

Legal Guide to Immigration in Portugal Guidelines for Trade Union Action



Immigration

Informing and training
to integrate better

Co-Funded by:



► Data sheet

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Logo/Lay-out/Pagination: Formiga Amarela, Oficina de Textos e Ideias, Lda;

Printing and finishing: Grafica100, Produção Gráfica por Sistemas Digitais, Lda.

Edition: 2.250;

1st Edition: March 1st 2011:

Legal Deposit:

ISBN: 978-989-8430-03-8

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Note of Introduction

The “Legal Guide for Trade Union Action”, which we now present, is produced in the framework of a Project developed by the CGTP-IN Migration Department and called “IMIGRAÇÃO – INFORMAR E FORMAR PARA MELHOR INTEGRAR”. The project is funded by the POPH - Human Potential Operational Programme. Knowing in detail the existing legislation, understanding how to enforce it and detecting the “loopholes” it contains, is crucial for all citizens, since the existence of a law is simply not sufficient - it is also necessary that citizens know how to put into practice. If this is the general principle for any legal framework, in the case of the current legislation there are three singularities that make this principle even more important. More precisely, we are talking about the fact that this law: (i) is directed at immigrants, the majority of whom do not know the social standards and regulations that preside over our society, with many of them hardly knowing our language; (ii) will be applied, popularized and disseminated by CGTP-IN trade union militants and other social activists, who are keen to protect the interests of men and women immigrants; (iii) is mostly directed at the wage earners, who are the absolute majority of the migrant communities, and, in the labour world, with their work – often subject to inhumane and outrageous exploitation – contribute to the national growth and wealth. Therefore, it becomes even more relevant to know this legislation in depth – to know it in all its dimensions, but also in all its potential (to protect the immigrants) and in its limitations (to overcome them).

This is the objective of this “Legal Guide for Trade Union Action” – being a tool for the union militants so that, in the work places, we may better protect men and women migrant work-

ers. The method for its elaboration was simple: it is divided into subjects and, in each of them, we raise the questions that may be asked concerning its application. Next, we give the answers for its enforcement. In brief, this “Guide” has the clear and assumed aim of knowing the legislation in detail and depth, to apply it in order to protect the immigrants. Besides this main objective, we seized this opportunity to convey to the migrant communities, other relevant legal information regarding trade union and social work. The translation of this “Guide” in English, Ukrainian and Romanian, allows us to disseminate its contents among the largest immigrant communities, so that we may better implement the above mentioned objective.

We are, in this way, informing and training, to contribute to the integration of men and women migrant citizens in our democratic society. A society that must be inclusive, cosmopolitan and equitable. Fighting, in this way, discrimination, deregulation and exclusion and promoting equality, regulation and inclusion means, in the last analysis, preventing racism and xenophobia - a major task of trade union and social militants. This “Guide” is one of the main tools to carry out that work.

Let us then go to work! Good work to us all!!!

Carlos Trindade
The Migration Department,
Lisbon, March 2011

RULES OF ENTRY, PERMANENT RESIDENCY, LEAVING AND EXPULSION OF FOREIGN NATIONALS FROM PORTUGUESE TERRITORY

(law 23/2007, of july 4th and regulatory decree 84/2007, of November 5th)

(Every provision quoted in this Guide with no reference to any legislation is part of the above mentioned law)

Chapter I

Legal Entry Entry Visas

1. How can third-country nationals come to work legally in Portugal?

To legally enter the country, third-country nationals must:

- Be holders of a recognized travel document (passport) valid for at least 3 months after the period of the intended stay;
- Having a valid entry visa for the purpose of the trip or stay;
- Having sufficient subsistence means, either for the period of stay or for the return trip to their home country.

When the purpose of the stay is work, the appropriate visas will be as follows, depending on the type of work and its duration:

¹ Decree no. 1563/2007, of December 11, determines the means of subsistence that third-country nationals shall have, in order to enter and stay in Portugal. Please also refer to Decree no. 760/2009, of July 16, which adopts exceptional measures related to the assessment of the means of subsistence.

a. Temporary stay visas

- For temporary wage earning or self employed work which does not, as a rule, exceed six months;
- to pursue scientific research activity in a research facility, to teach in a higher education institution or carry out a highly qualified activity, for a period of less than a year.

b. Residence visas

- For wage earners;
- to be self-employed or be immigrant entrepreneurs;
- to do research or a highly qualified activity.

2. What is and how do you obtain a temporary stay visa to do wage earning work?

The temporary stay visa for wage earning work may be granted to third-country nationals wishing to engage in temporary work in the Portuguese territory, provided they hold an offer of employment contract.

The request for a temporary entry visa must be submitted to the embassy, consular post or section of the applicant's home country or in the consular district of his/her country of residence, on the appropriate form and with the following documents attached:

- Two identical passport photographs;
- Passport;
- Criminal record check certificate issued by the authorities in the country of nationality or of the applicant's current residence;
- Request for check of the Portuguese criminal record by the Immigration and Border Control (SEF);
- Valid travel insurance, which can cover the necessary expenses for medical care, including urgent medical care as well as possible repatriation;
- Proof of means of subsistence;
- Copy of a return ticket;

- Promise of employment contract or contract, for temporary employment
- A statement issued by the IIEFP, stating that the promise or contract of employment refers to job offers available to third-country nationals.

The offers of temporary employment available to third-country nationals are published by the IIEFP on an information system accessible to the public (via Internet); embassies and consulates access this information and popularize it via diplomatic channels to the competent authorities of third countries.

Third-country nationals wishing to take one of these offers of temporary employment must submit their application directly to the employer, who, in turn, will directly select and notify the candidate, by sending him/her all the required documents so that he/she may apply for a visa at the consulate.

In principle, the temporary stay visa for wage earners is granted for the duration of the contract and cannot normally exceed 6 months.

However, this visa may be extended for another 90 days, provided the applicant holds an employment legal contract and is a member of the National Health Service or holds a health insurance policy.

