



Families know no borders II – What does it mean to live a family life as a foreigner in Slovakia?

Barbora Meššová

Abstract:

In order for a family to enjoy family life, all its family members shall be entitled to some form of right of residence in the same territory. In case of Slovak citizens the right of residence is indisputable, however; foreign nationals must often fulfil different legal conditions, certify it with number of documents, apply for residence and wait lengthy periods before decision is taken and the right granted by Slovak authorities. The article describes some positive practices as well as difficulties faced by foreigners when applying for family reunification residence in the Slovak Republic. It also outlines the scope of the rights attached to the different forms of residence of foreign nationals. Among other issues, it draws attention to the proposed change of the law which as of 1st December 2013 aims to divert from current good practice according to which foreign nationals with temporary residence for purpose of family reunification may enter labour market immediately without a work permit.

Form of residence determines the level of rights

The legislation in the Slovak Republic guarantees the right for family reunification¹ for third country nationals who can show that they fulfil conditions prescribed by law. Family unity may be a reason for acquisition of permanent, temporary or tolerated residence. For family members of EU nationals, the legislation provided for a more favourable set of rules for family reunification. However, they are not necessarily applicable to every family member of Slovak citizens. The specific regime applicable to family members of EU citizens as well as of Slovak citizens was discussed in the previous article.²

1 Act on Residence of Foreigners No.404/2011 Coll. states: "a police unit *shall grant* residence permit to a foreigner who..".

2 If you wish to read more about who defines as eligible for family reunification and about general legal context of protection of family life in Slovakia, please, read article "Families Know No Borders – Who is a Family in

Permanent residence

Permanent residence is the highest form of residence for third country nationals who are family members. It is initially granted for five years and after four years of duration it can be extended to indefinite time. Permanent residents have almost equal rights as a Slovak citizen. Foreigners with permanent residence have right to conduct business, being employed without a need for work permit, enroll in public health insurance or in education under the same conditions as Slovak citizens. After four years of permanent residence, he/she shall apply for permanent residence for indefinite time. However, if the family relationship is based on marriage, the marriage must exist at least five years since obtaining first residence. Generally after 8 years of permanent residence, he/she may apply for a Slovak citizenship.

Temporary residence

Temporary residence by definition is more time-limited and it is dependent on the duration of the residence of a sponsor. Temporary residence for the reason of family unity shall expire together with the validity of sponsor's residence. If a child reaches age of maturity or when a marriage dissolves, family reunification temporary residence shall be revoked. On the other hand, a family member of a sponsor may apply and acquire autonomous right of residence for a different purpose. The maximum duration of temporary residence for family reasons shall be five years, but in practice it is rarely granted for more than 12 months after which a foreigner applies for renewal. After five years of continuous residence, temporary residence may be changed to long-term (permanent) residence with duration for indefinite time.

The current legal regulation of their access to employment, self-employment and conducting business in the Slovak Republic represents a good practice. Upon the immediate acquisition of temporary residence, the temporary residents may engage in business or be employed without a need for work permit. This good practice, however, may soon be altered. In May 2013, Ministry of Interior in cooperation with the Ministry of Labour, Social Affairs and Family introduced an amendment to the Act on Services of Employment which proposes return to the old practice of only allowing family members to access employment within first 12 months of their residence based on work permits. Work permits shall be issued by the Labour Office while taking into account the situation on the labour market. Only after the first 12 months of residence, the law no longer requires a work permit. This amendment is currently under legislative process and, if approved in Parliament, it shall become valid as of 1st December 2013. Ministries are currently debating with the need to protect Slovak labour market.

Currently, the legal regulation that regulates the enrollment of family members of temporary residents to public health insurance system is problematic. Unless they are economically active

Slovakia?" by the same author.

(employed or conducting business) in Slovakia, they cannot participate in the public health insurance scheme. The only possibility for them is to contract themselves with private health insurance.³ Participation in the private insurance scheme in cases of family members with health risks identified may be unreasonably expensive or even impossible.

Tolerated residence

Tolerated residence is a form of residence ensuring safety net for those family members for whom it is not possible to fulfil conditions for obtaining permanent or temporary residence, yet their family life requires presence in the territory of the Slovak Republic. The law requires that the family member shall not present a threat to state security or public order. In theory, tolerated residence is designed in a manner in order to offer an alternative form of residence for those who cannot be granted higher form of residence. In practice, however, the police authority is rather reluctant in granting this form of residence. On many occasions the Ministry of Interior presented in its official positions that the tolerated residence is not to be considered a regular form of residence, but only a registration of foreigners who otherwise would be deported.⁴ The fact that Slovak authorities consider tolerated residence as a short-term interim form of residence is reflected in the regulation of its duration and renewal. Tolerated residence shall be granted for inevitable time, maximum for 180 days with possibility of renewal, if necessary, for another maximum 180 days. Regardless of the fact how long the tolerated residence may be, according to Slovak law the length of its duration does not automatically lead to qualification of a foreigner for higher form of residence. Holders of tolerated residence are explicitly ruled out from the possibility of acquiring a long-term residence.

The scope of rights directly connected with the tolerated residence for purpose of respecting family life is rather limited. Family members with tolerated residence may access to labour market from the moment of obtaining their residence and without requirement of a work permit. During tolerated residence he/she is prohibited from conducting business. Access to health insurance is only secured if they are employed, otherwise only private health insurance is applicable.

