



EMN Ad-Hoc Query on Ad-hoc query on entry permits in connection with long processing times for extensions of work permits

Requested by Marie BENGTTSSON on 21st November 2016

Economic Migration

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom (21 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

In Sweden, the processing time for combined work/residence permit applications from third country nationals has increased substantially during 2015 and 2016. This has particularly been the case for processing extensions of work/residence permits.

Third country nationals are allowed to remain and work in Sweden while their application for an extended work/residence permit is processed. However, if their original work/residence permit has already expired, they are not entitled to re-enter Sweden should they leave the country during the processing of their application for an extension. This issue has recently been highlighted in relation to third country nationals who need to conduct business trips abroad as a part of their work in Sweden.

Summary

Out of the 21 answers received 11 Member States answered yes - that they have a system which allows third country nationals to re-enter the country while an application for extension is being processed. 10 Member States answered no – that they did not have such a system which allowed for re-entry.

In all countries an application for renewal allows the third country national to stay within the territory while the application is being processed. For the countries that have a system allowing third country nationals to re-enter the territory two main approaches seem to be used. In several countries a proof of application for extension is issued and can be used to re-enter the state. The other approach is to issue some kind of visa valid while the application for extension is being handled and enabling the third country national to re-enter the Member State.

Questions

1. Does your country have a system which allows third country nationals to re-enter your country if they choose to leave while their application for an extension of a previous visa/work/residence permit* is being processed and when the original visa/work/residence permit is no longer valid?* Sweden generally issues a combined work and residence permit to third country nationals who reside in Sweden for work longer than 3 months. Please answer the question where applicable in your country's system, regardless of type of visa/permit.
2. b.) If yes, please describe this system, including applicable legislative provisions.

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. Yes, depending on the type of residence permit (see question 2). However, visa in general cannot be applied for in Austria (Art. 7 Aliens Police Act). An application for a visa does not allow third-country nationals to re-enter Austria (see Art. 15 para 2 Aliens Police Act).</p> <p>2. If third-country nationals apply for renewal of a regular residence title before the residence title expires, they are entitled to stay in Austria until the decision on the application is final. After expiry of the residence title, the legal stay in Austria may be recorded in the third-country national's travel document once. This confirmation may not be valid for longer than three months and entitles the third-country national to enter Austria without a visa (Art. 24 para 1 Settlement and Residence Act). A pending application for renewal of a humanitarian residence title does not entitle third-country nationals to re-enter Austria (Art. 58 para 13 Asylum Act). If a third-country national is granted asylum, initially the residence permit is valid for one year. Afterwards, the third-country national is allowed to re-enter Austria unless the asylum status has been withdrawn (Art. 3 para 4 in conjunction with Art. 2 para 1 subpara 15 Asylum Act). If beneficiaries of subsidiary protection have applied for renewal of the status before expiry of the residence permit, they are entitled to re-enter Austria until the decision on the renewal application is final (Art. 8 para 4 in conjunction with Art. 2 para 1 subpara 16 Asylum Act).</p>
	Belgium	Yes	<p>1. Please note that Belgium does not yet issue a single permit to third country nationals (TCNs). The Single Permit Directive should be transposed soon. Until the single permit system is implemented, a separate work permit and residence permit are issued to TCNs. Regarding the renewal process of a temporary residence permit: the municipal authorities issue a specific document ("Annex 15") to TCNs who are in the process of renewing their temporary residence permit (A card) that is expiring. This Annex 15 is valid for 45 days and can be renewed twice. It allows the TCN to continue residing in Belgium during the process of renewal of the residence permit. But this document is not considered to be a residence permit or an identity or travel document, which means that the concerned TCN cannot travel outside of Belgium and return to Belgium with this document. However, for people whose application for the renewal of their residence permit has been granted but who do not yet have their residence card (as it takes some time to produce the card), and who need to travel urgently outside of Belgium, a return visa can be granted to this person (for nationalities subject to a visa requirement). This visa allows the TCN</p>

