



## **The draft of the new Aliens Act: Tighter Rules for All**

### **Abstract:**

At the beginning of May 2013, after more than two years of preparations, the Ministry of the Interior of the Czech Republic submitted for public consultation, its conception of the new foreigners' legislation. Three new separate acts, if approved by the Government and Parliament, would substantially change the current legal regulation of stay and residence of foreigners from the EU as well as from so-called third countries.

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Who will be affected and how by the draft of the new Aliens Acts, which the Ministry of the Interior wants to pass by 2014? By way of illustration, there should be around 60 grounds for rejection or refusal to extend residency instead of the current 20; landlords could be fined up to CZK 50,000 for failure to register with the police any EU citizen who lodges with them, or the permanent residence permit should no longer provide existing guarantees. The following short texts, written by lawyers of the Consortium of Migrants Assisting Organizations in the Czech Republic, outline the main changes for immigrants and those Czech citizens affected by the draft new legislation. If you disagree with these amendments, support the declaration of the Consortium: WE ARE REJECTING THE NEW ALIENS ACT.

What would the new Aliens Acts tighten for:

- non-EU citizens in general
- applicants for and holders of permanent residence permits
- non-EU citizens on the labour market
- EU citizens,
- family members of the Czech citizens?

## **Changes for non-EU citizens: the thousandth-and-first reason to cancel or reject a residence permit**

### **From visa to residence – no longer**

The draft legislation comes with a radical change – it introduces the so-called “national visa”. This new visa type will no longer make it possible to apply for the residence permit on the territory with the long-term visa (type D). **The new visa type grants limited temporary residence (up to a maximum of 1 year) and requires subsequent departure from the Czech Republic.** In other words, the new visa is only for those who do not want to stay in the Czech Republic long-term. Yet, despite previous promises, **it won’t be easier or faster to acquire this new “one-off” visa type.**

### **Tightening of long-term residence permits**

According to the draft legislation, whoever wants to come to the Czech Republic for business or work for longer periods, will have to apply for the long-term residence permit directly. The draft laws make more stringent proof of income for all categories of immigrants, including students and reuniting family members. **Business people and employees can expect substantial tightening.** Enterprises by migrants or the employment of migrants would be based on so-called “cards”. The employment of highly-qualified migrants will continue with “blue cards” (so far only few of them were issued). Each request for employment, including lower-qualified jobs, will require arduous substantiation of education and abilities regardless of the employer’s requirements.

Businesses of foreigners should be egregiously limited. The right to conduct business would only be permitted to foreigners who would **substantially invest in the Czech Republic** on the basis of a “credible and feasible” business plan. Furthermore, in case of companies the ministry would verify whether the **foreigner truly and significantly contributes to the day-to-day running of the company.** Last but not least, the businessman would have to **prove his or her knowledge of the Czech language.** Therefore, it is quite obvious that the ability of non-EU citizens to conduct business in the Czech Republic is being completely severed from the generally freer conditions for businesses essentially applied until now.

### **Cancellation and rejection of residency**

The residence permit can be denied/not extended/cancelled only in those cases expressly stated in the law. The current legal regulation recognizes around 20 cases, the new draft law would increase this total to 60. It is, therefore, clear the chances to acquire a residence permit will be reduced and retaining one more difficult. To illustrate: one of the grounds for the cancellation of a long-term residence permit, including one issued for family purposes, would be the fact that the family files an application for child benefits. **Any late payments** on taxes

or insurance constitute another **reason for cancellation of any residence permit, including the permanent residence permit.**

The draft law also takes into account the possibilities of denying or canceling residency for reasons outside the control of the applicant, e.g. late payments of his or her employer's taxes or insurance.

### **Permanent residence permit - any guarantee?**

Around 220,000 foreigners with permanent residence permits live in the Czech Republic. Most of them come from outside the EU, in particular Ukraine, Vietnam and Russia. The permanent residency is quite a specific residence status. It allows for unlimited access to the labour market, business and all social benefits (including for example the building savings schemes). It also enables travel within the Schengen area and simplifies possible relocation into another EU member state.

