

Fremdenrecht (Alien law)

Der rechtliche Rahmen
und die Neuerungen ab 2006

Legal framework and changes with 2006

Ehe-ohne-Grenzen
Wien, 17.8.2006



Helping Hands

- Gegründet 1993 (Zerfall Jugoslawien & neue Gesetze)
Founded 1993 (Break-up of Yugoslavia & new laws)
- Studentisches Projekt, Kooperation ÖH
Law students' project, cooperation with OeH
- Kernkompetenz: Fremdenrecht im weiteren Sinn
Core competence: Migration law, access to work,
(a bit) asylum procedures, non-discrimination



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- Asylrecht im Überblick /asylum law overview



Einreise / Entry (1)

„Betreten des österreichischen Bundesgebiets ohne längere Aufenthaltsabsicht. (Tourismus, Besuch, Geschäftsreise, etc.)“

„To enter Austria without intending a longer stay (Tourism, visits, business)“

•Sichtvermerksfreie Einreise / No visa needed

- EWR-Bürger / EEA-nationals
- verschiedene Staatsangehörige auf Basis von Staatsverträgen based on bi-national contracts (z.B. USA, Kanada, einige lateinamerikanische Staaten, Rumänien, Bulgarien, etc...)
- Fremde, die Aufenthaltsrecht in Österreich oder einem anderen Staat des Schengener Übereinkommens haben.
Persons with a leave to stay in a Schengen-country



Einreise / Entry (2)

•Einreise mit Visumpflicht / visa needed

Erteilung der Visa durch österreichische Vertretungsbehörden auf Antrag. Visa können nicht im Inland erteilt werden.

Visa: issued by embassy/consulate, never within Austria

- Visum A: even for flight transit: only for a few countries
- Visum B: to travel through Austria
- Visum C: for all Schengen states ; max. 90 days
- Visum D: only valid for Austria ; max. 6 M

- From 2006 on: Visa for max. 6 M employment (Visum C/D).
requirement: Sicherungsbescheinigung nach AuslBG / permission in advance (for the employer)



Einreise / Entry (3)

•Erteilungsvoraussetzungen für Visa / requirements

- gültiges Reisedokument / valid passport
- Nachweis der Unterhaltsmittel / proof of living (bank account, employment, Verpflichtungserklärung/guarantee by person living in Austria)
- Krankenversicherung / health care insurance

- Ermessen der Botschaften / freedom for embassy to decide
- Versagung bei Zweifel an Wiederausreise / doubts on return;
- kein ordentliches Rechtsmittel gegen Versagung außer f. begünstigte Drittstaatsangehörige / no legal proceedings save privileged third country nationals



Einreise / Entry (4)

- **Fehlen des Visums / no visa although required**
rejection at the border: material decision by border police: appeal to UVS is possible
- **Überschreitung der Aufenthaltsdauer / overstay**
fines, expulsion + deportation is possible, no further visas issued
- **Schengener Übereinkommen / Schengen accord** : since 1995
SIS- Schengener Informationssystem: expulsion and exclusion decisions filed there: decision by one state is valid for the complete Schengen area (or not: ECJ decision January 30, 2006). Deletion of entries takes a long time – consultation between authorities necessary



Änderungen / Changes 2006

- **Antragstellung im Herkunftsland / Application from home county**
 - Nur persönlich / showing up personally required
 - Andere Vertretungsbehörde nur nach Ermächtigung durch BMAA / other embassy: authorization by FO
- **Verfall nach 3 bzw. 6 M / invalid after 3 or 6 M**
 - Einreisetitel / visa D : 3 M
 - Aufenthaltstitel / residence permit: 6 M in Austria



Aufenthalt / Residence (1)

- **Aufenthaltstitel notwendig / permit is necessary**
 - Exemption: EEA- and Swiss nationals
- **Arten / types**
 - Aufenthaltsbewilligung / leave to remain (to stay)
 - Niederlassungsbewilligung / residence permit
 - (Niederlassungsnachweis) Daueraufenthalt-EG / long-term resident's EC residence permit

With or without quotas (students)
(with or without access to employment, family reunion..)
First application from home country (rare exceptions)