3. What is it and how to obtain a residence visa to do wage earning work?

The residence visa is a visa that is intended to allow entry into Portugal, to request a residence permit.

This visa, in principle, allows its holder to remain in Portugal for four months.

There are six different types of residence visas, depending on the purpose of the stay:

- Residence visa to do wage earning work
- Residence visa for self-employment or for immigrant entrepreneurs
- Residence visa for research or for a highly qualified activity
- Residence visa for study, student exchange, job internship or voluntary work
- Residence visa to allow college students mobility
- Residence visa for family reunification.

The residence visa for work is the visa that entitles the holder, provided the statutory requirements are met, to apply for a residence permit to work in Portugal.

The residence visa for wage earners should be requested at the embassy, consular post or sections of the country of the usual residence or in a country where his/her state of residence has consular jurisdiction, and attach the following documents:

- Two identical passport photographs;
- Passport;
- Criminal record certificate issued by the authority of the country of nationality or current residence of the applicant;
- Request for consultation of the Portuguese criminal record by Immigration and Border Control (SEF);
- Valid travel insurance, which can cover the necessary expenses for medical reasons, including urgent medical care and eventual repatriation;
- Proof of means of subsistence;
- Copy of a return ticket;
- Employment contract, promise of employment or individualized show of interest;
- Certificate, issued by the IEF, stating that the employment contract or individual expression of interest is covered by the global quota in place and that the offer has not been filled by a preferential worker;
- Evidence of being able to do the respective job and if it regulated in Portugal.

The granting of a residence visa for wage earners depends on the existence of job opportunities unfilled by Portuguese nationals, nationals of Member States of the European Union, of the European Economic Area or of a third State with which the EU has signed an agreement of free movement of workers, as well as of workers from third States that have legal residence in Portugal.

To this end, the Council of Ministers, after consultation with the Standing Committee for Social Dialogue, approves the annual global quota of job opportunities presumably not filled by preferential workers.

The job vacancies within this global quota are disclosed on IEFP's website; embassies and consulates access the available information, advertise job vacancies in an appropriate place and they also disclose them to the competent authorities of third countries.

Foreign nationals wishing to take one of these offers shall apply directly to the employer who, in turn, will select and send the documents directly to the candidate who is applying for the respective visa.

Exceptionally, as soon as the applicant fulfils the general conditions for obtaining a residence visa for wage earning work and holds an employment contract, the visa may be granted independently of the the established global quota, provided a statement is issued by the IEFP, at the request of the employer and provided that the offer was not accepted by a preferential worker. Please note that issuing a visa under these conditions requires the express permission of the Director-General for Consular Affairs and Portuguese Communities.

4. What is a residence visa for self-employment or for immigrant entrepreneurs?

The residence visa for self-employment or for immigrant entrepreneurs is intended to allow the entry into Portugal of third-country nationals who wish to pursue an independent business activity

here and that are qualified to do so, provided they have a proposal of contract or a written contract proposal as service provider.

The residence visa for immigrant entrepreneurs is for third-country nationals wishing to invest in Portugal, provided they have carried out investment operations as well as demonstrating they have available financial means in Portugal, including those obtained from Portuguese financial institutions.

5. What is a residence visa for the exercise of research or highly qualified activity?

For this purpose, an activity is considered as highly qualified when there is an exercise of certain technical or exceptional expertise, and having the appropriate qualification thereof, including higher education.

Researcher (i.e. someone who conducts research) is the holder of an appropriate higher education qualification, who is hired by a research centre to conduct a research project that typically requires such a qualification.

Therefore, only foreign nationals who meet these requirements may apply for and obtain a residence visa for the exercise of research or highly qualified activity.

The granting of these visas is not subject to a quota and is subject to less bureaucracy and fewer requirements than for the granting of residence salaried work permits.

The residence visa for research purposes may be granted to third-country nationals who have been admitted as researchers, working under contract or promise of an employment contract, for services or holding a letter of engagement to provide services, or having been attributed a grant for scientific research, at a research centre recognized by the Ministry of Science, Technology and Higher Education.

The residence visa to pursue a teaching activity in a higher education institution or a highly qualified activity may be granted to third-country nationals who have the proper promise or contract of employment, written proposal or contract for services.

6. In what cases can a visa be cancelled?

Any entry visas, including those granted for any type of work may be cancelled in the following situations:

- When the holder fails to comply with or no longer meets the conditions for its granting;
- When the visa has been issued based on false statements, use of fraudulent means or by invoking different reasons from those that led to the entry of its holder in the country;
- When the holder is subject to deportation from Portugal.

Residence or temporary stay visas may also be cancelled if the holder, without acceptable reasons, leaves the country for 60 days during the period of the visa's validity.

The residence visa will also be cancelled if the application for residence permit is cancelled.

7. If the period of the visa ends, what should the foreign holder do to remain in Portugal?

If you want to remain in Portugal for a longer time than that offered on entry, you must request an extension of stay, which will only be granted approval if the conditions that allowed the admission of foreign nationals still apply. In the case of work visas, it is necessary to maintain the employment contract.

Requests for extension of stay are presented in person, in a proper form, at the Immigration and Border Control (SEF) and accompanied by the following documents:

- Valid passport;
- Proof of means of subsistence and accommodation;
- Request for consultation of the Portuguese criminal record by Immigration and Border Control (SEF) if the required period of stay exceeds 90 days;

- Title of transport that ensures the return, whenever the requested stay exceeds 90 days;

In addition, in the case of application for extension of a temporary stay visa for work purposes,

- Employment contract or letter from the employer confirming the employment relationship;
- Health insurance or proof of being covered by the National Health Service;
- Information needed to verify your status with the tax and social security authorities.

The request for extension of stay filed by the holder of a residence visa must also be accompanied by proof of application for a residence permit.

Chapter II

Legal Residence Residence Permits

8. What is a residence permit?

The residence permit is a legal title that allows its holder, a foreign citizen, to live in Portugal for a certain period of time or indefinitely.

