

# LEGAL FRAMEWORK OF RESIDENCY REGARDING NON-EU CITIZENS IN THE SLOVAK REPUBLIC

## PRÁVNÝ RÁMEC TRVALÉHO POBYTU OBČANOV TRETÍCH KRAJÍN V SLOVENSKEJ REPUBLIKE

**Zahir Jaan ZAHER**

**Kristína Králiková**

**Abstract:** *The aim of this article was to outline the current trends in unification and coordination of legal orders of member states of the European Union regarding immigration. The authors deal with not only the legal aspects of immigration in the Slovak Republic, but they try to point out at several important economic and social aspects that trigger immigration and that are substantially connected with legal framework thereof.*

**Keywords:** *non-EU citizen, residency, permanent residency, temporary residency, asylum*

**JEL Classification:** K 37

### 1 INTRODUCTION

We have identified the reasons why immigration into the European Union (hereinafter only as the “EU”) takes place. At this stage, we would like to pinpoint the reasons why non-EU citizens move to the Slovak Republic (hereinafter only as the “SR”). What is the material background for inflow of immigrants?

The SR is a landlocked state located in the middle of the Europe. Its population is relatively small in comparison to other countries – over 5 million people and its land area is also of small number. More importantly, the SR is a member of the EU, Eurozone, Schengen area, NATO or OECD. This makes *prima facie* from the SR a great destination for the non-EU

citizens. On the other hand, the SR has not achieved the level of western countries in terms of economic development or standard of living yet. If we take a look at GDP per capita, we were discussing above, according to the number of International Monetary Fund for 2011, the SR was on the 41<sup>st</sup> position in the world. In relation to HDI for 2011, the position of the SR according to the Human Development Report Office is slightly better - 35<sup>th</sup> in the world. Although, the SR does not belong to high-profile countries, its place among already developed countries is indisputable. Many experts on migration in the SR agree that, despite membership of the SR in the EU, immigrants do not currently consider the SR to be a primary country of destination. In spite of the recent pace of economic growth, the country is not a destination for immigrants when compared to other member states of the EU. However, the experience gained by the International Organization for Migration (hereinafter only as the "IOM") in operating its Migration Information Centre indicates a different scenario, namely that among potential migrants there is a growing interest in living and working in the SR, an interest so strong that it is essential for state institutions to provide financing for establishing and maintaining counselling centres for immigrants.<sup>1</sup>

Since joining the EU, the SR has to respect the EU law as such regardless of whether primary law or secondary legislation. As mentioned, the EU legislation consists of regulations and directives. A regulation is a legislative act of the EU, which has immediate legal effects, meaning that it is enforceable as law in all member states simultaneously with its effectiveness in the EU. This is of great importance when certain questions should be unified on the EU level. Regulations must be distinguished from directives. Directives need to be transposed into national law and therefore generally they have no immediate legal effect. If a directive of the EU has been adopted, the SR is obliged within a certain time stipulated by this directive to implement the objectives of this directive into the Slovak law. However, unlike regulations, the directives provide the member states with a certain level of independence in process of unification of laws of member states in order to respect national customs and differences.

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<sup>1</sup> GULIČOVÁ, G., BARGEROVÁ, Z. 2008: *Organisation of migration and asylum policies in the Slovak Republic*. National Contact Point of the European Migration Network in the Slovak Republic. 2008. p. 51

The SR has been therefore obliged to implement various directives that are to any extent associated with the immigration. For many, the most important piece of art of the EU is the Schengen Borders Code, which was adopted only couple years ago. On the basis of this regulation which has naturally direct legal effects on everyone in the SR including the state by itself, the Slovak legal order had to adjust to the content and terminology used in this regulation. There was a sort of inconsistency in terms and terminology used in the Slovak legislative acts and Schengen Borders Code, which resulted in adoption of essential amendments in the Slovak legal order. Since joining the EU, the SR has amended Slovak law numerous times. For example an adoption of Directive 2008/115/EC was a reason for amendments to the former Immigration Act from 2002 and to the amendments to the Asylum Act. Adoption of Directive 2009/52/EC amended the Slovak Act No. 82/2005 Coll. on Illegal Work and Illegal Employment, as amended. By this directive also a new reason for granting a tolerated stay in cases of illegal employment was amended to the Immigration Act. This Directive was also transposed into the Act on Labour Inspection, the Act on Public Procurement, and the Act on the Budget Rules for Public Administration. Obviously, the common EU policy is perspicuous and undoubtedly currently a key issue for the EU.

