

Dear Readers,

Please take a look at our last issue of this year's quarterly *HR Perspectives Global Mobility & Immigration* devoted to recent and upcoming changes in immigration practices and regulations, where we discuss:

- the new bill on the employment of non-nationals;
- rejecting Russian nationals' residence applications on the grounds of national security;
- important deadlines for residence permit applications by Ukrainian citizens who have arrived in Poland because of the war;
- the September extension of the Poland Business Harbour programme;
- changes to application templates for work permits, their extensions and declarations for giving employment to a non-national.

As always, we keep our finger on the pulse and remain ready to comprehensively cover all immigration topics for you.

Enjoy reading!

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New bill on the employment of non-nationals later this year

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A new bill on the employment of non-nationals is being worked on before referral to the Sejm. If enacted, the new legislation will change the rules for obtaining work permits and declarations for giving employment to a non-national.

However, the changes will not apply to obtaining visas or residence permits, which are regulated in another act. Moreover, the bill does not change the rules of carrying out work by Ukrainian citizens who reside and work in Poland under the Emergency Ukraine Act.

It seems that the most crucial change included in the bill at this stage is **the abolition of the “labour market test”** and the transfer of the procedures concerning work permits and declarations for giving employment to a non-national entirely to the praca.gov.pl website, which means **full digitalization of the process**. It can have a significant practical impact by streamlining the processes of obtaining work legalisation documents on the one hand, and on the other, forcing those employers who have not yet adopted the new tools for obtaining work permits to start using them.

Here is a selection of other changes included in the bill:

- increased prevention of abuse in the area of working conditions for non-nationals. Employers applying for a work permit for a non-national will have to provide them **pay conditions comparable to those of other employees** (verified through the central job offers database) and be employed for at least ¼ FTE;
- additional options for the government to **limit the issue of work legalization documents for non-nationals** by introducing separate regulations;
- a foreign citizen who has entered Poland but has **not taken up employment based on a previously held work permit** or declaration, may not be allowed to work for a new employer;
- if there are some changes planned in the working conditions of a non-national, it will be possible **to amend the existing work permit** instead of applying for a new one;
- **fines for illegal employment of foreign citizens will be increased** (at least PLN 500 for each foreign worker);
- there will be **new restrictions on outsourcing non-national employees to other entities** by employers who are not temporary work agencies.

However, the bill leaves some unresolved issues, such as the question of remote working by non-nationals or **the lack of clear division between the regular performance of work and business travel to Poland by non-nationals**.

Our team is taking part in the consultation process for the new legislation, which is expected to be enacted later this year. The bill should soon be referred to the Sejm. We will keep you up to date with the work in progress on our LinkedIn company profile, please follow us [there](#).

Series of residence permit refusals for Russian citizens. Is appeal worth the deal?

Author: Maciej Zabawa, lawyer, maciej.zabawa@pcslegal.pl

Over the past few months, Russian citizens have been significantly more often denied residence permits in Poland. Allegedly, it is for the defence and state security reasons or the protection of public safety and order. The number of refusals is increasing and this trend is expected to continue.

Supposedly, refusals are based on negative **opinions of state services, in particular, the Internal Security Agency**. However, the information contained in such opinions is confidential. Thus, the applicants cannot learn the actual reasons for the negative assessment of the services and administrative bodies considering their case.

The problem concerns both those Russians who have just arrived in Poland based on already obtained visas and are now applying for their first temporary residence permits and those who have been in Poland for many years based on successive temporary residence permits and are currently applying for indefinite residence permits. These include a long-term EU residence permit or a permanent residence permit on the grounds of Polish origin or marriage to a Polish citizen.

It may be the case that a series of refusals to grant residence permits to Russian citizens could be politically motivated. This is linked to Russian armed aggression against Ukraine and Poland's understandable course in supporting Ukraine and its people. Therefore, it may be assumed that it is based on general prevention considerations, disregarding individual circumstances and the outcomes of thorough vetting procedures to confirm if they are a threat or not.

This is exactly how most Russians perceive this situation. It is, therefore, not surprising that they refuse to accept the negative assessment by Polish authorities and are determined, to challenge such refusals. They should do it, because otherwise, in the worst-case scenario, Russian citizens might be deprived of their right to work in Poland or forced to return to Russia.

