



EMN Ad-Hoc Query on 2019.4 AHQ regarding a regulation for the work and residence permit for specialized chefs for the Asian restaurants

Requested by Adolfo SOMMARRIBAS on 15 January 2019

Protection

Responses from EMN NCP Germany, Adolfo SOMMARRIBAS, EMN NCP Austria, EMN NCP Norway, EMN NCP Italy, EMN NCP Lithuania (6 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.



Background information:

Since 2014 there is a regulation in place with regard to the work and residence permit of chefs for the Asian kitchen in the Netherlands. The current temporary regulation will end on the 1st of October of 2019. The current regulation has some unforeseen unwanted side effects. Therefore the Netherlands is contemplating what a possible new regulation should entail. Considering this, we would like to gather some information about similar regulations in other European countries in order to learn from those regulations.

Questions

1. 1) Is there a special regulation in place in your country regarding the entry of specialized chefs from third countries?

Available choices:

Yes, No

2. a. If yes, is there a distinction with regard to the Asian cuisine and/or with regard to certain specific countries?

3. 2) How many specialty chefs from a third country are granted a permit in your country every year (can you please provide data for 2017 and 2018?)

4. 3) What are the conditions to qualify for the special regulation? In the regulation do you differentiate between the type of restaurants? (in case you do not have a special regulation can you please describe how you handle these cases in your Member State)

5. 4) How do you judge the qualifications of the applicant?

6. 5) Are there any complications or unwanted side effects when dealing with these cases?

7. 6) What is the (maximum) period of validity of the residence and/or work permit?

Responses

EMN NCP Germany

Wider Dissemination: Yes

Heiko HECHT, EMN NCP Germany

1. Yes

2. Yes, Section 18 of the Residence Act (Aufenthaltsgesetz) in conjunction with Section 11 subsection 2 of the Ordinance on the employment of foreigners (Beschäftigungs-verordnung). No, the legal basis mentioned above applies regardless of the country of origin. However, Chinese, Indian and Thai chefs require an additional examination certificate proving they have completed a practical and theoretical cooking and hygiene test, which must be taken at an educational institution accredited by the (German) Federal Employment Agency in the country of origin.

3. In 2017, in all 1,063 visas were issued to speciality chefs (source: Bundestag printed paper 19/2035 of 8 May 2018, page 36). There are no figures available yet for 2018.

4. Permits can only be granted to speciality chefs for full employment in speciality restaurants. The remuneration must be comparable to that of a chef de partie and the working conditions must be no less favourable than those of comparable domestic employees. The quality of the restaurant and the number of its employees are taken into account. The menu of the restaurant must be oriented to the typical cuisine of the applicant's country of origin. Snack bars, catering companies and delivery services are not recognised as speciality restaurants.

5. As part of its participation in the visa procedure, the Federal Employment Agency examines the menu and business description of the speciality restaurant, the employment contract and the applicant's curriculum vitae, references and other qualifications. The chef must be able to cook typical dishes according to original recipes. His or her professional qualification must generally be proven by an apprenticeship lasting a minimum of two years at a vocational school as well as additional on-the-job training of at least two years in qualified companies.

6. No problems have been raised in the exchange of experience between the foreigners authorities of larger cities in the past three years, so there is nothing to indicate there have been any such complications or unwanted side effects.

7. The permit is granted for the first time for a maximum of one year. With extensions, the maximum period of validity can be four years. After that, there is a blocking period of three years before the person concerned can be granted any such permit again.

Adolfo SOMMARRIBAS

Wider Dissemination: Yes

Adolfo SOMMARRIBAS, EMN statelessness platform

1. No
2. The following data, based on the ISCO code (International Standard Classification of Occupations), relate to the number of residence permits issued (first issue and renewals) and not to the number of persons concerned (one person may have had more than one permit during the reference period). The data distinguish between cooks and other catering professions. It is not possible to indicate whether the Asian cooks are working in restaurants serving Asian cuisines or not.

Clarification:

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3. See attached table.