The most relevant Slovak provisions dealing with the issues of immigration are Act No. 404/2011 Coll. on Residence of Aliens, as amended (hereinafter only as the “Immigration Act”) and Act No. 480/2002 Coll. on asylum, as amended (hereinafter only as the “Asylum Act”). We will pay a particular attention to these acts later on.

According to the statement of reasons to the Immigration Act, the commitment of the SR after joining the EU in a field of asylum policy, border control, stay of non-citizens, etc. is to fulfil the task and conditions of the common policy of the EU marked out in the TFEU. This is relevant especially, when we take into the consideration the fact that the SR remains a transit country for non-EU citizens on their way to the western EU countries. For this purpose, the old Act on stay of foreigners, which had been adopted in 2002 and numerous times amended, had to be replaced by a new law which would be able to effectively face modern immigration

challenges. According to the statement of reasons to the Immigration Act, following are the objectives of this act<sup>2</sup>:

- Unification of the issues regarding the control of external borders of the EU (Slovak-Ukraine border) for the purpose of its simplification and better use in practice;
- To respect other relevant international bilateral and multilateral treaties to which the SR is a party and have legal binding effect;
- To enhance the mechanisms of coordination of migration and immigration of foreigners with an particular emphasis on unification of policy within the EU;
- To secure unification of Slovak legal provisions with the valid EU legislation in a field of external border controls, stay of foreigners, etc. in order to achieve the highest level of compatibility with the EU law;
- To secure a terminology unification of Slovak legal provisions with the valid EU legislation;
- To participate in creation of an area of freedom, security and justice by enacting of relevant provisions aiming to regulate legal and illegal immigration of non-EU citizens; and
- To guarantee human rights of EU citizens, their family members and non-EU citizens when crossing Slovak borders and during their stay in the SR. This should be however in line with the Slovak public order.

The Immigration Act is fully compatible with the law of the EU. According to the Immigration Act, a foreigner should be understood as a person not being a citizen of the SR. An EU citizen should be understood as a person being a citizen of the SR or of any other member state of the EU. A non-EU citizen is a person who is neither a citizen of the SR nor a citizen of the EU or a person without citizenship. We will use these terms further when analysing the Slovak legal order.

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<sup>2</sup> Statement of reasons to the Immigration Act. p. 2.

## 1.1 Temporary residence

Provided that a non-EU citizen seeks to acquire a permit to stay, exit and re-enter the SR during the specific time, he shall be obliged to obtain temporary residence permit by Alien police department. Such temporary residence permit may be obtained in cases when an applicant wants either to:

- do business meaning that he is at the moment conducting business or will be conducting business as a natural person or on behalf of a company or cooperative. Such person cannot be employed; or
- be employed. In this sense, a non-EU citizen may obtain a temporary residence permit provided that he has obtained an employment permit based on the Slovak Act No. 5/2004 Coll. on Employment Services, as amended. Such permit is limited and can be obtained maximum for two years. A temporary residence for the purpose of seasonal employment can be also granted; or
- study. A person opting for this option shall be either a student of a (i) secondary school, (ii) language school, (iii) university or (iv) he can attend language or other professional preparation for the study at university which must be organized by a university in the Slovak Republic. In any case, such permit may be granted for the assumed duration of study, however maximum for six years; or
- do special activity. Under this term, following activities shall be understood: (i) lecturing activity, (ii) artistic activity, (iii) sporting activity (iv) traineeship as a part of study outside the Slovak Republic territory, (v) activities which follow from the programs of the Slovak Republic government or from the programs of the EU, (vi) fulfilment of an obligation of the Slovak Republic which follows from an international, (vii) provision of health care or for the escort of a non-EU citizen who is provided health care, if necessary, (viii) volunteering activities; or (ix) activities of a journalist accredited in the Slovak Republic. Such permit may be obtained only up to two years.; or
- do research and development. An applicant shall be a non-EU citizen performing research and development on the basis of an agreement on hosting for the time period necessary in order to achieve the purpose, however, maximum for two years.; or

- unify his family. An applicant shall be a non-EU citizen who is (i) a family member of a non-EU citizen with temporary residence or with permanent residence in the Slovak Republic (ii) a relative in a direct ascending line of a person granted asylum younger than 18 years or (iii) a dependent person in accordance with a relevant international treaty.; or
- perform service obligations by civil units of armed forces as a member of the civil units of the issuing state and who is in service of such armed forces, however such permit is limited up to five years.