When making a claim or an appeal, it should be remembered that the authorities cannot base their decision solely on the security services' opinion, especially if they do not include an individual assessment of the non-national's situation. The authorities are obliged to collect and assess all the evidence in the case independently and thoroughly. In particular, the assessment of whether or not the refusal to grant a non-national a residence permit was motivated by the defence or state security considerations or the protection of public security and order. A residence permit may only be refused if such an assessment indicates that the individual's behaviour constitutes a real and sufficiently serious threat and it will not unduly interfere with the non-national's private and family life.

Such an assessment must have already been made by a first-tier authority. The correctness and validity of the assessment by the security services and the first-tier authority is, in turn, subject to both a higher-tier authority and judicial review. This is because all authorities and courts involved in the case have access to information classified for non-nationals and their attorneys. It is worth appealing against and challenging such decisions and, as a result, subject the work of the services and authorities dealing with the case to close scrutiny.

We are ready to offer our assistance in any appeal proceedings, please contact us directly.

Deadline for Ukrainian refugees to apply for residence permits is approaching

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Citizens of Ukraine covered by the protection granted by the so-called special Ukrainian act (act of 12 March 2022 on help for citizens of Ukraine due to armed conflict on the territory of this country) have **guaranteed right to stay in Poland for 18 months from 24 February 2022 (i. e. until 24 August 2023)**. To be able to stay longer, they need to apply for special residence permit (provided in the art. 38 of the special act). According to the special act, however, the application for the special residence permit may be submitted no earlier than after 9 months from the date of arrival in Poland and receiving protection under the special act.

For Ukrainian citizens who arrived in Poland on the first day of the special act, i.e. 24 February 2022, this 9-month “waiting period” after which an application for a temporary residence permit can be submitted, will end on **24 November 2022**. This means that on 25 November 2022 they will be able to apply for residence permit. Each day after 24 November 2022, the possibility to apply for a residence permit will open for more Ukrainian citizens as the period of 9 months from their arrival in Poland expires.

This means that **by the end of 2022 we should expect significant increase in the number of applications for residence permits submitted to district offices**. It is important to keep in mind, that Ukrainians protected by the special act generally (with few exceptions) cannot submit an application for residence permit earlier than 9 months since their arrival in Poland. Thus, citizens of Ukraine, who came to Poland in large numbers in February and March 2022 could not submit those applications over a number of months which could allow for a more balanced workload for the offices over time. Instead, it is expected, that many will want to apply for the permit at the same time by the end of 2022. Unfortunately, this could mean significant difficulties in scheduling appointments in offices to apply for a residence permit, and longer pending proceedings. These difficulties may not only affect Ukrainian nationals covered by the special act. The same district offices that will process applications for residence permits for Ukrainians under the special act remain responsible for all other types of residence permits.

It is worth to plan applications for residence permits well in advance and to be aware that the duration of the procedure may increase significantly in the coming months.

Poland Business Harbour for companies around the world

Author: Kinga Polewka-Włoch, lawyer, kinga.polewka-wloch@pcslegal.pl

On 5 September 2022 the vice-president of Ministry of Foreign Affairs announced expansion of the Poland Business Harbour programme (further PBH). So far the programme covered only **companies and foreigners from Armenia, Azerbaijan, Belarus, Moldavia, Russia, and Ukraine**. Now, it is not restricted territorially, and it was expanded to cover the **whole world, but only in the aspect dedicated for companies**.

Since the whole programme is not specifically regulated by any legislation in force, and its rules are set by announcements such as the one discussed. In practice, the scope of the above expansion raises doubts. It is certain that after the change, regardless of their location, companies (small, medium and large) from strategic industries, realising projects of significant importance to Polish market, will be able to move their operations to Poland and use advice

on running business in our country. At the same time, Polish Investment and Trade Agency (further PAIH), responsible for this project at least in part of the business track is supposed to support the companies in the programme **in relocating employees from all over the world, not only from the previous list of countries covered by the programme.**

On the other hand, the announcement directly mentions that the rules of the programme for individuals remain unchanged. Right now, our experience shows, that Polish consulates in countries that were covered by the Poland Business Programme from the beginning, issue PBH visas independently from the applicant's nationality. What is left is to follow the practices of consulates from around the world, which can now also benefit from the programme – whether they will issue these special visas, or whether additional support will be only on the PAIH side. The former case would be a big improvement and opening of the Polish market for foreigners from key industries, particularly IT, which – at least ultimately – is the main beneficiary of the PBH.

