

## 4. TERMINOLOGY IN MIGRATION

### TÓTH JUDIT

Terms used in studies of labour migration across borders require some explanation based on the consensus of experts and/or national, European as well as international regulation. For this reason a comprehensible summary of each relevant term is given with an indication of its legal grounds.

*ALIEN POLICING* ▪ As a separate branch of public administration this has its own body with specific procedural rules. The OIN, police and the security agencies have competence on entry, residence, limitation on free movement, authorisation and preparatory work in the nationality procedure of EEA nationals, third country nationals and their family members.

*ASYLUM SEEKER* ▪ Third country national or stateless person applying for international protection pending the final decision regarding asylum and shall be furnished with a residence permit issued on the basis of a humanitarian reason. The applicant is entitled to be employed inside the refugee camp or in any other place as determined by the public employer for a maximum of nine months following the submission of the application. After this period the individual would need a labour permit issued through a standard authority procedure should they wish to be employed for a longer period.

*EEA NATIONAL* ▪ Citizens of party states in the EEA and EU together with nationals of other stipulated states with the EC/EU, (hereinafter together: EEA national), are entitled to enjoy the freedom of movement and residence as well as employment. This may not however generate a disproportionate burden for the national social system. Moreover, the health insurance and self-subsistence of the EEA national shall be provided during his/her residence in another party state. (The material resources of welfare are proper if the monthly personal income exceeds the lawful minimum old age pension level in the family or if the EEA national has received social aid for no longer than three months.)

The EEA national shall notify his residence and address in Hungary to the next regional office of OIN if they intend to stay more than 90 days. The EEA national obtains a registration document that is valid for an undefined period (together with a valid travelling document or identity card).

On ceasing employment the EEA national can retain the right to residence if they are undergoing medical treatment and incapable to work due to an accident or occupational disease, or if they are registered as a job seeker, or attending professional training as a precondition of their occupation or remunerated work in practice. If the remunerated work were to be in excess of one year the individual retains the right to residence for an undefined period. When a shorter employment period ends, the maximum allowable stay in Hungary means the length of granted job seeking benefit but no more than six months.

The EEA national and their family members acquire the right to permanent residence (permanent residence card) if they have resided lawfully and continuously for at least five years, or their child was born here. It provides a stable employment relationship. The family member of a Hungarian national acquires permanent residence if they have been living in a joint household for at least one year or in marriage living under the same roof for at least two years. In absence of the preconditions for staying or employment, the EEA national obtains permanent residence if they are entitled to receive an old age pension or if they become incapable of work due to an accident or occupational disease. If the EEA national employee dies before they can acquire the right to permanent residence, a family member having resided continuously for at least two years is eligible to the right to permanent residence here. The same applies if the breadwinner's death is caused by an accident or occupational disease.

*EMIGRANT* ▪ Hungarian national and lawfully residing foreigner has a fundamental right to leave Hungary. The Hungarian national must notify his leaving the country for a period longer than three months to the municipal clerk and returning their address card unless they wish to continuously pay the contribution to the health care fund. The emigrating person can avoid the double payment of the contribution if they can prove that they are paying the contribution in another Member State of the EEA. However, their payment of tax is contrary to the national regulation in the absence of the notification and return of the address card to the responsible Hungarian authority

*EMPLOYED MIGRANT WITH SIMPLIFIED LABOUR CONTRACT* ▪ A third country national can be employed in seasonal agricultural work on the basis of a simplified, standard labour contract while a migrant with an immigration permit (long-term migrant) can also be employed in tourism and occasional work. The 'seasonal work' covers plant cultivation, afforestation, stockbreeding, fishing and hunting, the logistics and packaging of agricultural production; employment at professional tourism service and transport providers that does not exceed 120 days within one calendar year between the same parties is also covered. The occasional work (for instance being an 'extra' in the production of a film) denotes employment for a defined period that is no longer than 5 consecutive days, 15 days in a month or 90 days within one calendar year. If a migrant worker is eligible for the social insurance in another state (due to international, bilateral social or labour agreement or if they are covered by the social coordination between EEA states) and it is properly documented, the public revenues shall not be paid by the employer; in this event the employee is excluded from the pension, accident health care and job-seeking benefits in Hungary.

