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US IMMIGRATION & NATIONALITY LAW

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Feature Article

OPTIONS FOR UKRAINIANS: AN OVERVIEW – This article provides an overview of options for Ukrainians in several European Union countries following the invasion of Ukraine by Russia and massive migrant outflows.

Country Updates

Italy – There is good news from the Italian government for people who seek to convert their permit of stay to a work permit.

Russia – The Russian government has issued guidance for employers of foreign citizens with highly qualified specialist work permits who leave the Russian Federation for an indefinite period. Russia has lifted restrictions on the entry of persons from several countries. Also, there is a new list of professions that employers can use to hire foreign nationals from visa countries without having to apply for a quota for foreign labor first. In another development, citizens of the EAEU are no longer required to submit a negative PCR test result to enter the Russian Federation through land borders.

UNITED KINGDOM – The adjusted right-to-work check process has been extended until September 30, 2022.

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Feature Article

OPTIONS FOR UKRAINIANS: AN OVERVIEW

This article provides an overview of options for Ukrainians in several European Union countries following the invasion of Ukraine by Russia and massive migrant outflows.

European Union

European Union (EU) Member States have decided to apply Council Directive 2001/55/EC of 20 July 2001 (on minimum standards for **giving temporary protection in the event of a mass influx of displaced persons** and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof), **thus introducing temporary protection for Ukrainian and Ukrainian residents fleeing from war**.

T**emporary protection quickly allows displaced persons to enjoy harmonized rights across the EU, including a residence permit; the possibility to engage in employed or self-employed activities; access to accommodation, social welfare assistance, and medical or other assistance; and means of subsistence. T**emporary protection also benefits affected Member States because it limits the need for these displaced persons to immediately seek international protection and overwhelm the asylum systems of the Member States by reducing formalities to a minimum because of the urgency of the situation. The measures included in the Temporary Protection Directive and implementing national measures therefore **allow the Member States to manage the influx of displaced persons in a controlled and effective way with full respect for fundamental rights and international obligations.**

Also, according to the decision, Ukrainian nationals will have the right to obtain a residence permit immediately, valid for one year and extendable up to three years. Non-Ukrainian nationals residing in Ukraine on short term permits will be helped to leave the country but will then be repatriated. Those living in Ukraine for long-term periods with a permanent permit will be treated differently according to the Member State of relocation.

F**rom a practical point of view**, there could be some difficulties. For example, because this is an EU Directive, all Member States are required to implement it within their national law systems, which means that each Member State has discretion regarding how to implement it. Also, t**his Directive has never been applied before**, which means that it is difficult to know, at least immediately,

whether the Member States are correctly incorporating and implementing it.

Belgium

Relevant information for Belgians in Ukraine and Russia, and Ukrainians in Belgium, is at https://info-ukraine.be/en.

The Belgian federal immigration office confirmed that they "will examine the residence applications...with great care. Therefore, Ukrainians in Belgium should not worry if their residence permit expires in the next few weeks." (https://dofi.ibz.be/en/themes/ukraine).

The most recent guidelines/regulations are briefly summarized below.

Temporary Protection Status

The European Directive discussed above has been transposed into Belgian law to provide for minimum standards for granting temporary protection in the event of a mass influx of displaced persons into EU territory.

Ukrainian nationals residing in Ukraine and their family members, as well as third-country nationals or stateless persons enjoying temporary protection in Ukraine and their family members, are eligible for temporary protection in Belgium, provided they resided in Ukraine on or before February 24, 2022.

Ukrainian nationals can present themselves every day (Saturdays and Sundays included) between 8.30 am and 5.30 pm at a registration center in Brussels (current address as of March 14, 2022, is Brussels Expo Hall, Palais/Hall 8 – Heysel, Verregat) with their Ukrainian identity documents to apply for temporary protection. Due to the increasing number of registrations, the authorities ask those who already have a place to stay to wait to register in order to allow prioritization for those in need of housing. Those who registered between March 7 and 13, 2022, at the first-used registration center do not have to come back to the current registration center in Palais 8 (Heysel).

After the registration is completed, a temporary protection certificate will be issued if the conditions for granting temporary protection are met.

