

Act II of 2007

on the Admission and Right of Residence of Third-Country Nationals¹

With a view to partaking in the progressive establishment of an area of freedom, security and justice, and to promoting the social and economic development and advancement of countries within and outside the borders of the European Union, Parliament has adopted the following Act concerning the admission and residence of third-country nationals:²

Chapter I

General Provisions

Section 1.

(1)³ Hungary shall ensure the right of entry, exit and residence of third-country nationals in accordance with the provisions of this Act.

(2) The right of entry, exit and residence of third-country nationals may be restricted in accordance with the provisions set forth in this Act.

(3) This Act - with the exceptions set out in Subsections (4)-(5) - shall not apply to persons with the right of free movement and residence.

(4)⁴ The persons referred to in Subsection (3) of this Section, if not nationals of any Member State of the European Union, shall be subject to the provisions of Chapter IV of this Act pertaining to EC permanent residence permits, and the provisions of Chapter VIII of this Act governing stateless status and the issue of travel documents to stateless persons.

(5) The provisions of this Act shall apply to the persons referred to in Subsection (3) if they are third-country nationals by definition of specific other legislation, and if they apply for authority to reside specified in this Act following termination of their right of residence specified in specific other legislation.

Section 2.

For the purposes of this Act:

a) 'third-country national' shall mean any person who is not a Hungarian citizen and stateless persons, other than the persons referred to in Subsection (3) of Section 1;

b) 'stateless person' shall mean a person who is not recognized as a citizen by any country under his/her national law;

¹ Promulgated on 5 January 2007.

² Amended: by Section 300 of Act CCI of 2011. In force: as of 1. 01. 2012.

³ Amended: by subparagraph a) Section 299 of Act CCI of 2011. In force: as of 1. 01. 2012.

⁴ Established: by Section 32 of Act CXXXV of 2010. In force: as of 24. 12. 2010.

c) 'Schengen State' shall mean any Member State of the European Union applying in full the Schengen acquis defined in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on the European Union, to the Treaty establishing the European Community and to the Treaty establishing the European Atomic Energy Community (hereinafter referred to as "Schengen Protocol") and in Council Decision 1999/435/EC, as well as the measures adopted by the institutions of the European Union in these fields, and any other State that is in association with the implementation, application and development of the Schengen acquis by virtue of Article 6 of the Schengen Protocol within the meaning of the Agreement concluded with the Council of the European Union;

d) 'family member' shall mean:

da) the spouse of a third-country national;

db) the minor child (including adopted children) of a third-country national and his/her spouse;

dc) the minor child, including adopted and foster children, of a third-country national where this third-country national has parental custody and the children are dependent on him/her;

dd) the minor child, including adopted and foster children, of the spouse of a third-country national where the spouse has parental custody and the children are dependent on him/her;

e)⁵ 'unaccompanied minor' shall mean third country nationals below the age of eighteen, who arrive on the territory of Hungary unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of Hungary;

f)⁶ 'exile' shall mean any person who is provided temporary shelter and may not be returned to the country of his/her nationality, or in the case of a stateless person to the country of domicile, for fear of being subjected to the actions or conduct defined in Article XIV(2) of the Fundamental Law, and there is no safe third country offering refuge, and who is not entitled to asylum or treatment as a stateless persons, nor to any subsidiary form of protection or temporary protection;

g)⁷ 'travel document' shall mean a passport or another instrument or document that is recognized by Hungary as proper means of identification for its holder for crossing the border of Hungary and to certify his/her citizenship (stateless status);

h)⁸ 'carrier' shall mean any natural or legal person, or unincorporated organization whose profession it is to provide transport of persons;

i) 'readmission agreement' shall mean the international convention relating to the procedure for the transfer of persons at state frontiers, and the transport or transit of such persons under official escort;

j) 'SIS alert for the purposes of refusing entry and the right of residence' shall mean data files installed in the Schengen Information System by any Schengen State for the purposes of refusing entry to and the right of residence in the territory of the Schengen States for a third-country national;

k)⁹ 'employer' shall mean any natural person or any legal entity, or unincorporated organization, including temporary work agencies referred to in Paragraph b) of Subsection (1) of Section 214 of Act I of 2012 on the Labor Code, for or under the direction and/or supervision of

⁵ Amended: by subparagraph b) Section 299 of Act CCI of 2011. In force: as of 1. 01. 2012.

⁶ Amended: by subparagraph c) Section 299 of Act CCI of 2011. In force: as of 1. 01. 2012.

⁷ Amended: by subparagraph b) Section 299 of Act CCI of 2011. In force: as of 1. 01. 2012.

⁸ Amended by Section 81 of Act CCLII of 2013.

⁹ Established: by paragraph (1) Section 88 of Act CV of 2011. In force: as of 1. 08. 2011.