Application for family reunification in Slovakia⁵

3 Only one insurance company offers this type of insurance to foreigners.

4 Explanatory reports to legislative proposal of the Act on Residence of Foreigners and of its amendments.

5 A family member shall submit documents not older than 90 days which certify his/her family relationship with a sponsor. Of course, some documents issued by the civic registry office cannot by its nature be younger than 90 days, such as a birth certificate. If a foreigner is older than 14 years of age he/she also needs to submit documents certifying his/her integrity from country of origin and from all country in which he/she has taken up the residence. The sponsor is obliged to show sufficient financial resources for residence, provision of accommodation and in case of minor children consent of both parents with family reunification on the territory of the Slovak Republic. Accommodation shall be common for a sponsor and his/her family member. Financial resources shall be demonstrated by a sponsor in the amount of subsistence minimum¹ for each month of residence, which at the time of

The advantage of the Slovak regulation of the family migration is that it does not require any specific duration of residence of a sponsor for his family reunification. The Slovak Republic also does not require waiting periods, requirement of stable and regular resources of a sponsor or any integration measures.

Family members may apply for residence abroad at a Slovak embassy. In this case, if residence is granted, an embassy will inform the family member who shall arrive to the territory of the Slovak Republic in less than 180 days. He/she shall declare his/her taking up of the residence in Slovakia to immigration authorities which will then issue a document certifying his/her residence. Slovak embassy may also issue a national visa, if it is necessary for a foreigner to arrive to the Slovak Republic to take up his/her residence. The validity of national visa is usually up to 90 days and other member states respect national visa with the same consequences as granted residence. Its holder may stay in their territories for the duration of maximum 90 days within half a year.

Another advantage is that family members may also submit their application at the police department in the territory of the Slovak Republic provided that their residence is authorised. In practice, however, the application for residence in the territory of the Slovak Republic is often obscured by the lengthy procedure in which decision about granting first residence is made. In family reunification cases, the law requires that the procedure shall normally take up to 90 days. In reality it usually takes a little bit shorter. This affects third country nationals for whom visa is not required as well as those who acquired visa with duration for 90 days or less. According to the law, submission of a request for first residence does not itself authorise the residence on the territory of the Slovak Republic. Thus, if a police authority has not taken up decision within the time for which their visa is not required, or before expiration of their visa, they must leave the country once their legal title for residence is no longer valid. If the residence is granted, they may arrive back to the territory of the Slovak Republic, but since they possess no document that certifies their residence, they must again apply for visa in order to enter the Slovak Republic repeatedly.

writing this article is 194,58 eur monthly; maximum twelfefold of the subsistence minimum. For a minor child sponsor shall demonstrate only a half of this amount.

Administrative fees shall be paid in a form of stamp which must be submitted together with application. For temporary residence application in the police station a foreigner shall provide 132,5 Eur in stamps, while at an embassy it was 135 Eur. For renewal of temporary residence only 66 Eur shall be paid. For permanent residence application submitted at the police station a foreigner shall provide 165,5 Eur in stamps, while at an embassy it was 170 Eur. In order to submit application for tolerated residence, police authority requires 99,5 Eur and 33 Eur for its renewal. The issuance of the document certifying residence costs 4,5 Eur and application national visa for purpose of arrival in order to take up one's residence is 9,5 Eur. In some cases law excludes an applicant from payment of an administrative fee for humanitarian reasons as well as due to dependency or insolvency of an applicant. Police authority may also uplift requirement to pay the fee for the same reasons.

The requirement of visa for arrival to the Slovak Republic in this case would affect also third country nationals who come from a visa-free country. According to Schengen rules they are authorised to reside on the territories of the member states without visa for 90 days within half a year. Having exhausted their time for residence without need of visa, they may usually return again to the territories of EU member states without need for visa only after lapse of three months since they had left. If they wish to arrive back earlier, they may have to apply for visa for the purpose of arrival to the Slovak Republic to begin their residence.

The approach of the legislator is different in cases of renewal, change of type or purpose of the residence. In these cases, if a third country national submitted his/her application no later than the last day of his/her granted residence, his/her further residence is considered as authorised until the decision about his/her application is taken. This is a favourable solution, since it does not require a third country national to leave from the territory of the Slovak Republic.

Horizontally relevant consideration

Family reunification Directive imposes an obligation⁶ on member states to take due account of the nature and solidity of the person's family relationships, the duration of his/her residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin and therefore, a case-by-case approach is applied. This horizontal consideration with regards to right of residence was also specifically recalled by the European Court of Justice (referred to as ECJ) in C-540/03. According to ECJ, the mere reference to Article 8 European Convention for Protection of Human Rights and Fundamental Freedoms (ECHR) does not seem to constitute adequate implementation of Article 17 of the Directive. Also in the case of Slovakia, transposition of Article 17 by mere citation of this provision of the Directive in the law does not seem to be satisfactory. Report of the European Commission on the implementation of the Directive considers this approach to be problematic.⁷

According to the report, the "national requirements for family reunification are applied very strictly, and authorities are not obliged to assess the application on an individual basis" in Slovakia. This is not necessarily true. Pursuant to the Administrative Procedure Code⁸ applicable to administrative proceedings according to the Act on the Residence of Foreigners, the individual approach is always required. On the other hand, the application of the individual approach to all the circumstances of the case is still under-developed in Slovakia. Regarding the reasoning of decisions by the police authorities on family reunification cases, there is very only little evidence of a practice taking into account the detail of the individual application.

6 Article 17 of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

7 Commission of the European Communities Brussels, 8.10.2008, COM(2008) 610 final: Report from the Commission to the European Parliament and the Council on the Application of Directive 2003/86/EC on the rights to family reunification, pg.11.

8 Act No. 71/1967 Coll. on civic administrative proceedings.

The article has been written as part of the project Migration to the Centre supported by the by the Europe for Citizens Programme of the European Union and the International Visegrad Fund.

This article reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



Funded by the Europe for
Citizens Programme
of the European Union

•
• Visegrad Fund
•