The municipal administration of the place of residence can afterwards issue a residence permit type A valid until March 4, 2023 (potentially renewable). Before issuance of the residence permit type A, a temporary residence document "annex 15" can be issued while awaiting the residence permit type A.

Under Belgian law, third-country nationals with temporary protection status have unlimited access to the labor market as employees as soon as they hold the document "annex 15" and later the residence permit type A. This applies to Ukrainian nationals: they can work without the need to obtain a specific permit (work or single permit).

Temporary protection status does not allow self-employed work in Belgium: a specific permit (professional card) is required to legally work in Belgium as a self-employed person.

Short Stay in Belgium (< 90 days)

Ukrainian biometric passport holders are exempt from visa requirements for short stays (maximum 90 days) in Belgium. If the situation in Ukraine does not allow for safe return at the end of the 90 days, this period can be extended up to a maximum of 180 days. This extension is also possible for those who do not hold a biometric passport but who have received a visa to enter Belgium.

The federal immigration office reassures "Ukrainian citizens who are, or have arrived, legally in Belgium and who, due to the situation in their country, stay longer than the authorized stay," but they "are advised to go immediately to the municipal administration of their place of residence to declare their arrival and/or to request the authorization to extend their stay in Belgium."

Short-stay status does not allow work in Belgium.

Long Stay in Belgium (> 90 days)

The guidelines for long stay, e.g., for work or for family reunification, include:

- For Ukrainian citizens who are still in Ukraine, in principle those who wish to come to Belgium should normally obtain a visa D (national long-stay visa) before traveling. It is now possible to apply for this visa at the Belgian Consulate General in Warsaw, Poland, since the Belgian Embassy's offices in Kiev are currently closed.
- For Ukrainian citizens who have left Ukraine and are already in the Schengen area, it is possible for them to apply for a residence permit directly at the municipal administration of their residence in Belgium. The conditions for granting this residence permit (study, work, family reunification) are maintained, but if the applicant cannot present the usual official documents, the immigration office will look for alternatives.

- Ukrainian citizens who have left Ukraine and are in a country that is not part of the Schengen area can contact the Belgian embassy or consulate responsible for that country.
- Ukrainian citizens who are legally residing in Belgium for a limited period of time and no longer meet the requirements for renewal of their residence card type A can obtain an extension of their authorized stay (end date of stay + 90 days). It is possible to extend this period up to a maximum of 180 days.

Flanders: Ukrainian Seasonal Workers

Specifically for Flanders, Ukrainian seasonal workers who are currently living and working in Belgium with a work permit valid for a maximum of 90 days can extend this work permit up to a maximum of five months overall, even when they will stay in Flanders for longer than 90 days in total.

Canada

Canada has committed to opening two new streams of immigration for Ukrainians.

First, a Canada-Ukraine Authorization for Emergency Travel (CUAET) allows Ukrainian nationals to apply for a visa without most of the usual requirements (free of charge, exempt from completing an immigration medical exam overseas, option to apply for a free open work permit, exempt from Canada's Covid-19 vaccination requirements) excepting biometrics and ArriveCAN. No limit on the number of applications will be imposed, and pending a background check and security screening, the stay in Canada can be for up to three years. Canada intends to process a standard CUAET application within two weeks of receipt of the application. The steps to apply for this stream are at https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures/cuaet.html

Second, Canada will implement a Special Family Reunification Sponsorship pathway for immediate and extended family members of Canadian citizens and permanent residents who are in Ukraine. For this pathway, details should follow in the coming weeks.

Ukrainians who will be coming to Canada through these two streams will be eligible to apply for an open work permit. Canada has also committed to issue open work permits to Ukrainian visitors, workers, and students who are

currently in Canada and cannot go back due to the unsafe conditions. The Canadian government continues to encourage Ukrainians to apply through all available programs, as their applications will be prioritized.

Canadian immigration measures for people affected by the situation in Ukraine are at https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures.html

Italy

Below is a summary of possible options applicable to Ukrainian citizens migrating to Italy now. This information was prepared based on the measures available at the moment; no official specifications had been issued yet.

