

HRK German Rectors' Conference
The Voice of the Universities

Rights of residence for researchers from non-EU countries in Germany

Overview on potential residence permits pursuant
to the German Residence Act
(in the new version of 01 August 2017)



Residence permit/ purpose of residence	Target group/ beneficiaries	Requirements for granting a residence permit			Duration/limitation	Extension	Employment	Approval of Federal Employment Agency/ Foreigners' Authority required	Subsequent immigration of spouses and unmarried minor children
		1. Minimum income ⁶	2. German language skills	3. Other					
Section 16 Studies ¹	Doctoral candidates ³	No ⁷	Proof of knowledge of the 'language in which the course of studies is to be conducted' ¹¹	Admission in accordance with the relevant doctoral degree regulations	Limited duration: minimum 1 year, maximum 2 years	Possible, if purpose of residence has not yet been achieved and is achievable within a reasonable period of time ²² After successful completion of studies, the temporary residence can be extended by up to 18 months for job search. ²³	Max. 120 days or 240 half-days p.a., as well as student secondary/part-time job at the university or a research institution ²⁷	Only if employment falls outside the scope of above frame	The general requirements for the subsequent immigration of dependants and spouses are laid down in sections 27 et seq. Residence Act. ³⁴
Section 18 Employment ²	Foreign employees in general	No ⁸	No	Concrete job offer ¹⁴	Limited duration	Yes, if conditions for granting are still met; also, after termination of employment (one-time) for a maximum period of 6 months for seeking employment commensurate with qualification ²⁴	Yes, residence permit includes the permission to take up the authorised economic activity.	Usually yes ³⁰	The general requirements for the subsequent immigration of dependants and spouses are laid down in sections 27 et seq. Residence Act. ³⁴
Section 18b Permanent settlement permit for graduates of German universities	Foreigners who have successfully completed their studies at a state or state-recognised university or a comparable educational establishment in the federal territory	No ⁸	Yes ¹²	Temporary residence permit pursuant to sections 18, 18a, 19a or 21 Residence Act for at least 2 years <u>and</u> job commensurate with the degree <u>and</u> compulsory or voluntary contribution to the statutory pension scheme for at least 24 months ¹⁵	Unlimited duration ¹⁹	Not required (unlimited duration)	Yes ²⁸	No ²⁸	Spouse and minor children are entitled a temporary residence permit. ³⁵
Section 19 Permanent settlement permit for highly qualified foreigners	Top-level personnel in science, research and teaching with outstanding professional qualifications	No ⁹	Usually not required ¹³	Concrete job offer ¹⁴	Unlimited duration ¹⁹	Not required (unlimited duration)	Yes ²⁸	No ³¹	Spouse and minor children are entitled to a temporary residence permit. ³⁵
Section 19a EU Blue Card	Foreign employees with a university degree	Yes ¹⁰	No	German or recognized ¹⁶ foreign tertiary degree or foreign degree comparable to a German tertiary degree <u>and</u> actual pursuit of a highly qualified employment <u>and</u> concrete job offer ¹⁴	Limited to the period of the employment contract plus 3 months ²⁰ , for a maximum period of 4 years from the date of initial issue	Yes, if requirements for granting are still met ²⁵	Yes, employment commensurate with qualification	No ³² , however, for each job change within the first two years of employment after initial issue, permission in writing by the Foreigners Authority (Ausländerbehörde) is required. ³³	Spouse and minor children are entitled to a temporary residence permit. ³⁶
Section 20 Research	Foreign researchers who want to carry out a research project in an officially approved research institution ⁴ ; where applicable doctoral candidates ⁵	No ⁶	No	Approval of the research institution by the Federal Office for Migration and Refugees (BAMF) ⁴ <u>and</u> hosting agreement between researcher and research institution <u>and</u> declaration of assumption of costs by the research institution ^{17,18}	At least 1 year; in case of shorter residence period as researcher, limited to the duration of stay ²¹	Yes, in case of extension of the research project <u>or</u> if the researcher will be assigned to a new project <u>or</u> after completion of the research activities for a maximum period of 9 months for seeking employment commensurate with qualification ²⁶	Yes, permission to take up research activities in the research establishment specified in the hosting agreement and teaching activities ²⁹	No	Spouse and minor children are entitled to a temporary residence permit. ³⁷