In all of the above cases, general conditions must be also fulfilled. According to the article 33(4), Alien police department shall refuse an application for granting of temporary residence permit if:

- a non-EU citizen is an undesired person;
- there is a justified suspicion that a non-EU citizen would threaten the state safety, public order or public health during his/her residence;
- a non-EU citizen fails to fulfil the conditions for the granting of temporary residence;
- a non-EU citizen has closed the marriage of convenience;
- a non-EU citizen gives false or misleading data or submits falsified or counterfeited documents or a document of another person;
- the data in a travel document do not correspond with the reality;
- the granting of temporary residence is not in public interest; or
- it is obvious that the provided accommodation in the SR territory fails to fulfil the minimum requirements as per a special regulation.

Additionally, such permit may be granted also to a person who has a status of a Slovak living abroad according to the Slovak law or who has the statutes of a person with long term residence in another member state of the EU.

Note that pure submitting of an application does not establish the legal claim for temporary stay in the SR. And if permit for such stay is not granted within the time specified according to visa permit of a non-EU citizen, he has to leave the country.

A non-EU citizen may apply for a temporary residence permit at a Slovak representing authority located outside of the SR. In exceptional cases, a non-EU citizen may apply at another diplomatic mission or Alien Police Department competent according to the place of his residence in the SR. This residence must be, however, authorized, whereas the filing of an application does not make *prima facie* the residence of a non-EU citizen in the SR authorized beyond the conditions defined in a special regulation.

An authority (i.e. Slovak representation authority) after obtaining an application from a non-EU citizen performs an interview with the applicant for the purpose of granting him of temporary residence permit in order to preliminarily evaluate the application. The interview is performed in the Slovak language or in another language, which is comprehensible for both parties (very often English). The representing authority further prepares a written record about the interview. Unlike interview, such record must be prepared in the Slovak language and must be signed by the applicant. In most cases, the applicant does not speak Slovak language and therefore, he must provide for his representative who will be able to sign the record in his name and on his behalf. Afterwards, the representing authority sends its statement on the granting of temporary residence to Alien police department together with this record. In this statement it is specified, the representing authority recommends the granting of temporary residence permit whether or not.

Note that temporary residence is bound with a single purpose only. And hence if a non-EU citizen wants to perform other activities than those for which the temporary residence permit was granted, he must generally file a new application for the granting of temporary residence for other purpose.

## **1.2 Permanent residence**

If permanent residency is granted, it permits a non-EU citizen to stay in the territory of the SR within the period for which this permit has been granted. Such person may perform activities in almost the same scope as citizens of the SR. On the basis of this permit, a non-EU citizen can for instance freely do business, study, and to have access to social security system in the SR.

According to the Slovak immigration Act, a permanent residency permit may be given for a period of 5 years or for an unlimited duration. In certain cases, if a non-EU citizen is acknowledged as a person with long-term residence in the EU, a permanent residence permit may be granted.

### **1.2.1 Permanent residence for 5 years**

In order to be granted with permanent residency permit, a non-EU citizen must not be subject to any reason for the refusal of his application pursuant to the Article 48 par. 2 of the Immigration Act. Such reasons are similar to those in relation to temporary residency permit. For instance, a non-EU citizen must not be an undesired person or there are reasons to believe that such person would threaten the state safety, public order or public health during his residence. Above this, there are few new reasons therefore:

- A non-EU citizen has closed a marriage of convention;
- The marriage was not closed as per Slovak Act No. 36/2005 Coll. On Family, as amended;
- A non-EU citizen gives false or misleading data or submits falsified or counterfeited documents or a document of another person; or
- Data in travel document do not correspond with the reality.

A non-EU citizen fulfils conditions for being refused provided that he has not meet criteria for being granted of permanent residence permit.