Option 1: Special temporal permit of stay for "calamity"

This solution applies when the country of origin of a foreigner (applicant) is in a proven situation of a "situation of serious calamity," which makes that person unable to return to their country due to safety concerns. This type of permit has a duration of 6 months and is valid only within the Italian territory. It allows foreigners to work in Italy and can be converted into a work permit.

However, it should be noted that this type of permit is for cases of "natural calamity," but the applicable law does not specify cases regarding wars and similar conflicts.

Option 2: Asylum

Ukrainian citizens can apply for asylum in Italy. According to Italian law, there is no formal timeframe for making an asylum application. However, asylum seekers should file their applications as soon as possible. Immigration legislation prescribes, as a general rule, a deadline of 8 days from arrival in Italy for migrants to present themselves to the authorities.

An asylum application can be submitted either at the border police office or within the territory at the provincial Immigration Office (*Ufficio immigrazione*) of the Police (*Questura*), where fingerprinting and photographing (*fotosegnalamento*) are carried out. If the asylum application is submitted at the border, the Border Police invites asylum seekers to present themselves at the *Questura* for formal registration.

After the filing (*verbalizzazione*) of the application, the *Questura* sends the

formal registration form and the documentation to the Territorial Commissions or sub-Commissions for International Protection located throughout the national territory, the only authorities competent to conduct the substantive asylum interview. The *Questura* then notifies the asylum seeker of the interview date to appear before the Territorial Commission.

Applicants can check for their local *Questura* office at https://questure.poliziadistato.it/localcity. A receipt, including a photo and the tax code of the applicant, is issued for the applicant to access health services.

Details:

For more information, see https://www.mazzeschi.it/temporary-protection-for-ukrainian-citizens-in-italy/

Ukrainian citizens who need to request temporary protection in Italy can also check the following links:

- Italia (inca.it)
- https://www.patronato.acli.it/soluzioni-per-te/straniero-in-italia/
- https://patronatoinas.si/?lang=it
- https://www.patronatoenac.it/servizi/immigrazione/

For further information, see https://www.interno.gov.it/it/info-utili-lingresso-dei-profughi-ucraini-italia

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Country Updates

ITALY

There is good news from the Italian government for people who seek to convert their permit of stay to a work permit.

The deadline for sending applications to convert residence permits issued for other reasons into work permits has been extended from March 17 to September 30, 2022.

RUSSIA

The Russian government has issued guidance for employers of foreign citizens with highly qualified specialist work permits who leave the Russian Federation for an indefinite period. Russia has lifted restrictions on the entry of persons from several

countries. Also, there is a new list of professions that employers can use to hire foreign nationals from visa countries without having to apply for a quota for foreign labor first. In another development, citizens of the EAEU are no longer required to submit a negative PCR test result to enter the Russian Federation through land borders.

Update on Highly Qualified Specialist Work Permits

Due to the current situation, many foreign citizens engaged in labor activity in the territory of the Russian Federation on the basis of work permits for highly qualified specialists may decide to leave the territory of the Russian Federation for an indefinite period.

Employers of such foreign citizens are reminded:

1. To maintain the employee's status of highly qualified specialist, the employer must pay the minimum wage per month: 167,000 rubles gross. If it is impossible to pay wages (for example, if the employee took leave at his own expense), the minimum amount of wages *within one quarter* should be paid in the amount of 501,000 rubles before taxes.
2. The period of stay of a foreign citizen abroad should not exceed six months. If this period is exceeded, the work permit of the highly qualified specialist will be canceled. A similar rule applies to highly qualified specialists who have residence permits in the Russian Federation issued based on HQS work permits.
3. If a decision is made to terminate an employment contract with a foreign citizen, the employer should consult a lawyer as early as possible to receive advice on the specific case.

Restrictions on Entry Lifted for Several Countries

Starting March 30, 2022, restrictions have been lifted on the entry of citizens of Kazakhstan to the Russian Federation and on the exit of Russian citizens to Kazakhstan through the land section of the Russian-Kazakh border, as well as foreign citizens and stateless persons to Russia and Russian citizens to Mongolia through the land section of the Russian-Mongolian border. Previously it was only possible to travel to Russia from these countries by air.

