

Dear Readers,

In our spring edition of *HR Perspectives Global Mobility & Immigration*, we look at ever-changing immigration laws and the authorities' practices concerning non-nationals. The most significant changes include:

1. new documents for confirming the knowledge of Polish for a residence permit,
2. priority service for work visas issued for non-national professionals in high demand in the Polish labour market,
3. a new protective measure for Ukrainian citizens,
4. change in the approach of immigration authorities to temporary residence permits for Ukrainian citizens who do not consider themselves war refugees,
5. access to the diia.pl system for children.

We encourage you to follow our profiles on social media to keep abreast of the latest immigration news.

Enjoy your reading and feel free to contact us if you have any questions.

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Change of rules for confirming knowledge of Polish for long-term EU residency applicants

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There will be new rules for confirming the knowledge of Polish for people over the age of 16 applying for a long-term residence permit.

According to the existing residency process requirements, the necessary knowledge of Polish can only be confirmed by an official certificate of B1 level language proficiency in Polish, a Polish school graduation certificate, or a graduation certificate from a school or university abroad with Polish as the language of instruction.

When the new rules take effect, certificate of B1 level language proficiency in Polish from the following institutions will also be accepted:

- a. European Consortium for the Certificate of Attainment in Modern Languages (ECL),
- b. telc GmbH, WBT Weiterbildungs-Testsysteme GmbH (TELC).

Furthermore, non-national students of Polish universities attending a university-run Polish language course can have their knowledge of Polish confirmed by that university. In this case, the university has a free hand in determining the process of obtaining the certificate, as long as it is compliant with the Common European Framework of Reference for Languages.

The draft regulation is past the consultation phase with provincial governors.

According to the explanatory memorandum to the regulation, the changes should become effective 3 months from the date of their announcement.

Work visas. Non-nationals with in-demand qualifications on the fast track to working in Poland

Author: **Ewa Wysocka**, lawyer, ewa.wysocka@pcslegal.pl

The Ministry of Foreign Affairs is working on a new regulation that will set out professions eligible for the expedited visa process. Such professions as programmers, doctors, nurses, electricians, but also bus and truck drivers and carers of the elderly are considered key to the Polish economy. The regulation is expected to partially solve the problem of work visa backlogs - waiting for a visa appointment in some consulates can take months.

The draft regulation has received mixed reactions from employers and experts. On the one hand, it's good that at least some industries will be able to bridge the gap in staff numbers with non-EU specialists. On the other hand, a systemic change is needed to overcome difficulties in obtaining visas. The proposed solution may even further exacerbate employment problems in other industries struggling with staff shortages, such as the financial services industry, which were not mentioned in the planned legislation.

The regulation will take effect 14 days after the announcement, but the exact date is not yet known.

"Lifeline" for Ukrainians – safeguard against temporary residence permit refusal

Author: Aleksander Dżuryło, lawyer, aleksander.dzurylo@pcslegal.pl

On 28th January 2023, the Act on Assistance to Ukrainian Citizens (the Ukrainian emergency law) was amended to provide a sort of "lifeline" for Ukrainians who will apply for a temporary residence permit but fail to meet all criteria needed for such a permit. Their applications will not be rejected as before but they will be issued one-year permits.

The new protective measure will apply only to applications for temporary residence permits considered before 24th August 2023. Notably, applications for other types of residence permits, such as permanent or long-term EU residence permits, are not covered by such protection and may still be rejected by authorities.

The provisions of the emergency law that set out the protective measure constitute an independent and stand-alone legal basis for granting a temporary residence permit. A permit issued under this procedure is a new, separate type of a temporary residence permit in Poland, which does not entitle a non-national to take up employment without any additional document legalising employment. This means that this new permit should be combined with a separate basis for taking up employment in Poland, such as a notification submitted to the district employment office about giving employment to a Ukrainian citizen.

The new protective measure can be used by all Ukrainians, regardless of whether they arrived in Poland before or after the war started (24th February 2022).

In practice, however, those who arrived after the outbreak of the war are covered by the Ukrainian emergency law and may apply for certain types of temporary residence permits only since 1st April 2023.

It is highly unlikely that applications submitted on and after 1st of April will be processed before 24th August 2023 and, therefore, covered by the protection.

Is every Ukrainian a refugee?

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

There has been some unofficial news on the Internet recently, saying that the Office for Foreigners (pl. Urząd do Spraw Cudzoziemców, UDSC) has changed its approach to temporary residence permit applications submitted by Ukrainians who entered Poland after 24 February 2022 but do not consider themselves war refugees. It concerns Ukrainians who want to legalise their stay on a general basis and do not have UKR PESEL numbers, and claim they are not covered by temporary protection.