In the abovementioned reasons for being refused on permanent residence, we can identify that granting of permanent residence permit is somehow in some cases connected with marriage of that person. In material terms, a permanent residence demonstrates a certain level of penetration of a non-EU citizen in the SR meaning that such person is already to a great extent domiciled and accustomed to living in the SR. This is, however only a material thing which if to be proved, must be demonstrate by formal means. According to the Article 45 of the Immigration Act, Alien police department grants permanent residence permit for a period of five years, if there are no reasons under the Article 48 par. 2 of the Immigration Act and a non-EU citizen is:

- is a spouse of the SR citizen with permanent residence in the SR territory or dependent relative in direct line of the SR citizen with permanent residence in the SR territory;
- is a single child younger than 18 years of age entrusted into personal care of a third country national who is a spouse of the SR citizen with permanent residence in the SR territory;
- is a single child younger than 18 years of age of a third country national with permanent residence for five years or child younger than 18 years of age entrusted into personal care of a third country national with permanent residence for five years; or
- is a dependent child younger than 18 years of age who cannot take care of himself/herself due to long term unfavourable health condition, third country national with permanent residence.

In some cases, a permanent residence permit for a period of five years can be granted if it is in interest of the SR. The process of evaluation of an applicant resembles the process in case of temporary residence permit. In order to prove the allegation stated in an application regarding the status of a non-EU citizen, this person must by himself demonstrate those facts and allegation by any means that are generally acceptable. Note that there are further conditions. Namely, an applicant must demonstrate his financial independence; financial resources. The material background therefore is that the SR does not wish to receive immigrants, which would mean a burden for Slovak social security system. Such prove must be demonstrated in a form of personal account statement or by a confirmation of his employer about the agreed salary; or any other document demonstrating his ability to financially take care of himself. Furthermore, a non-EU citizen must submit a medical report confirming that he does not suffer from any disease, which could threaten public health.

### **1.2.2 Permanent residence of unlimited duration**

Permanent residence of unlimited duration may be granted to a person who has already acquired a permanent residence permit and has had permanent residence in the SR for at least 4 years. Also, a minor can acquire permanent residence of unlimited duration. There are exceptions from these general conditions. Namely, the Ministry of Interior of the SR can grant permanent residence of unlimited duration even when neither

of the conditions described above is fulfilled. This is due to the reason that in some cases, there are particular circumstances that may be sufficient for this purpose. The Slovak legislation leaves a legal gap for discretion of the Ministry of Interior of the SR if such special circumstances arise. This can happen:

- if necessary for the provision of protection and assistance to a witness according to the Act No. 256/1998 Coll. on the Protection of a Witness, as amended
- to a person without any citizenship;
- for reasons of particular concern;
- upon a proposal of the Slovak Information Service due to safety interests of the SR; or
- to a full aged person who has been granted a tolerated residence according to the Art. 58 par. 2(a) of the Immigration Act for at least three years of study at a school in the SR territory.

An applicant for permanent residence permit of unlimited duration must file his application together with a valid travel document and documents demonstrating his financial resources, medical report, valid health insurance and that his criminal record is clear at Alien police department which will confirm the receipt of the application. In some cases, Alien police department may require from a non-EU citizen – the applicant a document confirming that an accommodation has been provided to him. Alien police department decides about an application for the granting of permanent residence of unlimited duration within 90 days from the delivery of the application to Alien police department and upon its approval, the permanent residence permit becomes effective.

There is no free discretion of Alien police department when deciding whether an application for permanent residency permit will be given. There are several statutory issues that should be taken into the consideration by police department, mainly the issues of public interest, level to threat to state safety or public order or public health. This is necessary in cases when a police department is dealing with a non-EU citizen which sole by his nature represents to a great extent a potential risk for the SR. A police department takes into account also the immigration aspects, meaning that if such person

is not willing to adapt to way of living, customs and habits. The opinion of our representing body is also of great importance. The application for residency permit regardless of whether for permanent or temporary has to be filed in person, with the exception of immobile applicant and when waiving this requirement is in the interest of the SR.<sup>3</sup>

### **1.3 Tolerated residence**

A non-EU citizen may be granted a tolerated residence; if he finds himself in such situation that he cannot travel back home from the SR and at that time he does not fulfil conditions for obtaining another type of residency permit. According to the Immigration Act, following should be understood as reasons for being awarded by a tolerated residence. This can for instance happen when a non-EU citizen is being provided by an institutional care. He cannot move back from the SR and at the same time he does not have meet the condition for being granted of any of residency permits. Similar can happen if a non-EU citizen is subject to certain quarantine measures. If there is a process of evaluation of applications for the granting of tolerated residence, prison sentence execution or period of imprisonment, a non-EU citizen may be granted a tolerated residence permit as a result thereof. Also a tolerated residency permit may be granted for a period of maximum 90 days from the filing of a written application by a non-EU citizen for assisted voluntary return until leaving of the country; or until taking back of this application or by a non-EU citizen who is the victim of human trafficking and at least 18 years old, decides whether he would cooperate with prosecuting authorities, when resolving criminal acts related to human trafficking.