Starting March 17, 2022, citizens of the Republic of Belarus can enter the Russian Federation, crossing the Russian-Belarus state border without any previously set restrictions, by car (previously entry was possible only by train

and plane), and without the need to undergo sanitary-quarantine control.

Also, starting March 10, 2022, restrictions on entry into the Russian Federation of Russian citizens and foreign citizens from the following countries have been lifted:

Hong Kong Special Administrative Region

Botswana

Eswatini

Kenya

Lesotho

Madagascar

Mozambique

Namibia

Tanzania

South Africa

Zimbabwe

For the entry of foreign citizens from these countries (with the exception of certain cases as specified in paragraph 2 of the Order of the Government of the Russian Federation from 16.03.2020 No 635-r, "On temporary restriction of entry into the Russian Federation of foreign citizens and stateless persons and temporary suspension of issuance of visas and invitations," for example, the residence permit owners or those who have relatives who are citizens of the Russian Federation), they must be included in the entry list compiled by the Federal Security Service of the Russian Federation and the Ministry of Internal Affairs of the Russian Federation. The Ministry of Internal Affairs has begun accepting documents for work permits and invitations for citizens of these countries, but submission is possible only after they are included in the lists of the Federal Security Service and the Ministry of Internal Affairs for entry.

New List of Professions for Employers Hiring Foreign Nationals

Also, starting March 29, 2022, a new order from the Ministry of Labour and Social Development introduces a renewed list of professions that employers can use to hire foreign nationals from visa countries without having to apply for

a quota for foreign labor first.

Citizens of EAEU No Longer Required to Submit PCR Test Results to Enter Russia

EAEU citizens (Republics of Armenia, Belarus, and Kazakhstan, and the Kyrgyz Republic) entering the Russian Federation through land borders no longer need to submit a negative PCR test result.

Details:

- Entry to Russia: Restrictions on Entry from Kazakhstan and Mongolia Lifted, Vista Immigration, https://vista-immigration.ru/entry-to-russia-restrictions-on-entry-from-kazakhstan-and-mongolia-lifted/
- Entry to Russia: News (Belarus), Vista Immigration, https://vista-immigration.ru/entry-to-russia-news/
- Entry to Russia: African Countries and Hong Kong, Vista Immigration, https://vista-immigration.ru/entry-to-russia-african-countries-and-hong-kong/
- Quota-Free Standard Work Permit: New List of Professions, Vista Immigration, https://vista-immigration.ru/quota-free-standard-work-permit-new-list-of-professions/
- Entry to Russia: The EAEU Citizens Are No Longer Required to Submit PCR, https://vista-immigration.ru/entry-to-russia-the-eaeu-citizens-are-no-longer-required-to-submit-pcr-to-enter-russia/

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UNITED KINGDOM

The adjusted right-to-work check process has been extended until September 30, 2022.

The COVID-19 pandemic-related video call temporary adjusted right-to-work check process was scheduled to end on April 5, 2022. However, in a welcome development, it has been extended until September 30, 2022. This means that employers can continue to use the adjusted process to check copies of right-to-work documents over a video call.

The extension is mainly to give employers more time to become comfortable

with the new digital Identification Document Validation Technology (IDVT) checking process for British and Irish citizens due to launch on April 6, 2022. This means that employers who do not wish to start using the new IDVT process now will benefit longer from the adjusted process for checking British and Irish citizen employees. Beginning October 1, 2022, if they wish, employers will still be able to check original documents from British and Irish citizens without using the IDVT.

Beginning April 6, 2022, employers must perform an online check if the person has a biometric residence permit. It will not be possible to carry out an original document (manual) check or an adjusted check (over video) if the person has a biometric residence permit.

Details:

- Right-to-Work Checks: What Employers Need to Know, Kingsley-Napley, https://www.kingsleynapley.co.uk/services/department/immigration/slp/right-to-work-checks
- Right-to-Work Checks: An Employer's Guide, UK Home Office, https://www.gov.uk/government/publications/right-to-work-checks-employers-guide

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