*EU BLUE CARD* ▪ The card holder as a third country national is authorized to be employed in a qualified work role and reside in Hungary or in another Member State of the EU. If the applicant meets the professional qualification

requirement and the monthly wage is not below 120–150 percent of the officially published gross monthly wage level in the given occupational branch in the country in the penultimate year (as an example, according to the Central Statistical Office data from 2014 the national average gross wage per month for an obstetrician or physician would be at least 285,240 HUF or 356,550 HUF), the Card may be issued.

Furthermore the applicant has to be registered in the social insurance system and register their place of residence in Hungary. If the applicant is a holder of an EC residence permit issued by another Member State or a seasonal labour visa, the application for a Card shall be denied. The Card is valid up to the fourth month from the end of the person's employment but must at least be valid for a minimum of one year and a maximum of four years which may be extended on occasion to four years. The card holder cannot be employed in any other occupation authorized on the grounds of the national labour market test for the first two years. The card holder is eligible for family unification.

*FAMILY MEMBER* ▪ During the existing family relationship a family member can enter, reside and work in Hungary. The foreign family member may join the breadwinner (sponsor) thereby acquiring a family unification visa, residence permit or registration card. The immigration of family members means a limited labour force due to the restrictive conditions of unification that are controlled by the OIN (for instance, evidence is required regarding a valid family tie established before their departure and that the marriage is not for convenience. Subsistence and accommodation for the whole family is ensured in Hungary or for a dependent family member in need of personal assistance).

The circle of family members and conditions of their entry and residence are different as determined by the legal position of the sponsor living in Hungary. They would be a recognised refugee, a settled/long term migrant, a lawfully employed third country national, a Hungarian national or a person with the right to free movement. For instance, a recognized refugee's spouse, a minor (including an adopted and/or a foster child) or his parent or responsible guardian (if the recognized refugee is a minor) may request the same legal status if they arrive together in Hungary and their family relationship has been established prior to arrival.

*FOREIGN STUDENT IN WORK* ▪ A regular student does not need labour authorisation for a part-time job if that student is employed in a labour practice that is organised by an international student association for a third country national being enrolled with a home country tertiary education institute, or lawfully attending a vocational, grammar or artistic school or a tertiary education institute that is seated in Hungary. This permit exemption is applicable only during the student relationship. Moreover a student of elementary, secondary or tertiary education in the ambit of bilateral exchange programs can be employed freely if they have an attestation from the responsible min-

ister of the sending and admitting states. Third country national students participating in the labour/vocational practice in the frame of the Comenius, Erasmus, Leonardo da Vinci or Grundtvig Programs can also work without labour authorisation. The labour market test in the authorisation procedure is not required for a third country national apprentice if the vocational training period in Hungary does not exceed three months in a calendar year.

**FOREIGN VOLUNTEER** ▪ If an adult third country national intends to work in Hungary without remuneration, they can obtain a residence permit issued for voluntary work provided they hold a reception contract with a Hungarian organisation in accordance with the legal rules on public voluntary work. This contract has to define the accommodation, nutrition, liability insurance, health care and proper instructions that are provided by the receiving organisation for the volunteer. The maximum period of validity of the contract determines the length of the residence permission but can not exceed a period of two years. The residence permit issued is not extendable. If a Hungarian national works as a posted volunteer of a Hungarian civil organisation abroad, they also need a finalised contract in order to access certain reimbursements of their individual expenses.