According to the current law, legal residents are foreign citizens holding residence permits valid for a minimum of one year.

9. What types of residence permits are there?

The law provides for the existence of two types of residence permit, depending on their period of validity:

- Temporary residence permit
- Permanent residence permit.

a. What is a temporary residence permit?

The temporary residence permit is a residence permit that allows the foreign citizen to reside in Portugal for a certain period of time and has the following characteristics:

- It is normally valid for one year from the date of issue
- It is renewable for successive periods of two years;
- It must be renewed whenever there is any change in the identification information recorded therein.

b. What is a permanent residence permit?

The permanent residence permit is a residence permit that allows the foreign citizen to reside in Portugal for an indefinite period and is characterized mainly by not having an expiry date; it must be renewed every five years or whenever there is a change of personal identification details.

Moreover, the law distinguishes between various types of residence permit according to their purpose, namely:

- To do wage earning work
- To engage in self-employment
- To exercise a research or highly qualified activity
- To study or to attend an unpaid job internship
- To do voluntary work
- For family reunification.

10. Under what conditions can a foreigner apply for a residence permit to do wage earning work?

Any foreign citizen holding a residence visa for wage earning work may require a conditional residence permit for this purpose, provided that he meets the following conditions:

- Presence in Portugal;
- Absence of any fact which, if known to the authorities before issuing visas, would have prevented such granting;
- Possessing the means to support himself;
- Accommodation;
- No convictions for any crime, that in Portugal is punishable with imprisonment for more than a year;
- Not being in a period of ban on re-entry, following deportation;
- Not being included in the Schengen Information System alert list, nor in the Integrated Information System of

the Immigration and Border Control (SEF) for the purpose of refusing entry;

- Having a legal contract of employment;
- Being enrolled in social security.

11. Is there any way of getting a residence permit to work without having a residence visa?

Exceptionally, the residence visa may be dispensed, provided that, in addition to meeting all the general conditions required to apply for a residence permit, the foreign citizen:

- Has an employment contract or an employment relationship as testified by a Trade Union, an association with a seat on the Advisory Board on Immigration or by the Authority for Working Conditions;
- Entered the country legally and remains here legally;
- Is registered in the Social Security and timely pays its respective social insurance.

In this case, to start the official procedure for the exceptional granting of a residence permit, the foreign national who meets these requirements must personally submit to the Immigration and Border Control (SEF) the reasons for wishing to obtain a residence permit, and the following documents:

- Employment contract pursuant to the law or evidence of the existence of employment, issued by any of the above mentioned entities;
- Information required for the verification of enrolment in the tax administration and regularity of their situation with regard to social security deductions.

Note that in these cases, any decision on the request is only issued after conducting a personal interview with the applicants

and taking into account the uniqueness of their situation, including force majeure and justifiable personal or work reasons.

12. In what other cases can a residence permit be obtained without a residence visa?

A visa is not required to obtain temporary residence permit to foreign citizens who are in the following situations:

- Minor children of foreign nationals who hold a residence permit, born in Portuguese territory;
- Children born in Portugal, who have remained here and are attending school at any grade, as well as their parents, provided they have effective parental responsibility;
- Children of residence permit holders who have reached adulthood and have usually stayed in the country since they were 10 years old;
- Adults born in national territory who have not been absent or who have stayed here since the age of 10 years;
- Minors must be subject to guardianship;
- Who no longer qualify for asylum in Portugal because they have ceased the grounds on which they obtained such protection;
- Suffering from an illness that requires prolonged medical treatment that prevents return to their country, to avoid risk to the individual's health;
- Who have completed military service in the Portuguese Armed Forces;
- Who have lost Portuguese nationality, but have stayed in Portugal for the last 15 years;
- That have not been absent from Portugal and whose right of residence has expired;
- Who have minor children in Portugal or with Portuguese nationality, over whom they exercise effective parental custody and for whom they provide support and

education;

- Diplomatic or consular agents, their spouses, dependants and dependent relatives accredited in Portugal for a period not less than three years;
- That are or have been victims of severe or very severe criminal acts or administrative offences on the working relationship and that is expressed in terms of lack of social protection, exploitation or salary scale, of which there are indications proven by the Authority for Working Conditions, and provided they have denounced the crime to the authorities and cooperate with them;
- Who have benefited from a residence permit for being victims of penal infractions related to human trafficking or to aiding and abetting illegal immigration²;
- Who have been granted a residence permit to study at secondary or higher education and completed the studies intend to pursue a professional activity in Portugal;
- Who have received a temporary stay visa to pursue a research or highly qualified activity and wish to pursue research, teach in a higher education institution or develop a highly qualified activity in Portugal.



² Victims of human trafficking enjoy a special regime for granting a residence permit, provided for in Decree-Law 368/2007 of 5 November.

13. How to make a request for a residence permit without the residence visa?

The application for permit of residence without residence visa is made as usually, with the following documents:

- Valid passport;
- Proving to have means of subsistence and accommodation;
- Request for consultation of the Portuguese criminal record by the Immigration and Border Control (SEF);
- Criminal record of the country of origin, when required;
- The documentary evidence specific to each case for visa exemption.

The application for a residence permit for victims of criminal acts or severe or very severe subpoena concerning the working relationship is accompanied by:

- Copy of the crime report
- Statement issued by the Authority for the working conditions or judicial authority, confirming the applicant's cooperation with the investigation and the existence of that circumstantial evidence of the offence
- Statement issued by the Authority for Working Conditions confirming the existence of a situation of lack of social protection, working time and salary exploitation.

14. Who can be granted a permanent residence permit?

Eligible for a permanent residence permit are foreign nationals who cumulatively:

- Are holders of a temporary residence permit for at least five years;
- During the last five years of residence in Portugal have not been convicted with a penalty or penalties which individually or together exceed one year in prison;
- Have means of subsistence;
- Have accommodation;
- Prove to have knowledge of basic Portuguese.

