obtaining a title and capacity under a quota is available, while providing evidence of a regular monthly income of twice the reference rates specified in Art. 293 of the General Social Insurance Act;<sup>19</sup> or the sponsor is a beneficiary of privileges and immunities, satisfies the general requirements for obtaining a title and is already retired. In the former case, the sponsor's family member can also be granted a Settlement Permit – Gainful Employment Excepted, subject to available capacity under the quota.

#### *Temporary Residence Permit – Family Cohabitation*

Pursuant to Art. 8 para 1 subpara 10 Settlement and Residence Act, a Temporary Residence Permit entitles the holder to temporary residence for a specified purpose.

Art. 8 para 3 in conjunction with Art. 69 allows a Temporary Residence Permit – Family Cohabitation to be issued to family members of third-country nationals, where they satisfy the general requirements for obtaining a title and the sponsor holds a Temporary Residence Permit which has not been issued either for a posted worker, a self-employed person, a school pupil or an individual providing social services (Art. 69 para 2 Settlement and Residence Act).

#### *2.1.3 Options for changing residence status*

For those holding a Red-White-Red Card Plus, a Settlement Permit – Gainful Employment Excepted or a Temporary Residence Permit – Family Cohabitation, it is possible to change the residence status to that of any of the target groups referred to in this study (→ refer to 2.2 to 2.11; 2.13), with the exception of victims of trafficking in human beings (→ refer to 2.14) and Visa D holders (→ refer to 2.12). It is also not possible to change to a Temporary Residence Permit – Provider of Social Services (under the category of other residence titles).

The above similarly applies to the residence title Family Member, with the addition that holders of this permit also have the option of changing to a Temporary Residence Permit – Provider of Social Services. This is practically the only arrangement under which it is possible to change to a

19 FLG I No. 189/1955, in the version of FLG I No. 18/1956.

Temporary Residence Permit – Provider of Social Services. For this reason, no further explicit mention is made of the non-existent option of changing to a Temporary Residence Permit for providing social services.

Individuals granted a Settlement Permit can change their residence status to that of any of the target groups under study here with the exception of the categories of seasonal employees, Visa D holders and victims of trafficking in human beings. Under the categories of employed and self-employed workers, any change is limited in each case to a Red-White-Red Card Plus.

Holders of a Settlement Permit – Dependant can change to a residence title Family Member, as well as to a title in the categories of education, employees, self-employed workers or asylum-seekers. As with the Settlement Permit, any change to the categories of employed and self-employed workers is limited in each case to a Red-White-Red Card Plus. Changing to this status is subject to the quota requirement, as specified in Art. 13 para 2 subpara 3 in conjunction with Art. 47 para 4 subpara 2 Settlement and Residence Act.<sup>20</sup>

Observations in practice reveal that individuals who are settled in Austria usually maintain their existing title. This is in fact the case with family members holding a residence title Family Member, which includes unrestricted labour market access. Except in the case of divorce, family members always retain the residence title Family Member until they become eligible for permanent residence status. Within this settlement category, no occasion for a status change arises. Thus, as Dietmar Hudsky of the Federal Ministry of the Interior observes, after the second year of settlement such individuals apply for renewal as a rule and for a status change only in rare cases.<sup>21</sup>

Dietmar Hudsky reports that in practice families are reunified in Austria mostly under sponsors who either hold a Red-White-Red Card Plus or already have a Permanent Residence – EU title. This means that authorities are required to issue the RWR Card Plus in almost every case. This title includes unrestricted access to the labour market. As such it is the best choice for family members, so that as a rule they do not seek to obtain

20 The 2015 Settlement Regulation allotted a total quota of 195 places for changing to this purpose of residence. The total quota is broken down into various federal quotas.

21 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

a normal Red-White-Red Card. The latter entails complicated procedures, while limiting the family member to a single employer during the first year. Where such a transition is not feasible, the Red-White-Red Card is obviously the most likely choice for a status change.<sup>22</sup>

#### *2.1.4 Change of rights*

When a family member changes residence titles from a Settlement Permit – Dependant to a Red-White-Red Card Plus (under the employee category), the individual acquires additional rights, specifically unrestricted access to the labour market.

A person changing from a Settlement Permit – Dependant to a Temporary Residence Permit – Student (under the education category) can obtain a work permit without submitting to a labour market test, provided the other requirements are met. However, the work permit can only be granted for a limited number of working hours – initially for up to ten hours of employment a week and later, upon completing either the first level of a five-year programme or a bachelor's degree, for up to 20 hours weekly (Art. 4 para 7 subpara 2 Act Governing the Employment of Foreigners). The reduced number of weekly working hours is apparently based on the requirement that the employment may not impede the exclusive purpose of the title, i.e. to pursue studies. Mention should also be made of the reduced scope of rights entailed in changing residence status in this case. The right to settlement for a specified period of three years at the most is transformed into temporary residence for a specified purpose, without the intention of settling in Austria and limited to a maximum of one year (Art. 20 para 1 and para 1a Settlement and Residence Act). It is also not possible to obtain the Permanent Residence – EU title (Art. 45 Settlement and Residence Act). The options for family reunification are also restricted under a Temporary Residence Permit – Student (Art. 46 para 4 subpara 3 Settlement and Residence Act). The family member can apply for a derived Temporary Residence Permit – Family Cohabitation (Art. 69 Settlement and Residence Act).

Similar restrictions apply to individuals who change from a residence title Family Member to a Temporary Residence Permit – Student. They subsequently require a work permit if they wish to pursue employment,

22 Ibid.

which would otherwise not be necessary with a residence title Family Member.

## **2.2 Education**

### *2.2.1 Definition*

School pupils and students as defined in the Settlement and Residence Act fall under this category.

Art. 63 para 1 Settlement and Residence Act specifies school pupils as:

- Pupils or students regularly enrolled at a public school;
- Pupils or students regularly enrolled at a private school under public law (subject to approval of the school statutes);
- Pupils or students at a non-scholastic educational institution which has been certified by the Federal Minister of the Interior (Art. 70 Settlement and Residence Act);
- Persons holding their first temporary residence permit who are irregularly enrolled as pupils or students at a public school or private school under public law.

Art. 64 para 1 Settlement and Residence Act defines students as persons who are regularly or irregularly enrolled to pursue a course of studies at one of the following types of institutions:

- University;
- University of applied science;
- Accredited private university;
- Teacher training college (public or recognized private);
- Recognized private course of studies or recognized private university-level course of studies;
- University course of studies not exclusively for the purpose of language acquisition.

### *2.2.2 Residence titles and related eligibility criteria*

#### *Temporary Residence Permit – School Pupil*

Art. 63 para 1 Settlement and Residence Act allows a Temporary Residence Permit – School Pupil to be issued to school pupils from third countries upon meeting the general requirements for obtaining a residence

title. In lieu of evidence of sufficient means, a declaration of liability is accepted as well as other evidence of third-party payments. In addition, schools – with the exception of those providing compulsory education – must confirm acceptance of the pupil in writing, while evidence that an adult residing in Austria will provide care and act as guardian is to be submitted for minor pupils (Schumacher et al., 2012:161).

The conditions under which the individual may pursue gainful employment are specified in the Act Governing the Employment of Foreigners, whereby employment must not impede the purpose of residence, i.e. education (Art. 63 para 2 Settlement and Residence Act).

#### *Temporary Residence Permit – Student*

To be issued a Temporary Residence Permit – Student, third-country nationals must satisfy the general requirements for obtaining a title. To pursue studies in Austria, individuals additionally have to meet the general and specific university eligibility requirements as well as provide evidence of German skills. Those unable to demonstrate German skills are only permitted to enrol as irregular students. Acceptance confirmation from the educational institution must be submitted when applying for the permit for the first time (Schumacher et al., 2012:158–159).

With regard to proving sufficient means and to pursuing employment, the rules are the same as for a Temporary Residence Permit – School Pupil.

#### *2.2.3 Options for changing residence status*

For those holding a Temporary Residence Permit for school pupils or students, it is possible to change their residence status to that of any of the target groups referred to in this study (→ refer to 2.1 to 2.11; 2.13), with the exception of Visa D holders (→ refer to 2.12) and victims of trafficking in human beings (→ refer to 2.14).<sup>23</sup> Within the category of education, school pupils can change to a Temporary Residence Permit – Student.

Students, i.e. persons with a Temporary Residence Permit – Student, who wish to apply for a Red-White-Red (RWR) Card in order to remain

23 The categories of research, EU Blue Card, highly skilled workers, employees and intra-company transferee do not reflect the real situation for the Temporary Residence Permit – School Pupil are thus not applicable.

in Austria upon completing their studies<sup>24</sup> can initially receive confirmation authorizing them to legally reside in Austria for six months for the purpose of seeking employment (Art. 64 para 4 Settlement and Residence Act); they can later be issued an RWR Card if they meet the specific requirements. Graduates finding suitable employment within that six-month period are entitled to apply for an RWR Card for university graduates (Art. 12b subpara 2 Act Governing the Employment of Foreigners).<sup>25</sup> Confirmation authorizing residence for the purpose of seeking employment cannot be renewed. University graduates thus enjoy simplified access to an RWR Card: they are not required to reach any minimum number of points based on the catalogue of criteria, while the level of gross monthly earnings which they have to prove is lower than that required for other applicants (Art. 12b subpara 2 Act Governing the Employment of Foreigners).<sup>26</sup> Additionally, no labour market test is required for university graduates. Upon successfully completing their course of studies, university graduates who already meet the requirements can, of course, immediately apply for an RWR Card (Art. 41 Settlement and Residence Act in conjunction with Art. 12 subpara 2 Act Governing the Employment of Foreigners).

24 The Temporary Residence Permit cannot be renewed after graduation or after discontinuing the course of studies.

25 Where, after changing residence status, students hold first a Red-White-Red Card and then an RWR Card Plus, half of their period of residence under the Temporary Residence Permit is recognized towards the period required to obtain a Permanent Residence – EU residence title. Consequently, (former) students can obtain an unlimited residence title as early as two and a half years after the status change (Schumacher et al., 2012:159–160).

26 Art. 12b subpara 2 Act Governing the Employment of Foreigners specifies that the applicant's gross monthly pay must "equal at least the normal level of pay in the area for university graduates with Austrian citizenship who have comparable work responsibilities and experience, and in any case be at least 45 per cent of the monthly maximum contribution base set forth in Art. 108 para 3 General Social Insurance Act". By way of comparison, other foreigners are required to provide evidence of at least 50 per cent (under age 30) or 60 per cent (over 30) of the monthly maximum contribution base specified in Art. 108 para 3 General Social Insurance Act.

#### *2.2.4 Differing requirements for obtaining a title*

In the case described above (→ refer to 2.2.3) involving a change from a Temporary Residence Permit – Student to a Red-White-Red Card (Art. 64 para 4 in conjunction with Art. 41 Settlement and Residence Act), the conditions for obtaining the RWR Card differ from those required to be met by first-time applicants for a title, specifically in that, for applicants successfully completing studies, the level of monthly pay to be demonstrated is lower, no minimum number of points has to be achieved and no labour market test takes place. Applicants are required to show that they have suitable employment.

#### *2.2.5 Change of rights*

When holders of a Temporary Residence Permit – Student subsequently obtain an RWR Card (under the category of very highly qualified workers), certain rights are simultaneously expanded. The RWR Card entitles the holder to settlement for a specified period and to pursue gainful employment under a specified employer. Subsequently, if employed for at least ten of the previous twelve months, individuals with such a title can apply for a Red-White-Red Card Plus. In this case half of their period of residence under the Temporary Residence Permit is recognized towards the period required to obtain a Permanent Residence – EU residence title. This means that under optimum circumstances former students can obtain an unlimited residence title just two and a half years after the status change. Changing the status from Temporary Residence Permit – Student to an RWR Card for very highly qualified workers also entails additional rights for family members in the event of reunification. Family members receive an RWR Card Plus, allowing them to pursue gainful employment without being tied to a certain employer.