**ILLEGALLY EMPLOYED MIGRANT** ▪ This covers a foreign person performing remunerated work employed without registration, a third country national employed in a different position or under different conditions than those determined in labour authorisation or without a valid residence permit – all can be considered as illegal work. It is a grave violation of law if the individual is employed under severe exploitation – including racial or gender discrimination – derogating the guarantees for lawful employment, in particular in the context of the dignity, the physical or the health security requirements of workers. Upon proposal of the court a residence permit on the grounds of humanitarian reasons shall be given for such a third country national even in the absence of preconditions of staying if they were being employed under grossly exploitative conditions, or without a valid residence authorisation in the country or if it is a minor being employed. Victims of exploitation and illegal work have the right to claim for the payment of a proportional wage at the court. The employer of an illegally employed migrant shall be subjected to the criminal procedure (with reference to the violation of Art.209 and 256 in the Penal Code).

**INTEGRATION OF MIGRANTS** ▪ Recognised refugees and subsidiary protected migrants may enjoy certain services for social integration (such as a language course, accommodation, job-seeking service and self-subsistence benefits), while other migrants are not eligible to access these supports. They can conclude a social integration contract including services with the OIN for a maximum of two years and this is implemented with the assistance of a local municipal family care unit or a civil organisation. The benefits based on the integration contract are provided for a family in need and is controlled

by the OIN. Should the contract be seriously breached all supports and benefits may be withdrawn by the OIN.

*JOBSEEKER MIGRANT* ▪ National treatment shall be ensured for a third country national with a residence permit that is issued in a combined procedure as determined in the Act on entry and stay of third country nationals in Hungary (2007) in the area of job seeking registration and accession to the unemployment benefit if they were employed for at least six months here. Similarly, any other lawfully employed migrant becoming unemployed is eligible for accession to the job seeking benefit – if the prior working period meets the requirement in Hungary – and that of the labour services. If the employment period of an EEA national exceeds one year, their right to residence is undefined but in the case of a shorter prior working period they can stay in the country until the end of the period of applied job seeking benefit but for at least for six months. A job seeking migrant can receive unemployment benefit, support before the pension and cost contributions of seeking work if they meet the labour law requirements (for instance, fulfilled social insurance period, cooperation with labour authority).

*KEY PERSONNEL* ▪ This covers the employee of a foreign invested company in Hungary that is not a responsible leader of the company according to the Civil Code but directs or supervises the entire firm (including entitlements of the employer) or at least some units of the company that are under the direct governance or supervision of the owner, highest authority or responsible leader, as well as an employee with a high level qualification (specific occupation, technical or outstanding knowledge) that is necessary for the basic profile of the service, technology or administration in the company. The employee can benefit from the exception in the labour authorisation process if they have had a worker/employee position at the foreign invested company according to the national law of the seat country for at least one year prior to the application.

*LAWFULLY EMPLOYED MIGRANT* ▪ Recognised refugees, subsidiary protected persons and settled/long-term migrants (with an open-ended residence permit) as well as migrants with the right to free movement and residence shall be treated as nationals in employment and so can work without permission. National treatment may be limited only through act or government decree (for instance, determining certain jobs that can be filled only by nationals). Employment is free without authorisation for posted, delegated or rented/hired worker of a non-Hungarian seated company providing services transnationally or for private contractual work at a Hungarian employer. Professional athletes, directing persons and working members in the supervisory board of a partly foreign invested company as well as clergy in church related roles as determined by its internal rules also can be employed without permission.

Other migrants shall obtain a labour permit to be employed unless a governmental decree regulates otherwise. Their residence permit issued for re-

munerated work is valid up to three years which can be extended on occasion by a further three years. Permission shall be denied if foreigners are excluded from the jobs through concern due to the high unemployment rate and characteristics of local job seekers. The first step of the procedure is a preliminary agreement on the job between the employer and the potential employee that defines the scope of the activities, the working time and the remuneration of the worker. This agreement is considered a binding job offer and possessing the permit the parties have to conclude the labour contract. These two steps are mandatory for lawful employment. If the employee has a residence permit issued for family unification the agreement with the employer may be valid for up to five years, up to four years if a third country national applies for an EU Blue Card, up to 6–12 months for a migrant with a residence permit issued on humanitarian grounds, and up to two years for all other labour migrants. An application for a labour permit can be refused taking into account the conditions, such as the fine for unlawful employment that was implied the employer within one year, or if the employment of a migrant is not necessary or applicable due to the ongoing training programmes or because of staff redundancies or of strikes at the business, or if the defined wage would be below the national average wage level (not exceeding 80 percent of the average monthly wage amount).