Amended: by paragraph (3) Section 62 of Act LXXXVI of 2012. In force: as of 1. 07. 2012.

whom the employment is undertaken;

l)¹⁰ 'host' shall mean any natural or legal person, or business association lacking the legal status of a legal person, who undertakes a commitment in a letter of invitation - with an official certificate affixed - to provide room and board and financial support for the invited third-country national during his stay in the territory of Hungary, and, unless an international treaty provides otherwise, to cover the costs of medical care and the costs of exit of such third-country national.

m)¹¹ 'visa for an intended stay of no more than ninety days within a one hundred eighty day period' shall mean an authorization defined in Article 2(2) of Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (hereinafter referred to as "Visa Code");

n)¹² 'Dublin Regulations' shall mean Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, and Commission Regulation (EC) No. 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No. 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

o)¹³ 'employment' shall mean the exercise of activities covering whatever form of labor or work performed under employment relationship for or under the direction and/or supervision of an employer;

p)¹⁴ 'highly qualified employment' shall mean the employment of a person who has the required adequate and specific competence, as proven by higher professional qualifications, for consideration in an amount specified by the relevant decree on the method for establishing the minimum remuneration payable to third-country nationals, or for higher pay;

q)¹⁵ 'higher professional qualifications' shall mean qualifications attested by evidence of higher education qualifications or professional qualifications;

r)¹⁶ 'EU Blue Card' shall mean a residence permit entitling its highly qualified holder to reside and work in highly qualified employment in the territory of a Member State under the terms set out in Section 20/C;

s)¹⁷ 'particularly exploitative working conditions' shall mean working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity.

t)¹⁸ 'persons eligible for preferential treatment' shall mean unaccompanied minors, or vulnerable persons such as minors, elderly people, disabled people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, if they are found to have special needs after

¹⁰ Amended: by subparagraph b) Section 299 of Act CCI of 2011. In force: as of 1. 01. 2012.

¹¹ Established: by paragraph (1) Section 13 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

¹² Enacted: by Section 33 of Act CXXXV of 2010. In force: as of 24. 12. 2010.

¹³ Enacted: by paragraph (2) Section 88 of Act CV of 2011. In force: as of 1. 08. 2011.

¹⁴ Enacted: by paragraph (2) Section 88 of Act CV of 2011. In force: as of 1. 08. 2011.

¹⁵ Established: by paragraph (1) Section 57 of Act XCIII of 2013. In force: as of 1. 07. 2013.

¹⁶ Established: by paragraph (1) Section 57 of Act XCIII of 2013. In force: as of 1. 07. 2013.

¹⁷ Enacted: by paragraph (2) Section 88 of Act CV of 2011. In force: as of 1. 08. 2011.

¹⁸ Enacted: by paragraph (1) Section 60 of Act CLXXXI of 2012. In force: as of 1. 01. 2013.

an individual evaluation of their situation;

u)¹⁹ ‘detention camp’ shall mean a restricted access facility designed specifically for the detainment of aliens whose personal liberty is restricted as ordered in immigration proceedings.

v)²⁰ ‘single permit’ shall mean a residence permit allowing a third-country national to enter into a contract for employment relationship with an employer and to reside legally in the territory of Hungary for the purpose of work;

w)²¹ ‘single application procedure’ shall mean any procedure leading, on the basis of a single application made by a third-country national, to a decision ruling on that application for an intended stay of more than ninety days within any one hundred eighty day period and for entering into a contract for employment relationship with an employer in the territory of Hungary.

Section 3.

The following persons shall be treated as third-country nationals:

a) any person who uses a valid travel document issued by a third country to verify his/her nationality, unless proven to the contrary; or

b) any person who is unable to show proof of having the right of free movement and residence under specific other legislation.

Section 4.

The provisions of this Act shall apply to third-country nationals granted diplomatic or other personal immunity, or who are entering the country for the purposes stipulated in treaties or international agreements, unless prescribed otherwise by international treaty.

Section 5.²²

(1) Of the provisions of this Act only the ones contained under Chapters IV, V and X shall apply to the third-country nationals recognized by the Hungarian refugee authority or court, or by any Member State of the European Union as refugees or having granted any subsidiary form of protection.

(2) Of the provisions of this Act the ones contained in Chapter IV pertaining to national permanent residence permits, and the provisions of Chapters V and X shall apply to the third-country nationals having granted temporary protection by the Hungarian refugee authority or court.

Chapter II

Regulations for the Right of Residence for an Intended Duration of No More

¹⁹ Enacted: by paragraph (1) Section 60 of Act CLXXXI of 2012. In force: as of 1. 01. 2013.

²⁰ Enacted: by paragraph (2) Section 57 of Act XCIII of 2013. In force: as of 1. 01. 2014.

²¹ Enacted: by paragraph (2) Section 57 of Act XCIII of 2013. In force: as of 1. 01. 2014. Shall enter into force with the text amended: by Section 20 of Act CXCVIII of 2013.

²² Established: by Section 1 of Act XXVII of 2012. In force: as of 20. 05. 2012.

Than Ninety Days Within Any One Hundred Eighty Day Period²³

General Rules

Section 6.