15. What are the rights of the holder of a residence permit?

In principle, the legal resident, who is the holder of a valid residence permit, has all the rights and obligations of the national citizen, except those which the Constitution and the law reserves exclusively for nationals.

However, Article 83 of Law 23/2007 stipulates that holders of residence permits are entitled to:

- Education and learning
- Engage in salaried work or self-employment
- Vocational guidance, training, retraining and improvement;
- Access to healthcare
- Access to the law and the courts.

The same law also guarantees equal treatment in matters of social security, tax benefits, union membership, recognition of diplomas, certificates and other occupational qualifications and access to goods and services available to the public.

This provision of Law 23/2007 of July 4, can not however be construed to limit or restrict the rights that the Constitution confers on foreign nationals with legal residence in the country.

16. What are the labour rights of the holder of a residence permit?³

According to Article 4 of the Labour Code, approved by Law 7 / 2009 of 12 February, the foreign worker entitled to working in Portugal enjoys the same rights and is subject to the same duties as Portuguese nationals - which means that their working relationship includes all the provisions of the Labour Code and related regulatory documents, as well as all the applicable collective regulations.

17. What are the requirements of the contract concluded with foreign citizens?

Under Article 5 of the Labour Code, the contract concluded with foreign nationals must be in writing and include the following:

- Identification, signatures and domicile or headquarters of the parties;
- Reference to the document that entitles the foreign national to work in Portugal;
- Employers work;
- Contracted occupation and worker's pay;
- Locality and normal working time;
- Amount, timing and manner of payment of wages;
- Dates of the contract and date of commencement of work.

 ³These rights apply to any foreign national in possession of valid title to do salaried work in Portugal.

The employee must also attach to the contract the identity and address of any person in receipt of a pension in the case of death resulting from accident or occupational disease (wife or unmarried partner, children, parents).

The employer must give the employee a copy of the written contract.

The worker must be aware that by hiring a new employee, the employer is obliged to report the fact to the competent social security services and provide for their inclusion in the social security system, if applicable. Notwithstanding this obligation, the employee must also, for his own benefit, notify the Social Security of the beginning of his employment.

18. May a residence permit be cancelled? On what grounds?

A residence permit may be cancelled in the following situations:

- If the holder is subject to deportation from Portugal;
- If the permit was issued based on false or misleading declarations, false or forged documents or using fraudulent means;
- If there are reasonable grounds to believe or solid evidence that its holder has committed or will commit serious criminal acts;
- For reasons of public policy or security;
- If the holder, without acceptable reasons, leaves the country for long periods.

Chapter III

Status of long-term resident

19. Who qualifies for the status of long-term resident?

The beneficiaries may hold the status of long-term resident nationals of third countries residing legally in the country and fulfil the following conditions:

- Legal and continuous residence in the country during the five years immediately preceding the filing of the application;
- Stable and regular resources sufficient to maintain themselves and their families without recourse to social security;
- Health insurance;
- Accommodation;
- Fluency in basic Portuguese.

20. How to apply for the status of long-term resident?

The application for granting the status of long-term resident is presented on the correct form, in person, at the headquarters or sub-headquarters of Immigration and Border Control (SEF) in the area of residence of the applicant, accompanied with the following documents:

- Valid travel document (passport);
- A document certifying of having sufficient regular income;
- Copy of contract of health insurance or proof he is covered by the National Health Service;
- Request for consultation from criminal records by SEF;
- Certificate of qualifications issued by the national education establishment, certificate of proficiency in basic Portuguese course delivered by the IEFP or other educational institution officially recognized, or certificate of achievement of basic knowledge of Portuguese test in an assessment centre of Portuguese as a foreign language, recognized by the Ministry of Education;
- Information required for compliance with tax obligations and social security payments.

21. What are the rights of a long-term resident?

Under the Constitution and the law, foreign nationals legally residing in Portugal enjoy the same rights and are subject to the same obligations as nationals, except those exclusively reserved for nationals.

In this sense, long-term residents have the same rights and obligations of the holders of residence permits.

However, Article 133 of Law 23/2007 of July 4 establishes that long-term residents enjoy equal treatment with nationals as regards:

- Access to a job as employee or self-employed, subject to constitutional and statutory limitations on the exercise of public activity;
- Access to employment conditions and labour matters including dismissal and remuneration;
- Vocational education and training, including grants and scholarships;

- Recognition of occupational diplomas, certificates and other qualifications;
- Social security, social assistance and social protection;
- Tax benefits;
- Health care;
- Access to goods and services and the supply of goods and services available to the public, as well as procedures for obtaining accommodation;
- Freedom of association, affiliation and membership of organizations representing workers, employers or others;
- Free access to the entire national territory of Portugal.

The provisions of this article can not however be interpreted to limit or restrict the rights that the Constitution and the law provide to foreign citizens, nor establish any unequal treatment or discrimination between foreign citizens according to their residence permit.

Chapter IV

To bring the family

Family reunification

22. Who has the right to family reunification?

The foreign national with a valid residence permit, who proves to have accommodation and means of subsistence, is entitled to reunification with members of his family.

23. For this purpose, who is considered a family member?

- The spouse or unmarried person duly established by law;
- Minor or incapacitated children of the couple or one spouse or de facto partners;
- Minors adopted by the applicant if not married, by the applicant or spouse or de facto partner, as the result of a decision of the competent authority in the country of origin, where the law of the country agrees to recognize rights and duties similar to those of natural filiations and the decision is recognized in Portugal;
- The adult dependent children of the couple or a spouse who are unmarried and are studying in an educational institution in the country;
- The parents of the resident or his spouse, who are responsible for them;
- Younger brothers, provided they are under the respon-

sibility of the resident, in accordance with the decision of the competent authority in the country of origin which is known in Portugal.