According to the Ukrainian emergency law, only those Ukrainians who have legally arrived in Poland from Ukraine after 24th February 2022 because of the war will be covered by temporary protection in Poland. Not every person from Ukraine is a refugee and not all Ukrainians coming to Poland after 24th February 2022 fled the war and sought protection.

Nevertheless, the UDSC and provincial governor offices treated all Ukrainians equally and these persons were considered to be covered by temporary protection, regardless of whether they actually came to Poland because of the war or for other reasons, such as taking up employment or reuniting with their family. As a result, the offices refused to initiate temporary residence permit processes for them. According to the Act on non-nationals, such processes cannot be initiated for people covered by temporary protection.

This is now about to change and our law firm had a hand in this. We have supported our clients in lodging complaints to Provincial Administrative Courts in such cases and they have been considered in our clients' favour.

Diia.pl electronic document will be available for children covered by Ukrainian emergency law

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An amendment to the Ukrainian emergency law (Act on Assistance to Ukrainian Citizens) will enable adult Ukrainians covered by the emergency legislation to download the electronic diia.pl document for children under their parental authority.

Diia.pl is an electronic document available in the mObywatel application. The document confirms the identity of Ukrainian war refugees and allows them to travel within the Schengen Area (for no longer than 90 days in any 180-day period) or to cross the external EU borders.

Currently, as a result of procedural errors, the diia.pl document is unavailable to children under the age of 13. The mObywatel application is available only to those who have a trusted profile, which, in turn, can be set up only by individuals with full or limited legal capacity, achieved in Poland at the age of 13. This means that the children of people covered by the Ukrainian emergency law are currently unable to travel outside Poland, as they are unable to obtain a document that would confirm their right to cross the Schengen or EU borders.

As a result of the planned changes, parents who have registered with their children as refugees from Ukraine and have downloaded their own Diia.pl document through the official mObywatel mobile application will be able to download Diia.pl for their children as well.

Downloading Diia.pl for children will be possible as soon as Polish authorities confirm that IT systems have been updated to accommodate the changes. We expect this to happen in the next few weeks.



PRESS

Legal changes for Ukrainians in Poland

How to fill out a tax return? Who should pay for the stay of Ukrainians in collective accommodation centres? How to apply for a residence card in Poland? - Aleksander Dżuryło answers these questions in an interview with *Polish Radio*. Read more: [here](#).

“Grey envelope” for Ukrainians, Polish employers lower wages and pay for work “under the table”

Ukrainian citizens employed by Polish entrepreneurs very often get part of their salary under the table. This is also due to the fact that this is a common practice in Ukraine called the “grey envelope”. This also explains the low wages of Ukrainian citizens listed in public registers – Karolina Schiffter comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

Employment rules for foreigners. Check when the simplified rules will apply

These changes were pending for years, but the modification of the project means that we will have to wait even longer. Important changes are postponed. It is worth to mention, that public offices will have two years from the bill’s entry into force to implement the discussed solutions, i.e. digitalisation of proceedings. According to the project, in this time, interior and family ministries, and Social Insurance Institution (ZUS), will have to adapt their systems to handle cases electronically. – Karolina Schiffter comments for *Business Insider*. Read more: [here](#).



ALERTS AND ARTICLES

GMI Legal Update: Electronization of procedures for employing foreigners delayed

The latest (third) version of the draft law on the employment of foreigners has been published on the website of the Governmental Legislation Centre on February 5, 2023. All indications are that we will have to wait for electronic proceedings on the legalisation of work of foreigners. Perhaps even a few years. Work on the provisions of the bill is ongoing. The milestones from the first version of the bill, such as the abolition of the labour market test, changes in the conditions for issuing work permits, tightening of criminal provisions and full electronization of procedures in cases of employment of foreigners, are gradually being supplemented with new solutions. Read more: [here](#).

GMI Legal Update: Amendments to Ukrainian Special Bill – overview of the most significant changes

Newest amendments to the Special Bill on help to foreigners from Ukraine and to some other acts are in force from 28 January. They in particular provide for obtaining certain types of temporary residence permit by Ukrainian refugees. Moreover, the adopted protective mechanism should help them to avoid receiving negative residence permit decisions. Read more: [here](#).

GMI Legal Update: New changes on work notification for Ukrainians – employers who have not submitted notifications on time will be able to do so within additional deadline of 14 days

Polish authorities published newest changes to the Special Bill on help to foreigners from Ukraine on last Friday evening. New regulations came to effect on the following day (28 January) and provide many significant changes in the Polish immigration law, not least the special regulations provided for Ukrainians. The new legislation explicitly indicates the employer duty to file a work notification in the event that an Ukrainian obtains a combined temporary residence and work permit (Single Permit) with an annotation of exemption from the work permit under the Special Bill, even if the work was performed before such a permit was delivered to such a person. Read more: [here](#).