

Dear Readers,

this summer edition of *HR Perspectives Global Mobility & Immigration* is the third issue we have published this year.

Summer is in full swing, but immigration law stands still for no one. On the one hand, the war is still raging on the other side of our eastern border. An important piece of news here is that it is now possible, at least to some extent, to apply for visas in Ukraine again. At the same time, the current geopolitical situation is affecting Russians and Belarusians who either want to come to Poland or are already here. On the other hand, the Polish legislator is still working on possible amendments to the Foreign Nationals Act which would make obtaining permits and residence documents referred to in the Act faster and easier. Furthermore, fees for certain immigration matters are changing.

As you can see, changes are taking place on every possible level of immigration law and practice. In order not to get lost in the nitty-gritty and miss anything, it is worth subscribing to our newsletter!

Enjoy reading!

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Visas can again be applied for in Ukraine

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Since the beginning of the Russian invasion of Ukraine, Poland has maintained its diplomatic and consular presence at the Embassy of the Republic of Poland in Kyiv and the Consulate General of the Republic of Poland in Lviv. **On 7 April, the consulate in Lviv launched a lottery for visa applications.** As other Polish diplomatic missions in Ukraine remain closed, the Consulate is accepting applications not only from the Lviv district but from all over the country. **The current visa procedure is quite different from the one that applied before 24 February 2022.**

NOTE: The following applies to national visas only, as Ukrainian citizens are entitled to visa-free travel based on biometric passports and generally do not need to obtain Schengen visas.

A visa appointment **can only be arranged through the e-consulate system after registering the application.** The consulate does not currently cooperate with any intermediary company, including the visa centres that have been very popular in Ukraine until recently. Therefore, the number of visa appointments is severely limited,

and meetings take place only at the Consulate in Lviv. On the other hand, most visa applications are now processed within one working day.

Another change is the **random allocation of visa appointments.** The lottery is launched about once every week and there are two appointment days given per lottery draw. There is no guarantee that an appointment will be made for every registered application. Those applications that are not drawn do not need to be registered again - they automatically go into each following draw until successful or, in the case of national work visas, until the work permit expires.

Notably, national work visas for employment in Poland may be issued **only based on a valid employer's declaration of the intention to entrust work to a non-national, registered in the employment office competent for the employer's seat or a valid work permit issued by the province governor (Wojewoda) competent for the employer's seat.** Notifications submitted to the employment office by the employer under the special act of 12 March 2022, which currently also legalise the employment of Ukrainians in Poland, are not considered sufficient to obtain a worker visa.

According to the information provided on the Consulate website, the following persons are exempt from the application registration:

- 1) family members of a Polish or European Union citizen;
- 2) holders of the Pole's Card and their immediate family members;
- 3) persons applying for visas under the "POLAND. BUSINESS HARBOUR" programme (only after a prior email enquiry sent to wiza.lwow@msz.gov.pl).

Another significant change is that now it is possible to **submit a visa application by an authorized representative.** As a result, Ukrainians staying in Poland will not need to return

to Ukraine to apply for a visa but can prepare a notarised power of attorney for the person who is already there and will be able to apply on their behalf. This makes travelling possible

for Ukrainians residing in Poland whose residence title is expiring and for those who arrived after 24 February on the terms of the special legislation of 12 March 2022.

However, Ukrainian authorities still do not allow men aged 18-60 to leave the country. Therefore, if such a person enters Ukraine to obtain a visa, he may not be able to leave even if his visa application was approved.

Russians find it increasingly difficult to obtain visas, while repressed Belarusians will benefit from a new residence permit

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No visas for Russians

Neither Poland nor the European Union has decided to stop issuing visas to Russian citizens altogether, even though some European countries have taken the plunge. Instead, since Russia launched a full-scale invasion of Ukraine on 24 February this year, **the number of processed visa applications has been significantly reduced**. Russians who intended to come to Poland to take up employment based on work permits or employer declarations of entrusting work to a non-national are not always able to do it. Polish consulates in Russia have almost stopped issuing work visas based on the above-mentioned documents.

Russian citizens who **can obtain a Polish visa** include, in particular:

- 1) family members of Polish or EU citizens;
- 2) students of Polish universities (including private universities);
- 3) holders of the Pole's Card and their spouses.

These are relatively small groups of Russians, so it has become a common practice **to apply for Polish visas in Russia's neighbouring countries, such as Belarus, Kazakhstan, Georgia and Azerbaijan**.

However, according to the principle of consulate local jurisdiction, **a visa application, as a rule, should be submitted at the place of permanent residence of the foreign national**. Exceptions to this rule require a very detailed justification and the consul has the discretion to decide on a case-by-case basis whether a visa application would be accepted for consideration.

These exceptions cover, for example, individuals who have a permanent residence permit or, less frequently, a temporary residence permit in a visa application country other than Russia. Furthermore, Polish consuls in Russia's neighbouring countries will, as a rule, consider applications from Russians who can prove that they are being repressed in their country and that returning to Russia may be dangerous for them.