24. How to exercise the right to family reunification?

The citizen resident in Portugal applies for family reunification at the headquarters or sub-headquarters of Immigration and Border Control (SEF) in his area of residence, with his and family members identification to whom the application relates, as well as all probative documents of the family ties stated or de facto unions, as well as the availability of accommodation and means of subsistence sufficient to meet the needs of his family.

25. Which residence permit is granted to family members?

When the application for family reunification is authorized, a residence permit is granted to the family member with the same duration as the applicant.

When the resident in Portugal has a permanent residence permit, then the permit of the family member joining him is a renewable residence permit, valid for two years.

The first residence permit granted to the spouse under family reunification is independent, if they have been married for over 5 years.

In other cases, after two years of the first issuing of residence permit for family reunification, family members are entitled to an independent residence permit - for spouses or de facto partners and children of the spouse or de facto partner of the applicant, but only if the links are maintained.

In exceptional cases, an autonomous residence permit may be granted before the lapse of two years.

Chapter V

Becoming portuguese

Acquiring portuguese nationality

26. Who can acquire Portuguese nationality by naturalization?⁴

Those who can can acquire Portuguese nationality:

- Foreign citizens with legal residence for at least six years;
- A child born in Portugal, who has concluded the first cycle of basic education or has a parent residing here legally for five years;
- Who has lost Portuguese nationality and can prove he has not acquired another nationality;
- The citizen born abroad with a 2nd degree relative who has not lost Portuguese nationality;
- The citizen born in Portugal and who is in an illegal situation, if it has remained in the country for the 10 years immediately preceding the application for citizenship;
- In special cases: those of Portuguese nationality; the descendant of Portuguese or member of community of Portuguese descent, by providing relevant services to the Portuguese Nation.

⁴ The matter relating to the acquisition of nationality is regulated by the law on nationality - Law 37/81, of October 3, as amended by Organic Law 2 / 2006 of 17 April and Decree-Law 237-A/2006 Of 14 October, which approves the regulation of Portuguese nationality

27. What are the requirements for the acquisition of nationality by naturalization?

Subject to certain special conditions required in some cases, general requirements for the acquisition of nationality are:

- Be of age or emancipated under Portuguese law - except in cases where the law allows children to acquire the Portuguese nationality;
- Have sufficient knowledge of the Portuguese language;
- Not having been convicted of and sentenced for a crime punishable by imprisonment for not less than three years, according to Portuguese law.

28. How can Portuguese nationality be acquired by naturalization?

Portuguese nationality through naturalization is granted by the Minister of Justice at the request of the person concerned.

29. Where to apply for the acquisition of Portuguese nationality?

The request, along with its associated documents, can be filed in the registry office, an extension of the Central Registry (NSCI) or in the Central Registry.

If you live abroad, the request may be submitted to the consular services of the area.

30. How to complete the application?

The request addressed to the Minister of Justice, must be completed by the person concerned or his legal representative in the case of a minor, written in Portuguese and contain, besides the grounds of the application, the following elements:

- Full name, date of birth, marital status, national origin, nationality, affiliation, occupation and current residence, as well as an indication of the countries where he lived before;
- Full name and residence of the legal representative in the case of a minor;
- Number, date and issuer's identification card, passport or residence permit, as well as the legal representative if applicable.

31. What documents should accompany the application?

In most cases, without prejudice to other documents, depending on the specific situation, the following documents shall be attached:

- A document issued by the Immigration and Border Control as proof of being a legal resident for at least six years, or a parent who is legally resident here for at least 5 years, or evidence that the minor has completed the first cycle of basic education in Portugal;
- Written proof of sufficient knowledge of Portuguese;
- Criminal record certificates issued by the Portuguese authorities, the country of nationality and, where appropriate, other countries where they resided before (in the case of minors, only those over 16 must submit a certificate of criminal record).

32. How to demonstrate sufficient knowledge of the Portuguese language?⁵

Proof of knowledge of Portuguese may be made by:

- Certificate of proficiency issued by the Portuguese education establishment or teaching cooperative recognized under the law;
- Certificate of approval in a diagnostic test performed on any of those schools;
- Certificate of approval on the above diagnostic test issued by the Portuguese Consulate where the applicant resides abroad;
- Certificate in Portuguese as a Foreign Language issued by the performance test in the assessment centre of Portuguese as a foreign language approved by the Ministry of Education.

For children under 10 years old or a person who does not know or can not read, write or speak, knowledge of Portuguese is proved in a manner acceptable to their ability to acquire and demonstrate knowledge in the same language.



⁵ Concerning the proof of knowledge of Portuguese, please refer to 1403-A/2006 Ordinance of December 15, as amended by Decree 60/2011 of 2 February.

Chapter VI

Transitional Situations

33. What happens to the legal title of entry and stay granted under the previous law?

Holders of work visas, residence permits, temporary stay visas with permission to work as an employee, extensions of stay enabling the exercise of an occupation as employee and study visas granted under previous legislation, are all considered automatically holders of residence permits for all legal purposes.

34. What should foreign nationals in this situation do?

No immediate action required.

On expiry of their titles, they shall be replaced by residence permits, and apply as appropriate according to the different laws concerning the renewal of temporary residence permits or the granting of permanent residence permit.

35. Under the current law, what happens to foreign citizens enrolled in the regularization process under Article 71 of Decree No. 6 / 2004 of April 26?

The stay of foreign citizens covered by this process is extended for three months, to enable the acquirement of an employment contract or proof of the existence of an employment relationship by a trade union, by an association with a seat on the Advisory Board of Immigration or the Authority for Conditions of Work for the purpose of granting a residence permit for the exercise of a wage earning occupation, exempting a residence visa.

(Please note that in order to complete the time needed for the grant of permanent residence permit - 5 years - the period of legal stay away from all the previous titles is taken into account).

36. What happens to third-country nationals with pending regularization requests when the new legislation comes into force?