On the basis of a tolerated residency permit, a non-EU citizen is permitted to stay in the territory of the SR; however, such person is not authorized to travel out of the SR. According to the Article 58 par. 1 in connection with the Article 58 par. 2, a non-EU citizen may be granted by tolerated residence permit if:

- There is an obstacle to administrative deportation in his case;
- Temporary shelter permit has been granted;

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<sup>3</sup> GULIČOVÁ, G., BARGEROVÁ, Z. 2008: *Organisation of migration and asylum policies in the Slovak Republic*. National Contact Point of the European Migration Network in the Slovak Republic. 2008.

- Departure from the SR is not possible at the moment;
- You are a minor who has been found in the SR;
- It is required in respect of his private and family life; and
- A non-EU citizen is a person older than 18 years old who has been a victim of human trafficking related criminal offence.

An application should be submitted at a competent police department.

#### 1.4 Asylum

Asylum policies have undergone several dramatic changes during the existence of the SR as such. The country has been heavily criticized by non-governmental organizations and also international institutions that the asylum policy has been too restrictive. This has been often demonstrated on the basis of numbers of asylums that has been granted. According to the report from Mr. Divinsky, the assessment of criteria for asylum is too rigorous, asylum procedure too strict, and conditions for the successful integration of recognized refugees insufficient.<sup>4</sup> However, since joining the EU and since adoption of further common policy regarding immigration law on the level of the EU, the critics of the asylum policy has noticed that the implementation of the EU directives has left a positive impact on our law. *“Despite the fact that Slovakia usually enacts only the minimum standards required by the relevant directives, the adoption of even these minimum standards represents a positive contribution to the asylum and migrant system of the Slovak Republic.”*<sup>5</sup> Also UNHCR has recognized changes in our law and has given a positive feedback. This positive growth, the report goes on to note, is reflected in “the improvement of the quality of accommodation facilities, fulfilment of basic needs, especially of asylum seekers, and in the initialization of employment activities of those asylum seekers who

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<sup>4</sup> DIVINSKÝ, 2006. Zahraničná migrácia v SR: Potreba nových prístupov [online] [19.12.2012] Available on Internet : < <http://www.euractiv.sk/socialna-politika/analiza/zahranicna-migraciav-sr-potreba-novych-pristupov> >

<sup>5</sup> GULIČOVÁ, G., BARGEROVÁ, Z. 2008: *Organisation of migration and asylum policies in the Slovak Republic*. National Contact Point of the European Migration Network in the Slovak Republic. 2008. p. 52

are allowed to work.” The report also proposes specific solutions for the elimination of persistent shortcomings.<sup>6</sup>

The Slovak constitution provides basis for asylum protection in Article 53 by saying that the SR grants asylum to foreign nationals persecuted for upholding political rights and liberties. Under the Slovak constitution, it must not be understood as an absolute right. Asylum may be denied to those who acted at variance with basic human rights and liberties. Details regarding this are specified in the Asylum Act.

According to the Asylum Act, an asylum as term shall mean protection from persecution on grounds stipulated in the Refugee Convention or in the article 53 of the Slovak constitution. A person who declares his intention to apply for asylum in the SR is regarded as an applicant (hereinafter only as the “Asylum seeker”) and if asylum is granted than such person is regarded as non-EU citizen who has been granted asylum. The Asylum Act sets out that asylum seekers and actually everyone who has been granted a temporary shelter or a supplementary protection has the right to a temporary or a tolerated residency permit in the SR. This is without prejudice to the review of their residence permit application and they do not have to meet any other legal conditions. According to the Asylum Act, if a non-EU citizen is granted asylum, he also gains a permanent residence permit.

