An indispensable prerequisite for the employment of third-country nationals, i.e. countries outside the European Union (EU) and the European Economic Area (EEA), in Bulgaria is the admissibility of this employment under the Labour Migration and Labour Mobility Act (LMLMA). The ordinary procedure of employing a foreign national typically takes several months, requiring evidence that no person with the appropriate professional qualifications is available on the Bulgarian labour market. The maximum duration of employment cannot exceed three years in such cases. However, there is a more convenient fast-track procedure for highly qualified employment, which ensures access to the labour market. This is the EU Blue Card which allows employment for up to four years and renewal without any restrictions as long as the requisite conditions are met. This procedure provides substantial advantages to both employers and employees but it has some specific features which are outlined below.

This opportunity is envisaged in Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The Directive has been transposed in the Bulgarian legislation and, more specifically, in the LMLMA and its Implementing Rules and the Foreign Nationals in the Republic of Bulgaria Act (FNRBA) and its Implementing Rules. The major precondition can be seen in the title itself. The relevant foreign national should be highly qualified. Currently, the only option for attesting qualifications is to submit a higher education diploma. A mechanism of attesting informal qualifications has been discussed at the EU level but neither the Directive nor the Bulgarian legislation provide for such an option yet.

The second condition for granting an EU Blue Card is a salary of at least 1.5 times the average wage in Bulgaria for the 12 months preceding the date of the employment contract. There is no requirement for the employer to submit evidence of search for a person with the appropriate qualifications on the Bulgarian labour market as the Directive indicates that it is in the EU interest to attract highly qualified employees and the interests of the labour market will be protected in all cases. Furthermore, the employer is not required to maintain a certain level of employment of Bulgarian nationals or nationals of EU or EEA Member States. This could be compared to the granting of an ordinary work permit, where the total number of third-country nationals cannot exceed 20 percent of the total number of employees for the 12 months preceding the date of the employment contract.

The procedure of issuing an EU Blue Card starts with an application which the employer files with the Employment Agency. The foreign national may reside in Bulgaria at the time when

CR legal DL 2018. Всички права запазени.

the application is filed, including the possibility for residence on other grounds. In the cases of highly-qualified employment, the grounds for the issue of residence permits may change. The application is submitted in the form prescribed by the Employment Agency. The documents to be attached to the application are the following: a transcript from the employee's diploma, the employment contract, a declaration by the employer on the guaranteed equal working conditions with all other employees, a justification of the application, and a copy of the employee's passport. The employment contract must be signed for a fixed term and its validity cannot be less than one year and more than four years. The position of the employee has to require higher education of its holder. The diploma is needed to attest the qualifications required for the position specified in the employment contract. Further documents might be needed to provide evidence of the qualifications. For instance, if the position requires the exercise of a regulated profession, documentary evidence will be required to ensure that the qualifications have been recognized under the terms and conditions applicable to that profession. Another example of an additional requirement which is not even posted on the website of the Employment Agency refers to the cases in which the employee will not work at the address of the principal office of business of the employer. Then the employer will have to submit a rental contract or another document to prove that the employer is entitled to post workers at that address.

The time limit for the examination of the application is 15 days. Where further evidence is needed, the Employment Agency will notify the employer thereof and the employer will have to make them available within 15 days. If the application is approved, the Employment Agency will send a notice to the employer by mail, instructing the employer to pay the state fee of BGN 100 within a month. Since the notice takes time to reach the postal address of the employer and the procedure cannot continue without payment of the state fee, the employer should follow the progress of the file continuously to ensure that the notice will be received in a timely fashion and the procedure will take the shortest time possible. On the basis of documentary evidence of payment of the state fee, the Employment Agency grants the permit for access to the labour market on the following working day.

However, this is not the end of the procedure. The longest part is yet to take place if the foreign national does not hold a type D visa or a residence permit. Then the foreign national should apply for a type D visa (long-term stay) with a Bulgarian consular mission in the country where the foreign national resides at that point of time. The following documents

CR legal DL 2018. Всички права запазени.

should be attached to the visa application: the permit for access to the labour market, a copy of the employment contract, evidence of accommodation arrangements in Bulgaria and a criminal record certificate issued by the country of origin of the foreign national. Besides, a standard travel medical insurance with a validity of at least six months should be attached. The visa application is examined within 35 working days. In some countries, an appointment is to be made with the consular office for the filing of the application and this can prolong the procedure even further. For some types of work permits, such as seasonal work permits, the time limits for the issue of the visa are shorter but, for all practical purposes, they prove to be unfeasible.

After the visa is issued or if it has already been issued, the foreign national should appear in person before the relevant Regional Directorate of the Ministry of the Interior (MoI) at the address where he or she will reside so as to submit the same documents which are required for the issue of a visa. The FNRBA Implementing Rules refer to a smaller number of documents (only a copy of the passport and the travel medical insurance) but, in reality, all the documents are required once again for the completion of the procedure. A practical problem with a longer-term stay, for instance four years, is that the travel medical insurance has to cover the whole duration of the stay, whereas insurance companies typically issue one-year insurance policies.

The MoI examines the documents within seven days. If the application is approved, the foreign national will apply for the issue of an identity card. The identity card may be issued within 30, 10 or 3 days, depending on the choice of service. A practical difficulty arises with regard to the requirement of the Employment Agency and the Labour Inspectorate for the foreign national to begin work only after the identity card is obtained and the employer is given a seven-day time limit to declare that before the Labour Inspectorate. The alternatives in this case are either to wait for the identity card to be issued or to pay a higher issuance fee. The express service in which the identity card is issued within three working days costs five times more than the ordinary service.

The renewal of a work and residence permit of the type of an EU Blue Card follows the same procedure as its initial issue but, in this case, the employee’s diploma is not required. The visa application procedure is not applied either. Furthermore, a holder of an EU Blue Card is entitled to change employers or find another job in accordance with the same minimum requirements within three months of leaving the previous job. In this case, the order on the

CR legal DL 2018. Всички права запазени.

termination of the employment contract with the previous employer has to be submitted.
Members of the family of an EU Blue Card holder are entitled to obtain residence permits in Bulgaria and work in accordance with the LMLMA requirements. The precondition is to file a family reunification application after the procedure for the issuance of the EU Blue Card is completed. After the request for family reunification is granted, family members – mainly spouses and children – have the opportunity to obtain Bulgarian visas and residence permits within short time limits. A problem that might occur in reality with this procedure is that it might take several months to examine the family reunification application, although the FNRBA Implementing Rules prescribe a one-month time limit.
Generally, the procedure of issuing an EU Blue Card is substantially easier than other procedures of granting work permits to foreign nationals. It should be noted that the 2018 amendments to the LMLMA further expanded its scope of application. Furthermore, this type of work and residence permit provides extensive opportunities for long-term employment and ensures easy change in employers for the employee. However, that is not to say that the procedure is easy at all. It involves at least four government authorities and the same set of documents is subject to several checks. The procedure is further delayed because of the requirements to follow the progress of the file at the relevant administrations, to ensure the presence of the person on at least two different days at the MoI, etc. In other words, a proactive approach and good organization are needed to ensure the work will start at the earliest possible time. Therefore it would be appropriate to introduce some amendments to the legislation so that to avoid repetitive checks and to seek options to substantially shorten the procedure of issuing a type D visa.

CR legal DL 2018. Всички права запазени.