- Requests for extension of stay enabling the exercise of a profession made under Article 71 of Decree No. 6 / 2004 of April 26 are automatically converted into requests for residence permits to exercise wage earning work or self-employment, under the new law, without a visa.
- Applications for work permits made under paragraph 2 of Article 6 of the Agreement between the Portuguese Republic and the Federal Republic of Brazil on the Reciprocal Employment of Nationals from July 11, 2003 (the so called "Agreement Lula") are converted into residence permit requests, without a visa.

Chapter VII

Possibility of regularization

37. Given the new law, how can third-country nationals resolve irregular situations?

Firstly, it is worth noting that the possibilities of regularizing the situation of foreign nationals who are in the country are very limited.

Obtaining a residence permit depends, nowadays, on holding a valid residence visa, which must be applied for and granted in the applicant's home country.

Nevertheless, in addition to the various situations in which an authorization request may be made with the visa exemptions referred on paragraph 12), the more likely scenario, even if exclusively dependent on the discretion of the competent authority, is set out in paragraph 11) i.e.:

Exceptionally, a residence permit may be granted to exercise a professional activity as employee, with exemption of visa to foreign citizens who:

- a.** Have an employment contract or proven employment relationship, as testified by a trade union, an association with a seat on the Advisory Board on Immigration or by the Authority for Working Conditions;
- b.** Entered the country legally and remains here legally;
- c.** Is registered and has all dues paid to Social Security.

Foreign citizens who meet these requirements must personally submit to the Immigration and Border Control (SEF) their interest in benefiting from this opportunity, attaching their respective documents.

Later, before a decision is taken, the applicant will be invited for a personal interview, in which will be taken into account the exceptional nature of the situation, as well as force majeure and / or personal or work reasons worthy of consideration.

We stress that this possibility is entirely exceptional and completely dependent on the free decision of the competent authorities, there are no objective criteria.

Rejection of the application (i.e. the refusal to grant a residence permit) will mean obviously to leave the country for lack of title of entitlement to residence.

Finally, if the case meets the legal requirements for that purpose, the foreign national in an illegal situation, may still acquire the nationality by naturalization.

Chapter VIII

Employers responsibility

38. What happens to those who employ non-qualified third-country nationals who don't have a valid residence permit in Portugal?

Employers who employ foreign nationals not authorized to work, are subject to the imposition of the fines enshrined in the law and are responsible for the payment of outstanding wages owed for work actually performed, without respecting the law by not declaring income subject to social security and tax administration, as well as the payment of the expenses related to the permanency or expulsion of these citizens.

Jointly liable are the employer, the employer of temporary workers or contracted services, the general contractor and also the owner of the works, who has not obtained from the other party a statement of compliance with legal obligations relating to foreign nationals eventually hired.

39. What shall a foreign worker do when detected working without being legally employed?

The foreign national must report to the competent authorities any situation in which it deems to be the victim of labour exploitation in relation to wages or working hours or in a particular situation with lack of social protection.

The situation must first be carefully assessed to determine whether there criminal offenses or serious or very serious con-

traordenacional relating to the employment relationship were really committed.

If confirmed, this situation must be reported to the Authority for Working Conditions and the third-country national who is victim of exploitation shall cooperate on the investigation of these infractions.

40. Can the employee caught in this situation avoid being expelled?

If he reports the situation, and if he cooperates with the Working Conditions Authority and if he proves the existence of serious labour violations, the foreigner may apply for a residence permit, without needing a visa, as described at the end of paragraph 13.

Chapter IX

Role of trade unions

41. What's the role of trade unions in this process?

Firstly, where the process of application for a residence permit is required, it is for unions to prove the existence of an employment relationship by issuing a declaration of the existence of that employment relationship.

Secondly, they should also be alert to situations in which migrant workers, particularly those who are in an illegal situation, are victims of labour exploitation, to assess these situations, whether or not there are serious offenses, report them if they favour the immigrant employee and, if appropriate, report such situations and provide support to workers in this process.

Chapter X

Protection against discrimination

42. What is racial discrimination?

The law uses this expression to refer to any conduct which directly or indirectly jeopardises a person based on the colour of the skin, nationality, race or ethnic origin.

Thus, racial discrimination is any differentiation, exclusion, distinction or preference based on race, colour, ancestry, national or ethnic origin which has the purpose or results in the cancellation or impairing of the recognition, enjoyment or exercise, on an equality basis, or rights.

43. What are discriminatory practices?

In the terms of the law⁶, one considers as discriminatory practices the actions or omissions, which, for belonging to a race, colour, nationality or ethnic origin, violate the equality principle.

⁶ Portuguese legislation on racial discrimination - Law 134/99 of 28 April and Decree-Law 111/2000 of 4 July, which regulates, Law 18/2004 of 11 May, and Decree-Law 86/2005 Of May 2.

44. What to do in case of being the target of a discriminatory act?

The citizen who is the victim of a discriminatory act may submit a complaint to the competent authorities for those purposes, which are:

- The Commission for Equality and Against Discrimination (CICDR);
- Minister for the Presidency of the Council of Ministers (Government member who supervises the area of equality);
- High Commissioner for Immigration and Intercultural Dialogue (ACIDI);
- Inspector General with jurisdiction in this matter.

45. What is the Commission for Equality and Against Discrimination (CICDR)?

It is an independent body that specialises in the fight against racial discrimination that works with the High Commissioner for Immigration and Intercultural Dialogue (ACIDI), which is composed of several entities, including the Commissioner for Immigration and Intercultural Dialogue (she chairs the CICDR), representatives of Parliament and Government and representatives of immigrant associations, anti-racist associations, human rights associations, trade unions and employers' associations.

46. Inspector General with jurisdiction in this matter.

What are the core competences of the CICDR:

- Collect all information concerning the practice of discrimination;
- The Issuing by the Standing Committee, of opinions on

the sanctions to be imposed by the High Commissioner in proceedings against the ordinance instituted by the practice of discrimination;

- Recommend the adoption of legislative measures, regulations and administrative provisions it deems appropriate to prevent the practice of discrimination;
- Promote studies and research on the issue of discrimination;
- Make public, by all means possible, actual cases of law infringement;
- Develop and publicise an annual report on the situation of equality and racial discrimination in Portugal.