Change of template applications for issuing and extension of work permits, and declarations of assigning work to a foreigner

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On 29 July 2022 a new directive of the Minister of Family and Social policy of 18 July 2022 came into force. It fully replaced the previous regulations in this area.

Most important changes to the documents required in procedures (accordingly with §9 of the directive) are:

1. Waiving the requirement to attach a copy of the employer's identity card or other proof of identity to the application;
2. Limiting the required copy of the foreigner's valid travel document only to the pages with personal data (this means that only the first page of the passport with the foreigner's data will be required);
3. Consideration of documents confirming foreigner's work for a foreign employer and their posting to work on the territory of Poland – in case of type C, D, and E permit applications;
4. Waiving the requirement to submit original copy of information from the District Governor;
5. Clarification that the information from the District Governor with a specific identification number can be submitted only with one application for work permit (the information ID number should be included in the application each time);
6. Including foreigner's personal data in the copy of stamp duty payment confirmation
7. Waiving regulations allowing submission of a single copy of certain documents in cases where an entity submits applications for more than one foreigner at the same time;

There are also significant changes in the below areas:

Extending work permits

Currently, instead of indicating in the application for extension of a work permit only the changes in the employment conditions in relation to the original application, it is necessary to indicate all terms and conditions of employment, including those that remain unchanged, as if applying for a new work permit.

In order to maintain the legality of employment, the application for extension of work permit still needs to be submitted not earlier than 90 days and not later than 30 days before the expiry of the work permit. No changes were made in this regard.

Certification of lack of criminal record

The new directive states that the certification of lack of criminal record still needs to be attached to the application. The certification should be relevant to the date of submission of application or declaration and signed by the entity assigning work not earlier than 30 days before this date.

Job market test

After changes, district employment office refers to the employer only those candidates who meet the requirements specified in the job offer and at the same time express interest in the offered job.

The unemployed person referred to entity applying for information form a District Governor, will be able to refuse the offer without concern about losing the unemployed status. This solution is supposed to improve the efficiency of the labour market test and significantly shorten this process.

Additionally, each copy of information form the District Governor regarding staffing needs has a specific identification number, so there is no need to submit the original copy of this document in the application procedure. At the same time, though, one copy of the information with specific ID number can be attached only to one application for work permit.

Attention! Procedures that were started and were still ongoing before 29 July are conducted on the basis of previous regulations.

Due to these changes, the system that allows for electronic submission of applications (praca.gov) has been temporarily shut down. When the changes were implemented, and the system was back up again, it turned out that the submitted applications were reaching the relevant authorities in the wrong form, so the issued permits and declarations contained errors.

Once the application is submitted via praca.gov, it is visible in the system of the applicable Office, but the inspector who received it does not have the possibility to approve it and has to make random changes imposed by the system.

Therefore, **each permit issued after 1 August 2022 should be thoroughly verified to confirm that all the data is correct, e. g. name of the company, foreigner's personal data etc.**



PRESS

Employment of foreigners will symbolically gain in importance

The planned new act on the employment of foreigners will replace the current act of employment promotion and labour market institutions in the part concerning employment of foreigners. Issues concerning, for example, activation of the unemployed will be covered by a separate act – act on professional activity. This is a symbolic but significant change. Firstly, the employment of foreigners, (i.e. obtaining work permits) will get a separate act, which raises the importance of immigration issues. Secondly, the adoption of a separate law will in a way acknowledge that the employment of foreigners is no longer just a side effect on the labour market, secondary to, for example, the fight against unemployment. – Marcin Snarski comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

Government to crack the whip on companies

The Council of Ministers is to be given an additional tool to control the labour market. According to the new bill, the Council will have the power to issue regulations setting out quotas for the headcount of Polish and non-national employees in a given company – Karolina Schiffer comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