Visas for Russians are still under discussion in both the EU and Poland, thus, it is still possible that further visa restrictions will be introduced or that visas will not be issued in Russia at all.

Residence permits for Belarusian humanitarian visa holders

In contrast, since 9 July **repressed Belarusians can apply for a new temporary residence permit in Poland**.

This application track is available to Belarusians who, immediately before applying for a residence permit, have been residing in Poland based on a Polish visa issued for humanitarian reasons or due to national interest or international obligations (D-21 visa). This also applies to Belarusians whose humanitarian visas have been extended for the duration of an epidemic and epidemic threat under the Covid-19 emergency legislation.

A temporary residence permit can be obtained for 3 years at a time. It is issued under a simplified procedure. Foreigners do not have to provide the office with documents confirming their current employment, health insurance or sufficient income to support themselves in Poland.

Offices do not charge stamp duty for issuing a decision on a new permit for Belarusians nor for a residence card based on that decision.

Holders of the new residence permit **will be exempt from the obligation to have a work permit**. However, it is worth remembering that the right to work in Poland is not extended for the residence permit waiting period, namely the period when the holder's humanitarian visa has already expired, and the residence permit has not been issued yet. To avoid employment interruption in such a situation, the employer must either obtain a work permit for the non-national or submit a declaration on entrusting work to a non-national.

The existing legislation says nothing about whether Belarusian holders of humanitarian visas who have already applied for other types of temporary residence permits (e. g. to perform work) before 9 July can re-apply to obtain a new type of permit. How exactly the offices will handle this remains uncertain, as the new solution for Belarusians has only recently been introduced.

New law on employment of non-nationals

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As part of the commitments made under the National Reconstruction Plan, the government plans to introduce new laws on the employment of non-nationals by the end of the year. The Act would revise the rules for issuing work permits and registering declarations of entrusting work to non-nationals and put the matter of work permits for non-nationals in order.

The changes should not affect residence permits or visas for non-nationals, which are regulated under a separate act (the Act on Foreigners). However, minor changes may be introduced under separate immigration laws that will come as a package with the new legislation. Although the final form of the bill is not available yet, **some of the main points** are already common knowledge.

One of the most interesting changes is **the digitalisation of the work permit and work entrustment declaration issue process on a larger scale**, which will certainly contribute to streamlining the issuance of the above-mentioned documents. Although employment offices and the province governor's offices have already implemented some digital solutions, they are used inconsistently and to a limited extent. The new legislation will be an additional incentive to modernise public administration.

A change awaited by employers is the planned **abolition of the resident labour market test (the starosta's information)**. This change will enable faster (by a few weeks) employment of non-national workers who would take up jobs for which employers could not find a suitable candidate in the Polish labour market anyway. At the same time, the Act is supposed to set out certain (not yet specified) solutions that will counterbalance the potential negative effect of the change, such as pushing Poles out of the labour market or lowering pay standards.

Another planned change is a rather controversial one, as it introduces the requirement that **a work permit or declaration can only be issued for no less than half-time work**. It is supposed to prevent paying part of the salary under the table. We believe that this regulation would not serve its purpose. Instead, it would certainly limit the options of entrusting work to non-nationals. We hope that the legislator will drop this idea in the course of the work on the bill.

The legislator also plans to **put the access rules to the labour market for non-nationals in order**. The basic division into those non-nationals who need a work permit to carry out work and those who don't will be kept. We hope that while working on that the legislator will close some loopholes that currently put both employers and their foreign employees at risk of considering their employment illegal. At present, there are many provisions on the non-nationals' right to work which are either unclear or too formalistic.

Furthermore, the planned legislation fails **to regulate, among other things, the rules for entrusting non-nationals with remote work** and for entering into contracts with them by virtual means. In practice, there are frequent **collisions** between immigration and labour laws (concerning not only the above issues), which we have discussed regularly for some time now in a **series of articles published with Dziennik Gazeta Prawna**. We hope that the legislator will manage to remove the most serious collisions of laws and problems with their application when working on the bill.

The first version of the bill is likely to be presented in September. We are monitoring closely the progress of the bill and plan **to submit our suggestions to the bill based on our immigration team's hands-on experience with the application of the current legislation**. We will keep you updated about the progress of the bill.

Fees for immigration matters are increasing

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On 12 July 2022, **the fee for registering a declaration on entrusting work to a non-national** was increased. The change is substantial, **since before it was 30 zlotys and now the fee amounts to 100 zlotys**. Notably, the new higher fee applies to declarations **submitted on or after 12 July 2022**. For declarations filed before that date the lower fee of 30 zlotys still applies (for example, if the fee was not paid at the time of submitting the declaration and now needs to be supplemented).

There are also plans to increase the fees for issuing residence cards in the near future.