The labour permit shall identify the data regarding the employer, the place of work, the scope of the activities, the SNOJ code of the job and the period of employment. The government office can withdraw the permission that was issued in a single (non-combined with residence authorisation) procedure if the employment breaks down, it is terminated, the working conditions are changed relating to the permission, or when the employee cannot meet lawful residence or combined permission. For instance, employment is considered unlawful if the job is taken up at a different employer than that indicated in the permit, or the location of the work or the scope of activities is not the same as defined in the permit. The permit issued in a combined procedure is valid for up to two years and renewable on occasion for a further two years.

*MIGRANT* ▪ This gathering term from the daily discourses does not exist in legal provisions. If you can read it in our text it means only a person in mobility but his legal status (national, long-term migrant, EEA national, third country national, refugee etc.) shall be indicated in addition.

*MIGRANT WITH RIGHT TO FREE MOVEMENT* ▪ The EEA national – as a Hungarian national – together with their family members joining and following them to Hungary, their relatives belonging to the wider family whose entry and residence is authorized by the OIN (including the dependent of the Hungarian national, person living in the same household with the sponsor for at least one year, or has been cared for health reasons by the sponsor, or

was living together in the household of the sponsor as a dependent or as cared person prior to departure) have the right to free movement in the Member States of the EEA and the EU.

*OFFICE OF IMMIGRATION AND NATIONALITY AFFAIRS (OIN)* ▪ Under the auspices of the Ministry of the Interior the OIN is a central alien policing authority with seven regional and 24 desk offices. It is entitled to decide visa, residence, asylum, expulsion, statelessness and nationality authorisation including the claims for registration of EEA nationals and their family members, employment, issuing passport of, and integration contract with, third country nationals. A judicial review of its decision may be requested to the administrative court.

*PLACEMENT AND LABOUR AGENCY* ▪ The Labour Authority or private entities provide various services for job seekers and workers, for instance, EURES as the job portal of the EU is introduced by coordinators. Private placement and labour agencies are entitled to transmit job offers lawfully if entrepreneurs are registered at the governmental office. The registration demands infrastructural, legal and personnel requirements (reception desk and proper communication facilities, skilled advisor, legitimized jobs according to the national law in the destination country are ensured), and a deposit from the entrepreneur shall be given if foreign job offers are transmitted. Fee, cost or charge must not be accounted for labour services to job seekers.

*POSTED WORKER* ▪ A worker from a company seated in a Member State of the EEA that is posted to Hungary for a contractual, service or undertaking project task does not need a labour authorisation if the work does not exceed two years. He remains inside the social security and labour law regime of that Member State as the employee posted up to two years, and similarly, a delegated worker from Hungary to another EEA state remains inside the Hungarian social and health care system for up to two years. However, his dual taxpaying shall be avoided on the basis of the place of his permanent registered residence and it is that which determines the competence of the national tax office. If his work does not finish within two years the national health care fund may extend this posted worker position.

*RECOGNISED REFUGEE* ▪ A third country national or stateless person can be recognised as a refugee if they are not admitted by another state but by returning to their country of origin or of habitual residence would face a well founded fear of persecution on the grounds of race, national or ethnic origin, religion or conviction, political opinion or membership of a special social group and there being no basis of exclusion for public order or security reasons. In this way a refugee can be removed exceptionally from the country but their recognition as a refugee may be withdrawn for a gross violation of law and national security tolerating their temporary presence in the country. A refugee can be employed freely with the exception of a job and position that

requires Hungarian citizenship (for instance, to become mayor, governmental official, judge or policeman). Recognised refugees shall be furnished with identity card and address card.