Access to labour market for family members	German language skills of spouse ³⁹ and/or children ⁴⁰	Parental benefits ⁴⁵	Child benefits ⁴⁸	Fees ⁵¹	Alternative residence title	Permanent settlement permit	Residence in other EU Member States		
							1. Private travels	2. Research-related stays (Outgoing)	3. Research-related stays (Incoming)
The temporary residence permit entitles the holder to pursue an economic activity. ³⁸	Usually yes ⁴¹	No ⁴⁶	No ⁴⁹	Issue of temporary residence permit: 100 € extension of up to 3 months: 96 € more than 3 months: 93 € ⁵²	Where applicable, section 20 Residence Act for doctoral candidates ⁵	After completion of the dissertation, a change of purpose to section 18 is admissible. For 18b, only one-half of the residence periods pursuant to section 16 are taken into account. ⁵⁶ Graduates of German universities obtain a settlement permit after 2 years. ⁵⁷	Freedom to travel for up to 90 days in any 180-day period within the Schengen area	A stay in another EU Member States related to doctoral research is possible in principle. ⁵⁹	Section 16a Residence Act: Doctoral candidates in possession of a residence title for study purposes ⁶² in another EU Member State are allowed to carry out their doctoral study programme for up to 360 days in Germany. The BAMF must be notified. ⁶³
The temporary residence permit entitles the holder to pursue an economic activity. ³⁸	Yes ⁴²	Usually yes ⁴⁷	Usually yes ⁵⁰	Issue of temporary residence permit: 100 € extension of up to 3 months: 96 € more than 3 months: 93 € ⁵²	Sections 19, 19a Residence Act	Obtainment of a permanent settlement permit and/or entitlement to EU long-term residence is governed by the general requirements pursuant to sections 9, 9a. Graduates of German universities obtain a settlement permit after 2 years. ⁵⁷	Freedom to travel for up to 90 days in any 180-day period within the Schengen area	–	–
The temporary residence permit entitles the holder to pursue an economic activity. ³⁸	Yes ⁴²	Yes	Yes	113 € ⁵³	Sections 18, 19a Residence Act	The residence title pursuant to section 18b Residence Act already constitutes the national permanent settlement permit.	Freedom to travel for up to 90 days in any 180-day period within the Schengen area	–	–
The temporary residence permit entitles the holder to pursue an economic activity. ³⁸	No ⁴³	Yes	Yes	147 € ⁵⁴	Sections 18, 19a Residence Act	The residence title pursuant to section 19 Residence Act already constitutes the national permanent settlement permit.	Freedom to travel for up to 90 days in any 180-day period within the Schengen area	–	–
The temporary residence permit entitles the holder to pursue an economic activity. ³⁸	No ⁴⁴	Yes	Yes	Issue of temporary residence permit: 100 € extension of up to 3 months: 96 € more than 3 months: 93 € ⁵²	Sections 19, 20 Residence Act ⁵⁵	If the prerequisites are met, application for a permanent settlement permit is possible already after 33 or 21 months, resp. ⁵⁸	Freedom to travel for up to 90 days in any 180-day period within the Schengen area	EU Blue Card holders and their family members are allowed after 18 months to enter another EU Member State without a visa and to apply there for a EU Blue Card. ⁶⁰	EU Blue Card holders and their family members are allowed after 18 months to enter another EU Member State without a visa and to apply there for a EU Blue Card. ⁶⁰
The temporary residence permit entitles the holder to pursue an economic activity. ³⁸	No ⁴⁴	Yes	Yes	Issue of temporary residence permit: 100 € extension of up to 3 months: 96 € more than 3 months: 93 € ⁵²	Section 19a Residence Act ⁵⁵	Obtainment of a permanent settlement permit and/or entitlement to EU long-term residence permit is governed by the general requirements pursuant to sections 9 and 9a Residence Act.	Freedom to travel for up to 90 days in any 180-day period within the Schengen area	A research-related stay in another EU Member State for a period of up to 180 days in a 360-day period is possible in principle. ⁶¹	Section 20a Residence Act: Researchers holding a residence title in another EU State are allowed to carry out part of their research in Germany for up to 180 days in a 360-day period without having a German residence title. The BAMF must be notified ^{64,65}