If the foreigner proves his or her income at least equals the amount of the minimum living wage or housing costs, he or she is usually allowed to bring his or her family. The permanent residence permit can only be cancelled due to a serious misdemeanour or in cases when the foreigner resides more than one year outside the EU. Migrants with permanent residence permits can live in the Czech Republic without restrictions (apart from the right to vote) and do not have to be concerned with visits from government officers or police more than Czech citizens.

The draft of the new Aliens Act **degrades the status of foreigners applying for permanent residence permit**, and those already holding it, in the following ways:

- The permanent residence permit could be cancelled on the grounds of any late payments or penalties of the foreigner (in contradiction with the EU law). The Ministry of the Interior should have an online access to the databases of financial offices of the Czech social security administration.
- The possibility to bring and live together with family members in the Czech Republic would be reserved for wealthy foreigners who could prove the net minimum income (excluding any state benefits) of CZK 15,400 (for 1 family member), CZK 22,000 (for 2 family members) and CZK 28,600 (for 3 and more family members). Thus, most migrants would have to postpone their family lives until obtaining citizenship.
- The issuance of a permanent residence permit to every foreigner (aged 15 and more) would also depend on the intelligence services: if the intelligence services declare that they have classified information proving a foreigner to be dangerous, his or her residence and the residence of his or her family would be prohibited without further explanation. The foreigner would have no chance to review this information or to initiate a legal challenge in court.

## **New controls on labour market for non-EU migrants**

Migrants are being systematically pushed out from the labour market. The number of employed migrants holding the work permit dropped from 130,000 to 30,000 between years 2009 and 2011. Non-EU citizens need work permit even for part-time jobs. The permits are issued only after submitting the verified proof of education (even if it is not required by the employer) and for very short periods, e.g. six months, the entire process needs to be constantly repeated. Any mistake in the complex process of applying for a work permit made by the foreigner or the employer could be punished with a minimal fine of CZK 250,000 and an administrative expulsion of the foreigner for up to 5 years. The green cards, which were supposed to bring the promised solution, brought only more complications to the system and are almost never used.

Although the Czech economy evidently needs foreigners, the draft of the new Aliens Act proposes **further restrictions of the access of foreigners to the labour market:**

- Instead of the current single filter (the work permits issued by the labour offices), there should be three filters:
  1. The right of the Ministry of Labour and Social Affairs to remove the job from the Central Registry of Available Jobs (under Section 37b of the Employment Act),
  2. The binding opinion of the Labour Office (under Section 40 para. 2 letter c) of the draft of the new Aliens Act), and
  3. the overall quota (under Section 403 para. 3 of the same draft), whereas all three filters would be applied at once.
- The period for testing the possibility to occupy the free position by any job applicant should be extended from the current 30 to 45 days;
- The business trips of foreigners beyond the district in the work permit should be prohibited;
- Besides notification obligations with the Labour Office, employers would have to report certain facts also to the Ministry of the Interior, again under the threat of a fine of up to CZK 50,000 (see Sections 231 and 241 para. 7 of the draft of the new Aliens Act).

The entry visa for small businesspeople would no longer be issued. The residence would only be granted to businesspeople investing a larger amount of money and those foreigners who already reside in the Czech Republic and want to start a business. (These people, however, would be prohibited from being employed and running a business at the same time).

## **Changes for EU citizens – an obligation to get a residence permit**

EU citizens and citizens of some other states (e.g. Switzerland) can currently reside in the Czech Republic freely for any period of time without having to obtain a residence permit. Mostly citizens of Slovakia, Poland and Germany are currently residing in the Czech

Republic on this basis. At present, they have only an obligation to notify the police about their place of residence, and this obligation is usually fulfilled by their landlord.