47. Does the law foresee penalties for the practice of discrimination?

The practice of discrimination is an infraction punishable by a fine (monetary penalty) and, possibly, other penalties.

Racial discrimination can also be considered a crime in accordance with the provisions of the Criminal Code, which establishes and punishes, among other things, the crime of racial discrimination (Article 240) and attaches particular condemnation, increasing their sentences, for crimes of murder and grievous bodily harm, if determined by racial hatred (Articles 132 and 146).

48. Is a victim of a discriminatory act entitled to compensation?

The victim of a discriminatory act may be entitled to compensation for moral and property damage, by bringing legal action for that purpose.

49. Are there any specific provisions on discrimination in employment and at work?

The Labour Code, in Article 25, expressly prohibits any discrimination in access to employment, vocational training and promotion and working conditions in particular in relation to nationality, ethnic origin or race.

50. In relation to discrimination at work and in employment, which entity is responsible for handling complaints?

In this case, the entity responsible for prosecuting a complaint is the Authority for Working Conditions (General Labour Inspectorate).

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MINISTÉRIO DA ADMINISTRAÇÃO INTERNA
SERVIÇO DE ESTRANGEIROS E FRONTEIRAS

PEDIDO DE AUTORIZAÇÃO DE RESIDÊNCIA

Fotografia/Photo

(A preencher pelo Serviço/For official use only/À remplir par les services)

DIR / DEL Reg _____ Processo n.º _____ Ano _____ Funcionário: _____

(A preencher pelo requerente/For the applicant use/À remplir par le demandeur)
(Por favor, escreva em maiúsculas/Please, use capital letters/S'il vous plaît, écrivez en majuscules)

1 IDENTIFICAÇÃO / IDENTIFICATION / IDENTIFICATION	
1.1 Nome completo / Full name / Nom complet _____	
1.2 Nacionalidade / Nationality / Nationalité	1.3 Sexo / Sex / Sexe Pais/Country/Pays _____ M <input type="checkbox"/> F <input type="checkbox"/>
1.4 Data de Nascimento / Birth date / Date de naissance _____/_____/_____ Dia/day/Jour / Mês/Month/Mois / Ano/Year/Anné	
1.5 País e Local de Nascimento / Country and Place of birth/Pays et lieu de naissance _____/_____	
1.6 Filiação / Name and nationality of parents / Nom et nationalité des parents Nome/Name/Nom _____ Nacionalidade/Nationality/Nationalité _____ Pai/Father/Père _____ Mãe/Mother/Mère _____	
1.7 Estado Civil / Marital status / État civil Solteiro <input type="checkbox"/> Casado/Junto <input type="checkbox"/> Divorciado/Separado <input type="checkbox"/> Viúvo <input type="checkbox"/> Single <input type="checkbox"/> Married/Living with <input type="checkbox"/> Divorced/Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Célibataire <input type="checkbox"/> Marié/Joint <input type="checkbox"/> Divorcé/Separé <input type="checkbox"/> Veuf <input type="checkbox"/>	
1.8 Documentos de identificação / Documents of identification / Documents d'identification Passaporte/Passport/Passeport _____ Bilhete de Identidade/Identity Card/Carte d'Identité N.º _____ Outro/Other/Autre (_____) Emitido em /Issued at/Passé à _____ Data/Date/Date ____/____/____	
1.9 Morada completa / Full address / Adresse complète _____ _____ Código Postal/Postal code/Code postal _____ Telefone/Telephone/Téléphone _____ Distrito _____ Concelho _____	



MINISTÉRIO DA ADMINISTRAÇÃO INTERNA
SERVIÇO DE ESTRANGEIROS E FRONTEIRAS

PEDIDO DE AUTORIZAÇÃO DE RESIDÊNCIA
COM DISPENSA DE VISTO DE RESIDÊNCIA

Fotografia/Photo

(A preencher pelo Serviço/For official use only/À remplir par les services)

DIR / DEL Reg _____ Processo n.º _____ Ano _____ Funcionário: _____

(A preencher pelo requerente/For the applicant use/À remplir par le demandeur)
(Por favor, escreva em maiúsculas/Please, use capital letters/S'il vous plaît, écrivez en majuscules)

1 IDENTIFICAÇÃO / IDENTIFICATION / IDENTIFICATION	
1.1 Nome completo / Full name / Nom complet _____	
1.2 Nacionalidade / Nationality / Nationalité País/Country/Pays _____	1.3 Sexo / Sex / Sexe M <input type="checkbox"/> F <input type="checkbox"/>
1.4 Data de Nascimento / Birth date / Date de naissance _____/_____/_____ Dia/day/Jour / Mês/Month/Mois / Ano/Year/Anné	
1.5 País e Local de Nascimento / Country and Place of birth/Pays et lieu de naissance _____/_____	
1.6 Filiação / Name and nationality of parents / Nom et nationalité des parents	
Nome/Name/Nom _____ Nacionalidade/Nationality/Nationalité _____	
Pai/Father/Père _____	
Mãe/Mother/Mère _____	
1.7 Estado Civil / Marital status / État civil	
Solteiro <input type="checkbox"/> Casado/Junto <input type="checkbox"/> Divorciado/Separado <input type="checkbox"/> Viúvo <input type="checkbox"/> Single <input type="checkbox"/> Married/Living with <input type="checkbox"/> Divorced/Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Célibataire <input type="checkbox"/> Marié/Joint <input type="checkbox"/> Divorcé/Separé <input type="checkbox"/> Veuf <input type="checkbox"/>	
1.8 Documentos de identificação / Documents of identification / Documents d'identification	
Passaporte/Passport/Passeport _____	
Bilhete de Identidade/Identity Card/Carte d'Identité N.º _____	
Outro/Other/Autre (_____)	
Emitido em /Issued at/Passé à _____ Data/Date/Date ____/____/____	
1.9 Morada completa / Full address / Adresse complète _____ _____	
Código Postal/Postal code/Code postal _____ Telefone/Telephone/Téléphone _____	
Distrito _____ Concelho _____	

Exmo. Senhor Presidente da Comissão para a Igualdade e contra a Discriminação Racial

Identificação:

Nome

.....