The dispute over social security contributions for non-nationals is back. This time it is about refugees

The Social Insurance Institution's (ZUS) take on Article 5(2) of the Social Insurance System Act should be regarded as reprehensible. The way ZUS acts flies in the face of the rule of law where lower-level authorities take into account the positions of higher-level authorities in their decision-making. Meanwhile, despite a well-established line of Supreme Court decisions which has been continued for over 15 years, ZUS ventures the opinion contrary to this line. It is also contrary to the best interest of citizens and entrepreneurs who need to take on the burden of appealing against ZUS's decisions and going through the entire court proceedings to obtain a decision compliant with the court decisions. - Łukasz Chruściel comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

Foreigner's return from maternity leave may cost the employer a lot

If the existing position has been removed, a new one must be provided for her, which, however, requires a change in the work permit. As long as the new decision has not been issued, the woman cannot work, but she will be, in principle, entitled to a salary. – Marcin Snarski and Bartosz Grzenkowicz comment for *Dziennik Gazeta Prawna*. Read more: [here](#).

Employers' rights and obligations in case of foreigner's job abandonment

Job abandonment is a problem that employers, especially those employing foreigners, face relatively often. Foreigners often find, better-paid jobs on the black market and are not always

aware of the potential consequences related to labour and immigration areas. – Kinga Polewka-Włoch and Ewa Wysocka comment for *Dziennik Gazeta Prawna*. Read more: [here](#).

Hiring foreigners will be a little easier? Rules for submitting work permit applications were clarified

New rules permanently introduce certain solutions that were already used by immigration offices in practice. They are also an opportunity for further digitalisation, which will soon be extended to employment procedures involving foreigners. – Marcin Snarski comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

A scanned employment contract for a non-national? It is a risk to employers

Employers should be aware that, depending on the circumstances of a given case, the legality of entrusting work to a non-national may be questioned. This is because contracts concluded with non-nationals are subject to additional requirements under immigration law. - Kinga Polewka-Włoch and Marcin Snarski comment for *Dziennik Gazeta Prawna*. Read more: [here](#).



ALERTS AND ARTICLES

#ALERT: Russian citizens will lose facilitations in performing work in Poland

The Ministry of Family and Social Policy is planning to limit the possibility for Russians to work in Poland, starting from October. The exact date of the changes is not known yet. So far, Russian citizens have been able to undertake work under simplified rules. The changes are related to other sanctions introduced earlier by European Union countries (including Poland), e.g. restrictions on the issuance of visas or limitations on the possibility of entering Poland for certain groups of Russian travelers. More: [here](#).

#ALERT: Electronization of employment procedures for foreigners expected still this year

The long-awaited draft of a bill on the employment of foreigners has been published. It will change the rules for obtaining work permits and declarations on entrusting work to foreigners in Poland. It is planned to adopt the new regulation still this year. The draft also foresees that the act will enter into force shortly after its publication - after only 7 days. More: [here](#).

#ALERT: New templates for applications for work permits and declarations on entrusting work to foreigners will take effect from 29 July!

To a large extent, the new regulation refers to the existing provisions, but it also includes solutions to make it easier for authorities to carry out the procedures for issuing work permits

and entering declarations for giving employment to a non-national into the register of declarations. The new legislation clarifies certain aspects of these procedures, taking into account other provisions on non-national employment legislation and practical needs. More: [here](#).

#ALERT: Traveling not available to everyone who fled the war in Ukraine

Refugees from Ukraine will be able to travel e.g. between Poland and Ukraine or within the Schengen area. In some cases, foreigners may use previously obtained documents and do not have to visit the authorities again. Poland notified the European Commission of two types of documents, which are therefore treated by other EU Member States as documents enabling their holders to travel. More: [here](#).

The series of refusals of residence permits for Russian citizens on grounds of state security protection

During the past few months, Russian citizens are receiving significantly more decisions to refuse residence permits in Poland. Such decisions point to the need to protect state security as the reason. More: [here](#).

Changes to per diems for foreign and domestic business trips

On 3 August 2022, a new bill on business travel allowances was published on the Governmental Legislation Centre website. It increases per diems and expense limits for overnight stays during foreign business trips and further raises per diems for domestic trips. More: [here](#).