At the time of preparing this newsletter, the relevant regulations have not been officially published yet, but according to the draft, the new fee is supposed to apply from **29 July 2022**. The basic amount of the residence card fee was 50 zlotys but it will be the same as the fee

for declarations, namely 100 zlotys. The 50%, percentage discount will remain unchanged and will be available to non-nationals:

- 1) in a difficult financial situation;
- 2) whose residence purpose is to enrol for secondary and higher education in Poland;
- 3) who are minors, which means they were under 16 years of age on the date of applying for issuance or replacement of the residence card.

If the application for the card was submitted before the effective date of the new regulations (scheduled for 29 July 2022), the residence card will be issued at a lower cost and no fee adjustment will be required.



PRESS

Government is about to stamp out labour exploitation. What will change in the employment of non-nationals?

In the face of new developments in the labour market, such as remote and platform working, the ministry's proposal is a step backwards. Employers need flexibility in securing staff to handle assignments, regardless of whether they will be carried out by Poles or foreign nationals - Karolina Schiffter comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

Foreigners' overtime work: According to PIP and the labour ministry it is illegal

It is not permitted to entrust work under conditions other than those indicated in the permit or declaration. As a consequence, the control authorities are of the opinion that, since the permit indicates the number of hours within which the employer decides to entrust work to a foreigner, even the slightest exceeding of this number will constitute illegal employment. However, it is hard to agree with this approach – Kinga Polewka-Włoch and Ewa Wysocka comment for *Dziennik Gazeta Prawna*. Read more: [here](#).

Troublesome residence permits for the purpose of work for Ukrainians

In the residence permit for the purpose of work issued to a Ukrainian citizen, the immigration office should not include a reference to the Special Act on Assistance to Ukrainian Nationals. It is uncertain whether a residence permit issued this way actually authorizes the holder to continue work legally – Tomasz Rogala and Marcin Snarski comment for *Rzeczpospolita*. Read more: [here](#).

Children of foreigners can legally work in Poland. What requirements must they meet?

Children of foreigners who are minors can work in Poland. However, when employing them, the company must fulfil requirements related to legal employment of foreigners (resulting from immigration regulations), and comply with rules of employment of minors, which are provided in the Labor Code – Marcin Snarski comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

The rules of a host country will determine the terms of a foreigner's posting

I employ citizens of Ukraine under the provisions of the Act on help for Ukraine due to the armed conflict on its territory. I have sent the appropriate notifications to the labor office. Am I allowed to delegate them to work abroad, for example for a few weeks on an order from a client in Portugal? – Kinga Polewka-Włoch and Zofia Pawelec comment for *Dziennik Gazeta Prawna*. Read more: [here](#).

Remote work for Ukrainian refugees still questioned

Those who are working in Poland for Ukrainian employers are the main concern. According to Ministry of Family and Social Policy this is allowed under specific, complicated conditions, but there are significant doubts about this interpretation. – Tomasz Rogala comments for *Dziennik Gazeta Prawna*. Read more: [here](#).



ALERTS AND ARTICLES

#ALERT: Special Bill on help to Ukrainian citizens – electronic document will allow travel

Ukrainian citizens who came to Poland in connection with the war often do not have possibility of traveling. They do not receive documents (such as a residence card) that are necessary to cross the Polish border. This is about to change soon. The government is working on making travel possible on the basis of an electronic document. More: [here](#).

Special Bill on help to Ukrainian citizens – changes in the employment of Ukrainians on simplified terms soon

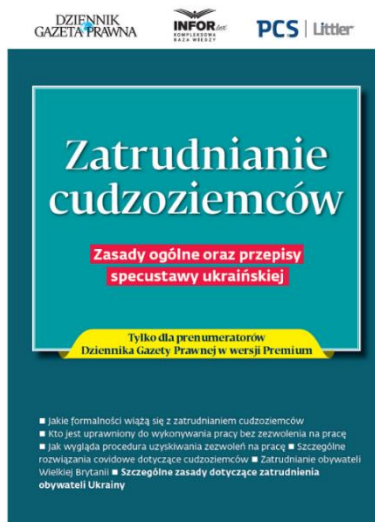
Despite the holiday period, further changes are being made to the situation of Ukrainian citizens residing in Poland. The rules related to the status of people who fled to Poland before the war are being modified. More: [here](#).

#ALERT: State of the epidemic has been lifted! What does this mean for foreigners?

On May 16, 2022, as previously announced, the Minister of Health lifted the epidemic state in Poland and introduced the state of epidemic emergency. It will be in force until further notice. More: [here](#).



BOOKS



We would like to invite you to read **Employment of non-nationals – general rules and provisions of the emergency Ukraine legislation** published jointly with *Dziennik Gazeta Prawna*.

The publication discusses such issues as:

- Who can work without a work permit;
- What is the procedure for obtaining work permits;
- Special covid measures concerning non-nationals;
- Special rules for employing Ukrainians.

Authors: Karolina Schiffter, Tomasz Rogala, Kinga Polewka-Włoch, Marcin Snarski. | More: [here](#).