			<p>to return to Belgium. Source: Immigration Office</p> <p>2. See answer to question 1.</p>
	Croatia	Yes	<p>1. No</p> <p>2. N/A</p>
	Cyprus	Yes	<p>1. According to national law and the current procedures, if the application for obtaining a residence permit is still being processed, the applicant is considered to be legally residing and hence may travel abroad only by presenting the receipt of having paid for the submission of the application, irrespectively if the previous permit has expired in the meantime.</p> <p>2. As from 19/01/2016, third country nationals (TCNs) who are legally residing in Cyprus and wish to travel outside Cyprus while their application for a temporary residence permit is still pending, can re-enter the Republic, following the procedures below: 1. Where a TCN has left Cyprus and the residence permit has not been issued on the date of his/her arrival, he/she can re-enter the Republic using the original receipt of application for a temporary residence permit, provided that he/she hasn't stayed abroad for more than three months. It is noted that Third Country applicants for whom no such receipt is issued (applications with zero fees) are required to obtain a re-entry visa. 2. The same arrangements apply for TCNs who have submitted an application for a Residence Card as a family member of a citizen of the European Union, with the only exception that applications will not be rejected if the TCN stays abroad for more than three months. 3. It is noted that these procedures can apply only for applications for obtaining a temporary residence permit or residence card. At the same time, it is clarified that the above procedures do not apply for applicants who applied for the acquisition of an Immigration Permit or for the acquisition of long-term resident status in the Republic. Those applicants must also have a pending request for obtaining a temporary residence permit, in order to be allowed to use the above procedures for entry. http://www.moi.gov.cy/MOI/CRMD/crmd.nsf/All/F77B50B76C96BE47C2257F50003CF9F9?OpenDocument</p>
	Czech Republic	Yes	<p>1. Yes. In such cases the Section 47 of the Act on Residence of Foreign Nationals in the Czech Republic is applied.</p>

			<p>2. Until the decision on submitted application comes into force, the visa/residence is regarded as valid – so called fiction of stay. This fiction is proved (Section 47, paragraph 8 of the Act on Residence of Foreign Nationals in the Territory of the Czech Republic) by visa sticker which is marked into the passport. Thus, the third country national that is under the status of “fiction of stay” is provided with the long-term visa, its validity period corresponds to the expected duration of the application procedure. It is a standard long-term visa which allows the foreign national to leave the country and subsequently returns to the Czech Republic.</p>
	Estonia	Yes	<p>1. Yes, Estonia allows third country nationals to re-enter Estonia if their residence permit extension application is in process and current permit expires.</p> <p>2. According to § 130 of the Aliens Act, third country nationals are allowed to stay in Estonia, if they are applying for extension of a residence permit, new residence permit or long term residents permit and their current residence permit expires. Estonia also introduced a new regulation from 1st of January 2016 which allows all third country nationals to stay and re-enter Estonia after the end of their temporary residence permit within 90 days (students, researchers and teachers for 183 days), regardless if they are applying for an extension or not (§ 43 section 1 subsection 8 and sections 4, 5 of the Aliens Act). The purpose of this regulation is to give third country nationals the time to think what they will do next – it makes it more flexible for the third country nationals to look for a new job or other purpose to apply for a new residence permit. During this 90 or 183 day period the third country national is regarded as a temporary stayer in the country and not a resident of the state.</p>
	Finland	Yes	<p>1. No. The system in Finland is similar to that of Sweden: third country nationals may remain and work in Finland while their application for extension of work/residence permit is being processed. However, should they leave the country during this time, they are not allowed to return to Finland if the original residence permit has expired.</p> <p>2. -</p>
	France	Yes	<p>1. Yes, France has a system which allows third country nationals to re-enter the French territory when they choose to leave while their application for a renewal of a previous visa/work/residence permit is being processed and when the original visa/work/residence permit is no longer valid.</p> <p>2. As indicated in Article R.311-4 of the Code on Entry and Residence of Foreigners and Right of Asylum</p>

			<p>(CESEDA), a receipt of residence permit is issued to all third-country nationals allowed to apply for the renewal of a residence permit if the renewed permit cannot be issued before the expiry date of the current permit. The receipt of residence permit gives the right to remain in the territory during its validity. The receipt of residence permit shall last for a minimum of one month (Article R.311-5 of CESEDA), usually it is issued for 6 months unless the renewed residence permit can be issued before. It can be renewed several times if the process is delayed. It is possible to travel with the receipt of residence permit, provided that third-country nationals present their initial visas stamped in the passport or the residence permit under renewal process when they return to France.</p>
	<p>Germany</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. If a foreigner applies for an extension of his residence title before his residence title expires, the current residence title is deemed to remain in force from the time of its expiry until the time of the decision by the immigration authority on the extension application. This also applies to the permission to engage in gainful employment that is associated with the residence title (section 81 subs. 4 of the Residence Act [Aufenthaltsgesetz]). The foreigner is issued with a provisional residence document (Fiktionsbescheinigung) confirming the effect of his application extending the validity of the title (section 81 subs. 5 of the Residence Act). A six-page, nationally-standard form is used for this, to which a self-adhesive sticker is to be affixed on page 5 (section 58 No. 3 of the Residence Ordinance [Aufenthaltsverordnung]). A 20 Euro fee is collected for issuing it (section 47 subs. 1 No. 8 of the Residence Ordinance). If the extension application is lodged in good time, a cross is entered in the third box “the residence title is deemed to remain in force (section 81 subs. 4 of the Residence Act)” on page 3 of the provisional residence document. It is then possible to travel in the Schengen Area, and to re-enter Germany, together with a recognised, valid passport or replacement passport (Art. 6 of Ordinance (EU) 2016/399, Art. 21 of the Schengen Convention and sections 3 and 4 of the Residence Act; cf. No. 81.5.3 of the General Administrative Regulation on the Residence Act [Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz]). The specimen form for the provisional residence document and the self-adhesive sticker are printed in the Federal Law Gazette (Bundesgesetzblatt) Part I 2004, pages 2975-2977 as Annex D3 to the Residence Ordinance, retrievable at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl104s2945.pdf%27%5D__1481030063007). An English version of the Residence Act can be found at http://www.gesetze-im-internet.de/englisch_aufenthg/index.html. The Residence Ordinance can be retrieved in</p>

