

Employment of foreign filmmakers in Germany

Introduction

In a networked business like the film industry, the film crew often consists not only of national but also of international filmmakers. If it comes to a cooperation with foreign colleagues or if a complete film team wants to shoot in Germany, some laws and regulations concerning the law on foreigners have to be considered when entering and working in Germany. This factsheet is intended to explain general processes and provide important information on the subject of residence and work permits.

In principle, however, it is recommended that you contact the relevant immigration authorities or the Federal Employment Agency (FEA) directly in specific cases, as the legal basis is very complex and this information sheet cannot cover all cases.

Basic

The legal basis for the employment of foreign filmmakers in Germany is formed by various laws and ordinances. These include, above all, the Residence Act (Aufenthaltsgesetz), the Residence Ordinance (Aufenthaltsverordnung) and the Employment Ordinance (Beschäftigungsverordnung).

Two legal areas are involved in the employment of foreign filmmakers: Residence and employment. The German diplomatic mission abroad is responsible for the entry of persons requiring a visa, and the foreigners authority at the respective place of residence/work is responsible for the stay of persons not requiring a visa, whereby the Federal Employment Agency is consulted for longer-term employment.

Regulations for nationals of the EU, EEA, Switzerland

Citizens of the EU (European Union), with the exception of Bulgaria, Romania and Croatia, and the EEA (European Economic Area) do not generally require a residence or work permit for Germany.

EU member states		EEA member states
Belgium	Luxembourg	Iceland
Bulgaria	Malta	Liechtenstein
Denmark	Netherlands	Norway
Germany	Austria	
Estonia	Poland	
Finland	Portugal	
France	Romania	

Greece	Sweden	
Great Britain	Slovakia	
Ireland	Slovenia	
Italy	Spain	
Croatia	Czech republic	
Latvia	Hungary	
Lithuania	Cyprus	

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Exceptions: Bulgaria, Romania, Croatia and Switzerland

Bulgaria, Romania and Croatia are EU member states, but for a transitional period nationals need an EU work permit. This does not apply to university graduates who work in an occupation that corresponds to the content and salary of their degree. Furthermore, all freelance activities (see delimitation catalog) are exempt from work permits.

According to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, Swiss nationals are exempt from the requirement of a residence title. As far as the agreement provides that the right of residence is certified by a residence permit, this residence title is applied for and granted at the foreigners department. This is the case if the Swiss national intends to pursue gainful employment in the Federal territory for longer than 3 months or intends to stay in the Federal territory for longer than 3 months. An entry visa is not required.

Regulations for third country nationals

Third countries are all countries except member states of the European Union, Iceland, Liechtenstein, Norway, Switzerland. To clarify the licensing requirement, the following aspects are basically decisive:

- Origin: What is the nationality of the filmmaker?

Here it is important to find out whether or not there is a visa requirement for entry into Germany. A visa requirement requires the prior application for an entry permit even for a tourist stay. A list with current information about the visa requirement is provided by the German Foreign Office.

- Duration of stay: How long will the filmmaker stay in Germany in total?

Does he/she have previous stays in Germany (periods of time, if applicable)? With regard to the duration of stay, a primary distinction must be made between a total stay

- a) from up to 3 months and

b) over 3 months

- Duration of employment: How long should I work in Germany?

With regard to the duration of employment, a primary distinction must be made between employment

a) of up to 3 months within a 12-month period (the 12-month period is calculated back from the last working day of the planned employment in Germany. All employment, also for other employers, may not exceed a total of 3 months) in the context of a foreign film and television production.

b) over 3 months

- Type of employment: How is work done in Germany?

Here, a basic distinction is made between three possibilities: secondment, self-employed / freelance and employed

Case A

Case A occurs as soon as one or more of the following statements are true:

- The filmmaker comes from a third country with a visa requirement.
- The stay and/or the employment will exceed a period of 3 months (90 days).
- the filmmaker is employed in Germany (no secondment).

In these cases, an entry permit (visa) entitling the holder to take up work must be applied for before entering Germany. The filmmaker can obtain this from a German mission abroad (embassy or consulate with a visa office) responsible for his or her place of residence. Information on the documents to be submitted and other formalities can be found on the website of the respective foreign mission.

Exception: Nationals of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the United States of America may enter Germany without a visa, also for the purpose of taking up employment, and may apply for a residence title (residence permit and work permit) in Germany at the local foreigners authority (§ 41 Aufenthaltsverordnung). Processing times vary greatly depending on the workload of the foreigners authorities. Employment may only be taken up once the residence title has been issued. If reference periods are to be observed according to Schengen law (SDÜ), these must be observed.

Case B – Secondment

One option for filmmakers from third countries without a visa requirement who are employed for a period of up to 3 months in the context of foreign film and television productions is secondment. A secondment is when an employer based abroad orders the filmmaker from abroad to Germany to perform work.

The work performed, together with any previous activities in Germany, may not exceed a period of three months. All activities, also for other employers, in a 12-month period are considered. The twelve months are counted back from the expected last working day of the upcoming secondment.

It does not matter whether it is a dependent employment relationship or a freelance activity.