## **2.3 Research**

### *2.3.1 Definition*

Researchers as defined in Art. 67 Settlement and Residence Act are persons who work for a research institution and have signed an employment contract with a certified research institution. Research institutions are certified by the Federal Ministry of the Interior for a five-year period,

specifically where “the research purpose of the institution is given”. The application for certification has to include a review by the Austrian Research Promotion Agency to evaluate the institution’s research purpose (Art. 71 para 1 Settlement and Residence Act).

The term “researcher” (*Forscher*) is not defined more specifically in Austrian aliens law. Here it can be useful, however, to refer to definitions found in EU legislation. One instance is in Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, which in Art. 2 (d) defines “researcher” as “a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required”. According to Art. 2 (b) of that Directive, “research” signifies “creative work undertaken on a systematic basis in order to increase the stock of knowledge ... and the use of this stock of knowledge to devise new applications”.

Another definition of research is found in the Framework for state aid for research and development and innovation<sup>27</sup> (on this issue, refer also to Lukits, 2015:289). In this document a distinction is made between fundamental research and applied research.<sup>28</sup> According to the Framework, “fundamental research” refers to “experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view”.<sup>29</sup> “Applied research”, by contrast, means “industrial research, experimental development, or any combination of both”.<sup>30</sup> “Industrial research” is defined here as “planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services.”<sup>31</sup> This is distinguished from “experimental development”, which refers to “acquiring, combining, shaping and using existing scientific, technological,

27 European Commission, *Communication from the Commission, Framework for State aid for research and development and innovation*, OJ C 198/1–29 (“Framework”).

28 Framework para 12 (a).

29 Framework para 15 (m).

30 Framework para 15 (e).

31 Framework para 15 (q).



business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services”.<sup>32</sup>

### *2.3.2 Residence titles and related eligibility criteria*

#### *Temporary Residence Permit – Researcher*

Scientists who work at a research institution certified by the Federal Minister of the Interior and whose field of activity is exempted from the scope of the Act Governing the Employment of Foreigners can apply for a Temporary Residence Permit – Researcher, as specified in Art. 67 Settlement and Residence Act. Whereas pursuant to Art. 21 para 2 subpara 6 Settlement and Residence Act the first application can be submitted in Austria, applicants are generally subject to visa requirements.

To obtain a Temporary Residence Permit – Researcher, applicants must satisfy the general requirements for obtaining a residence title and present an employment agreement signed with the research institution (Art. 68 Settlement and Residence Act). This agreement is in lieu of providing evidence of health insurance and sufficient means (Schumacher et al., 2012:113).

#### *Temporary Residence Permit – Special Cases of Dependent Gainful Employment (Art. 62 Settlement and Residence Act)*

Scientists who work for a non-certified research institution can obtain a Temporary Residence Permit – Special Cases of Dependent Gainful Employment, as specified in Art. 62 Settlement and Residence Act (→ refer to 2.6.2).

### *2.3.3 Options for changing residence status*

Individuals granted a Temporary Residence Permit – Researcher or a Temporary Residence Permit – Special Cases of Dependent Gainful Employment can change their residence status to that of any of the target groups under study here with the exception of the categories of Visa D holders and victims of trafficking in human beings. Under the categories of employed and self-employed workers, it is possible to change to a Red-White-Red (RWR) Card Plus. Researchers who have held a Temporary

32 Framework para 15 (j).

Residence Permit – Researcher for at least two years (Art. 67, 68 and 71 Settlement and Residence Act) and meet the general requirements for a title can obtain an RWR Card Plus, not subject to any quota (Art. 41a para 4 Settlement and Residence Act).

It should be additionally noted here that this status change option is a special one for holders of a Temporary Residence Permit – Researcher. Art. 41a para 4 Settlement and Residence Act specifies the possibility for such individuals of changing to an RWR Card Plus after two years. This represents a special advantage, according to Dietmar Hudsky of the Federal Ministry of the Interior. He points out that a person could theoretically change from any other residence title to an RWR Card Plus, but would have to indicate a specific purpose of residence in this case. For instance, someone holding a Temporary Residence Permit – Student could obtain an RWR Card Plus only if able to assert a specific purpose of residence, for example as a family member. When changing from a Temporary Residence Permit – Researcher to an RWR Card Plus, this special legal provision is of itself the reason for residence, which Dietmar Hudsky terms a significant privilege for such individuals.<sup>33</sup>

## **2.4 EU Blue Card**

### *2.4.1 Definition*

The EU Blue Card is issued to the category referred to as “key workers”. To be considered key workers, third-country nationals have to reach a minimum number of the points listed in a criteria catalogue and be able to expect a certain minimum level of pay from their future employer (→ refer to 2.4.2).

### *2.4.2 Residence titles and related eligibility criteria*

The EU Blue Card residence title entitles the holder to settle and to be employed as a key worker with a certain employer for a specified period of two years, or less if the employment contract runs for a shorter term. In the latter case the EU Blue Card is issued for the agreed term along with an additional three months (Art. 8 para 1 subpara 3 in conjunction with

33 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

Art. 42 Settlement and Residence Act, Art. 20d para 1 subpara 5 Act Governing the Employment of Foreigners).

To obtain the EU Blue Card, Art. 42 para 1 Settlement and Residence Act requires the applicant to meet the general requirements for obtaining any title, with the exception of having to provide evidence of accommodation to local standards and of sufficient means. Written confirmation must also be provided by the regional office of the Public Employment Service Austria that the conditions for employment eligibility have been met (Art. 20d para 1 subpara 5 Act Governing the Employment of Foreigners).

Applicants must additionally submit proof of the following:

- Graduation from at least a three-year course of studies at a tertiary institution of education (i.e. university, university of applied science or teacher training college; Art. 12c Act Governing the Employment of Foreigners);
- Status of the educational institution;
- Binding offer of at least one year of employment at a position appropriate to the applicant's education;
- Employer's declaration in accordance with the Act Governing the Employment of Foreigners;
- Annual salary of at least one and one half times the average gross annual salary of full-time employees in Austria (Art. 12c Act Governing the Employment of Foreigners).

The Public Employment Service Austria must additionally perform a labour market test to verify that there are no workers with the same qualification who are registered as job-seekers with the Public Employment Service Austria and could be placed with the company (Art. 12c in conjunction with Art. 4 para 1 Act Governing the Employment of Foreigners).

#### *2.4.3 Options for changing residence status*

Individuals granted an EU Blue Card can have their residence status changed to that of any of the target groups under study here with the exception of the categories of Visa D holders and victims of trafficking in human beings.

#### *2.4.4 Differing requirements for obtaining a title*

Individuals who change from an EU Blue Card to a Red-White-Red Card Plus gain the advantage of unrestricted access to the labour market, so that they are no longer bound to a specific employer. On the other hand, the new title authorizes residence in Austria for only one year, instead of the two years entailed with the EU Blue Card.

## **2.5 Highly qualified workers**

### *2.5.1 Definition*

“Highly qualified workers” are defined as persons achieving at least 70 of the 100 points listed in the criteria catalogue<sup>34</sup> (Art. 12 in conjunction with Annex A Act Governing the Employment of Foreigners). This category is intended for senior managers and researchers as well as other very highly qualified individuals.

### *2.5.2 Residence titles and related eligibility criteria*

#### *Red-White-Red Card for very highly qualified workers*

The Red-White-Red Card is intended to provide a means to workers from third countries of immigrating to Austria and finding employment, based on transparent criteria. No quota requirements apply in this case. Pursuant to Art. 8 para 1 subpara 1 Settlement and Residence Act, the Red-White-Red (RWR) Card entitles holders to settlement for a specified period with limited access to the labour market.

Art. 41 para 1 Settlement and Residence Act specifies the conditions for granting an RWR Card for highly qualified workers. Specifically, applicants have to meet the general requirements for obtaining a residence title and present written confirmation from the competent regional office of the Public Employment Service Austria as specified in Art. 20d para 1 subpara 1 Act Governing the Employment of Foreigners. It is thereby

34 For more details refer to: Federal Ministry of Labour, Social Affairs and Consumer Protection, *Very highly qualified workers*, available at [www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/very-highly-qualified-workers.html](http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/very-highly-qualified-workers.html) (accessed on 14 August 2015).

confirmed that the applicant meets the eligibility requirements for employment.

Very highly qualified workers are required to have completed a four-year course of studies at an institution of tertiary education, have qualifications consistent with the intended type of employment and satisfy in essence the conditions for obtaining a work permit. No labour market test is performed (Art. 12 in conjunction with Annex A Act Governing the Employment of Foreigners).

RWR Card holders are considered as having fulfilled module 1 of the Integration Agreement, even without evidence of having completed a German course (Schumacher et al., 2012:63).

### *2.5.3 Options for changing residence status*

Individuals granted a Red-White-Red Card for very highly qualified workers can change their residence status to that of any of the target groups under study here with the exception of the categories of Visa D holders and victims of trafficking in human beings. Under the category of family, very highly qualified workers can change to a residence title Family Member. Under the category of education, it is possible to change to a Temporary Residence Permit – Student or to a Red-White-Red Card Plus. Under the category of dependent employees, such individuals can also change to an RWR Card Plus; under the category of self-employed workers, a change to either a Settlement Permit or an RWR Card Plus is permitted.

### *2.5.4 Change of rights*

Holders of an RWR Card for very highly qualified workers who change to a Temporary Residence Permit – Student (under the education category) lose certain rights. With the new title they require a work permit to pursue employment, while their settlement status for a specific period becomes residence for a specified period and specified purpose without the intention of settlement, and they are no longer eligible to obtain a Permanent Residence – EU title. The possibilities for family reunification are similarly limited. The family member can apply for a derived Temporary Residence Permit – Family Cohabitation.

Very highly qualified workers with an RWR Card who change to an RWR Card Plus (under the employee category) enjoy unrestricted access to the labour market and are not tied to any one employer.

After changing to a residence title Family Member (under the family category), such individuals also have unrestricted access to the labour market and are not bound to a specific employer. In addition, after two years with settlement status and upon completing module 1 of the Integration Agreement, the title can be renewed for another three years.

## **2.6 Employees**

### *2.6.1 Definition*

Art. 4 para 2 of the General Social Insurance Act defines an “employee” as a person who is employed under a relationship of personal and economic dependency; this includes cases in which the person’s work is more strongly characterized by personal and economic dependency than is the case with the pursuit of gainful self-employment.

Art. 33 para 1 Settlement and Residence Act specifies that the authorization to pursue dependent gainful employment is determined based on the provisions of the Act Governing the Employment of Foreigners. This does not prejudice the requirement to obtain a residence permit in accordance with other provisions of law.

### *2.6.2 Residence titles and related eligibility criteria*

#### *Red-White-Red Card*

Cases falling under the category of employees include the issuing of a Red-White-Red Card (RWR Card) to skilled workers in shortage occupations, other key workers, graduates of an Austrian institution of tertiary education and to persons holding a Permanent Residence – EU residence title from another Member State.