Clarification:

statistics_asian_cooks.docx

4. 3. a) As there is no special regulation in place in Luxembourg regarding the entry of specialized chefs from third countries, these persons must apply as any other third-country national for an authorization to stay as a salaried worker (article 42 of the amended law of 29 August 2008 on free movement of persons and immigration). Preliminary steps Labour Market test: Before recruiting a salaried worker, employers must make a declaration of vacant position to the National

Employment Agency (ADEM). The declaration will allow the employment agency to check whether there is a suitable candidate available on the local or EU job market. If the job offer cannot be filled with a person registered with the ADEM (National Employment Agency) within a 3 week deadline, the employer is allowed to conclude an employment contract with a person of his choice, under certain conditions, including a non-EU national. To this end, the employer must submit an application on plain paper to ADEM's director and request a certificate granting him the right to hire a third country national. The employer must sign a dated employment contract with the future employee. It may be stated in the contract that the start date is "subject to the employee obtaining an authorisation to stay for salaried workers/work permit". The employer must hand over the original certificate to the third-country national, who will attach it to his application for the authorisation to stay. Application for the authorization of stay: The third-country worker must submit an application for a temporary authorisation to stay (on plain paper) from his country of origin: • to the Immigration Directorate of the Ministry of Foreign and European Affairs, or; • to a Luxembourg diplomatic or consular representation or to a diplomatic or consular mission representing Luxembourg. The application for a temporary authorisation to stay must contain the applicant's identity details (last name, first name and address) and must be accompanied by the following documents and information: • a copy of their valid passport, in its entirety; • an extract from the criminal records or an affidavit (sworn oath) established in the country of residence; • a curriculum vitae; • a copy of the applicant's diplomas or professional qualifications; • a copy of the employment contract (compliant with Luxembourg law), dated and signed by both the applicant and his future employer in Luxembourg; • the original copy of the certificate from the National Employment Agency granting the employer the right to hire a third-country national; • where necessary, a proxy. In any case, the employment contract must respect all the minimum requirements of a labour contract including minimum wage, working hours, etc. 3.b. N/A. There is no differentiation made between the type of restaurants.

5. As mentioned above, the third-country national has to present a curriculum vitae and a copy of the diplomas and professional qualifications. The Foreigners Unit of the Directorate of Immigration will evaluate all the elements mentioned above.

6. N/A. Even though there is not a special regulation, the main problem is that the employers made the declaration of a vacant position with a very specific profile that allows them to refuse any candidate available on the local or EU job market.

7. 6. The validity of the first residence permit for salaried worker is valid for a maximum of 1 year, for one profession only with all employers and in only one sector. As of the first renewal, the residence permit is renewable for a maximum duration of 3 years and gives access to any sector and any profession.

EMN NCP Austria

Wider Dissemination: Yes

Pascal VAN DE GUCHT, European Commission

1. No

Clarification:

In accordance with Art 12a Act Governing the Employment of Foreign Nationals, chefs can be admitted to the Austrian labor market as "skilled workers" (Red-White-Red Card). In principle, there are no particular provisions regarding specialized chefs from third countries. The only small exception is the new exchange program between Austria and the People's Republic of China regarding the mutual admission of speciality chefs to the labour market, based on a bilateral agreement. The implementation will start in 2019 and the annual quota according to this agreement is currently 30 chefs per year (per country). The Chinese chefs are allowed to work for Chinese speciality restaurants in Austria for a maximum of three years under this agreement, without the possibility of renewal. The concept is similar to the respective regulations in Germany. --- Source: Ministry of the Interior

2. See Q1. --- Source: Ministry of the Interior

3. In 2017, 64 Red-White-Red Cards and in 2018, 100 Red-White-Red Cards were issued for qualified chefs. --- Source: Ministry of the Interior

4. Each year, the Federal Ministry of Labor, Social Affairs, Health and Consumer Protection publishes a list of “Skilled workers in Shortage Occupations”. In 2019, the list includes “Restaurant chefs” under item 34. For foreigners qualifying as “skilled workers” a Red-White-Red-Card granting (limited) access to the Austrian labor market can be issued. The issuance of a Red-White-Red-Card requires proof of a completed pertinent vocational education, a minimum number of points that are determined by predetermined parameters, and receiving a salary reaching at least the minimum wage threshold for the intended occupation according to law, regulation or collective agreement plus the company’s customary overpayment. Furthermore, the general requirements must be met (for example, there must be no relevant reasons against the issuing based in the person of the foreigner, such as repeated violations against the law because of working without work permit during the past 12 months). There is no distinction regarding the type of restaurant (Art 12a Act Governing the Employment of Foreign Nationals). Alternatively, there is the possibility of seasonal employment in the area of tourism. Third-country cooks can receive seasonal work permits according to the applicable annual quota for seasonal work permits in tourism. In accordance with Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, seasonal employment is limited to a maximum of 9 months. --- Source: Ministry of the Interior