Research / scouting or meetings as a business trip

Third-country nationals requiring a visa can apply for a visit or business visa for research, location tours or production meetings. Short stays are handled with a so-called "Schengen visa", which is valid for a maximum of 90 days in a 6-month period and entitles the holder to a short-term stay in all Schengen states. It is not permitted to take up gainful employment requiring a permit with a "Schengen visa".

Filmmakers from countries such as India, Russia or China often need a so-called "declaration of commitment" for the approval of this visa. This is an invitation from a natural or juristic person (company, business or association) who is liable for all costs that the public authorities might incur due to the visitor. The place of residence or business or association headquarters must be in Germany. Non-German hosts need a residence permit with a validity of at least 6 months. With the declaration of liability, the host assures to provide for the living expenses of the incoming person. In addition to food, housing, clothing and other basic needs, subsistence also includes care in case of illness and need for nursing care. In case of deportation of the foreigner, particularly high costs may arise due to the return journey and accommodation or detention pending deportation. To ensure that the host can meet such liability, a credit check is carried out.

The declaration of commitment of a third party living in the territory of the Federal Republic of Germany must always be submitted to the foreigners authority responsible for the intended place of residence in the territory of the Federal Republic of Germany. If the third party has his or her usual place of residence in the district of another foreigners authority, the latter shall accept the declaration of commitment and the necessary evidence by way of administrative assistance and forward them to the competent foreigners authority without delay. In the case of legal entities, the foreigners authority of the registered office of the legal entity shall be responsible.

Before entering the country, the guest must apply for the visa in person at the German mission responsible for his or her place of residence, together with all the necessary documents.

Visa procedure

The entry permit (visa) must be applied for by the respective applicant in person at the German diplomatic mission responsible for his/her place of residence together with all necessary documents prior to entry.

If a work permit is required in addition to the entry permit, the procedure can take several weeks, occasionally two to three months. Depending on the case, the Federal Employment Agency and/or the foreigners authority responsible for the German place of residence may also be involved in the procedure. The foreign mission may only issue the visa applied for once the approvals for employment and/or entry have been obtained.

If the Federal Employment Agency has to be involved, it is necessary to submit an engagement contract in order to check whether foreigners are employed under less favorable working conditions than comparable employees in Germany. The contract should therefore include details of working hours, pay and other working conditions. Detailed information on how to submit all the necessary documents can be obtained from the relevant foreign representative office.

Attention

If employment is taken up without the correct permit, not only are fines possible, but under certain circumstances also measures to terminate residence on the grounds of illegal residence. The Residence Act also contains its own penal provisions (in particular Section 95 of the Residence Act). Furthermore, the production company is threatened with the denial of a work permit for employees requiring a work permit. For these reasons, the permit must be available on the first day of the start of employment.

Evidence

The obligation to verify the correctness of employment is not only incumbent on the applicant, but also on the employer (Section 4 (3) Residence Act). The employer must be able to confirm the filmmaker's lawful employment, for example, in the form of a copy of the visa. If the work does not take place in compliance with all requirements, the employer may face consequences.

Laws / Regulations

Legal foundation

- http://www.gesetze-im-internet.de/aufenthg_2004/index.html
Law on the Residence, Employment and Integration of Foreigners in the Federal Territory
- <http://www.gesetze-im-internet.de/aufenthv/index.html>
Supplementary provisions for the implementation of the Residence Act
- https://www.gesetze-im-internet.de/beschv_2013/
Ordinance on the Employment of Foreign Nationals
- <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:DE:PDF>
- <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:DE:PDF>
- <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2802%29:de:HTML>

This information sheet was prepared in close cooperation with the Stuttgart Foreigners Registration Office and the Central Placement Office of the Federal Employment Agency (CPOFEA). The status of this document is 28.08.2019. All contents refer to the laws, regulations and procedures applicable at that time. The Foreigners' Registration Office and the CPOFEA point out that this leaflet is only for initial orientation and does not represent a final assessment of visa, residence permit and work permit requirements. In order to obtain legal certainty, it is strongly advised to contact these offices.

Contact

Competent foreign authority Stuttgart		
City of Stuttgart	State Capital Stuttgart Office for Public Order 32-41 Eberhardstr. 39 70173 Stuttgart	Entry and work team Fax 07 11 -216 -3512 or 07 11 -216 -1970 Email auslaenderrecht.arbeit@stuttgart.de Web www.stuttgart.de
Federal Employment Agency		
	Federal Employment Agency Central Foreign and Specialist Placement Office Villemombler Str. 76 53123 Bonn	Bernd Feyand Special Labor Market Admissions Officer Tel.0228 -713 -1094 fax 0228 -713 -1600 Email: ZAV-Bonn.AMZ- Kuenstler@arbeitsagentur.de Web: www.zav.de
For questions or problems		
Stuttgart region	Film Commission Stuttgart Region Breitscheidstr. 4 70174 Stuttgart	Tel.0711 -228 35 - 720 Email: film@region-stuttgart.de Web: www.film.region-stuttgart.de
Links		
www.auswaertiges-amt.de		Foreign Office
www.zuwanderung.de		Immigration in Germany
www.bamf.de		Federal Office for Migration and Refugees
www.arbeitsagentur.de		Federal Employment Agency