Skilled workers in shortage occupations are individuals skilled in the occupations specified each year by the Federal Ministry of Labour, Social Affairs and Consumer Protection in the Regulation for Skilled Workers. The composition of the list depends on the current labour market situation

in Austria (Art. 12a in conjunction with Art. 13 Act Governing the Employment of Foreigners).<sup>35</sup>

Applicants can be issued an RWR Card if they satisfy the criteria above, where additionally the regional office of the Public Employment Service Austria notifies the authority in Austria competent for settlement and residence that the conditions for employment eligibility as specified in Art. 20d para 1 subpara 2 Act Governing the Employment of Foreigners have been met in this case (Art. 41 para 2 subpara 1 Settlement and Residence Act). No labour market test is conducted and module 1 of the Integration Agreement is regarded as completed (Schumacher et al., 2012:88).

Art. 12b subpara 1 in conjunction with Annex C Act Governing the Employment of Foreigners requires that third-country nationals seeking employment with a company as a key worker on the basis of their qualifications achieve the minimum number of points (50 of 75) listed in the related criteria catalogue.<sup>36</sup> A further requirement is for the company to provide the legal minimum amount of pay, which is a gross monthly amount of at least 50 per cent of the maximum contribution base for employees under 30 (2015: EUR 2,325) and 60 per cent for workers 30 and above (2015: EUR 2,790). Though no work permit is formally required, the requirements for obtaining one have to be met. In the case of other key workers a labour market test is performed. Applicants are issued an RWR Card if they satisfy the general requirements specified in the Settlement and Residence Act and where the regional office of the Public Employment Service Austria provides written notification that the conditions for employment eligibility as specified in Art. 20d para 1 subpara 3 Act Governing the Employment of Foreigners have been met in this case (Art. 41 para 2 subpara 2 Settlement and Residence Act).

35 On the shortage occupations in 2016, refer to Federal Ministry of Labour, Social Affairs and Consumer Protection, *Skilled workers in shortage occupations*, available at [www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/skilled-workers-in-shortage-occupations.html](http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/skilled-workers-in-shortage-occupations.html) (accessed on 9 February 2016).

36 For details, refer to Federal Ministry of Labour, Social Affairs and Consumer Protection, *Other key workers*, available at [www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/other-key-workers.html](http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/other-key-workers.html) (accessed on 14 August 2015).

University graduates from third countries who wish to obtain an RWR Card and to remain in Austria to seek employment may apply to stay a further six months, prior to expiry of their current residence title and after having successfully completed a study programme in Austria (Art. 64 para 4 and 5 Settlement and Residence Act).

Pursuant to Art. 41 para 2 subpara 3 in conjunction with Art. 12b para 2 Act Governing the Employment of Foreigners, university graduates meeting the general requirements for obtaining a residence title can be issued an RWR Card, provided that within those six months they provide evidence of an offer of employment corresponding to their level of education. The gross level of pay must equal at least the level normally paid to graduates in that field for comparable work and professional experience. The individual must nonetheless be paid at least 45 per cent of the monthly maximum contribution base (EUR 2,092.50), excluding special payments. Though no work permit is formally required, the requirements for obtaining one thus have to be met. No labour market test is performed. The regional office of the Public Employment Service Austria has to notify the authority in Austria competent for settlement and residence that the requirements for employment eligibility as specified in Art. 20d para 1 subpara 4 Act Governing the Employment of Foreigners have been met. Module 1 of the Integration Agreement is regarded as completed (Schumacher et al., 2012:92).

An RWR Card for pursuing dependent gainful employment can also be issued to highly qualified third-country nationals holding a Permanent Residence – EU residence title from another Member State (Art. 49 para 2 Settlement and Residence Act). Such individuals have to meet the general requirements for obtaining a title. In addition, capacity has to be available under a quota, while the regional office of the Public Employment Service Austria must confirm in writing that the employment eligibility requirements either for very highly qualified workers, skilled workers, key workers or university graduates have been met.

#### *Red-White-Red Card Plus*

The Red-White-Red Card Plus (RWR Card Plus) entitles third-country nationals to settle in Austria for a specified period and allows unrestricted access to the labour market. The title authorizes individuals to engage in gainful self-employment or to pursue dependent employment not limited



to a specific employer (Art. 8 para 1 subpara 2 Settlement and Residence Act in conjunction with Art. 17 Act Governing the Employment of Foreigners). The RWR Card Plus can be issued in the cases listed in Art. 41a Settlement and Residence Act.

#### *Temporary Residence Permit – Rotational Worker*

Art. 58 Settlement and Residence Act specifies the conditions for obtaining a Temporary Residence Permit – Rotational Worker. Such individuals are defined in Art. 2 para 10 Act Governing the Employment of Foreigners as persons whose employers are active across international borders and whose place of work alternates. Such are:

- Managing executives;
- Qualified employees in basic or advanced training;
- Agents representing interest groups in other countries.

As a first prerequisite for the approval of a Temporary Residence Permit, Art. 58 Settlement and Residence Act requires that rotational workers meet the general requirements for obtaining a title. In addition, one of the following conditions has to be satisfied:

- Conditional assurance;
- Work permit for rotational workers;
- Posting by a company group active across international borders to the Austrian headquarters for no more than 50 weeks as part of a basic or advanced training programme (Art. 18 para 3 subpara 2 Act Governing the Employment of Foreigners).

Employers can apply for conditional assurance on behalf of third-country nationals not yet residing in Austria. Such a document guarantees that a work permit will be issued to the third-country national, provided the individual immigrates to Austria within 26 weeks of the document date. The conditions for obtaining conditional assurance are the same as for a work permit, except that the recipient need not first have any right of residence (Schumacher et al., 2012:313).

#### *Temporary Residence Permit – Posted Worker*

As specified in Art. 18 para 1 Act Governing the Employment of Foreigners, posted workers are “foreigners who are employed in Austria by a foreign employer not having a place of business within Austrian territory”.

When applying for a Temporary Residence Permit – Posted Worker, Art. 59 Settlement and Residence Act requires the general requirements for obtaining a title to be met. The additional requirements include conditional assurance or a work permit for posted workers, where the posting period exceeds four months. Prior to the end of the fourth month, the owner of the business where the foreigner is employed is required to file an application for a work permit with the competent regional office of the Public Employment Service Austria (Art. 18 para 4 Act Governing the Employment of Foreigners).

#### *Temporary Residence Permit – Special Cases of Dependent Gainful Employment*

Examples of workers to whom a Temporary Residence Permit – Special Cases of Dependent Gainful Employment can be issued include: scientists (researchers) and teaching staff; counsellors and ministers of officially recognized religious communities; and foreign correspondents (agents commissioned by media organizations) from third countries.

Art. 62 Settlement and Residence Act requires the general requirements for obtaining a title to be met. The type of work as a dependent employee must not fall within the material scope of the Act Governing the Employment of Foreigners (Art. 1 para 2 to 4 Act Governing the Employment of Foreigners). Proof can also be requested showing that the individual is in fact pursuing the occupational activity applied for.

#### *Temporary Residence Permit – Artist*

Art. 61 Settlement and Residence Act specifies the possibility of issuing a Temporary Residence Permit to either dependently employed or self-employed artists from other countries who fulfil the general requirements for obtaining a title. When deciding whether the person's work is to be considered artistic, the main criteria applied by authorities is whether – irrespective of the design, material and genre – the individual pursues an artistic objective and works in a manner that is independently creative (Schumacher et al., 2012:104).

Distinctions are made under residence laws as to whether artists work for the short term or reside for an extended period in Austria and whether they are self-employed or work for an employer.

With regard to meeting the general requirements for obtaining a title, a declaration of liability can also be accepted. When working on a self-employed basis, the artist's income must be sufficient as a means of subsistence.

### *2.6.3 Options for changing residence status*

The options open to holders of a Red-White-Red Card or Red-White-Red Card Plus for changing their residence status have been discussed above (→ refer to 2.5.3 and 2.1.3).

Individuals granted a Temporary Residence Permit – Rotational Worker or a Temporary Residence Permit – Posted Worker can change their residence status to that of any of the target groups under study here with the exception of the categories of seasonal employees, Visa D holders and victims of trafficking in human beings. Those holding a Temporary Residence Permit – Special Cases of Dependent Gainful Employment can only change their status to a Red-White-Red Card (under the category of very highly qualified workers). In the case of individuals holding a Temporary Residence Permit – Artist, the status can only be changed either to a Red-White-Red Card (under the category of employees or very highly qualified workers), another Temporary Residence Permit (under the employee category), to a residence title Family Member or to the category of asylum-seekers.

Individuals who are granted a Red-White-Red Card as their first residence title usually change to a Red-White-Red Card Plus after the first year and remain with that title until they receive a permanent residence title.<sup>37</sup>

## **2.7 Self-employed workers**

### *2.7.1 Definition*

Self-employed workers are persons whose gainful employment, in contrast to that of employees, is not as strongly characterized by personal and economic dependency (→ refer to 2.6.1).

37 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

### *2.7.2 Residence titles and related eligibility criteria*

Except in cases of merely temporary self-employment,<sup>38</sup> in accordance with the provisions of the Settlement and Residence Act, third-country nationals require a corresponding residence title to take up gainful self-employment as specified in Art. 32 Settlement and Residence Act. Other types of authorization as required in federal or provincial legislation also have to be obtained.

#### *Temporary Residence Permit – Self-Employed Worker*

A Temporary Residence Permit – Self-Employed Worker can be issued to individuals not having the intention of settling, who work under self-employment for a period longer than six months as stipulated under an agreement. This is the case for third-country nationals who wish to reside in Austria temporarily on a project basis and not permanently.<sup>39</sup>

Art. 60 Settlement and Residence Act specifies the requirements for being granted this title. Specifically, applicants must meet the general requirements for obtaining a title. Where the settlement and residence authorities have doubts as to whether a case of self-employed activity is concerned, confirmation can be obtained from the provincial office of the Public Employment Service Austria that the activity is of this nature, compliance is given with the provisions of the Act Governing the Employment of Foreigners and the activity is “in the interests of Austria when viewed from the perspective of the economy and of labour market policy”.

#### *Settlement Permit*

The Settlement Permit, which is issued for a specified period, entitles holders to pursue gainful self-employment (Art. 8 para 1 subpara 4). It does not allow access to dependent gainful employment.

Art. 43 Settlement and Residence Act specifies the possibility of issuing a Settlement Permit to third-country nationals who meet the general requirements for a title and provide proof of basic German skills (A1 level),

38 Art. 2 para 7 Settlement and Residence Act defines a merely temporary gainful self-employment as that which “is pursued for not more than six months within a twelve-month period, where residence is maintained in a third country that continues to be the centre of vital interests”.

39 Thomas Neugschwendtner, *Vortrag Einführung Fremdenrecht*, 12 February 2015.

where such individuals have worked as a self-employed key worker in the previous twelve months and intend to continue this activity (change of status after having a Red-White-Red Card). The same applies to working as a very highly qualified worker, a skilled worker in a shortage occupation, another key worker or as a university graduate, or when the individual has a permit pursuant to the Act Governing the Employment of Foreigners. Third-country nationals who are entitled to freedom of establishment under a legal instrument of the EU are likewise entitled to apply for a Settlement Permit. In addition, individuals holding a Residence Permit (Plus) issued for one of the reasons in Art. 8 ECHR (Art. 55 Asylum Act), or due to particularly exceptional circumstances (Art. 56 Asylum Act) can change to a Settlement Permit after twelve months.

*Red-White-Red Card for self-employed key workers*

Pursuant to Art. 41 para 2 subpara 4 Settlement and Residence Act, a Red-White-Red Card for self-employed key workers is granted to third-country nationals who meet the general requirements for a title and where the provincial office of the Public Employment Service Austria confirms that this gainful self-employment in Austria has a benefit for the economy as a whole that supersedes any benefit merely for a company (Art. 24 Act Governing the Employment of Foreigners).