If the EU citizen does not violate the laws in a serious manner, he or she does not need to fear officials or the police more than Czech citizens.

The Ministry of the Interior now proposes to **degrade the status of the EU citizens** in the following manner:

- The EU citizens would have to obtain a residence permit from the Ministry of the Interior for a *stay longer than 3 months*. It is the first time in history that Slovak citizens would need to have a residence permit in the Czech Republic;
- EU citizens without a valid residence permit could be fined. If they refuse to leave the territory they could be *placed in the detention centre* for up to 18 months (even children under 15 years could be placed in the detention centre for up to 90 days);
- The residence permit of EU citizens (aged 15 and more) would depend on the intelligence services: if the intelligence services declare that they have classified information proving a foreigner to be dangerous, the residence of an EU citizen would be prohibited without further explanation and without a chance to review this information;
- A submission of *proof of accommodation* should be one of the conditions for obtaining a residence permit. This requirement, however, is often problematic for foreigners to obtain because landlords are afraid to sign for foreigners with the respective authorities. Needless to say EU law forbids member states to require proof of accommodation from EU citizens;
- Any person providing accommodation for an EU citizen (e.g. a student) without notifying the police within 3 days could be fined up to CZK 50,000;
- Family members of EU citizens would be forbidden to submit applications by mail and would, therefore, have to queue in front of the offices of the Ministry of the Interior that are usually located only in regional cities.

### **Reversed discrimination: less rights for family members of the Czech citizens in comparison to family members of EU citizens**

All mixed couples (whether married or not) are already suspected by the officers of the Ministry of the Interior and Foreigners' Police of having a fake relationship or "relationship of convenience" – motivated only by the chance to get the residence permit in the Czech Republic. All families, even those with children, are screened. The Foreigners' Police visit their homes, check where they sleep and ask neighbors what they think about the relationship in question. These couples have to attend separate interviews where those who are married are questioned, for example, about the color of their clothes at their wedding. Differing answers only confirm any suspicions, which leads to denial of the residency. During this inquest, which often takes months or even years, the foreigner is not allowed to work, is not covered by the public health insurance and, moreover, the Czech spouse loses his/her entitlement to

social benefits. The proceedings take place two times: at first, on the temporary residence permit, and after two years on the permanent residence permit.

Even though the harassment of mixed couples has been criticized by the Ombudsman and the courts, **the Ministry of Interior now proposes further tightening of the existing rules:**

- The new draft re-introduces so-called *reversed discrimination*, where family members of Czech citizens would have fewer rights than partners of foreigners, the latter who are under the protection of EU law: e.g. the Ukrainian spouse of a Czech citizen would have a worse status than the Ukrainian spouse of a Slovakian citizen residing in the Czech Republic.
- The foreign spouse would have no right to remain in the Czech Republic during the proceedings and he/she may be forced to wait for the decision in his/her country of origin (which would on the other hand make proving sincerity of the relationship impossible).
- The application for the residence permit of the spouse of the Czech citizen could be denied for entirely vexing reasons, e.g. if he or she in the past lost his/her job or broke up with his or her previous partner;
- Both partners would have to answer all the officers' questions, even if the answers could lead to criminal prosecution, which is inconsistent with the prohibition of self-incrimination guaranteed by the Constitution. Any refusal to testify would automatically mean rejection of their application.
- The resident status of the spouses of Czech citizens would depend on the opinion of the intelligence agencies: if the intelligence services declare that they have classified information proving a foreigner to be dangerous, the residence of the spouse would be prohibited without further explanation, and without a chance to review this information or to initiate a legal challenge in court.

## NEWS:

The Ministry of the Interior decided not to proceed with the draft of the new Aliens' Act this year due to the large the number of amending proposals by various actors. The Ministry will, however, submit minor amendment of the current Act on Residence of Foreigners due to an obligation to transpose the EU legislation. Find out more information [here](#) (*Czech only*).