Morada.....

.....

Localidade.....

Código Postal.....

Profissão

BI nº, emitido pelos Serviços de Identificação Civil de

Ou

Passaporte emitido por, nº

Telefone / Telemóvel:

Correio Electrónico:

Nota: a indicação do Correio Electrónico é necessária para podermos enviar a identificação pessoal e a palavra – passe que permitirão aceder à consulta *on line* do estado do seu processo.

Teor da Queixa:

Vem, nos termos da alínea c) do art. 12º da Lei 18/2004 de 11 de Maio, participar a V. Exa., o seguinte:

Pelas horas do dia do mês de 2007, na Rua

....., da localidade de

fui discriminada por (indivíduo / empresa / associação / entidade) com o

nome de / ou Incerto, residente em

.....

nos seguintes termos:

.....

.....

**PEDIDO DE INTERVENÇÃO
DA AUTORIDADE PARA AS CONDIÇÕES DE TRABALHO**

O Sindicato ----- tendo tomado conhecimento que a entidade empregadora (NOME DA EMPRESA/EMPRESÁRIO INDIVIDUAL, SEDE/DOMICÍLIO, Nº DE CONTRIBUINTE) tem ao seu serviço o cidadão estrangeiro a seguir identificado/os cidadãos estrangeiros identificados em lista anexa:

NOME DO TRABALHADOR

NACIONALIDADE

PASSAPORTE Nº

SITUAÇÃO LABORAL

- Relação de trabalho
- Inscrição na Segurança Social
- Inscrição nas Finanças
- Referência às violações da lei laboral detectadas/situação de exploração

Vem por este meio requerer a intervenção da Autoridade para as Condições de Trabalho, no sentido de verificar os factos e tomar as medidas legalmente devidas.

Mais se informa que o cidadão/cidadãos acima identificado(s), tendo denunciado a situação a este sindicato, está/estão disposto(s) a confirmar a situação descrita e a colaborar com as autoridades competentes, nos termos e para os efeitos do disposto na alínea n) do nº1 do artigo 122º da Lei 23/2007, de 4 de Julho.

TABELA DE TAXAS E DEMAIS ENCARGOS A COBRAR PELOS PROCEDIMENTOS ADMINISTRATIVOS PREVISTOS NA LEI N.º 23/2007, DE 4 DE JULHO

Visto de residência – € 80

A CONFIRMAR

Visto de estada temporária – € 65

Prorrogação de permanência:

- a) Prorrogação de permanência a titular de visto de residência — € 60;
- b) Prorrogação de permanência a titular de visto de estada temporária para exercício de actividade profissional subordinada ou independente de carácter temporário — € 60;
- c) Prorrogação de permanência concedida na pendência de pedido de autorização de residência — € 60.

Títulos de residência:

- a) Pela recepção e análise do pedido de concessão ou renovação de autorização de residência — € 75;
- b) Por cada título de residência temporário ou pela sua renovação— € 65;
- c) Pela renovação do título de residência temporário — € 30;
- d) Por cada título de residência permanente— € 200;
- e) Pela renovação do título de residência permanente— € 35;
- f) Por cada título de residência temporário concedido com dispensa de visto consular— € 175;
- g) Pela emissão de segunda via do título de residência — 50% do valor da respectiva taxa de emissão;
- h) Pela emissão de terceira via e sucessivas do título de residência — 100% do valor da respectiva taxa de emissão.

A autorização de residência concedida a vítima de tráfico de pessoas ou de acção de auxílio à imigração ilegal está isenta do pagamento de taxa.

Estatuto de residente de longa duração em território nacional

- a) Pela recepção e análise do pedido de concessão de autorização de residência a titulares do estatuto de residente de longa duração em território nacional — € 100;
- b) Pela emissão de título CE de residência aos titulares do estatuto de residente legal em território nacional — € 210.
- c) Pela renovação do título de residência a titulares do estatuto de residente de longa duração em território nacional — € 120.

NOTA: As taxas previstas na presente tabela integram os custos dos impressos, vinhetas ou títulos de residência.

Os cidadãos que beneficiam da isenção do pagamento da taxa apenas suportam os encargos financeiros com impressos, vinhetas ou títulos de residência:

Impressos e vinhetas — € 15.

Impressos e títulos de residência — € 35.

DECLARAÇÃO PARA COMPROVAÇÃO DA EXISTÊNCIA DE UMA RELAÇÃO LABORAL

Nos termos e para os efeitos do nº2 do artigo 88º da Lei 23/2007, de 4 de Julho, o Sindicato _____, representado por _____¹, declara que o cidadão estrangeiro (NOME, MORADA, NACIONALIDADE, Nº DE PASSAPORTE, Nº DE CONTRIBUINTE, Nº DE SEG SOCIAL) mantém, desde o dia (dd-mm-aaaa), uma relação laboral com (IDENTIFICAÇÃO DA ENTIDADE EMPREGADORA – NOME DA EMPRESA, SEDE, Nº DE CONTRIBUINTE), exercendo actividade profissional subordinada, com as funções de (PROFISSÃO/CATEGORIA PROFISSIONAL/ACTIVIDADE EXERCIDA) em (LOCAL DE TRABALHO), no seguinte horário (HORÁRIO DE TRABALHO) e auferindo a retribuição mensal de (MONTANTE DA RETRIBUIÇÃO).



¹ Identificação da pessoa que, nos termos estatutários, obriga o sindicato, incluindo nome, morada, BI e NIF