This is especially the case where the individual's activities are tied to a transfer of investment capital to Austria and/or the planned activities will create or secure jobs. To demonstrate the benefit for the economy as a whole, a "business plan" has to be submitted, describing the planned activity and including proof that investment capital amounting to at least EUR 100,000 will be transferred or that employment will be created (Schumacher et al., 2012:94).

Module 1 of the Integration Agreement is considered completed when the Red-White-Red Card is issued.

*Red-White-Red Card Plus*

→ Refer to 2.6.2.

*Temporary Residence Permit – Artist*

As described above under the category of employees, Art. 61 Settlement and Residence Act specifies the possibility of issuing a Temporary Residence

Permit to either dependently employed or self-employed artists from other countries who fulfil the general conditions for obtaining a title (→ refer to 2.6.2).

### *2.7.3 Options for changing residence status*

Individuals granted a Temporary Residence Permit – Self-Employed Worker or a Red-White-Red Card for self-employed key workers can change their residence status to that of any of the target groups under study here with the exception of the categories of seasonal employees, Visa D holders and victims of trafficking in human beings.

Within the employee category, persons holding a Temporary Residence Permit – Self-Employed Worker can change to a Temporary Residence Permit – Special Cases of Dependent Gainful Employment, a Temporary Residence Permit – Posted Worker or a Temporary Residence Permit – Rotational Worker. Holders of a Red-White-Red Card for self-employed key workers can change to a Red-White-Red Card under the category of very highly qualified workers as well as, under their previous category, to a Settlement Permit.

The options for changing status among those holding a Settlement Permit or a Red-White-Red Card Plus are discussed above (→ refer to 2.1.3). The same applies to the Temporary Residence Permit for self-employed artists (→ refer to 2.6.3).

## **2.8 Owners of companies**

### *2.8.1 Definition*

As defined in Art. 1 of the Austrian Commercial Code, an “entrepreneur” is a person who operates an organization, intended as permanent, for the purpose of independent economic activity, even if not profit-oriented. Yet this definition does not play any significant role in Austrian aliens law.

### *2.8.2 Residence titles and related eligibility criteria*

*Red-White-Red Card for self-employed key workers*

→ Refer to 2.7.2.

### *2.8.3 Options for changing residence status*

Company owners who hold a Red-White-Red Card for self-employed key workers can change their residence status to that of any of the target groups under study here with the exception of holders of a Visa D. Under the category of employees, such individuals can change to a Red-White-Red Card for very highly qualified workers, other key workers or skilled workers in a shortage occupation.

## **2.9 Seasonal employees**

### *2.9.1 Definition*

This category includes foreign workers who are authorized to be employed for a temporary period “in a certain sector of the economy, in a certain occupational group or region” (seasonal workers) and “harvest workers” (Art. 5 para 2 Act Governing the Employment of Foreigners).

### *2.9.2 Residence titles and related eligibility criteria*

#### *Work permit*

Art. 5 para 2 Act Governing the Employment of Foreigners specifies the possibility of issuing a work permit to seasonal employees for the purpose of pursuing employment for a specified period. A work permit valid for up to six months is regarded as a residence permit (Art. 31 para 1 subpara 6 Aliens Police Act).<sup>40</sup> Such work permits can be renewed for no more than an additional six months. The overall rule applies that work permits can be issued for a maximum of twelve months within any 14-month period. Work permits for harvest workers are allowed to be issued only for six weeks at a time and exclusively to persons entitled to enter Austria without a visa (Art. 5 para 2, 4 and 5 Act Governing the Employment of Foreigners).

Eligibility for such work permits also depends on a temporary need for additional workers that cannot be filled by either workers with Austrian citizenship or by regular registered seasonal workers. If such a need exists, the Federal Ministry of Labour, Social Affairs and Consumer Protection

40 FLG I No. 100/2005, in the version of FLG I No. 121/2015.

issues a regulation setting quotas for the temporary employment of persons under this category.

For persons eligible to enter the country without a visa, employers are required to apply to the aliens police for a certificate of non-objection (Art. 31 para 2 Aliens Police Act).

For persons requiring a visa, employers must apply for conditional assurance. If such a document is issued, the foreigner can personally apply with the Austrian representation authority abroad for a Visa D. The individual subsequently receives a work permit under the available quota.

### *2.9.3 Options for changing residence status*

The Administrative High Court handed down a ruling<sup>41</sup> determining that the work permit “is to be regarded as a residence and travel visa (Visa D+C, Art. 24 Aliens Police Act)”. As such “it does not represent a residence title as defined in the Settlement and Residence Act and is consequently not eligible either for a change of purpose or for renewal”.

## **2.10 Intra-corporate transferees**

### *2.10.1 Definition*

The category of intra-corporate transferees includes posted workers and rotational workers.

As specified in Art. 18 para 1 Act Governing the Employment of Foreigners, posted workers are “foreigners who are employed in Austria by a foreign employer not having a place of business within Austrian territory”.

Rotational workers are defined in Art. 2 para 10 Act Governing the Employment of Foreigners as persons whose employers are active across international borders and whose place of work alternates (→ refer to 2.6.2 under Temporary Residence Permit – Rotational Worker).<sup>42</sup>

41 Administrative High Court, 26 February 2013, 2009/22/0081.

42 Cf. Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157/1–22.



### *2.10.2 Residence titles and related eligibility criteria*

#### *Temporary Residence Permit – Posted Worker*

The requirements to be met for obtaining a Temporary Residence Permit for posted workers as specified in Art. 59 Settlement and Residence Act are discussed above under the category of employees (→ refer to 2.6.2).

#### *Temporary Residence Permit – Rotational Worker*

The same applies to the Temporary Residence Permit – Rotational Worker (→ refer to 2.6.2).

### *2.10.3 Options for changing residence status*

Individuals granted a Temporary Residence Permit – Posted Worker or a Temporary Residence Permit – Rotational Worker can change their residence status to that of any of the target groups under study here with the exception of the categories of seasonal employees, Visa D holders and victims of trafficking in human beings.

## **2.11 Investors**

### *2.11.1 Definition*

Austrian legislation contains no explicit definition of the term “investor”. The EMN defines investors as persons who intend to make a substantial investment in financial products or in a business but without being involved in the management of the business (European Commission 2015:5–6).

### *2.11.2 Residence titles and related eligibility criteria*

Based on the EMN definition, the following two categories or types of residence title can be classified as applicable to third-country investors immigrating to Austria:<sup>43</sup>

43 Biffi, G. (2014), *EMN Study: Admitting Third-Country Nationals for Business Purposes in Austria*, p. 4, available at [www.emn.at/images/EMN\\_Business\\_Study\\_2014\\_AT\\_EMN\\_NCP\\_final.pdf](http://www.emn.at/images/EMN_Business_Study_2014_AT_EMN_NCP_final.pdf) (accessed on 23 September 2015).

- Settlement Permit – Gainful Employment Excepted;
- Red-White-Red Card for self-employed key workers.

#### *Settlement Permit – Gainful Employment Excepted*

As specified in Art. 8 para 1 subpara 5 Settlement and Residence Act, the Settlement Permit – Gainful Employment Excepted entitles holders to settlement for a specified period but not to pursue gainful employment. The requirements to be met to obtain this type of Settlement Permit are described above under the family category (→ refer to 2.1.2).

#### *Red-White-Red Card for self-employed key workers*

The requirements to be met to obtain a Red-White-Red Card for self-employed key workers are described above under the category of self-employed workers (→ refer to 2.7.2).

#### *2.11.3 Options for changing residence status*

Investors granted a Settlement Permit – Gainful Employment Excepted can change their residence status to that of any of the target groups under study here with the exception of the categories of Visa D holders and victims of trafficking in human beings. Within the categories of very highly qualified workers and self-employed workers, such individuals can in each case change to a Red-White-Red Card.

The conditions applying to company owners with a Red-White-Red Card similarly apply to investors holding such a residence title (→ refer to 2.8.3).

## **2.12 Category D visa**

### *2.12.1 Definition*

Pursuant to Art. 20 para 1 Aliens Police Act, a Visa D is issued in these cases:

- Visa for a long stay in Austrian territory;
- Humanitarian visa;
- Visa for gainful purposes (as specified in Art. 24 Aliens Police Act, for merely temporary self-employed or dependently employed work or aliens employed for a specified period);
- Visa for job-seeking (very highly qualified workers);

- Visa for the granting of a residence title (subject to prior approval of the title);
- Visa for inclusion in the family procedure pursuant to the 2005 Asylum Act;
- Re-entry visa.

### 2.12.2 Residence rights and related eligibility criteria

#### *Long stay visa*

The Visa D has a scope of validity limited to Austria and can be issued for six months at the most (Art. 20 para 2 Aliens Police Act). The general requirements for obtaining such a visa are specified in Art. 21 Aliens Police Act. These include:

- Valid travel document;
- Assured later departure from Austria (except for visas issued for job-seeking or for the granting of a residence title);
- No grounds for refusal, such as:
  - Lack of adequate health insurance coverage;
  - Insufficient means of subsistence;
  - Endangerment of public order or security.

Art. 7 Aliens Police Act empowers Austrian representation authorities in other countries to issue the Visa D. Pursuant to Art. 8 Aliens Police Act, local competence is determined based on the alien's place of establishment or residence. In certain exceptional cases,<sup>44</sup> visas of this kind can also be issued to aliens at Austria's international borders upon request (Art. 24b Aliens Police Act).<sup>45</sup>

44 Conditions for issuing the visa at an international border:

- Fulfilment of the entry requirements specified in Article 5 para 1 (a) (c) (d) and (e) of the Schengen Borders Code;
- No possibility of previously applying for a visa as well as proof of unforeseeable and compelling grounds for entry;
- Return to the applicant's country of origin or residence or transit through other Schengen countries is deemed certain;
- In some cases, proof of humanitarian grounds or grounds of national interests or international obligations.

45 Federal Ministry of the Interior, *Fremdenpolizei und Grenzkontrollwesen, Einreise mit Visum, Zuständigkeiten*, available at [www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visum/Visum\\_2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visum/Visum_2.aspx) (accessed on 17 September 2015).

### *2.12.3 Options for changing residence status*

Individuals granted a Visa D can generally change their residence status to that of any of the target groups under study here with the exception of victims of trafficking in human beings.

An application for a change of purpose of residence is defined in Art. 2 para 1 subpara 12 Settlement and Residence Act as an application, submitted during the validity period of a residence title as defined in the Settlement and Residence Act, to be issued a residence title with another scope of purpose. Thus, the case here involves an option for changing the purpose of residence or residence status as defined in this study (→ refer to Introduction), but not an application for change of purpose of residence as defined in the Settlement and Residence Act.

Pursuant to Art. 2 para 1 subpara 11–13 Settlement and Residence Act, when an individual holding a Visa D applies for a residence title, the case is instead considered an initial application for a residence title as defined in that law. Initial applications are admissible in Austria only in the exceptional cases listed in Art. 21 para 2 Settlement and Residence Act. Furthermore, pursuant to Art. 21 para 6 Settlement and Residence Act, an initial application filed in Austria does not establish any right of residence beyond the scope of the stay permitted subject to a visa. Art. 11 para 1 subpara 5 Settlement and Residence Act prohibits any residence title to be issued to a foreigner who exceeds the period of stay permitted subject to a visa. Thus, in exceptional cases a change is possible, but only as long as the visa is valid.

## **2.13 Asylum-seekers**

### *2.13.1 Definition*

The term “asylum-seeker” is defined in Art. 2 para 1 subpara 14 Asylum Act as a foreigner “from the point in time when that person files an application for international protection until the final completion or discontinuation of the procedure or until deemed no longer relevant”.