5. The qualifications of skilled workers are evaluated according to a specified list of criteria (Annex B to the Act Governing the Employment of Foreign Nationals; <https://www.migration.gv.at/en/types-of-immigration/permanent-immigration/skilled-workers-in-shortage-occupations/>). Skilled workers in shortage occupations from third countries are admitted to the Austrian labor market if they reach the specified minimum number of points and meet the remaining criteria set out in Art 12a Act Governing the Employment of Foreign Nationals (see Q3). --- Source: Ministry of the Interior

6. So far we have not been aware of side effects or complications. However, in cases where applicants cannot prove the necessary qualifications, their applications are rejected. --- Source: Ministry of the Interior

7. Red-White-Red-Cards are issued for the duration of the employment contract plus 3 months. The maximum validity is two years (Art 41 para 5 Settlement and Residence Act). Subsequently, the foreigner may apply for an extension of the Red-White-Red-Card or – under specific conditions – for the Red-White-Red-Card plus which entitles its holder to fixed-term residence and unlimited labor market access. --- Source: Ministry of the Interior

EMN NCP Norway

Wider Dissemination: Yes

Kathleen CHAPMAN, EU Member State Officials

1. Yes
2. Regulations valid until 1 April 2019 (not sure if it will be renewed or not). No distinction between Asian cuisine and other cuisines.
3. Estimated to be in the range between 50 and 70 each year for the two mentioned years.
4. There are requirements to the education/qualifications and to the employment relationship. From www.udi.no: Requirements relating to your education/qualifications • You must have at least ten years' relevant education and/or work experience. You must have worked at a high-standard hotel/restaurant for at least half of the work experience period. You will in principle only be granted a residence permit as an ethnic cook in exceptional circumstances. • If you are from China, you must have a certificate from the authorities stating that you are a 'level 1' cook or a 'level 2' cook. • If you are from Thailand, you must have a

certificate from the authorities stating that you are a 'level 2' cook. Requirements relating to the employment relationship • You must have received a concrete offer of full-time employment from one specific employer in Norway. The offer must state which restaurant you will be working at. You cannot work at several restaurants, even if they have the same owner. • The job you are offered must require qualifications as an ethnic cook. You must have the qualifications that the job requires. • You must be employed at an ethnic restaurant. An ethnic restaurant is a restaurant that serves food from only one country. In some cases, the UDI can accept that the restaurant serves food from several countries. • The pay and working conditions must not be poorer than stipulated in Riksavtalen for hotell og restaurant (external website) (national collective agreement for hotel and restaurant workers). • You can also be granted a permit to work for a catering company that meets the requirements for being regarded as an ethnic restaurant Important to read lengthy UDI circular 2012-003: <https://www.udiregelverk.no/en/documents/udi-circulars/rs-2012-003/>

5. UDI makes a concrete assessment in each case of the submitted documents on formal education, training and work experience. See circular 2012-003 (link above) for more information.

6. The special requirements make a distinction between “ethnic cooks” and “ethnic restaurants” on the one hand and “ordinary” cooks and restaurants on the other hand. It has been difficult to give clear meaning to the term “ethnic”. Strict requirements relating to restaurants, has made it difficult to accept newer concepts like crossover and fusion.

7. The permit is granted for a period for up to one year. It can be renewed (indefinitely) and qualifies for a permanent residence permit (with a 3 year qualification period).