According to the Asylum Act, the SR provides non-EU citizens with protection for reasons as stipulated in the Refugee Convention and in the Slovak constitution. It is important to note that according to the Asylum Act, the SR cooperates in this field with IOM in cases when non-EU citizens want to return on a voluntary basis to their country of origin or to any other non-EU country. Such people are granted a purpose-built donation from IOM in order to get back to their country of origin provided that their application for asylum has not been successful. Preparation and implementation of the return includes arranging of flight tickets, transport from the place of residence to the airport, airport assistance, providing of non-repayable financial allowance, providing the transit assistance at the airport(s)

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<sup>6</sup> UNHCR: *Hodnotenie začleňovania žiadateľov o azyl a azylantov v Slovenskej republike s ohľadom na ich vek, pohlavie a iné odlišnosti* [online] [05.01.2013] Available on Internet: <<http://www.unhcr.sk/slovakia/images/stories/pdf/svgagdm07.pdf>> p. 23-24.

and assistance from the airport in the country of origin to the place of residence<sup>7</sup>.

According to the Act on Asylum, the SR provides foreigners with protection from persecution for reasons stated in Refugee Convention or in the Constitution of the SR.

### **1.5 Working in the Slovak Republic**

Generally, employment of non-EU citizens in the SR is subject to different legal regime as employment of the EU citizens. There are different legal rules for the employment of asylum seekers, non-EU citizens with a tolerated residency permit or those who are provide subsidiary protection. Whether a non-EU citizen requires a work permit depends on many circumstances. Mostly, what kind of employment he wants to pursue and what kind of residency status does he have in the SR. For instance, if the provisions of the Slovak Act No. 5/2004 Coll. on employment services, as amended (hereinafter only as the “Employment Services Act”) stipulate that a non-EU citizen is obliged to gain a work permit and residency permit; he needs to apply for both of them before commencing any employment activity. If he fails doing so, he might find himself in breach of law what is regarded worldwide as an illegal work. If a non-EU citizen has acquired a permanent residency permit, he must file an application for being granted a working permit if he wishes so. This is, however not that automatic. The relevant office may grant a non-EU citizen a work permit, providing that such vacant place cannot be filled by a job seeker, which is registered in the register of job seekers. The relevant Slovak authority is obliged to take into the consideration all the labour aspects at that time. From the legal point of view, there is no legal claim to the issuance of a work permit. According to the Employment Services Act, a relevant Slovak authority issues a working permit without taking into account the current labour market situation in the following specific situations:

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<sup>7</sup> IOM: *Voluntary Return and Act No. 480/2002 Coll. On Asylum and on change and amendments of some acts.* [online] [19.01.2013] Available on Internet : <[http://www.avr.iom.sk/index.php?option=com\\_content&view=article&id=14%3Adobrovony-navrat-v-zakone-o-azyle-c-4802002&catid=19%3Alegislativa&Itemid=68&lang=en](http://www.avr.iom.sk/index.php?option=com_content&view=article&id=14%3Adobrovony-navrat-v-zakone-o-azyle-c-4802002&catid=19%3Alegislativa&Itemid=68&lang=en)>

- In accordance with an international agreement binding the SR, which was published in the Collection of Acts of the SR,
- A non EU citizen is going to be employed for a specific time period, not exceeding one year, in order to improve his/her qualification in the employment (stagier),
- A non EU-citizen is up to 26 years of age and is employed by performing occasional and time-restricted work within school exchange programs or youth programs, of which the SR is a participant,
- A non EU citizen is executing systematic educating activity or scientific activities in the SR as a pedagogic employee or academic employee of an university or research employee or as a development employee in a research,
- A non EU citizen is commissioned by a registered churches or religious societies to execute clerical activities,
- A non-EU citizen was granted supplementary protection according to the Immigration Act.

Further, a working permit is not required if a non-EU citizen:

- has acquired a permanent residence permit valid for the territory of the SR;
- was granted a temporary stay permit for the purpose of family reunification and he may enter a labour-law relation or similar legal relationship;
- was granted a temporary stay permit for study purposes and whose duration of employment in the territory of the SR does not exceed 10 hours per week, or the corresponding number of days or months in a year;
- is a foreign Slovak according to the Slovak law;
- is an asylum seeker and whose access to the labour market is permitted under special regulation or was granted an asylum status according to the Immigration Act;
- was granted a temporary shelter according to the Immigration Act;