Pursuant to Art. 17 para 2 Asylum Act, as amended by the 2015 Act Amending the Aliens Law,<sup>46</sup> the application is only considered filed once the Federal Office for Immigration and Asylum issues the order specified in Art. 43 para 1 Federal Office for Immigration and Asylum Procedures Act.<sup>47</sup> In detail, that provision requires the Federal Office for Immigration and Asylum, immediately after an application for asylum is submitted:

- by a foreigner entitled to residence, to order the person to appear at an initial reception centre or a regional directorate within 14 days;
- by a foreigner not entitled to residence, to order:
  - that the person be brought to an initial reception centre or a regional directorate for presentation to ensure action for the purpose of terminating residence;
  - that the person receive transportation at no expense to a specified federal reception facility, where it is not necessary for the person to be brought for presentation in order to continue the procedure.

Art. 43 para 2 Federal Office for Immigration and Asylum Procedures Act nonetheless allows the Federal Office for Immigration and Asylum to refrain from such an order “when the foreigner concerned has been detained, either pending deportation, due to a sentence of imprisonment, pending trial or in the context of another form of detention, or the foreigner cannot be cared for in a federal reception facility due to other unforeseeable circumstances.” In this case “after questioning and, if necessary, searching the person and processing items of identification, the application for international protection shall be deemed filed” (Art. 17 para 6 Asylum Act). In subsequent applications questioning can be waived under certain circumstances, as set forth in Art. 19 para 1 Asylum Act. A possible consequence is that the individuals concerned are not considered asylum-seekers.

Under Art. 10 para 6 Federal Office for Immigration and Asylum Procedures Act applications by minors under the age of 14 whose interests cannot be safeguarded by a legal representative are deemed filed when

46 FLG I No. 70/2015.

47 FLG I No. 87/2012.

submission of the application at an initial reception centre is confirmed in the presence of the minor's legal advisor. Asylum-seekers or foreigners granted asylum or subsidiary protection are also entitled to file with a regional directorate or a branch office of a regional directorate an application for international protection on behalf of a child born after entering Austria; this may also be done in writing (Art. 17 para 3 Asylum Act).

### *2.13.2 Right of residence*

#### *De facto protection against deportation*

While applying for international protection does not of itself establish a right of residence, except for certain cases of subsequent applications, foreigners enjoy de facto protection against deportation: this is in effect until an enforceable decision is issued or the procedure is discontinued or deemed no longer relevant. This means that applicants may be neither rejected at the border, forcibly returned nor removed (Art. 12 para 1 Asylum Act).

#### *Right of residence after admission*

Art. 13 Asylum Act specifies the admission of the asylum procedure as establishing a right of residence.

### *2.13.3 Options for changing residence status*

Broadly speaking, asylum-seekers are not generally permitted to change to any other status category except to that of seasonal employee.

It should be noted in this context that changing between a status under the Settlement and Residence Act and one under the Asylum Act is only possible in limited cases. Whereas foreigners are entitled to apply for asylum during legal residence under a residence title pursuant to the Settlement and Residence Act, no transition in the other direction is allowed.<sup>48</sup> Foreigners entitled to residence as asylum-seekers (i.e. within the framework of a pending asylum procedure) cannot obtain a residence title under the Settlement and Residence Act, since Art. 1 para 2 subpara 1 Settlement and Residence Act excludes foreigners with a residence status under the Asylum Act from the scope of applicability of the Settlement and Residence

48 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

Act. The general rule valid for the Settlement and Residence Act applies here, which states that foreigners having a right of residence based on asylum law or enjoying de facto protection against deportation do not fall within the scope of the Settlement and Residence Act.<sup>49</sup> In such a case, the individual concerned would have to wait until an initial negative decision is issued and then either refrain from filing a complaint or first withdraw any complaint filed in the asylum procedure,<sup>50</sup> in order to be able to apply for a residence title. However, this would qualify as an initial application as defined in the Settlement and Residence Act, in which case it is not normally admissible to submit the application inside the country (Art. 21 Settlement and Residence Act).<sup>51</sup>

## **2.14 Victims of trafficking in human beings**

### *2.14.1 Definition*

Within Austrian legislation the criminal act of trafficking in human beings is defined in Art. 104a of the Criminal Code.<sup>52</sup> Such an act is committed by anyone who, “with the intent of allowing the exploitation of a person of full age (para 3) and using unfair means (para 2) against that person, solicits that person, gives the person accommodation or otherwise harbours the person, transports the person, or offers or passes the person on to another party”.

49 Refer to: Materialien zur Neukodifikation eines BFA-Einrichtungsgesetzes und BFA-Verfahrensgesetzes sowie Novellierung des Asylgesetzes 2005, des Fremdenpolizeigesetzes 2005, des Niederlassungs- und Aufenthaltsgesetzes, des Staatsbürgerschaftsgesetzes 1985, des Grundversorgungsgesetzes – Bund 2005 und des Einführungsgesetzes zu den Verwaltungsverfahrensgesetzen 2008, p. 47.

50 Asylum-seekers are not entitled to withdraw an application for international protection during the procedure with the Federal Office (Art. 25 para 2 Asylum Act) unless lawfully settled in Austria (Art. 2 para 2 Settlement and Residence Act). Withdrawing an application for international protection in the procedure before the Federal Administrative Court is considered a withdrawal of the complaint.

51 Interview with Thomas Neugschwendtner, Attorney, 14 September 2015; interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015; interview with Judith Hörlsberger, Counselling Centre for Migrants, 15 September 2015.

52 FLG I No. 60/1974.

### *2.14.2 Residence titles and related eligibility criteria*

#### *Residence Permit for Individual Protection*

The Residence Permit for Individual Protection can be granted on authorities' initiative or upon substantiated application, to individuals including witnesses or victims of trafficking in human beings or of cross-border trafficking in prostitution (Art. 57 para 1 subpara 2 Asylum Act). In this case as well, third-country nationals' residence must not conflict with public interests (Art. 60 para 3 Asylum Act). Further conditions include the initiation of criminal proceedings or action under civil law to enforce claims, related to trafficking in human beings or cross-border trafficking in prostitution.

### *2.14.3 Options for changing residence status*

Victims of trafficking in human beings who hold a Residence Permit for Individual Protection can change to the category of asylum-seekers or apply for a Red-White-Red Card Plus (under the category of employees or self-employed workers).

### *2.14.4 Differing requirements for obtaining a title*

Compared with applying for a Red-White-Red Card Plus as the first title, different requirements have to be met when changing from a Residence Permit for Individual Protection to a Red-White-Red Card Plus. Specifically, the conditions for granting the Residence Permit for Individual Protection, as set forth in Art. 57 Asylum Act, still have to apply in this case (Art. 41a para 3 Settlement and Residence Act in conjunction with Art. 59 para 4 Asylum Act). In addition, the applicant has to have completed module 1 of the Integration Agreement and satisfy the general requirements for obtaining a title.

### *2.14.5 Change of rights*

Victims of trafficking in human beings who hold a Residence Permit for Individual Protection and then change to a Red-White-Red Card Plus (under the category of employees or self-employed workers) receive the additional right of unrestricted access to the labour market. Under the previous status, labour market access is possible only under a work permit



(without a labour market test). With the new status, family reunification is also an option.

## **2.15 Other residence titles and related eligibility criteria**

### *2.15.1 Residence permits*

#### *Temporary Residence Permit – Provider of Social Services*

To obtain a Temporary Residence Permit – Provider of Social Services, applicants are required to meet the following specific requirements listed in Art. 66 para 1 Settlement and Residence Act, in addition to the general requirements:

- The activity does not fall under the Act Governing the Employment of Foreigners;
- The services are provided “with a non-partisan, charitable organization which does not pursue any commercial goals”;
- The provider of the services does not pursue any commercial goals;
- The organization presents a declaration of liability;
- Proof of the activity being related to education or training.

Art. 66 para 2 Settlement and Residence Act specifies that the Temporary Residence Permit for providing social services is valid for a maximum of one year and is not renewable.

#### *Residence titles for exceptional circumstances*

Art. 54 para 1 Asylum Act provides for the option of issuing “residence titles for exceptional circumstances“ in these forms:

- Residence Permit Plus;
- Residence Permit;
- Residence Permit for Individual Protection.

The provisions governing these permits, referred to as “humanitarian” residence titles, are found in Art. 54–57 Asylum Act. Art. 54 para 2 specifies a twelve-month period of validity for the residence titles listed above. Unlike the Residence Permit for Individual Protection, the Residence Permit Plus and the Residence Permit cannot be renewed.

### *Residence Permit Plus*

Pursuant to Art. 54 para 1 subpara 1 Asylum Act, the Residence Permit Plus entitles the holder to reside in Austria for a specified period as well as to unrestricted access to the labour market as defined in Art. 17 Act Governing the Employment of Foreigners.

Art. 55 para 1 Asylum Act specifies that the Residence Permit is granted to third-country nationals either upon their request or on the authorities' initiative, where the application for asylum has been rejected but a return decision is not admissible in the long term. This is the case where termination of residence would interfere with the individual's private and family life, as specified in Art. 8 of the European Convention on Human Rights (ECHR). To obtain the permit, third-country nationals additionally must have completed module 1 of the Integration Agreement (A2 level language competence; Art. 14a Settlement and Residence Act) or legally pursue gainful employment with monthly pay equalling at least the minimum earnings threshold (Art. 5 para 2 General Social Insurance Act).

### *Residence Permit*

Pursuant to Art. 54 para 1 subpara 2 Asylum Act, the Residence Permit entitles the holder to reside within the country for a specified period and to pursue gainful employment on a dependent or self-employed basis. A suitable permit as specified in the Act Governing the Employment of Foreigners is a prerequisite for pursuing employment.

The requirements for obtaining a Residence Permit are the same as for the Residence Permit Plus, except that the individual is not required to complete module 1 of the Integration Agreement or earn monthly pay equalling at least the minimum earnings threshold (Art. 55 para 2 Asylum Act).

### *Residence title for particularly exceptional circumstances*

Art. 56 Asylum Act specifies the additional option of granting a Residence Permit Plus in particularly exceptional circumstances upon substantiated application. To qualify when applying, the third-country national has to have resided within the country without interruption for at least the previous five years, at least half of which and in any case three years of which must have been as a legal resident. The applicant additionally has to have completed module 1 of the Integration Agreement (A2 level

language competence; Art. 14a Settlement and Residence Act) or legally pursue gainful employment with monthly pay equalling at least the minimum earnings threshold (Art. 5 para 2 General Social Insurance Act).

Art. 56 para 3 Asylum Act requires that consideration be given in particular to the degree to which third-country nationals are integrated, their capability of supporting themselves, level of school education and vocational training, employment and knowledge of the German language.

The additional requirements for obtaining the title, as specified in Art. 60 para 2 Asylum Act, are listed below:

- Legal entitlement (agreement or property) to adequate accommodation by local standards;
- Coverage by a health insurance providing benefits in Austria and covering all risks;
- Secure means of subsistence;
- No impairment of Austria's relations with another country.

Art. 56 para 3 Asylum Act allows proof of accommodation, health insurance and of a secure means of subsistence to be provided in the form of a declaration of sponsorship (Art. 2 para 1 subpara 26 Asylum Act).

Where the applicant has not completed module 1 of the Integration Agreement, only a Residence Permit is to be issued. In other respects the requirements are the same as for a Residence Permit Plus for exceptional circumstances.

#### *Residence Permit for Individual Protection*

Pursuant to Art. 54 para 1 subpara 3 Asylum Act, the Residence Permit for Individual protection entitles the holder to reside within the country for a specified period and to pursue gainful employment on a dependent or self-employed basis, in which case an appropriate permit pursuant to the Act Governing the Employment of Foreigners is also required (Art. 54 para 1 subpara 3 Asylum Act).

