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NEW RULES ON VISA AND STATUS OF FOREIGNERS IN UKRAINE



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As we reported earlier, on 10 September 2011 Resolution No. 567 of the Cabinet of Ministers of Ukraine "On Approving the Rules of Issuing Visas Authorizing Entry into Ukraine and Transit Through its Territory" (the "**Resolution**") came into force. The Resolution introduces major changes in the Ukrainian visa rules and extends the list of persons entitled to obtain temporary residence permits ("**TRP**"). In this Alert we take into account the new developments, which took place after the Resolution took effect, including adoption of the new Law of Ukraine "On the Status of Foreign Nationals and Stateless Persons". In general, the new legislation is aimed at standardizing the visa and temporary residence rules and practice, and bringing these rules closer to the European Union standards.

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I. Visas

The Resolution provides for only three types of visa (instead of 22 types in the previous period): transit visa, short-term and long-term visa.

A short-term visa is issued if the duration of stay in Ukraine does not exceed 90 days during the 180-day period after the date of first entry. Such visa may be valid from 6 months up to 5 years. For obtaining a short-term visa an invitation letter shall be issued in the prescribed format by the immigration authority - State Department on Immigration, Citizenship and Registration of Physical Persons (Ukrainian abbreviation – the "UGIRFO", formerly known as "OVIR") - upon the application of the inviting legal entity or individual.

A long-term visa is issued based on documents authorizing stay in Ukraine for a period exceeding 90 days or one-time entry for the period of 45 days. Long-term visas are issued to persons who have work permits and other applicants listed below based on invitations verified/approved by the respective state authorities irrespective of the foreign national's citizenship: a) employees of representative offices of foreign companies in Ukraine - invitation of the representative office verified/approved by the Ministry of Economy; b) employees of branches and/or representative offices of foreign banks in Ukraine - invitation of the branches and/or representative offices of foreign banks verified/approved by the National Bank of Ukraine; c) employees of religious organizations in Ukraine - invitation of the religious organization verified/approved by the Ministry of Culture of Ukraine; d) foreign nationals assigned to international technical assistance projects - invitation by the state authority-recipient of the international technical assistance etc.

Depending on the number of entries, visas may be single-entry, two-entry and multiple-entry. Standard visa fees are: for a single-entry visa – USD 85; for a two-entry visa – USD 130; and for a multiple-entry visa – USD 200.

The Resolution provides for non-exhaustive list of documents, evidence of financial good standing and mandatory interview at the initial visa application. Visa application can be rejected only on the basis of reasons listed in the legislation. In such case an applicant is entitled to submit an appeal against visa rejection to the Head of the Embassy/Consulate.

II. Temporary residence permits (“TRP”)

TRP can be obtained by the following non-residents:

1. employees of Ukrainian companies;
2. employees of representative offices of foreign companies in Ukraine;
3. employees of branches and representative offices of foreign banks in Ukraine;
4. participants of international technical assistance projects (TACIS, USAID etc.);
5. employees of offices of foreign states' non-governmental organizations in Ukraine;
6. employees of religious organizations in Ukraine;
7. other groups of non-residents based of international treaties to which Ukraine is a party.

On 23 August 2011, the Ministry of Internal Affairs issued Order № 602 “On the Procedure for Formalizing and Issuing Temporary Residence Permits” that introduced a number of changes to the procedure of TRP formalization. Namely, the list of documents submitted in the course of application for TRP has been significantly changed. A fine ranging from UAH 510 to 850¹ (USD 63 to 106) may be imposed on the basis of administrative court decision on non-residents who fail to register within the prescribed order and/or term.

III. Other Issues

Currently, the state authorities do not have a unified interpretation of the visa and immigration rules. Embassies and Consulates of Ukraine in different countries as well as immigration authorities in different regions of Ukraine have different views regarding the same processes and procedures. No unified clarifications of immigration legislation by the immigration authority are available to the public.

In 2011, the State Migration Service was created² to take over functions of the UGIRFO (formerly – “OVIR”) in supervising compliance of the immigration rules by foreign nationals in Ukraine. It is not yet clear when the UGIRFO will transfer its functions to the State Migration Service. Most likely they will just change signboards.

Other immigration rules and procedures remain unchanged, including those related to short visa-free travels of citizens of the EU, USA, Canada; registration with the immigration authorities; work permits. No separate changes concerning diplomatic staff and their family members have been introduced.

IV. Law of Ukraine "On the Status of Foreign Nationals and Stateless Persons"

On 20 October 2011 the President has signed the Law of Ukraine "On the Status of Foreign Nationals and Stateless Persons". It concerns regulation of a number of immigration legislation issues, in particular: a) expands the list of persons entitled to obtain Ukrainian temporary residence permits, e.g. spouses of foreign employees may have the status of temporary residents of Ukraine; b) defines legal status of foreigners and stateless persons staying in Ukraine under Part II of the Constitution of Ukraine "Human and Citizen's Rights, Freedoms and Duties"; c) settles the question of their coming into and leaving Ukraine; d) establishes fundamentals and procedures for their detention and forced expulsion from the territory of Ukraine.

¹ Art. 203 of the Code of Ukraine on Administrative Offences dated 7 December 1984.

² Regulations of the State Migration Service of Ukraine approved by Decree No. 405 of the President of Ukraine "Issues of the State Migration Service of Ukraine" dated 6 April 2011.

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