

Amendments to the Legal Framework for the residence of Foreign Nationals in the Republic of Bulgaria and the Acquisition of Bulgarian Citizenship by Naturalization

On 12 March 2021, the Amending Act to the Foreign Nationals in the Republic of Bulgaria Act (“the Foreign Nationals Act” or FNA) and the Amending Act to the Bulgarian Citizenship Act were promulgated in The State Gazette, introducing changes in the legal framework concerning the residence of foreign nationals in the Republic of Bulgaria and the acquisition of Bulgarian citizenship by naturalization. The Transitional and Final Provisions of the Amending Act to the Foreign Nationals Act also introduced amendments to the Labour Migration and Labour Mobility Act (LMLMA).

The changes relate to almost all procedures laid down in these laws and they can be summarized as follows:

General changes in the procedures for granting residence permits in Bulgaria

The amendments to the Foreign Nationals Act set out a number of requirements to the applications, which were previously laid down in the FNA Implementing Rules and in the Regulation setting out the conditions and procedures for granting visas and for the establishment of the visa regime. Some examples to this effect are the rules concerning the way in which university students, pupils, and researchers are granted residence permits. There are explicit provisions that the persons concerned are to be notified of some types of permits or the refusal to grant such a permit respectively in accordance with the Administrative Procedure Code. This raises the issue whether a similar notification procedure for other types of decisions should be required or not.

Another new provision makes the opinion of the State Agency for National Security on the issuance of a residence permit binding on the authorities of the Ministry of the Interior (Moi) when they examine applications for permits.

Changes in the legal arrangements of the residence of foreign nationals for labour migration purposes

Most of the changes relate to labour migration issues, i.e. the rules on the granting of permits for access to the labour market and the related residence permits. As from 1 June 2021, all applications of this type will be filed only with the Moi authorities, which will send the relevant documents to coordinate the work permits with the Employment Agency. This

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change is intended to facilitate the procedure of granting residence permits for labour migration purposes, providing for a “one-stop shop” filing of all documents to a single government authority. Furthermore, all the documents needed to open the procedure are now listed in the Foreign National Act but the conditions for the Employment Agency to grant a permit for access to the labour market continue to be laid down in the LMLMA.

As to the single residence and work permit, applicants are no longer required to be outside the territory of Bulgaria at the time when the application for access to the labour market is submitted and the validity of the residence and work permit may be for up to three years. Thus persons who are entitled to residence in Bulgaria on other grounds may also apply for a residence and work permit. However, university students who stayed in the country for their education are still required to register as job-seekers so that to become eligible for such change in the legal grounds of the residence of foreign nationals. It is now possible for the foreign national to file the documents in person provided that he or she is in the Bulgaria at the time of submission of the documents. If the foreign national is outside the country, there is the obligation to apply for a long-term visa within 20 days and to report to the Mol authorities within 14 days as from the date of entry into the country and produce the passport with the visa affixed therein and an insurance policy for the duration of the residence of foreign nationals in Bulgaria. The whole procedure is envisaged to take two months and it may be extended by another two-month period in cases of factual and legal complexity.

The amended Foreign Nationals Act sets out the procedure for granting seasonal work permits and the related residence permits. In such cases, the requirement for the foreign national to be outside the territory of Bulgaria is still applicable and the application is to be filed by the employer. Again, the foreign national should apply for a visa within 20 days and report to the Mol authorities within seven days after the entry into the country.

Similar changes are introduced in the procedure for granting an EU Blue Card. Permits for access to the labour market are granted for up to four years and they may be renewed. Where the foreign national concerned has already been granted a residence permit, the procedure for granting an EU Blue Card should start not later than two months before the expiry of that permit. Like the other procedures, the EU Blue Card procedure is bound by the

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following time limits: 20 days as from the date of the permit for access to the labour market to apply for a visa and seven days after the foreign national entered the country to report to the Mol authorities. The law provides that the examination of the documents cannot take longer than three months for the whole procedure.

Furthermore, some rules concerning the granting of permits for access to the labour market in the cases of intra-corporate transfers have been moved to the Foreign Nationals Act. The general rule for this type of work permits is that the foreign national should not be within the territory of the country and this requirement can be waived in the cases of renewal of the residence permit on the same grounds. A permit for access to the labour market is granted for up to one year and it may be renewed for managers and experts for a total of up to three years. The validity term for interns is up to one year. The foreign national has the obligation to apply for a long-term visa within 20 days as from the date of the work permit and to report to the Mol authorities within 14 days as from the date of entry into the country and produce the passport with the visa affixed therein and an insurance policy for the duration of the residence of foreign nationals in Bulgaria. The whole procedure is envisaged to take two months and it may be extended by another month in cases of factual and legal complexity.

The changed time limits, including those concerning the submission of applications for renewal of permits for access to the labour market, make it necessary for all persons whose work and residence permits will expire by 1 August 2021 to start the permit renewal procedures before the effective date of the relevant amendments to the Foreign Nationals Act, which is 1 June 2021. Otherwise, these persons run the risk of failing to comply with the requirements for timely submission of documents in accordance with the new procedure, which has to take place within two months in the cases of single work and residence permits and EU Blue Cards. The time limit for renewal of work and residence permits in the cases of intra-corporate transfers under the same conditions is 30 days prior to the expiry date of the previous permit.