- whose employment on the territory of the SR does not exceed seven consecutive calendar days or the total of 30 calendar days in a calendar year and who is
  - a pedagogic employee, academic employee of an university, scientific, research or development worker participating in a professional scientific event;
  - a performing artist, participating in an artistic event;
  - a person providing in the SR for supply of goods or services or supplying such goods or performing installation works on the basis of a commercial contract, or performing warranty services and repairs;
- was accepted in an employment, based on an international agreement binding the SR and published in the Collection of Acts of the SR; stipulating that acceptance of such a non-EU citizen in the employment is not contingent upon issuance of a work permit;
- is a member of the family of a diplomatic mission member, or of an employee of a consular office, or family member of the employee of an international governmental organization whose registered office is in the territory of the SR, providing mutuality guaranteed by an international agreement concluded on behalf of the Government of the SR;
- is a member of a rescue unit and provides assistance on the basis of an inter-state agreement on mutual assistance while eliminating the consequences of accidents and natural disasters, as well as in humanitarian assistance cases;
- is a member of the armed forces or of a civilian branch of the armed forces of the state having delegated the non-EU citizen;
- performing work within his systematic vocational preparation at a school or at a schooling facility that is included in the system of schools, schooling facilities or pre-school establishments;
- was assigned to perform activities in the territory of the SR within the framework of services of an employer whose domicile is in another member state of the EU;
- is a partner of a commercial partnership or the statutory body of a commercial partnership or a member of the statutory body

of a commercial partnership, performing the activity on behalf of the commercial partnership in the territory of the SR or who is a member of a cooperative or a member of the statutory body of a cooperative or of another body of a cooperative, performing the activity on behalf of that cooperative in the territory of the SR;

- is employed in international mass transport and was posted by his foreign employer to perform the work in the territory of the SR;
- holding a mass media accreditation.

There are further specific conditions and exemptions in case of employing of non-EU citizen in the Employment Service Act. For instance, an asylum seeker whose application for the granting of asylum has not been decided within one year is not required to hold a work permit unless his application has been dismissed as unfounded or impermissible. This rule has been adopted as a result of dramatically rigorous proceedings before Alien Police Department when deciding on the granting on asylum. For time being, the concerning asylum seekers are entitled to look for a work without the obligation to hold a work permit. However, in order to prove it when looking for a job, Migration Office of the SR issues a certificate conforming that such person is an asylum seeker who is authorized to work in the SR since the Slovak authorities have not come to conclusion whether an asylum will be granted or not within one year. Also, a non-EU citizen who has been provided with subsidiary protection can be awarded by a work permit without consideration for the labour conditions in the SR.

According to this act, a non-EU citizen who is a participant of legal relations pursuant to this act has the same legal status as a citizen of the SR, if the non-EU citizen:

- was issued a work permit and temporary residence permit for the purpose of employment;
- holds a blue card of the EU
- is an asylum seeker, whose access to the labour market is permitted by a special regulation.

The employer with its registered seat in the territory of the SR may accept in an employment only a non-EU citizen meeting the abovementioned conditions. However this formal approach hits against the practicalities associated thereto. Notwithstanding non-EU citizens are authorized to legally work in the SR and they are not in any other way restricted, practical integration of them, especially when there is a 14% unemployment rate in the SR, is highly complicated. This is often due to the reason that their command of the Slovak language is not sufficient for Slovak employers.

## **1.6 Doing business in the Slovak Republic**

Generally, everyone can do business in the SR. However, there are certain limitations, but not only administrative. As mentioned in a part regarding temporary residence, a non-EU citizen may obtain a permit that authorizes him to pursue economic activities in a form of doing business. It can be either on the basis of temporary residence permit or permanent residence permit. Such approval from relevant Slovak authorities entitles such person to perform business activities as a natural person or through a company established in the SR as an executive director. Such approval may be given for a period not exceeding 3 years.

According to the Slovak Act no. 513/1991 Coll. Commercial Code, as amended, (hereinafter only as the “Commercial Code”) as an entrepreneur is regarded a person:

- registered in the Commercial Register;
- conducting entrepreneurial activity based on a trade license;
- conduction entrepreneurial activity based on an authorization other than a trade license under special regulations; and
- undertaking agricultural production who is registered in the respective register under a special regulation.

We will not grasp all the relevant issues, as it is too complex. We will concentrate on two basics and most common forms of doing business in the SR.

In general, according to the act no. 455/1991 Coll. on Trade License, as amended, a person having its permanent residence outside of the SR possesses the same rights and is subject to same obligations as a person having permanent residency in the SR.