Notes

1. This is the title of the relevant section. This brochure, however, deals exclusively with the target group of doctoral candidates who are partly also covered by section 16 of the Residence Act.
2. This provision covers all employment in Germany. Pursuant to section 18 (1) Residence Act, the admission of foreign employees is geared to the requirements of the German economy, according due consideration to the situation on the labour market. Individuals covered by the definition of 'researcher' pursuant to the REST Directive (EU) 2016/801 will be granted in principle only a residence permit for research in line with this Directive (section 20 Residence Act). In future, this target group will be excluded from the granting of a residence title for the purpose of employment pursuant to section 18 Residence Act (in conjunction with section 5 of the Employment Regulation (Beschäftigungsverordnung, old version). Section 18 Residence Act in conjunction with section 5 Employment Regulation remains relevant for the residence of a) researchers who exclusively carry out teaching assignments, and b) for doctors of medicine who engage in scientific work at a university hospital, i.e. including patient care, with the latter requiring more than 50 percent of the contract term.
3. If the doctoral degree programme is connected with matriculation at the respective university (see the explanatory memorandum to article 1, section 16 of the legislative proposal, BT paper 15/420, p. 74)
4. With the amendment of the Residence Act, state and state-recognised universities as well as research institutions financed primarily by public funds are considered as 'recognised' within the meaning of section 20 (1) no. 1a of the Residence Act.
5. Doctoral candidates fall within the scope of section 20 Residence Act only in those cases where the research activity is not exclusively carried out for the purpose of preparing a doctoral dissertation. This would, for example, be the case if the dissertation is produced within the frame of an employment contract.
6. Generally, the granting of a residence permit presupposes the proof that the foreigner's subsistence is secure, including adequate health insurance coverage, without recourse to public funds for the time of his or her stay in Germany (see section 5 (1) no. 1 in conjunction with section 2 (3) Residence Act). This is deemed to be the case if the foreigner has sufficient financial resources available to cover the monthly needs pursuant to section 20 of Book II of the German Social Code (SGB II) plus adequate rental costs effectively paid.
7. Subsistence must be secure. Pursuant to section 2 (3) sentence 5 Residence Act, this is deemed to be the case if the foreigner has funds in the amount of the monthly requirement as announced by the Federal Ministry of the Interior (BMI) in the Federal Gazette annually by 31 August for the following year (2018: 720 €/month).
8. Subsistence must be secure pursuant to section 9 (2) sentence 1 no. 2 Residence Act. For more information see also footnote 6.
9. Subsistence must be secure pursuant to section 19 (1) Residence Act. For more information see also footnote 6.
10. The minimum annual gross income for 2018 is 52,000 €. For shortage occupations such as STEM professionals or medical doctors, the amount for 2018 is 40,560 € (see Federal Gazette of 18th Dec. 2017 B1). The Federal Ministry of the Interior announces the minimum income in the Federal Gazette annually by 31 December for the following year.
11. Wording of section 16 (1) sentence 4 Residence Act
12. See section 18b sentence 1 no. 4 Residence Act in conjunction with section 9 (2) sentence 1 no. 7 Residence Act. 'Sufficient' command of the German language refers to Level B1 of the Common European Framework of Reference for Languages (General Administrative Regulation to the Residence Act no 9.2.1.7.).
13. In practice, the Foreigners' Authorities (Ausländerbehörde) may require proof of basic German language skills within their margin of assessment. 'Basic' German language skills refer to Level A1 of the Common European Framework.
14. See section 18 (5) Residence Act
15. Alternatively, evidence may be furnished of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company, see section 18b no. 3 Residence Act.
16. The Anabin database contains the degrees whose comparability has already been established, as well as further information on comparability: <http://anabin.kmk.org/anabin.html>.
17. The declaration of assumption of costs serves exclusively to cover claims in case of unlawful stay in the federal territory after termination of the regular stay for research purposes. The assumption of costs does not serve to provide evidence of secure subsistence during the research stay itself. For this, evidence of secure subsistence must be provided separately (see column 'Minimum income').
18. If the activity of the research institution is financed primarily from public funds, the presentation of the cost assumption declaration should be waived (see the General Administrative Regulations for the Residence Act no. 20 (2)).
19. See section 9 (1) sentence 1 Residence Act
20. See section 19a (3) Residence Act
21. See section 20 (4) Residence Act
22. See section 16 (2) sentence 4 Residence Act
23. See section 16 (5) Residence Act. The temporary residence permit entitles the holder to pursue an economic activity in this period.
24. See section 18c (3) in conjunction with section 18c (1) Residence Act. The granting of a residence title pursuant to section 18c Residence Act presupposes that subsistence continues to be secure and does not entitle the holder to pursue an economic activity. A further extension beyond 6 months is not possible.
25. Please note that meanwhile the minimum income required may have increased since the initial issue (see footnote 9).
26. See section 20 (7) Residence Act. This residence permit entitles the holder to pursue an economic activity.