*REGISTERED MIGRANT WORKER* ▪ A migrant worker entitled to the right to free movement and residence as well as a third country national that is exempted from the labour authorisation – including the recognised refugee, subsidiary protected person, settled/long-term migrant – shall be registered at the labour authority. The employer's note shall contain the number of employed persons, their age, qualification, nationality, the SNOJ code, the employment relation, family membership of the employee, the statistical code of the employer and the date of beginning or termination of the employment. The labour authority (governmental office) approves the notice (made in time) and keeps the up-to-date list of this employment data.

*REMITTANCE* ▪ There is no limitation of the minimum or maximum amount of gross/net salary of people that shall be spent or utilised in Hungary differing from other states. It means that foreign migrants can use freely their own incomes but their subsistence, accommodation and standard well-being shall be provided during their lawful residence in Hungary.

*REMUNERATED WORK* ▪ Persons with the right to free movement and residence exceeding three months would establish their income and lawful residence in Hungary by remunerated work if they are not to become a relevant burden to the social service system contributing to the health care fund. This work may include employment or other economic activity in a hierarchical relationship that is compensated for by wage or by self-employment individually undertaking the economic activity and paying the social and health care contributions or their other activities that are managed as an owner, manager, representative or supervisory board member of a corporate, cooperative or other legal entities for honorarium. A third country national can be at remunerated work only in possession of the EU Blue Card, or a residence permit issued for the purpose of work, for humanitarian reasons, for family unification, for studies or if holding a seasonal labour visa.

*RETURNEE* ▪ A Hungarian national has the right to return at any time to Hungary even with an expired travelling document without sanction. This fundamental right does not depend on their registered or permanent residence in Hungary but without proper document of payment to the mandatory health care contribution – either in Hungary or in another Member State of the EU – it shall be reimbursed (dating back to the previous five years) and paid as public revenue to the Treasury up to 12<sup>th</sup> day in every month.

*SEASONAL FOREIGN WORKER* ▪ A migrant with a seasonal labour visa is entitled to enter on one or more occasions and to stay in Hungary exceeding 90 days within 180 days but no more than six months in employment. There is no appeal if the visa application is denied or the issued visa is withdrawn.



The ministry responsible maintains registration on seasonal labour permits issued for agricultural work, and its prolongation over six months per annum is excluded. However the seasonal worker can work this six month period in several parts. The labour market test shall be made in the authorisation process on the grounds of prior submitted labour demand (indicated vacancy) but checking whether Hungarian labour force is available is neglected if the foreign seasonal worker's claim does not exceed 60 days work.

**STATELESS PERSON** ▪ A stateless person is not considered as a national on the grounds of legal rules or practice in any state thus cannot gain access to the protection, authorisation or identity documents. *De facto* statelessness of a foreigner is indicated in alien police documentation but means no specific right or entitlement despite the status of settled/long-term migrant or recognized refugee. However, among *de facto* stateless persons there are many asylum-seekers and migrant workers. A small part of stateless persons may be recognised *de jure* and furnished with a humanitarian residence permit, labour authorisation and travelling document that allows leaving and return to Hungary before its expiration. The OIN makes the decision on statelessness status in some dozens of cases per annum.

**SUBSIDIARY PROTECTED MIGRANT** ▪ A subsidiary international protection can be granted for a third country national including stateless person if such person does not meet the requirement of refugee recognition but there is a risk of serious harm should they return to the country or origin or if protection is not available in the country of origin while exclusionary reasons for public order or security are not applicable in their case. The subsidiary protected migrant may access an identity and address card while residing in Hungary and this status may extend to a joint applicant family member.

