

# Business Immigration Law in Germany

Aldag / Mävers

2024

ISBN 978-3-406-80262-1

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by

Ole Aldag

Gunther Mävers

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ISBN 978 3 406 80262 1

© 2024 Verlag C.H.Beck oHG  
Wilhelmstraße 9, 80801 München  
Druck und Bindung: Westermann Druck Zwickau GmbH  
Crimmitschauer Straße 43, 08058 Zwickau

Satz: Fotosatz Buck  
Zweikirchener Straße 7, 84036 Kumhausen  
Umschlag: Druckerei C.H.Beck Nördlingen



[chbeck.de/nachhaltig](https://chbeck.de/nachhaltig)

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## Preface

As the authors finalise the first edition of this monograph, Germany is currently engaged in a public debate on how to enhance its appeal to foreign talent and address an urgent and widely acknowledged demand for both skilled and unskilled labour across a diverse range of occupational sectors. Considering that the general workforce shortage not only poses a threat to Germany's economic stability but is also essential to counter the negative impacts of its demographic transition toward an increasingly aging society, there are few who would argue against the necessity of re-evaluating Germany's current approach to long-term immigration. Germany has already become a nation significantly impacted by immigration, not merely through foreign business travel, seasonal employment, and transit, but also through long-term immigration, both regular as well as irregular. Prospective immigrants, when faced with the choice between Germany and other destinations that have lower entry barriers, however, all too often prefer an easier route. This preference is especially true for countries that offer more transparent immigration prospects, quicker visa application processing, and greater societal acceptance, in particular in favour of states whose applicable immigration laws do not demand proficiency in the native tongue for the initial issuance of a residence right. Within the course of the newly adopted Advancement of the Skilled Immigration Act (*Gesetz zur Modernisierung des Fachkräfteeinwanderungsgesetzes*), both public and governmental discourse seems however to have finally been shifted towards consensus that not merely the substantial, but moreover the procedural framework of German immigration law will play a crucial role on whether Germany will be able to even its competitive disadvantage, and to attract the volume of international talents needed to maintain its established economic welfare.

The natural barrier of proficiency in German still constitutes a major hurdle both for inbound agencies seeking to attract prospective skilled workers into Germany's economy, but also to prospective immigrants themselves who evaluate their most promising destination country. It is therefore highly welcomed that the German legislator slowly, but steadily realises that it must assess whether and when to waive the requirement of proficiency in German as a natural condition for foreign talents to obtain a long-term residence title in the Federal Republic. Significant regulatory steps have been taken in this regard with the Advancement of the Skilled Workers Immigration Act, namely by allowing not only IT-related professionals, but also other qualified applicants to waive high standards of proof in terms of German proficiency either through proof of sufficient vocational experience or them being able to secure long-term residency by virtue of a points-based residence title.

There is however little doubt among German immigration law practitioners that the newly initiated, much-needed transformation entirely depends on the capacity and willingness of in- and outbound visa authorities to discard an – unfortunately all too often – predominating attitude of repudiation, and to transform its administrative communication into an outcome-oriented, welcoming governmental service agency, aiming to create pathways rather to block them. It became increasingly clear that any of these endeavours must be accompanied by an increase of staff at competent visa authorities, as many reports indicate that the average waiting time for the issuance of a desired residence title supersedes any acceptable timeframe, either due to a multitude of pending cases or to

## *Preface*

an unnecessarily high number of governmental actors involved. Against this background, it is astonishing that the German legislator – despite clear hints from the economy and service providers dealing with corporate migration – seems to have left aside what is most missing now for many years, which is to establish a central online portal for applications, to increase resources at visa authorities, to speed up and streamline processing, ultimately establishing a welcoming attitude towards foreigners. Recent legislation instead added more layers of complexity to the already dense German corporate migration framework, with the effect that the intended outcome of rapid improvement vanishes behind factual barriers towards sustainable progress. Detrimental to every actor involved, visa authorities are left with the challenge to accustom themselves with recent legislative changes and the task to shift their focus towards new laws and regulations rather than to focus on how to reduce an already huge backlog of pending visa procedures. Almost certainly, this will not expedite matters within the near future.

The authors hope to serve two distinct purposes with this monograph: firstly to introduce individuals with an interest in German immigration to the overall German immigration law framework for the purpose of business, education, and employment, both including short and long-term residency prospects. Moreover, its envisaged aim is to assist immigration professionals to translate technical vocabulary into adequate English needed to convey their expertise accordingly. As the strict and dogmatic requirement of German language proficiency for long-term residence slowly, but steadily erodes, the authors are pleased to provide a structured exposition of applicable laws, possible immigration pathways and important procedural aspects for non-German speakers, including all relevant changes which have just recently been adopted with the Advancement of the Skilled Workers Immigration Act and its accompanying Advancement of Skilled Workers Immigration Regulation. Yet, it remains to be seen if the legislative green light illuminated through the 2023 immigration law reform reaches its prospective recipients on near as well as distant shores, enticing away sought-after individuals with the promise of an alluring future in the Federal Republic of Germany, and if the increasingly complexity of provisions will, in what may be illustrated as boats against the current, be able to prevail against administrative shortcomings.

November 2023

*Ole Aldag  
Gunther Mävers*

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