It can be issued, on authorities' initiative<sup>53</sup> or upon substantiated application, to the following categories of individuals:

53 The possible granting of the permit on authorities' initiative is to be reviewed in cases where the application for international protection has been rejected, both with regard to asylum status as well as the status of a beneficiary of subsidiary protection (Art. 58 para 1 Asylum Act).

- individuals whose stay has been tolerated for at least one year, with the conditions for that status still existing;
- witnesses or victims of trafficking in human beings or cross-border prostitution (→ refer to 2.14.1);
- victims of violence, where such individuals are illegally residing within the country and an interim injunction as specified in Art. 382b or 382e Enforcement Code<sup>54</sup> has been issued or could have been issued. In this case the third-country national must plausibly demonstrate that the issuing of a Residence Permit for Individual Protection is necessary in order to prevent further violence.

### *Tolerated stay*

Allowing foreigners to stay when their removal would be inadmissible or impossible is tolerated. Art. 31 para 1a subpara 3 Aliens Police Act specifies that tolerated aliens are not legal residents of Austria. The requirements for “tolerated stay” are set forth in Art. 46a para 1 Aliens Police Act. Here it is specified that the removal of the foreigner concerned must be inadmissible or “impossible for factual reasons for which the alien is not responsible”. Another such case is where a return decision would be inadmissible because of intervening in the individual’s private or family life as specified in Art. 8 of the ECHR, unless the case falls within the jurisdiction of another country.

Where an individual meets all of the requirements for a tolerated stay, the Federal Office for Immigration and Asylum is obliged to issue a “Card for Tolerated Stay” to the person (Art. 46a para 4 Aliens Police Act). The stay is deemed tolerated from the date when the card is issued to the holder or, if prior to that, the date when fulfilment of the requirements was formally recognized with final effect (Art. 46a para 6 Aliens Police Act).

### *2.15.2 Options for changing residence status*

Individuals holding a Temporary Residence Permit – Provider of Social Services cannot change their status except in the cases specified in Art. 47 para 2 Settlement and Residence Act (residence title Family Member). Similarly, a Temporary Residence Permit for providing social services may

54 Imperial Law Gazette No. 79/1896.

not be issued to persons holding a residence permit with another scope of purpose or holding another residence title.

Foreigners under tolerated stay may change to any category except Visa D.

Persons holding a Residence Permit Plus for the reasons specified in Art. 8 ECHR or for particularly exceptional circumstances can change to a Red-White-Red Card Plus under the employee category or to a Settlement Permit or a Red-White-Red Card Plus under the self-employed category. The same applies to individuals holding a Residence Permit for the reasons specified in Art. 8 ECHR or for particularly exceptional circumstances. For holders of a Residence Permit for Individual Protection it is possible to change to a Red-White-Red Card Plus under the employee or self-employed workers category.

The Asylum Act requires the Federal Office for Immigration and Asylum to reject any application for a humanitarian residence title submitted by foreigners who are entitled to residence under the Settlement and Residence Act (Art. 58 para 9 subpara 2 Asylum Act).<sup>55</sup> According to an attorney specialized in asylum law, difficulties could consequently result for individuals who hold a residence title under the Settlement and Residence Act but are not entitled to the same high level of labour market access as is accorded with a humanitarian residence title.<sup>56</sup> As a result, with respect to gaining a right to stay in Austria, individuals having a right of residence are disadvantaged compared with those not entitled to residence. A person could obtain a humanitarian residence title by allowing the current residence status to become irregular (e.g. by intentionally filing a renewal application late or not at all or upon refusal of the renewal). Even so, such a procedure entails significant risk (Schumacher et al., 2012:176).<sup>57</sup>

55 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

56 Interview with Thomas Neugschwendtner, Attorney, 14 September 2015.

57 Ibid; interview with Judith Hörlsberger, Counselling Centre for Migrants, 15 September 2015. Refer also to Schumacher, S. et al., 2012, *Fremdenrecht*, ÖGB Verlag, Vienna, p. 176.

## 3. POLICY GOALS PURSUED THROUGH THE STATUS CHANGE OPTIONS

### 3.1 Specific policy goals of status change options

As described below, the framework for regulating changes of residence status or purpose is specifically aimed at preventing individuals from abusing or circumventing existing legal institutions, as well as at making the option of remaining in Austria more attractive for particularly desirable categories of individuals.

Biffi (2013, 2014) observes a shift in focus of Austrian migration policy in recent years, towards employment and promoting access to employment. The first pillar of a points-based system was erected in 2011 by introducing the Red-White-Red Card, specifically for qualified and highly qualified foreigners. At the same time an option for third-country nationals of changing their immigration status and purpose of residence was promoted, allowing immediate and unrestricted access to the labour market without requiring a labour market test (Red-White-Red Card Plus). This option is targeted not only at graduates of Austrian universities but also at other groups, including individuals under special protection for humanitarian reasons (Biffi, 2013:45).

The Red-White-Red Card Plus was intended to make it easier for university graduates to remain in Austria after completing their studies.<sup>58</sup> An expert with the Federal Ministry of the Interior cites an additional policy goal pursued by allowing university graduates to change their status to that of a Red-White-Red Card. Specifically, the requirements for obtaining the Red-White-Red Card were to be simplified for those foreigners who have completed their studies in Austria and wish to stay in the country to work in qualified employment, compared with individuals applying outside of Austria for their first Red-White-Red Card.<sup>59</sup>

58 Kurier, *Zuwanderung: Top-Stürmer statt Forscher*, 5 December 2012, available at <http://kurier.at/karrieren/weiterbildung/zuwanderung-top-stuermer-statt-forscher/729>.<sup>591</sup> (accessed on 27 September 2015).

59 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

During the first six months after introduction, 192 status changes resulting in the Red-White-Red Card and 2,909 leading to the Red-White-Red Card Plus were issued. The annual number of status changes increased continuously, reaching 566 changes to the Red-White-Red Card and 4,420 to the Red-White-Red Card Plus in 2014 (refer to Table 2 in the annex).

The Federal Ministry of the Interior has stated that there is in fact a certain underlying policy objective for those few cases in which special rules for residence status changes have been defined. These special regulations in certain cases are not a matter of coincidence. In enshrining the special regulations on change of status or purpose of residence in the Settlement and Residence Act, policy makers pursue a two-fold intention: to prevent behaviour that circumvents or abuses laws, and to give preferential treatment to certain individuals due to their living situation by providing them with an incentive to reside in Austria.<sup>60</sup>

Another goal underlies the regulation which expressly prohibits holders of a Temporary Residence Permit for providing social services from changing their purpose of residence. The legal and factual background, and thus also the underlying policy, is the notion that the Temporary Residence Permit for providing social services should not offer any opportunity to obtain a more permanent right of residence.<sup>61</sup>

According to the Federal Ministry of the Interior, considerations related to residence laws and migration policy are also behind the highly restricted options for individuals holding a Settlement Permit – Dependant to change to a Red-White-Red Card Plus, as specified in Art. 47 para 4 Settlement and Residence Act. A Settlement Permit – Dependant is issued to family members in a wider sense of Austrian nationals. Considering the great difficulty in estimating the number of individuals falling under this category, as well as the fact that labour market access for this group is regarded as a pull factor to be avoided, the Ministry states that it was intentionally decided in this case to exclude access to the labour market from this residence title. An added restriction is the special quota applying to such individuals when they wish to change to a Red-White-Red Card Plus. This represents a specific policy measure aimed at enhanced control of the

60 Ibid.

61 Ibid.

number of persons entering the labour force through the reunification of extended families.<sup>62</sup>

A final aspect is the special option allowing a change of residence status from a Temporary Residence Permit – Researcher to a Red-White-Red Card Plus after two years and the associated better legal conditions for researchers. The underlying intention here was to make Austria a highly attractive country for researchers to work in. According to an official with the Federal Ministry of the Interior, this provision is becoming less significant as researchers are now increasingly opting for a Red-White-Red Card Plus. Nevertheless a certain number of individuals reportedly continue to apply for and receive a Temporary Residence Permit – Researcher. It is noted that, for such individuals, the prospect of easily being able to change to settlement status after two years is a very relevant consideration.<sup>63</sup> Specifically, a Temporary Residence Permit – Researcher was issued in 248 cases in 2014. A similar figure was recorded several years earlier in 2010, when such a title was issued to 209 individuals (Federal Ministry of the Interior, n.d.a:21; Federal Ministry of the Interior, n.d.c:35). In an additional 47 cases in 2014, approval was granted to change the purpose of residence to correspond to this temporary residence permit. This figure was lower than in 2010, when an individual's status changed to that of Temporary Residence Permit – Researcher in 57 instances (refer to Table 2 in the Annex).

In summary, in defining the special regulations of the Settlement and Residence Act for changes of purpose or residence status, policy makers pursue a two-fold intention. The first is to prevent behaviour that circumvents or abuses laws (e.g. the cases of providing social services, or humanitarian right of residence), while the second is to give preferential treatment to certain individuals by providing them due their living situation with an incentive to reside in Austria.

According to an official of the Federal Ministry of the Interior, the measures described above are not based on any detailed needs analysis.<sup>64</sup>

62 Ibid.

63 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

64 Ibid.



### 3.2 Evaluation of status change options and media analysis

No official evaluation of the measures permitting third-country nationals to change their residence status exists for Austria. Although no official evaluation of this issue is available, certain indications are found in the media. In accordance with the common study template, such information is discussed in the following. In early 2014 there was a public debate on the “brain drain”, concerning highly qualified third-country nationals who leave the country again after completing their studies in Austria.<sup>65</sup> There was a discussion in the media on the lack of adequate action for retaining international talent in Austria.<sup>66</sup> Since its introduction in 2011, the number of Red-White-Red Cards has remained well below expectations. A discussion of the options for revision arose as a result (Gächter, 2015:21–22), especially focused on bachelor and doctoral level graduates. Certain conditions are criticized as being too strict, namely that the subsequent employment of international university graduates has to be in their field of study and that they must provide evidence of a certain level of income. In the media it is

- 65 Ibid, p. 22. Refer also to: Kleine Zeitung, *Akademiker als „Exportschlager“*, 19 March 2014, p. 34; Wiener Zeitung, *Hochqualifizierte verlassen das Land*, 18 March 2014, available at [www.wienerzeitung.at/nachrichten/oesterreich/politik/616115\\_Hochqualifizierte-verlassen-das-Land.html](http://www.wienerzeitung.at/nachrichten/oesterreich/politik/616115_Hochqualifizierte-verlassen-das-Land.html) (accessed on 27 September 2015); Der Standard, *Rot-Weiß-Rot-Karte: ÖVP will Zugang noch heuer erleichtern*, 5 November 2014, available at <http://derstandard.at/2000007765959/OeVP-will-rasche-Einigung-bei-Rot-Weiss-Rot-Karte> (accessed on 12 September 2015); Kurier, *Kurz fordert flexibleren Zugang zur Rot-Weiß-Rot-Karte*, 3 April 2014, available at <http://kurier.at/politik/inland/kurz-fordert-flexibleren-zugang-zur-rot-weiss-rot-karte/59.033.776> (accessed on 27 September 2015).
- 66 Wiener Zeitung, *Fehlende Strategien für ausländische Talente*, 8 July 2014, available at [www.wienerzeitung.at/themen\\_channel/bildung/uni/643542\\_Fehlende-Strategien-fuer-auslaendische-Talente.html](http://www.wienerzeitung.at/themen_channel/bildung/uni/643542_Fehlende-Strategien-fuer-auslaendische-Talente.html) (accessed on 27 September 2014).