**THIRD COUNTRY NATIONAL** ▪ The non-national of Hungary or Member States of the EU or EEA is a foreigner.

**TOLERATED MIGRANT** ▪ Upon the request of the asylum unit, the alien policing directorate of the OIN may recognise the third country national as a tolerated migrant if his expulsion is prohibited because the applicant would face torture, inhuman or degrading treatment, or capital punishment in their home country on the grounds of race, religion, national or ethnic origin, political views or membership of a specific social group, in absence of another safe state admitting him. On applying for a labour permit for employment outside the refugee camp, the claim would be supported by the OIN on humanitarian grounds and their application shall not be tested regarding the labour market supply or demand.

**YEARLY QUOTA** ▪ The maximum number of third country nationals for whom a labour permit would be issued in Hungary for a calendar year is determined by the minister responsible for employment policy. His decree defines not only the total number of foreign employees in the country but also

its amount in each sector and region. This quota was 59,000 to the year of 2015 based on the monthly average number of indicated vacancies in the labour offices.

### Applied legal sources

- Act I of 2007 on entry and residence of persons in Hungary entitled to the right to free movement, Government Decree No.113 of 2007, May 24 on executive rules of the Act;
- Act II of 2007 on entry and residence of third country nationals in Hungary, Government Decree No.114 of 2007, May 24 on executive rules of the Act;
- Act IV of 1991 on promotion of employment;
- Government Decree No.445 of 2013, November 22 on the non-single labour authorisation of third country nationals, exemptions and expert opinion issued by the governmental offices at county level and lawful employment of third-country nationals without permission, their registration and reimbursement of their unpaid wage;
- Government Decree No.355 of 2007, Dec 23 on transitional provisions implemented by the Hungarian Republic on the persons with right to free movement,
- Act LXXV of 2010 on employment on the grounds of simplified labour contract;
- Act LXXX of 2007 on asylum and Government Decree No.301 of 2007, Nov 9 on asylum procedure and support for refugees;
- Government Decree No.181 of 2007, July 6 on accreditation of institutes admitting third-country nationals for the purpose of research and on conditions of the admission contract;
- Ministerial Decree issued by the Minister of the Economy No.44 of 2011, Dec 16 on the minimum lawful monthly salary for a third country national employed with EU Blue Card;
- Ministerial Decree issued by the Minister of the Economy No.19 of 2015, July 3 on the maximum number of employable third country nationals in the given calendar year in Hungary;
- Resolution issued by the Central Statistical Office No.7 of 2010, Apr 23 on the Statistical Nomenclature of Occupations and Jobs (SNOJ);
- 2003/109/EC, Nov 25, Council Directive concerning the status of third country nationals who are long-term residents;
- 2003/86/EC, Sept 22, Council Directive on the right to family unification;
- 2004/38/EC, April 29, Directive of the European Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Reg.(EEC) No.1612/68 and repealing Dir. 64/221/EEC, 68/360/EEC, 72/148/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC;
- 2014/54/EU, April 16, Directive of the European Parliament and the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers;
- 2009/50/EC, May 25, Council Directive on the entry and residence of third-country nationals for the purposes of highly qualified employment;
- 2011/98/EU, Dec 13, Directive of the European Parliament and the Council 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;
- 2005/71/EC, Oct 12, Council Directive on a specific procedure for admitting third country nationals for the purpose of scientific research;
- 96/71/EC, Dec 16, Directive of the European Parliament and the Council concerning the posting of workers in the framework of the provision of services;
- 2014/36/EU, February 26, Directive of the European Parliament and the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (it shall be transposed to the national law up to 30 Sept 2016);
- 2014/66/EU, May 15, Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals in the framework of the intra-corporate transfer (to be transposed to the national law prior to 29 Nov 2016);
- 987/2009/EC, Sept 16, Regulation of the European Parliament and the Council on laying down the procedure for implementing the 883/2004/EC Regulation on the coordination of social security systems;
- 2009/52/EC, June 18, Directive of the European Parliament and the Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;
- 2011/98/EU, Dec 13, Directive of the European Parliament and the Council 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.