According to the Slovak Commercial Code, foreign person in general may conduct entrepreneurial activity in the territory of the SR under the same conditions and to the same extent as Slovak persons. On this note, a foreign person, irrespective of whether from the EU or not, may participate in the founding of a Slovak legal entity or become a shareholder or member of an already existing legal entity for the purpose of conducting entrepreneurial activity. A foreign person may be a single founder of a Slovak legal entity or become a single shareholder/member in a Slovak legal entity.

In this respect, it is necessary to distinguish between authorizations of foreign natural persons being shareholders of a Slovak legal entity in comparison to doing business in the SR as an executive director. As mentioned above, provided that a non-EU citizen seeks to conduct business activities as a statutory body of a Slovak legal entity; meaning that being authorized to act on behalf and in the name of this Slovak legal entity, there are restrictions; such person shall be granted either a temporary residence permit for the purpose of doing business or permanent residency permit. Pure disposal of a Slovak legal entity is not subject to any restrictions or limitations.

### **1.7 Studying in the Slovak Republic**

Generally, there are no restrictions for non-EU citizens to study in the SR, provided that a non-EU citizen has already acquired a residency permit. Such residency permit may be acquired on the basis of the temporary residency permit as stipulated by the Immigration Act. According to the Immigration Act, it is required to obtain such permit in cases when a non-EU citizen seeks to study in the SR as a:

- student of a high school;
- student of a language school;
- student of an university; and
- student who takes part in pre-education necessary for being approved organized by any Slovak university.

As we mentioned above, an applicant may be granted a permit to study in the SR for a period not exceeding 6 years. In contrast to other permit on the basis of temporary residency permit, a person being entitled to study in the SR is also simultaneously entitled to do business. In the event that a non-EU citizen fulfils conditions for being granted an approval to stay in the SR for a period from 3 to 6 months pursuant to the Article 5 of the Schengen Border Code, such person, if studying in the SR, does not any temporary residency permit for this purpose.

A non-EU citizen can freely study in the SR on the condition that he has been granted a permanent residency permit.

In this sense, it is necessary to mention that according to the act No. 131/2002 Coll. on Universities, as amended, a vast majority of non-EU citizens may be subject to school fees. According to this act, universities have been statutory given a free discretion whether or not to impose school fees for non-EU citizens and in what amount.

In order to help non-EU students, among other students, bearing all the costs accompanied with the study in the SR, National Scholarship Program has been established. The idea to help foreign students coming to the SR for the purpose of their studies was supported by the Government of the SR. According to the National Scholarship Program, following are the eligible students<sup>8</sup>:

- university students whose second level of higher education is taking place at a foreign university and who are invited by a public, private or state university in the SR to an academic mobility for a purpose of study in the SR. The period for such scholarship lasts from 1 to 2 semesters.
- PhD students whose higher education or research preparation is taking place at a foreign university or research organization and who are invited by a public, private or state university or research organization eligible to carry out PhD study programs in the SR to an academic

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<sup>8</sup> NATIONAL SCHOLARSHIP PROGRAM: *Scholarships for foreign students, Phd. Students, university teachers and researchers* [online] [14.01.2013] Available on Internet : < <http://www.scholarships.sk/en/main/programme-terms-and-conditions/foreign-applicants> >

mobility for a purpose of study or research in the SR. The period for such scholarship lasts from 1 to 12 months.

- university teachers from foreign universities who are invited by a public, private or state university in the SR to a lecture / research / artistic stay in the SR. The period for such scholarship lasts from 1 to 12 months.
- researchers or artists who are invited by a public, private or state university, research organization eligible to carry out PhD study programs or non-governmental organization in the SR to a lecture / research / artistic stay in the SR.

Granting of such scholarships is territorially limited. Only students from few non-EU countries may apply for this (countries that participate in the so called Bologna Process, Belarus, Canada, Mexico, USA, etc.).

Above this, there are other institutions providing financial help for students from non-EU countries. The government by itself provides scholarships for applicants from developing countries. The Slovak government has elaborated on a list of countries the students from are in a favourable position when granting scholarships.

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#### **AUTHORS:**

**mjr. PhDr. Kristína Králiková, PhD., MBA,** Administrative Law Department, Academy of Police Force Bratislava, Sklabinská 1, 835 17 Bratislava, Slovak Republic, e-mail: kristina.kralikova@minv.sk

**JUDr. Ing. Zahir Jaan Zaher, PhD.,** University of Kabul, Jamal Mena, Kabul, Afghanistan, e-mail: zaher@ku.edu.af