speculated that only a small percentage of third-country graduates from Austrian universities obtain or make use of the Red-White-Red Card.<sup>67</sup>

It has been observed in the same context that university graduates wishing to become self-employed or start up businesses have very limited prospects of obtaining a Red-White-Red Card, in particular due to the large amount of investment required.<sup>68</sup>

On the other side of the debate, representatives of authorities have asserted the possibility of abuse, were the requirements to be relaxed; for the opposition parties, in contrast, the discussion in the media was an opportunity to express demands for “a realistic system” and easier access to the Red-White-Red Card Plus for third-country nationals.<sup>69</sup>

67 Der Standard, *OECD-Forderung: Österreich soll Regeln für Rot-Weiß-Rot-Card lockern*, 16 December 2014, available at <http://derstandard.at/2000009448399/OECD-fordert-Lockerungen-bei-Regeln-fuer-Rot-Weiss-Rot> (accessed on 12 September 2015); Die Presse, *Arbeitsmarkt: Warum die Guten nicht kommen*, 3 May 2014, available at [http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt\\_Warum-die-Guten-nicht-kommen](http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt_Warum-die-Guten-nicht-kommen) (accessed on 12 September 2015); Wiener Zeitung, *Hochqualifizierte verlassen das Land*, 18 March 2014, available at [www.wienerzeitung.at/nachrichten/oesterreich/politik/616115\\_Hochqualifizierte-verlassen-das-Land.html](http://www.wienerzeitung.at/nachrichten/oesterreich/politik/616115_Hochqualifizierte-verlassen-das-Land.html) (accessed on 27 September 2015); Der Standard, *Weiter kein Ansturm auf Rot-Weiß-Rot-Card*, 29 July 2014, available at <http://derstandard.at/2000003663534/Weiter-kein-Ansturm-auf-Rot-Weiss-Rot-Card> (accessed on 12 September 2015); Wiener Zeitung, *Fehlende Strategien für ausländische Talente*, 8 July 2014, available at [www.wienerzeitung.at/themen\\_channel/bildung/uni/643542\\_Fehlende-Strategien-fuer-auslaendische-Talente.html](http://www.wienerzeitung.at/themen_channel/bildung/uni/643542_Fehlende-Strategien-fuer-auslaendische-Talente.html) (accessed on 27 September 2014).

68 Die Presse, *Arbeitsmarkt: Warum die Guten nicht kommen*, 3 May 2014, available at [http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt\\_Warum-die-Guten-nicht-kommen](http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt_Warum-die-Guten-nicht-kommen) (accessed on 12 September 2015).

69 Der Standard, *OECD-Forderung: Österreich soll Regeln für Rot-Weiß-Rot-Card lockern*, 16 December 2014, available at <http://derstandard.at/2000009448399/OECD-fordert-Lockerungen-bei-Regeln-fuer-Rot-Weiss-Rot> (accessed on 12 September 2015); Format, *Ungewollte Hilfe für Kurz*, 19 February 2014, available at [www.format.at/politik/oesterreich/ungewollte-hilfe-kurz-372734](http://www.format.at/politik/oesterreich/ungewollte-hilfe-kurz-372734) (accessed on 27 September 2015). Refer also to Gächter, A. et al., (2015), *EMN Study: Determining Labour Shortages and the Need for Labour Migration from Third Countries in Austria*, p. 22, available at [www.emn.at/images/Studies/EMN\\_LabourShortages2015\\_AT\\_EMN\\_NCP\\_en.pdf](http://www.emn.at/images/Studies/EMN_LabourShortages2015_AT_EMN_NCP_en.pdf) (accessed on 26 September 2015).

### 3.3 Impact of status changes on the Austrian economy

No studies or reports have been published that deal with the issue of how changes of residence status impact the Austrian economy. In a 2013 report, Biffi/Bock-Schappelwein only briefly observe that the gains due to renewals and changes of purpose as well as the losses on account of changes of purpose, “while resulting in movements between the categories of purpose of residence, do not have any overall impact on the total number of valid residence titles” (Biffi/Bock-Schappelwein, 2013:76).

One evaluation was carried out with regard to very highly qualified job-seekers. Of those without a concrete job offer who received a six-month visa for the purpose of seeking employment in Austria,<sup>70</sup> less than half found a suitable offer of employment in the country and subsequently satisfied the requirements for changing to a Red-White-Red Card for very highly qualified workers. Specifically, after the introduction of this type of visa, 202 applications were filed, while only 104 met the requirements for it. When this figure is compared with the number of Red-White-Red Cards issued under this category, it is seen that a mere 39 of the 104 individuals holding a visa for seeking employment actually received a Red-White-Red Card for very highly qualified workers (with a total of 47 applications). The successful group of very highly qualified job-seekers includes almost without exception Russian IT technicians and programmers, economists and mathematicians.<sup>71</sup>

### 3.4 Contribution of the system of residence status change to the prevention of irregular migration

An expert with the Federal Ministry of the Interior has stated that the relatively permissive rules for changing residence status in Austria additionally function well in preventing certain types of irregularity in practice, for instance when an individual who has resided in Austria for several years no

70 Individuals who have obtained a visa to seek employment can apply for an RWR Card as very highly qualified workers if they are able to present an employment offer during the validity period of the visa.

71 Public Employment Service Austria, *Geschäftsbericht 2013*, 2014, p. 44, available at [www.ams.at/\\_docs/001\\_geschaeftsbericht\\_2013.pdf](http://www.ams.at/_docs/001_geschaeftsbericht_2013.pdf) (accessed on 22 September 2015).

longer qualifies for the previous purpose of residence. It is observed how inappropriate it would be to restrict an individual to only one purpose of residence and then to attempt, often unsuccessfully, to terminate residence after several years. Permitting such status changes is also helpful in view of developing a system of residence along reasonable lines, it is claimed. It is noted that protection mechanisms are already in place through the residence requirements imposed on the individual concerned. On the other hand, it is said, status changes should not be rendered easier than necessary, only to allow the individual to obtain any right whatever to reside in Austria. This is claimed as being one of the reasons for limiting the possibility of transitioning from a right of residence on humanitarian grounds to a status under the Settlement and Residence Act.<sup>72</sup>

72 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

## 4. CHALLENGES

### *Challenges facing the competent authorities in structuring and implementing residence status changes for third-country nationals*

According to an official of the Federal Ministry of the Interior, one of the central issues in the area of status change facing the competent authorities is access to the labour market, a right that is usually very important and highly attractive for the individuals concerned. The issue has reportedly come more strongly into focus since framework Directive 2011/98/EU of the European Union<sup>73</sup> entered into effect, which is intended to introduce a single application procedure for a single permit for third-country nationals to reside and work in EU Member States. Thus, it is noted, when issuing a residence title, a decision generally also has to be taken on whether to grant labour market access, since the granting of both rights is to be decided in one procedure.

Yet, the ministry official reports, with regard to completing procedures involving status change applications in practice, no challenges worth mentioning exist.<sup>74</sup>

### *Challenges facing applicants for a change of status*

The challenges that applicants face regarding a change of status substantially depend on the type of residence title they are applying for.

For the applicants concerned it can in general be a challenge to meet the requirements for changing the purpose of residence. Beyond the general requirements (→ refer to 2.) they must additionally satisfy the special conditions for the particular purpose of stay or status – including the German language skills requirement.

University graduates wishing to obtain a Red-White-Red Card (RWR Card) encounter extensive difficulties in practice (cf. Gächter, 2015:21–22). This is especially true in the case of individuals graduating

73 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

74 Interview with Dietmar Hudsky, Federal Ministry of the Interior, 25 August 2015.

from bachelors and doctoral programmes, specifically due to the minimum income requirement, which many find difficult to meet, as well as the obligation for employment to correspond to the graduate's field of study.<sup>75</sup>

The minimum salary required for the RWR Card is not adjusted based on the number of hours the applicant works. In many cases this results in having to accept full-time employment, which hardly allows further education to be continued at the same time.<sup>76</sup>

An additional challenge facing university graduates is the period of six months conceded to them for finding employment; several stakeholders view this period as too short (→ refer to 3.2).<sup>77</sup>

- 75 Der Standard, *OECD-Forderung: Österreich soll Regeln für Rot-Weiß-Rot-Card lockern*, 16 December 2014, available at <http://derstandard.at/2000009448399/OECD-fordert-Lockerungen-bei-Regeln-fuer-Rot-Weiss-Rot> (accessed on 12 September 2015); Die Presse, *Arbeitsmarkt: Warum die Guten nicht kommen*, 3 May 2014, available at [http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt\\_Warum-die-Guten-nicht-kommen](http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt_Warum-die-Guten-nicht-kommen) (accessed on 12 September 2015); Wiener Zeitung, *Dickicht der Bürokratie*, 10 July 2014, available at [www.wienerzeitung.at/nachrichten/wien/stadtpolitik/643634\\_Dickicht-der-Buerokratie.html](http://www.wienerzeitung.at/nachrichten/wien/stadtpolitik/643634_Dickicht-der-Buerokratie.html) (accessed on 12 September 2015); Der Standard, *Rot-Weiß-Rot-Karte: ÖVP will Zugang noch heuer erleichtern*, 5 November 2014, available at <http://derstandard.at/2000007765959/OeVP-will-rasche-Einigung-bei-Rot-Weiss-Rot-Karte> (accessed on 12 September 2015); Kurier, *Kurz fordert flexibleren Zugang zur Rot-Weiß-Rot-Karte*, 3 April 2014, available at <http://kurier.at/politik/inland/kurz-fordert-flexibleren-zugang-zur-rot-weiss-rot-karte/59.033.776> (accessed on 27 September 2015); Salzburger Nachrichten, *Irrsinn in Rot-Weiß-Rot*, 1 July 2014, available at [www.salzburg.com/nachrichten/meinung/standpunkt/sn/artikel/irrsinn-in-rot-weiss-rot-112202/](http://www.salzburg.com/nachrichten/meinung/standpunkt/sn/artikel/irrsinn-in-rot-weiss-rot-112202/) (accessed on 27 September 2015).
- 76 Wiener Zeitung, *Dickicht der Bürokratie*, 10 July 2014, available at [www.wienerzeitung.at/nachrichten/wien/stadtpolitik/643634\\_Dickicht-der-Buerokratie.html](http://www.wienerzeitung.at/nachrichten/wien/stadtpolitik/643634_Dickicht-der-Buerokratie.html) (accessed on 12 September 2015); Der Standard, *Rot-Weiß-Rot-Karte: ÖVP will Zugang noch heuer erleichtern*, 5 November 2014, available at <http://derstandard.at/2000007765959/OeVP-will-rasche-Einigung-bei-Rot-Weiss-Rot-Karte> (accessed on 12 September 2015).
- 77 Die Presse, *Arbeitsmarkt: Warum die Guten nicht kommen*, 3 May 2014, available at [http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt\\_Warum-die-Guten-nicht-kommen](http://diepresse.com/home/wirtschaft/economist/3800622/Arbeitsmarkt_Warum-die-Guten-nicht-kommen) (accessed on 12 September 2015); Der Standard, *Rot-Weiß-Rot-Karte: ÖVP will Zugang noch heuer erleichtern*, 5 November 2014, available at <http://derstandard.at/2000007765959/OeVP-will-rasche-Einigung-bei-Rot-Weiss-Rot-Karte> (accessed on 12 September 2015); Salzburger Nachrichten, *Irrsinn in Rot-Weiß-Rot*, 1 July 2014, available at [www.salzburg.com/nachrichten/meinung/standpunkt/sn/artikel/irrsinn-in-rot-weiss-rot-112202/](http://www.salzburg.com/nachrichten/meinung/standpunkt/sn/artikel/irrsinn-in-rot-weiss-rot-112202/) (accessed on 27 September 2015); Wiener Zeitung, *Fehlende Strategien für ausländische Talente*, 8 July 2014, available at [www.wienerzeitung.at/themen\\_channel/bildung/uni/643542\\_Fehlende-Strategien-fuer-auslaendische-Talente.html](http://www.wienerzeitung.at/themen_channel/bildung/uni/643542_Fehlende-Strategien-fuer-auslaendische-Talente.html) (accessed on 27 September 2014).

