

PREFACE

In this article we give a summary on the most common mistakes in the preparation of an application for a Residence Permit for the Purpose of Employment that results in a refusal of the application due to the lack of the support of the Government Office. This article was produced by Kenéz Bogdány, a ceo of nVisa, Dániel Pozsár, certified migration expert and business policy manager of nVisa, and Blanka Balog, marketing and sales manager of nVisa.

The aim of this article is to help Employer Representatives and Private Individuals in their preparation of the application for a Residence Permit for the purpose of Employment.

This work is independent, it is based on the concerning Act and Government Decree and it mirrors a ruling issued by the Ministry of Innovation and Technology to nVisa Ltd.

This work has not been commissioned by any business, government or other institution.

We welcome your comments on this article at contact@nvisa.eu.

Kenéz Bogdány
chief executive officer
nVisa Ltd.

Dániel Pozsár
business policy manager
nVisa Ltd.

Blanka Balog
marketing and sales manager
nVisa Ltd.

Pivotal points of application for a Residence Permit for the purpose of Employment

Abstract

Unsuccessful application for a Residence Permit for the purpose of Employment results in many drawbacks for both the Hungarian Employer and the third-country national Employee: expulsion of the third-country national from Hungary, several months delay in the start of the employment, financing the new application's travel expenses and government fees again. Although the application for the Residence Permit for the purpose of Employment could have been potentially successful, the preparation of the application documents hides several pitfalls that lead to the refusal. The most common working authorisation-related mistakes of the residence permit application what leads to its rejection are if (i) the preliminary agreement does not echo the previously submitted workforce demand; (ii) the submitted workforce demand is unreasonably specific to the third-country national; (iii) the validity of the workforce demand is too short or it does not intersect the duration of the residence permit application process; or (iv) the qualification of the third-country citizen is not proved properly. In this article we present these common mistakes and highlight its context in order for their better understanding.

Introduction

Reporting the workforce demand. Generally, the Residence Permit for the purpose of Employment (hereinafter: single permit) has to be applied within a single application process. Single application process means that the authorisation of the third-country national's Hungarian work and his/her Hungarian legal stay is authorised within the same application process and these two authorisations are manifested in one permit: the single permit has to be applied at the Immigration Office, which authority asks the Government Office (as part of the same application process) to support the applicant's Hungarian work. Before applying for a single permit, the Hungarian employer has to report its a workforce demand concerning the job position in which it intends to employ a given third-country national. This report has to be submitted at the Government Office located at place where its third-country national prospective Employee will start his/her Hungarian work. The main contents of a workforce demand are the following:

- job position (name of the job position as well as its FEOR number);
- expected salary amount (in a scale);
- type of the employment (employment relationship, simplified employment, service agreement, etc.);
- expected start and end date of the employment;
- validity period of the workforce demand;
- place of the employment;
- information whether the employment is a full-time or part-time employment;
- educational level required for the work;
- qualification required for the work;
- duration of the work experience required for the work;
- other skills, knowledge or experience required for the work;
- amount and type of benefit in kind or benefit in cash that the Employee will receive.

The purpose of this workforce demand is to provide a chance to the unemployed Hungarian, EEA or Swiss citizens that they could get the job reported in the workforce demand instead of the third-country national. The third-country national can be hired by the Hungarian employer only if the Government Office could not find a Hungarian, EEA or Swiss citizen unemployed person who fits to the reported job position and who is appropriate for the Hungarian employer.

Concluding a preliminary agreement. On a general basis, the Hungarian employer and the third-country national prospective Employee has to conclude a preliminary agreement, which document has to be submitted together with the single permit application. Since the contract that serves the basis of the employment (e.g., employment contract) cannot be concluded before the issuance of the applied single permit, this preliminary agreement specifies the conditions of the third-country national's prospective Hungarian work. The Government Office reviews this preliminary agreement when makes a decision whether it supports the issuance of the single permit, therefore, the preliminary agreement is a core document of the working authorisation aspect of the single permit application. The content of the preliminary agreement has to specify at least the following information:

- job position (name and FEOR number) and the description of the working responsibilities;
- qualification required for the work;
- salary amount;
- type of the employment relationship;
- expected start and end date of the employment;
- place of the employment;
- information whether the work will be performed in full-time or part-time.