(1)²⁴ Third-country nationals may enter the territory of Hungary for an intended stay of no more than ninety days within a one hundred eighty day period from the time of first entry (hereinafter referred to as “intended stay of no more than ninety days”) under the conditions set out in Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (hereinafter referred to as “Schengen Borders Code”).

(2)²⁵ The third-country nationals who satisfy the conditions set out in Subsection (1) shall be authorized to stay in the territory of Hungary for an intended duration of no more than ninety days.

*Section 7.*²⁶

Unless otherwise prescribed by any directly applicable Community legislation, an international agreement, this Act or a government decree adopted by authorization of this Act, third-country nationals shall be admitted for stays for an intended duration of no more than ninety days in possession of a visa.

*Section 7/A.*²⁷

Third-country nationals holding a visa for an intended stay of no more than ninety days, and persons lawfully residing in Hungary as nationals of the states listed in Annex II of Council Regulation 539/2001/EC may undertake gainful employment in accordance with Subsection (1) of Section 20, unless this Act contains provisions to the contrary.

Visas for an intended duration of no more than ninety days²⁸

*Section 8.*²⁹

²³ Established: by paragraph (2) Section 13 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

²⁴ Established: by paragraph (3) Section 13 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

²⁵ Amended: by subparagraph b) Section 299 of Act CCI of 2011. In force: as of 1. 01. 2012.

Amended: by paragraph (1) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

²⁶ Amended: by paragraph (2) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

²⁷ Enacted: by Section 34 of Act CXXXV of 2010. In force: as of 24. 12. 2010. Amended: by subparagraph b) Section 299 of Act CCI of 2011. In force: as of 1. 01. 2012. Amended: by paragraph (2) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

²⁸ Amended: by paragraph (1) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

Visas for an intended stay of no more than ninety days shall be issued in accordance with the procedures and under the conditions set out in the Visa Code.

*Section 9.*³⁰

(1)³¹ In the cases defined by the minister in charge of immigration, the minister in charge of foreign policies, the minister in charge of supervising the national security services, and the minister overseeing civil intelligence activities for reasons of public security and national security, visas for an intended stay of no more than ninety days may only be granted upon the prior consent of the central visa authority.

(2)³² The central visa authority shall consult with the central authorities of the Schengen States requesting consultation prior to granting consent for the issue of a visa for an intended stay of no more than ninety days.

(3)³³ The resolutions adopted in connection with applications for visas for an intended stay of no more than ninety days, if approved, may not be appealed.

(4)³⁴ The decisions adopted for the refusal of applications for visas for an intended stay of no more than ninety days, or for the annulment and revocation of visas, may be appealed.

(5)³⁵ The decisions adopted to dismiss the appeal may be subject to judicial review.

(6)³⁶ The petition for judicial review of the appeal decision referred to in Subsection (4) shall be submitted to the authority of the first instance within three days following the date of delivery of the decision adopted to dismiss the appeal. The authority shall forward the petition without delay to the competent court together with the documents of the case and any cross-complaint attached.

(7)³⁷ The court shall adopt a decision concerning the petition referred to in Subsection (6) in non-contentious proceedings within eight days of receipt thereof. The Fővárosi Közigazgatási és Munkaügyi Bíróság (*Budapest Court of Public Administration and Labor*) shall have exclusive jurisdiction to hear such cases. There shall be no further appeal against the decision of the Fővárosi Közigazgatási és Munkaügyi Bíróság.

(8)³⁸ The acting court shall proceed in due observation of the provisions of the Act on the Code of Civil Proceedings pertaining to administrative lawsuits, unless the non-contentious nature of the proceedings suggests otherwise.

²⁹ Established: by Section 28 of Act XL of 2010. In force: as of 5. 04. 2010. Amended: by paragraph (2) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

³⁰ Established: by Section 29 of Act XL of 2010. In force: as of 5. 04. 2010.

³¹ Amended: by paragraph (2) Section 128 of Act CXXXV of 2010. In force: as of 24. 12. 2010. Amended: by paragraph (2) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

³² Amended: by paragraph (2) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

³³ Established: by paragraph (1) Section 35 of Act CXXXV of 2010. In force: as of 5. 04. 2011. Amended: by paragraph (2) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

³⁴ Established: by paragraph (1) Section 58 of Act XCIII of 2013. In force: as of 1. 07. 2013. Amended: by paragraph (2) Section 14 of Act CXCVIII of 2013. In force: as of 29. 11. 2013.

³⁵ Enacted: by paragraph (2) Section 58 of Act XCIII of 2013. In force: as of 1. 07. 2013.

³⁶ Enacted: by paragraph (2) Section 58 of Act XCIII of 2013. In force: as of 1. 07. 2013.

³⁷ Enacted: by paragraph (2) Section 58 of Act XCIII of 2013. In force: as of 1. 07. 2013.

³⁸ Enacted: by paragraph (2) Section 58 of Act XCIII of 2013. In force: as of 1. 07. 2013.