			German at http://www.gesetze-im-internet.de/bundesrecht/aufenthv/gesamt.pdf . The General Administrative Regulation on the Residence Act can be retrieved in German at http://www.verwaltungsvorschriften-im-internet.de/pdf/BMI-MI3-20091026-SF-A001.pdf .
	Greece	Yes	<p>1. YES</p> <p>2. A Third Country National whose visa/work or residence permit is no longer valid and has applied to renew his/her visa or work or residence permit shall as a holder of an application-lodging certificate legally leave Greece and visit his/her country only and reenter Greece</p>
	Hungary	Yes	<p>1. No, Hungary doesn't have any system which allows third country nationals to re-enter Hungary if they choose to leave while their application for an extension of a previous residence permit is being processed and when the original residence permit is no longer valid. A certificate of temporary residence shall be issued to any third-country national who has submitted an application for extension of residence permit, and whose previous residence permit has already expired before the permit is issued. According to Subsection (5) of Section 30 of the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals a certificate of temporary residence constitutes the right of residence in the territory of Hungary, it may not be used for exit or re-entry, it shall become void upon the third-country national's departure, when it shall be surrendered. The certificates surrendered shall be returned to the issuing authority. If third country nationals wanted to re-enter Hungary while their application for an extension of a previous residence permit is being processed they could apply for a Schengen visa at the competent Hungarian consulate.</p> <p>2. See above.</p>
	Italy	Yes	<p>1. Yes.</p> <p>2. In Italy, the validity of a residence permit is stated in the entry visa: it cannot exceed nine months for seasonal workers, and two years for self-employed workers and employed workers with an open-ended employment contract. Foreign nationals apply for a renewal of the residence permit to the provincial police authority (Questura) of the province in which they live within 90 days from expiry date (for two-year residence permits), or 60 days (for one-year residence permits) or 30 days (for the remaining types of residence permit). A residence permit is</p>

			usually issued, renewed or converted within 20 days from the date of application submission. Directive of the Ministry of the Interior No 11050/M(8) of 5 August 2006 (on the rights of foreign nationals pending the renewal of their residence permit) establishes that failure to comply with the 20-day deadline for completing the renewal procedure does not affect the legal residence status or the related rights if: (1) the renewal application has been submitted before expiration of the residence permit or within 60 days from it; (2) the documentation required for the renewal application has been confirmed to be complete; and (3) the office has given a receipt proving that the renewal application has been submitted. The same Directive provides that a foreign national holding a residence permit, even if expired, and having the receipt of renewal submission may leave the territory of the State and re-enter it, carrying his or her passport or equivalent identity document, a copy or the original of the expired residence permit and the receipt of renewal submission (issued by the provincial police authority or, under the new procedure by the post office). However, exit and re-entry should take place at the same border crossing point and the journey should not include transit in other Schengen area countries.
	Latvia	Yes	<p>1. There is no such a system however in each case the decision is taken individually.</p> <p>2. Usually persons whose cases are still under examination are not issued other visas or residence permits to allow them to travel. Only in those cases where person has to travel in order to perform business activities, Latvia issues D type visa that allows travelling. There is no special clause in the immigration legislation that could be applied, usually Article 11, clause 2 of the Immigration Law is used: “The period of stay in the Republic of Latvia provided for in a long-stay visa may exceed 90 days within six months from the date of first entry, if it conforms to the norms of international law, the State interests of Latvia, or if it is related to force majeure, reasons of a humanitarian nature or significant personal or professional reasons.”</p>
	Lithuania	Yes	<p>1. Yes, a third country national can apply and be issued with the multi-entry national (D) visa.</p> <p>2. According to the Description of the issuance of national visas, a multi-entry national (D) visa can be issued to a third country national who has submitted an application for the issuance or renewal of the temporary residence permit. Such visa may be issued up to 5 months.</p>
	Luxembourg	Yes	1. No.