The preliminary agreement can be aimed at a not more than two-year employment, in general. In case of an EU Blue Card application, it can cover a not more than four-year, or if the applicant has a Hungarian family member, it can cover a not more than five-year employment.

Common mistake 1: the preliminary agreement does not echo the previously submitted workforce demand

The preliminary has to specify those conditions of the prospective Hungarian work that were reported before to the Government Office in the workforce demand. Otherwise, the Government Office does not support the third-country national's Hungarian work, because the unemployed Hungarian, EEA or Swiss citizens did not have a chance to apply the third-country national's prospective job position before employing the given third-country national. If the Government Office does not support the third-country national's work, the single permit application will be refused by the Immigration Office.

Common mistake 2: the submitted workforce demand is unreasonably specific to the third-country national Employee.

Further common mistake that an employer could make is specifying the educational level, qualification, duration of the work experience, and the other skills or knowledge required for the work unreasonably to the favour of the third-country citizen and to the disadvantage of the unemployed Hungarian, EEA or Swiss citizens that might potentially fit to the open job

position. Such an unreasonable specification is usually the citizenship or native English language knowledge as a requirement to fulfil the given job position. If the responsible Government Office consider these requirements as too specific, it does not support the issuance of the single permit, and consequently the Immigration Office refuses the application.

Common mistake 3: the validity of the submitted workforce demand is too short or its duration does not intersect the duration of the single permit application process

The duration of the workforce demand has to be indicated when it is reported to the Government Office. If its duration is less than 15 days, the Government does not support the issuance of the single permit, because it gives too short time frame for the Hungarian, EEA or Swiss citizens to apply for the given job position. Furthermore, if the duration of the workforce demand does not intersect the single permit application period, the Government Office does not authorise the Hungarian work of the either, because it considers that it is not related to that third-country national, who applies for the single permit. So, the duration of the workforce demand has to be determined by taking into consideration these requirements.

Common mistake 4: the existence of the qualification required for the job position is not proved by the appropriate document

If the job position of the third-country national requires a given qualification, as a prerequisite, an attested translation about the degree of the given qualification has to be submitted together with the single permit application. The existence of the concerning qualification can be proved by the degree only. I.e., the Government Office does not accept the transcript, or any kind of certificate issued by the given educational institution if it is not the degree itself. If the Government Office identifies that the submitted attested translation is not about the degree, it raises the attention of the third-country national and/or the Hungarian employer to provide them with the attested translation of the degree, as a missing document within a given deadline. The deadline can be extended at once. However, if the attested translation of the degree is not provided to the Government Office within the deadline, it does not support the issuance of the single permit, and thereby the Immigration Office will refuse the single permit application.

Summary

In this article we provided a summary about the most common mistakes in the application for a Residence Permit for the Purpose of Employment in those cases, when the application could be potentially successful, but the asynchronous workforce demand and preliminary agreement, the unreasonably specific workforce demand, the too short or not properly adjusted validity period of the workforce demand, or the inappropriate proof of the required qualification results in a refusal in the application. All of these mistakes can be avoided by carefully preparing for the application.

Limitations

A successful application for a Residence Permit for the Purpose of Employment is a complex question and beside its working authorisation pillar, its immigration aspect has to be appropriate as well. This article did not touch the immigration aspect of the application. Furthermore, this article highlights the most common mistakes of the application from working authorisation point of view. Other than the above-described details, there are several additional potential mistakes that result in a rejection of the application. Although this article

focused on the mistakes made in connection with the workforce demand and the preliminary agreement in detail these documents hide further potential failures, in terms of their information content. Finally, there are some employment forms and working circumstances when a workforce demand and/or a preliminary agreement is not required for the application for a Residence Permit for the purpose of Employment. The present article did not specify these employment forms and circumstances.

Sources of information

Act IV of 1991 on the promotion of employment and on unemployment benefits.

Government Decree 445/2013. (XI. 28.) Government Decree on authorising the employment of third-country nationals in Hungary on the basis of a non-single application procedure, on the exemption from the permit requirement, on the involvement of the employment centre of the capital and county government offices in the single application procedure, and on the notification of the employment of third-country nationals authorised to be employed in Hungary without authorisation and on the reimbursement of wages.

Ministry of Innovation and Technology: Ruling about the interpretation of the validity of the workforce demand in terms of a single permit application. The ruling was issued to nVisa Ltd. on 27 April 2020.