27. See section 16 (3) sentence 1 Residence Act. Student secondary/part-time jobs include work limited to academic activities for university-related organisations with the subject matter relating to the studies (e.g. tutors working in halls of residence run by the student services organisation, counselling activities of university associations, student committees or the World University Service). Problems of definition should be clarified with the participation of the university (see also the General Administrative Regulation no. 16.3.3 to the Residence Act).
28. See section 9 (1) sentence 2 Residence Act
29. See section 20 (5) Residence Act
30. See section 39 Residence Act. Exceptions may arise from the Employment Regulation.
31. See section 2 (1) sentence 1 no. 1 Employment Regulation
32. Provided that the foreigner attains the required minimum income or, in case of STEM professions, holds a German university degree. In the case of STEM professions and a foreign university degree, an examination of the employment condition is made, but no examination of priority.
33. See section 19a (4) Residence Act
34. See especially section 30 (1) no. 3 e) Residence Act: The marriage must have existed at the time the residence permit was granted, and the duration of the stay in the federal territory is expected to exceed one year.
35. See especially sections 27, 30 (1) sentence 1 no. 3 a) and section 32 Residence Act
36. See sections 27, 30 (1) sentence 1 no. 3 g), sentence 3 no. 5 and section 32 Residence Act
37. See sections 27, 30 (1) sentence 1 no. 3 c) and section 32 Residence Act
38. See section 27 (5) Residence Act
39. In principle, proof of basic German language skills is required for spouses pursuant to section 30 (1) sentence 1 no. 2 Residence Act.
40. See section 32 Residence Act
41. Language skills are not required if the stay is expected to be only temporary, see section 30 (1) sentence 3 no. 3 in conjunction with section 44 (1) sentence 2 Residence Act.
42. See section 30 (1) no. 2 Residence Act. This requirement may be waived in cases of little need for integration measures (e.g. proof of completed university studies of the spouse immigrating subsequently); see section 30 (1) sentence 3 no. 3 Residence Act), Administrative Regulation no. 30.1.4.2.3.1 and no. 43.4.4.2.
43. If the marriage already existed at the time when the foreigner established his or her main ordinary residence in the federal territory, the requirement of proof of basic German language skills is waived for the spouse pursuant to section 30 (1) sentence 3 no. 7 Residence Act.
44. See section 30 (1) sentence 3 no. 5 Residence Act
45. See section 1 (7) Parental Allowances and Parental Leave Act
46. See section 1 (7) sentence 1 no. 2a Parental Allowances and Parental Leave Act
47. Unless the temporary residence permit was issued pursuant to section 18 (2) Residence Act and the approval of the Federal Employment Agency (Bundesagentur für Arbeit) may be given only for a certain maximum period, see section 1 (7) sentence 1 no. 2b Parental Allowances and Parental Leave Act.
48. See section 62 (2) Income Tax Act
49. See section 62 (2) sentence 1 no. 2a Income Tax Act
50. Unless the temporary residence permit was issued pursuant to section 18 (2) Residence Act and the approval of the Federal Employment Agency may be given only for a certain maximum period, see section 62 (2) no. 2b Income Tax Act.
51. See section 45 Ordinance on Residence
52. Foreigners who receive a grant from public funds for their stay are exempt from the fees for the issuance of a visa or a resident title pursuant to section 52 (5) no.1 of the Ordinance on Residence.
53. See section 44 no. 3 Ordinance on Residence
54. See section 44 no.1 Ordinance on Residence
55. At the time of initial issuance, the foreigner may choose between a residence title pursuant to section 19a and section 20 Residence Act. It is possible to change to the EU Blue Card at a later point in time (section 19a Residence Act), but not the reverse.
56. See section 9 (4) no. 3 Residence Act
57. See section 18b Residence Act
58. See section 19a (6) in conjunction with section 9 Residence Act
59. Article 27 REST Directive (EU) 2016/801 in conjunction with the legal provisions for residence of the respective target country. For information on the procedure, contact the university, the authorities and, if applicable, the embassy of the target country.
60. See section 39 sentence 1 no. 7 Ordinance on Residence
61. Articles 28 and 29 REST Directive (EU) 2016/801 in conjunction with the legal provisions for residence of the respective target country. For information on the procedure, contact the university, the authorities and, if applicable, the embassy of the target country.
62. It depends on how the doctoral phase is treated by the foreign university. If it is a doctoral studies programme, section 16a Residence Act is applicable. In other cases, section 20a Residence Act is the relevant paragraph.
63. See section 16a Residence Act. This notification procedure is carried out online via the BSCW server of the Federal Office for Migration and Refugees (BAMF). Detailed instructions to the notification procedure are available here: <http://www.asyl-in-deutschland.rs/SharedDocs/Anlagen/EN/Downloads/Infothek/Migration/formular-mobilitaet-student.html?nn=1452162>
64. See section 20a Residence Act. This notification procedure is carried out online via the BSCW server of the Federal Office for Migration and Refugees (BAMF). Detailed instructions to the notification procedure are available here: http://www.bamf.de/SharedDocs/Anlagen/EN/Downloads/Infothek/Migration/anleitung-mitteilung-kurzzeitmobilitaet-forscher.html?sessionId=01AF559C5AD7F258D4C85DB8079D67E7.2_cid368
65. See **section 20b Residence Act**: For a stay lasting more than 180 days and up to 1 year, a temporary residence permit is issued pursuant to section 20b Residence Act. This application procedure is easier and most of all faster than the procedure pursuant to section 20 Residence Act: If the application for a temporary residence permit is filed at least 30 days prior to the beginning of the stay and if the residence title issued by the other EU Member State is still valid, the researcher is allowed to enter Germany even if the application has not yet been decided. The foreigner's residence is permitted for an initial period of 180 days in a 360-day period, see section 20b (2) Residence Act.

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