Aufenthalt / Residence (2)

- **Allg. Voraussetzungen / general provisions:**
 - papers
 - Health care insurance
 - Proof of living
 - Proof of accomodation
- **Gesundheitszeugnis / health certificate:**
Should be limited to certain regions/countries from 2006 on
(decision still pending)
- **Integrationsvereinbarung / integration agreement:**
Extended from 2006 on



Aufenthalt / Residence (3)

- **Erteilungsort / type**
< 2006: Vignette od. Bescheid / adhesive sheet or document
2006: Eigene Karte, Anmeldebescheinigung: Dokument /
plastic card, EU-documentation: document
- **Rechtsmittel / legal proceedings**
if rejected: appeal within 14 days, if rejected for formal
reasons by embassy: no regular appeal (save privileged
third country nationals/ EEA citizens)!



Verlängerung / renewal

- **Zeitpunkt der Antragstellung / time schedule**
 - Before expiry, this serves as re-entry visa for 3 M
 - tolerated: 6 M
 - After 6 : handled like first application, but law is vague
 - 2x application after expiry: fine
- **Integrationsvereinbarung / integration agreement**
 - 100 → 300 h
 - Sanctions up to refusal of renewal



Arten der Aufenthaltstitel

- NIB Schlüsselkraft
- NIB ausgenommen Erwerbstätigkeit
- NIB beschränkt
- NIB unbeschränkt
- NIB Angehöriger (o. Erwerbstätigkeit)
- AT Familienangehöriger (mit Erwerbstätigkeit)
- Humanitäre NIB
- AB Rotationsarbeitskräfte
- AB Betriebsentsandte
- AB Selbständige
- AB Künstler
- AB Schüler
- AB Studierende
- AB Sozialdienstleistende
- AB Forscher
- Humanitäre AB



Neue Probleme / new problems (1)

- Künstler / artists
 - No longer residence permit, no indefinite stay, limited access to labour market
- Angehörige von Österreichern / family members of Austrians
 - Less procedural guarantees, limited access to labour market – residence permit required
- Unterhaltsnachweis / proof of living
 - ASVG: EUR 690/1056 instead of social assistance limits, resources for Children: ongoing discussion



„Freizügigkeit“ / EU policies?

- EU-Grundfreiheiten / policies:
free movement of goods, persons, services, capital
- „Anker-Europäer“ / sponsor
 - Der sich in einen anderen Staat begibt oder sich dort aufhält
 - Who moves to or resides in a member state other..
- Familienangehöriger / family member
 - Der ihn begleitet oder ihm nachzieht
 - English version: who will „join or accompany“



Familiennachzug / family reunion

- Familienangehörige von „Europäern“ / family members of „European“ sponsors
 - Immediately, access to labour market (see above)
- Angehörige von „Europäern“ / relatives of „Europeans“
 - Living together has to be shown, access to labour market only within quotas
- Familienangehörige von Drittstaatsbürgern / family members of third-country nationals
 - According to quotas, max. time to wait 3 Yr, access to labour market after max. 1 Yr



Neue Probleme / new problems

- Inlandsantragstellung / application within Austria
 - During legal entry and stay only
- Ehescheidung / Divorce
 - Who is responsible for the divorce?
 - Married for less than 5 Yr: Own income, insurance
- Familiendefinition / Definition of „family“
 - Up to 18 resp. 21 or being dependant



Aufenthaltsbeendigung/Removal (1)

- Ausweisung / Expulsion
 - No renewal of residence permit (z.b. lack of study success, income, not meeting integration agreement, divorce/death of sponsor, long-term unemployment: 4 M in 1. Yr, later: 1Yr)
 - Re-entry with special permit only (1 yr)
- Aufenthaltsverbot / Exclusion
 - Threat to public security (> 3 M detention, certain administrative offences, trafficking, illegal employment, marriage or adoption for gaining residence permit, terrorism)
 - Limited due to EEA-privileges, duration of former stay (5/8/10 Yr), right of family life, **Refoulement** criteria



Aufenthaltsbeendigung/Removal (2)