Age can represent an additional challenge for changing residence status. Individuals over 40 who have completed training or education are nonetheless unable to achieve the minimum number of points that the system requires for the RWR Card – even if they provide evidence of being skilled workers with occupational experience and German skills.<sup>78</sup>

Some types of status change are subject to a quota, which can also be a challenge. It is possible for an application for status change to be rejected, even though the individual meets all of the requirements, because the – in some cases low – total quota of residence titles of that type has already been exhausted.

78 Wiener Zeitung, *Dickicht der Bürokratie*, 10 July 2014, available at [www.wienerzeitung.at/nachrichten/wien/stadtpolitik/643634\\_Dickicht-der-Buerokratie.html](http://www.wienerzeitung.at/nachrichten/wien/stadtpolitik/643634_Dickicht-der-Buerokratie.html) (accessed on 12 September 2015).

# ANNEX

## A.1 Statistics

Table 1: Residence titles issued on the basis of a change of purpose by reason (2010–2014)

Change from:	Change to:	2010	2011	2012	2013	2014
Family	Education	0	1	3	0	7
	Paid employment	2	4	6	0	4
	Other reasons	4	249	211	2	161
	<i>Total</i>	<i>6</i>	<i>254</i>	<i>220</i>	<i>2</i>	<i>172</i>
Education	Family	62	61	69	48	78
	Paid employment	98	107	90	27	129
	Other reasons	18	15	8	12	7
	<i>Total</i>	<i>178</i>	<i>183</i>	<i>176</i>	<i>87</i>	<i>214</i>
Paid employment	Family	15	11	13	3	7
	Education	42	40	46	41	20
	Other reasons	5	7	5	1	7
	<i>Total</i>	<i>62</i>	<i>58</i>	<i>64</i>	<i>45</i>	<i>34</i>
Other reasons	Family	36	45	141	4	68
	Education	1	0	0	5	0
	Paid employment	4	1	3	2	0
	<i>Total</i>	<i>41</i>	<i>46</i>	<i>144</i>	<i>11</i>	<i>68</i>

Source: Eurostat, 2015.



Table 2: Residence titles issued on the basis of a change of purpose (2010–2014)

Changes to:	2010	2011	2012	2013	2014
<b>Temporary Residence Permits:</b>	<b>708</b>	<b>757</b>	<b>795</b>	<b>832</b>	<b>806</b>
<i>Special Protection (abolished)</i>	0	0	1	1	n/a
<i>Posted Worker</i>	5	1	1	0	0
<i>Family Cohabitation</i>	92	81	71	89	89
<i>Researcher</i>	57	60	36	43	47
<i>Artist</i>	34	45	49	43	59
<i>Rotational Worker</i>	4	4	6	1	5
<i>School Pupil</i>	133	136	160	201	227
<i>Self-Employed Worker</i>	1	4	1	1	0
<i>Special Cases of Dependent Gainful Employment</i>	134	126	87	131	95
<i>Students</i>	248	300	383	322	284
<b>Settlement permits subject to a quota:</b>	<b>511</b>	<b>445</b>	<b>341</b>	<b>282</b>	<b>365</b>
<i>Settlement Permit – Gainful Employment Excepted</i>	15	12	11	20	21
<i>Settlement Permit – Restricted (abolished)</i>	297	211	n/a	n/a	n/a
<i>Settlement Permit – Unrestricted (abolished)</i>	65	29	n/a	n/a	n/a
<i>Settlement Permit</i>	n/a	54	95	88	4
<i>Red-White-Red Card Plus</i>	n/a	67*	235	174	340
<i>Key Worker (abolished)</i>	134	72**	n/a	n/a	n/a
<b>Settlement permits not subject to a quota:</b>	<b>2,644</b>	<b>5,087</b>	<b>5,686</b>	<b>3,882</b>	<b>31,361</b>
<i>Blue Card EU</i>	n/a	n/i	n/i	n/i	8
<i>Permanent Residence – EU</i>	n/i	n/i	n/i	n/i	25,986
<i>Settlement Permit – Dependant</i>	18	23	23	26	33
<i>Settlement Permit – Gainful Employment Excepted</i>	0	0	1	3	1
<i>Settlement Permit – Restricted (abolished)</i>	33	15	n/a	n/a	n/a
<i>Settlement Permit – Unrestricted (abolished)</i>	1,889	996	1	n/a	n/a
<i>Settlement Permit – Family Member</i>	598	918	588	590	675
<i>Settlement Permit</i>	n/a	29	64	140	12
<i>Red-White-Red Card</i>	n/a	192*	418	441	566
<i>Red-White-Red Card Plus</i>	n/a	2,842*	4,591	2,682	4,080
<i>Key Worker (abolished)</i>	106	72**	n/a	n/a	n/a

Source: Federal Ministry of the Interior, n.d.

Note: \* The residence titles „Red-White-Red Card” and „Red-White-Red Card Plus” have been introduced as of 1 July 2011.

\*\* The residence title „Key Worker” existed until 30 June 2011.

## A.2 List of translations and abbreviations

English term	English abbreviation	German term	German abbreviation
Act Establishing the Federal Office for Immigration and Asylum	–	BFA-Einrichtungsgesetz	BFA-G
Act Governing the Employment of Foreign Nationals	–	Ausländerbeschäftigungsgesetz	AuslBG
administrative offence	–	Verwaltungsübertretung	–
aliens police	–	Fremdenpolizei	–
Aliens Police Act	–	Fremdenpolizeigesetz	FPG
aliens/foreigners	–	Fremde	–
apprenticeship	–	Lehre	–
Asylum Act	–	Asylgesetz	AsylG
branch office	–	Außenstelle	–
Citizenship Act	–	Staatsbürgerschaftsgesetz	StbG
Code of Criminal Procedure	–	Strafprozeßordnung	StPO
complaint	–	Beschwerde	–
conditional assurance	–	Sicherungsbescheinigung	–
decision, written	–	Bescheid, schriftlicher	–
departure	–	Ausreise	–
district commissions	–	Bezirkshauptmannschaften	BH
EU Member State	–	EU-Mitgliedstaat	–
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Economic Area	EEA	Europäischer Wirtschaftsraum	EWR
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Union	EU	Europäische Union	EU
exclusion order	–	Aufenthaltsverbot	–
Federal Administrative Court	–	Bundesverwaltungsgericht	BVwG
Federal Basic Welfare Support Act	–	Grundversorgungsgesetz – Bund	GVG-B
Federal Chancellery	–	Bundeskanzleramt	BKA
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBL
Federal Ministry for Europe, Integration and Foreign Affairs	–	Bundesministerium für Europa, Integration und Äußeres	BMEIA
Federal Ministry of Labour, Social Affairs and Consumer Protection	–	Bundesministerium für Arbeit, Soziales und Konsumentenschutz	BMASK
Federal Ministry of the Interior	–	Bundesministerium für Inneres	BMI
Federal Office for Immigration and Asylum	–	Bundesamt für Fremdenwesen und Asyl	BFA
Federal Office for Immigration and Asylum Procedures Act	–	BFA-Verfahrensgesetz	BFA-VG

English term	English abbreviation	German term	German abbreviation
Federation of Austrian Industries	–	Industriellenvereinigung	IV
General Social Insurance Act	–	Allgemeines Sozialversicherungsgesetz	ASVG
governor of the province	–	Landeshauptmann/Landeshauptfrau	LH
Initial Reception Centre	–	Erstaufnahmestelle	EAST
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
key worker	–	Schlüsselkraft	–
Member State	MS	Mitgliedstaat	–
National Action Plan for Integration		Nationaler Aktionsplan für Integration	NAP
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
non-governmental organization	NGO	Nichtregierungsorganisation	NRO
Organisation for Economic Co-operation and Development		Organisation für wirtschaftliche Zusammenarbeit und Entwicklung	OECD
Permanent Residence – EU	–	Daueraufenthalt – EU	–
police administration(s) of the provinces	–	Landespolizeidirektion(en)	LPD
posted worker	–	Betriebsentsandter	–
province	–	Bundesland	–
Public Employment Service Austria	–	Arbeitsmarktservice Österreich	AMS
public peace and/or order	–	Öffentliche Sicherheit und/oder Ordnung	–
Red-White-Red Card (Plus) – <i>very highly qualified</i> – <i>skilled workers in shortage occupations</i> – <i>other key workers</i> – <i>university graduates</i> – <i>self-employed key workers</i>	RWR Card	Rot-Weiß-Rot – Karte (plus) – <i>besonders Hochqualifizierte</i> – <i>Fachkräfte in Mangelberufen</i>  – <i>sonstige Schlüsselkräfte</i> – <i>StudienabsolventInnen</i> – <i>selbständige Schlüsselkräfte</i>	RWR – Karte
Regulation for Skilled Workers	–	Fachkräfteverordnung	–
removal	–	Abschiebung	–
Residence Act	–	Aufenthaltsgesetz	–
residence permit (plus)	–	Aufenthaltsberechtigung (plus)	–
Residence Permit for Individual Protection	–	Aufenthaltsberechtigung besonderer Schutz	–
residence title	–	Aufenthaltsstitel	–
residence title for exceptional circumstances	–	Aufenthaltsstitel aus berücksichtigungswürdigen Gründen	–
residence title for particularly exceptional circumstances	–	Aufenthaltsstitel in besonders berücksichtigungswürdigen Fällen	–
return decision	–	Rückkehrentscheidung	–
return, forced	–	Rückführung	–

English term	English abbreviation	German term	German abbreviation
rotational worker	–	Rotationsarbeitskraft	–
Schengen Borders Code	–	Schengener Grenzkodex	–
self-employed person	–	Selbstständiger	–
Settlement	–	Niederlassung	–
Settlement and Residence Act	–	Niederlassungs- und Aufenthaltsgesetz	NAG
Settlement Permit – Dependant	–	Niederlassungsbewilligung – Angehöriger	–
Settlement Permit – Gainful Employment Excepted	–	Niederlassungsbewilligung – ausgenommen Erwerbstätigkeit	–
Settlement Regulation	–	Niederlassungsverordnung	NLV
shortage occupations	–	Mangelberufe	–
skilled workers	–	Fachkräfte	–
social partners	–	Sozialpartner	–
Temporary Residence Permit	–	Aufenthaltsbewilligung	–
termination of residence	–	Aufenthaltsbeendigung	–
third-country national	–	Drittstaatsangehöriger	–
tolerated stay <i>Card for Tolerated Stay</i>	–	Duldung <i>Karte für Geduldete</i>	–
trafficked person	–	Betroffene/r von Menschenhandel	–
unaccompanied minors	UAM	unbegleitete Minderjährige	–
United Nations High Commissioner for Refugees	UNHCR	Flüchtlingshochkommissariat der Vereinten Nationen	UNHCR
vocational education and training	–	Berufsausbildung	–
United Nations High Commissioner for Refugees	UNHCR	Flüchtlingshochkommissariat der Vereinten Nationen	UNHCR
vocational education and training	–	Berufsausbildung	–

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