Startup visa

The amendments to the Foreign Nationals Act have created the opportunity for granting visas and residence permits respectively for the development of a high-tech or innovative project

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within the territory of Bulgaria. The certification of the project by the Ministry of the Economy is a precondition for issuing a visa with which the foreign national can enter the country. After the visa is granted, the foreign national should become a shareholder or a partner holding more than 50 % of a Bulgarian company which implements the high-tech or innovative project certified by the Ministry of the Economy.

In this particular case, there are two specific aspects to be taken into account, unless some additional requirements are introduced with the upcoming regulation with which the Ministry of the Economy will set out the project certification procedure:

- Firstly, foreign nationals are not required to be partners or shareholders of the company at the time when the certificate is issued and the visa is granted; it is only after the visa is granted that the company is to be established or the shares are to be acquired;
- The foreign national concerned should be the owner of more than 50% of the capital of the company, i.e. this option implies that only one individual will be eligible to obtain a residence permit.

The entry into force of these rules is not suspended. They are already in force but the Ministry of the Economy had not adopted the relevant secondary legislation yet and there is no draft regulation published for public consultations.

Changes in the legal framework for residence and citizenship by investment

The amendments to the Bulgarian Citizenship Act and to the Foreign Nationals Act change the grounds for granting permanent residence permits by investment in the Republic of Bulgaria and for acquiring Bulgarian citizenship as a result of the maintenance and increase of the investment.

The first group of changes relate to the legal grounds on which permanent residence permits are granted. Some investment options have been removed from these grounds: government securities, trust management agreements, and Bulgarian intellectual property rights. Out of the previous legal grounds, the option which has been retained is granting permanent residence of foreign nationals by investment in a concession within the territory of Bulgaria.

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As to the investment in companies operating on the regulated market, the threshold has been increased from BGN 1,000,000 to BGN 2,000,000. New options have been introduced for investment in a special purpose vehicle or an alternative investment fund. The threshold is BGN 1,000,000 in these cases. Besides, permanent residence permits may be granted to foreign nationals who have invested at least BGN 2,000,000 in the capital of a Bulgarian company implementing a priority investment project within the meaning of the Investment Promotion Act.

There is a requirement with regard to this type of investment, except for investment in companies implementing priority investment projects, to obtain prior approval by the InvestBulgaria Agency and to coordinate the procedure with the migration control authorities. An additional condition in this respect is to ensure that any assets acquired in this way will not be used to secure credits from credit and financial institutions.

In all these cases, investors become eligible for Bulgarian citizenship after five-year maintenance of the residence permit and the underlying investment. Moreover, if the investment has been doubled under the same conditions or if the investor has invested at least BGN 1,000,000 in the capital of a company implementing a priority investment project, an application for Bulgarian citizenship may be submitted one year after the date of the permanent residence permit.

Another new opportunity exists for investors who have invested BGN 500,000 in the capital of a Bulgarian company and the investment has resulted in the acquisition of fixed tangible assets and the creation of at least ten jobs. They may apply for citizenship one year after the date of the permanent residence permit provided that the capital investment has been increased to BGN 1,000,000 and a total of 20 jobs have been created.

Spouses of investors who have been granted citizenship in the accelerated procedure described above are also facilitated in applying for Bulgarian citizenship with the option to open the procedure three years after the date of their residence permit.

The applications for Bulgarian citizenship which were filed before the entry into force of the amendments will be examined in accordance with the previous procedure but the enhanced rules on the examination of investments introduced with the latest amendments will apply.

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Persons who were granted a permanent residence permit under the previous conditions laid down in the Foreign Nationals Act are eligible to apply for citizenship provided that the investment has been maintained for at least five years. Similar arrangements are provided for the members of their families if the investor himself or herself has already acquired Bulgarian citizenship.

The Ministry of the Economy is expected to set out the rules on the control of the maintenance of investments within the time limits pursuant to the Bulgarian Citizenship Act, including the time after the acquisition of Bulgarian citizenship.

Changes in the rules for naturalization based on Bulgarian origin

The amendments to the Bulgarian Citizenship Act set out new conditions for the acquisition of Bulgarian citizenship by Bulgarian origin and a new procedure to establish this origin. Now the documents providing evidence of Bulgarian origin are submitted directly to the Ministry of Justice, i.e. the preliminary procedure at the State Agency for Bulgarians Abroad has been eliminated. A foreign national will have to prove kinship with at least one person of Bulgarian origin who is his or her ascendant up to thrice removed (i.e. a great grandfather or a great grandmother).

In these cases, the Ministry of Justice may ask the foreign national to make available further documentary evidence or assign the Advisory Board at the State Agency for Bulgarians Abroad to check whether the person is really Bulgarian by origin. In this connection, it is taken into account whether the person speaks the Bulgarian language and belongs to a Bulgarian community or minority abroad, or comes from a territory which used to be within the borders of the Bulgarian State or the Bulgarian Exarchate, or has ascendant relatives bearing traditional Bulgarian names.