- Durchsetzung /Enforcement
 - Schubhaft / Arrest
 - Abschiebung / Deportation
- Rechtsmittel / legal redress procedures
 - Appeal to SiD/UVS
 - Be careful leaving voluntarily!
 - Seek legal advice immediately (prosecution of supporters)



Zugang zum Arbeitsmarkt Access to labour market (1)

Basic information

- Legal basis: AuslBG
- execution: Regional- and Landesstellen of AMS
- criteria: AuslBG-Quota & Test of labour market
- Exemptions:
 - EEA-citizens and privileged third-country nationals
 - NB Schlüsselkraft covers access
 - long-term permit
 - other: scientists, clergymen, diplomats, Au-pairs; practice during school/study, un-paid volunteers



Arbeitsmarkt / Labour market (2)

Types of work permit (1)

- Beschäftigungsbewilligung (initial work permit?)
 - Application by employer, limited to this employer.
 - Requirements:
 - Residence permit or leave to stay
 - Meeting legal provisions (wages, insurance)
 - No violation during the last year
 - Test if unemployed person is available



Arbeitsmarkt / Labour market(3)

Types of work permit(2)

- Arbeitserlaubnis (individual work permit(?) nach 1 Jahr Beschäftigung)
 - Application by **employee**; limited to Bundesland.
 - Change in 2006: ...only for a person with **residence permit**.
- Befreiungsschein (work concession)
 - After 5 Yr of employment in A or married for 5 Yr ; valid for Austria
 - Change in 2006: Also for family members after 12M
- No specific permit required: Niederlassungsnachweis, Daueraufenthalt-EG, NIB unbeschränkt



Asyl / Asylum (1)

Definition

- „...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...“
- Protected rights: life, personal integrity, personal freedom
- Economic situation: only relevant in personal existence is threatened



Asyl / Asylum (2)

Terms (1)

- **Nichtstaatliche Verfolgung / non-governmental prosecution:** Relevant, if government cannot protect its citizens or is not willing
- **Nachfluchtgründe / Reasons after pleading asylum:** From 2006 on only taken into consideration if prolonging actions started in the country of origin
- **Innerstaatliche Fluchtalternative / Protection in other parts of home country:** No Asylum granted, if asylum-seeker would be safe in other part of home country (failed states only?) Reason for rejection in the 2006 law



Asyl / Asylum (3)

Terms (2)

- **Sicherer Drittstaat / Safe third country:** Austria sees no responsibility if asylum-seeker was in a country with acceptable asylum procedures before; heavily debated as Austria has to check each case due to the convention; all neighbour countries are „safe“, so an asylum procedure is only possible if the applicant does not tell anything about the way he came to Austria
- **Sicherer Herkunftsstaat / Safe country of origin:** Austria can turn down the application without formal proceedings if applicant comes from : e.g. EEA-Countries, Australia, Canada, New Zealand



Subsidiärer Schutz /subsidiary protection

Definition

- No asylum status according to the convention, but life or personal integrity is endangered. (inhuman treatment, death penalty)
- Inhuman treatment, civil war, complete loss of basic living, torture, etc..

Status

- Less rights than refugees



Asylverfahren / Asylum procedure

• Procedure

- Application at: border police, airport police, BAA, embassy (family members only)
- With the application: „asylum seeker“ – if admitted, temporary leave to stay

• Authorities

Bundesasylamt - Unabhängiger Bundesasylsenat (UBAS) –
VwGH/VfGH

2006: complicated pre-procedure to define responsibility (Dublin-accord). 2009/2010 EU-authority?



New problems of asylum seekers

- Application for other type of permit within Austria
 - During legal entry/stay only, Marriage/adoption is no longer sufficient
 - No access to labour market, even if married
- Citizenship
 - Time to wait is longer now
- Access to labour market (during proceedings)
 - Theoretically possible, limited due to internal regulations



Zusammenfassung /Conclusion

- Austria is as restrictive as possible
- Sole improvements by EU legislation
- 2006: Penal law for the first time
- Migration and Asylum permanently mixed up
- No Migration strategy
- Integration: Nobody feels responsible?
- Security **by** Integration or **instead of**?



Danke für die Aufmerksamkeit
Thanks for you attention

Fragen?
Questions?

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