			2. N/A.
	Netherlands	Yes	<p>1. Yes, the Netherlands does have a system that allows third country nationals to re-enter the Netherlands. Third country nationals are allowed to remain and work in the Netherlands, while their application for an extended work and residence permit (a combined permit for residence and work) is processed. However, once the duration of the combined permit for work and residence is expired and no decisions has been made yet on the extension of the permit, the third country national is temporary not permitted to work in the Netherlands. To prevent this, the employer of the third country national is attended to renew the combined residence permit three months before the permit expires, to prevent a “gap in employment”. If the residence permit is still valid or the validity of the residence permit has been expired during the application procedure and the third country national is still waiting on the decision, he or she can re-enter the Netherlands on a so-called “return visa”. This is a national visa that gives right to reenter the Netherlands (article 1a of the Aliens Act). This return visa can be given out for several reasons: • Travelling for business or work purposes • Due to compelling and urgent family-related circumstances in a different country. In article 1.28 Foreigners Decree is described under which circumstances family members can prescribe for a return visa under family related issues. This can be amongst others: severe disease or death of a near kinsman in the first- or second degree, attending the marriage of a near kinsman in the first- or second degree and minors under guardianship who go abroad with their foster family for vacation purposes. This return visa is valid for no longer than one year and cannot be longer than the duration of the residence permit. This return visa can be given out for one or multiple journeys. The third country national requests a return visa him/herself. In order to process the request for the return visa, the third country national must pay a fee. The procedure for requesting a return visa is the same as for requesting or extending a normal visa (Foreigners Circular Section A1, article 5.3)</p> <p>2. See question 1</p>
	Slovak Republic	Yes	<p>1. No. If a third-country national applies for an extension of the permit and leaves the territory during the procedure, he/she can enter the territory only after being issued the residence permit and after being issued national visa for this purpose (visa issued in relation to the granted residence permit) by the diplomatic mission of the Slovak Republic abroad. He/she can subsequently pick up the the residence document personally or through an authorised representative.</p>

			2. N/A
	Slovenia	Yes	<p>1. No. Slovenian legislation provide system, which allows TCN to apply for extension of permit (visa, work/residence permit) if application has been submitted before validity of original permit expired. In case that extension procedure still running, while validity of original permit expired, responsible authority issued certificate which allowed to TCN to reside, but not work or re-enter Slovenian border, until procedure of extension is ended and decision is legally applicable.</p> <p>2. /</p>
	Spain	Yes	<p>1. Yes, we have a system which allows third country nationals to re-enter in Spain if the renewal of the work&residence permit or extensión of stay permit is being processed.</p> <p>2. “Article 5. Return authoritation (Royal Decree 557/2011, April the 20th, on the rights, freedoms and integration of third country nationals in Spain –it develops Organic Law 4/2000): 1. [...] The third country national whose residence or stay authorization is in the period of renewal or extension of stay, it will be issued a return authorization that allows the third country national to leave Spain and the subsequent return to the national territory, provided that the applicant proves that he/she has initiated the formalities of renewal or extension of the title entitling to remain in Spain within the legal term established for this. Likewise, the holder of a valid Third Conuntry National Identity Card may request a return authorization in the event of theft, loss, destruction or rendering unusable, provided that he / she proves to have submitted a request for a duplicate card. 2. The return authorization will have a validity not exceeding ninety days from the expiration of the authorization of residence or of stay, if it is requested before said expiration. If requested at a time after the expiration of the residence or stay authorization, the return authorization will have a validity not exceeding ninety days from the time it is granted. When the trip responds to a situation of necessity, the authorization of return will be dealt with preferentially. 3. When the thrid country national proves that the trip responds to a situation of need and there are exceptional reasons, the return authorization referred to in the previous section may be issued, with a validity not exceeding ninety days from the granting of the authorization of return, if the initial request for residence authorization or stay authorization has been favorably resolved and the issuance of the Third Country National’s identity Card is in progress. 4. The return authorization will be granted by the Delegate or Subdelegate of the competent Government, by the Commissioner General of Third Country Nationals and Borders or by the Head of the police</p>

			stations and border posts of the national police authority. 5. The concession by the Delegate or Subdelegate of the Government will be done after the processing of the file by the competent Office.”
	Sweden	Yes	<p>1. No</p> <p>2. N/A</p>
	United Kingdom	Yes	<p>1. No. A third country national must apply for the extension of a visa before their current visa expires. If they apply before their current visa expires, their existing permission to stay (and any permission to work attached to it) will be deemed to continue until the decision is made on their extension application. Applicants need to submit documents, including passport, as part of their application. If they leave the UK before their extension application is resolved and their current visa expires while they are outside the UK, their existing permission to stay will not be extended, their application will be voided and they may need to apply for a visa overseas to return to the UK to resume the purpose of their stay.</p> <p>2. N/A</p>