EMN NCP Italy

Wider Dissemination: Yes

Viviana CAPRA, EMN NCP Italy

1. No
2. N.A.
3. Data not available.
4. In Italy, the management of cases relating to highly qualified chefs from third countries is regulated through the provisions of the Legislative Decree on Immigration N. 286/98 (Testo Unico – T.U.) dedicated to entry and residence for highly qualified workers (Article 27 quater), as well as in the context of intra-corporate transfers (Article 27 quinquies). Specifically, Article 27 quater of Legislative Decree n. 286/98 establishes that - outside the maximum quota of third country nationals to be admitted into the territory of the State as established by the flow decree for reasons of subordinate employment, seasonal work and for self-employment, taking into account family reunification and temporary protection measures (Article 3 paragraph 4 of Legislative Decree No. 286/98) – “entry and stay for periods exceeding three months is allowed to third country nationals, hereinafter referred to as highly qualified third country nationals workers, who intend to carry out paid work performance on behalf of or under the direction or coordination of another natural or legal person and who are in receipt of: (a) the higher education qualification issued by the competent authority in the country where it was obtained, certifying completion of a course of higher education lasting at least three years and a higher professional qualification, as per levels 1, 2 and 3 of the ISTAT classification of the CP professions 2011 and subsequent modifications, attested by the country of origin and recognised in Italy; b) of the requisites foreseen by the legislative decree n. 206 of the 6 November 2007, limited to the exercise of regulated professions”. The territorial Chief of Police (“Questore”) issues to the highly qualified third country national worker authorised to carry out

work activities a residence permit bearing the heading "EU Blue Card" in the heading "type of permit". The residence permit is issued, following the signing of the employment contract and the communication establishing the employment relationship, with a duration of two years, in the case of a permanent employment contract, or with a duration equal to that of the employment relationship plus three months, in other cases. For the EU Blue Card holder there are limitations, for the first two years of legal employment in the national territory, both in relation to the exercise of work performance other than "highly qualified", and with regard to the possibility of changing employer. In the first case, there is an absolute prohibition, in the second the changes must be authorised preliminarily by the competent Territorial Labour Departments. The reunification of family members is recognised, regardless of the duration of the residence permit, to the general conditions provided for in Article 29 of the Legislative Decree on Immigration N. 286/98. Furthermore, according to the provisions of Article 9 ter of Legislative Decree no. n. 286/98, the third country national holder of the EU Blue Card issued by another Member State and authorised to stay in Italy under the conditions set out in Article 27-quater, may request the Questore to issue an EU residence permit for long-term residents, provided that he demonstrates: (a) that he has resided legally and continuously for five years in the territory of the EU as holder of an EU Blue Card; b) to be in possession, for at least two years, of an EU Blue Card permit pursuant to article 27-quater. The EU Blue Card holders, in possession of the requisites provided above, are issued by the Questore with an EU residence permit for long-term residents, bearing the wording "Ex holder of Blue EU card" in the section "notes". Article 27 quinquies of Legislative Decree n. 286/98 establishes that entry and stay in Italy to perform subordinate work in the context of intra-corporate transfers for periods exceeding three months is allowed, outside the quotas referred to in Art. 3, par. 4, to third country nationals who stay outside the territory of the EU at the time of application for admission or who have already been admitted to the territory of another Member State and who apply to be admitted to the national territory as: a) managers; b) highly qualified workers possessing the specialised knowledge essential for the sector of activity, the techniques or the management of the host entity, evaluated other than with respect to the specific knowledge concerning the host entity, also in the light of the possession of a high qualification, including adequate professional experience, for a type of job or activity that requires specific technical knowledge, including any membership in an accredited professional register. By "intra-corporate transfer", we mean the temporary secondment of a third country national - who at the time of the request for a work permit is located outside the territory of the EU - by a company established in a third country, to which the third country national is linked by a work relationship that lasts for at least three months, to a host entity established in Italy, belonging to the same company or to an enterprise belonging to the same group of companies pursuant to Article 2359 of the Civil Code. Intra-corporate transfer includes cases of mobility of third country national workers between host entities established in different Member States. Moreover, "host entity" means the legal venue, branch or representation in Italy of the company on which the transferred employee or company belonging to the same group depends.

5. See answer to question n.4.

6. No.

7. See answer to question n.4.

EMN NCP Lithuania

Wider Dissemination: Yes

Vytautas EÅ½ERSKIS, EMN NCP Lithuania

1. No

2. N/A

3. N/A

4. N/A

5. N/A

6. N/A

7. N/A