

# Family Reunification

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## Family Reunification of Third-Country Nationals in the EU: Poland

Report produced by the  
National Contact Point to the  
European Migration Network  
in Poland





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This national report has been compiled and prepared by the Department of Analyses and Migration Policy of the Ministry of the Interior and Administration, acting as the coordinator of the National Contact Point of the European Migration Network in Poland (PL EMN NCP) and compiles the answers to the questionnaire of the European Migration Network. The basis for the work on the report were the common specifications and methodologies adopted by the European Migration Network (EMN).

The European Migration Network was established by Council Decision 2008/381/EC of 14 May 2008 in order to provide up-to-date objective, reliable and comparable information on migration and asylum to Community institutions, Member States authorities and to general public, with a view to supporting policy-making in the EU. The EMN is co-ordinated and financially supported by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway and Croatia.

The electronic version of the National Report is available from [www.emn.gov.pl](http://www.emn.gov.pl) under "EMN Poland Publications".

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## Table of contents

# 0

Introduction  
> 6

# 1

Discussing the national policy  
on family reunification  
> 19

# 2

Definition of sponsor and family  
members  
> 13

# 3

Requirements for exercising the  
right to family reunification  
> 19

# 4

Submission and examination  
of the application for family  
reunification  
> 25

# 5

Access to rights following  
family reunification  
> 33

# \*

Summary  
> 39



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**Family reunification is one of legal means to settle in the European Union. Up to one third of all migration flows occur with the aim of reunification third-country nationals with their families. According to Eurostat 2015 data, over 440,000 individuals have been reunited with their sponsors.**

# Introduction

Family reunification is one of legal means to settle in the European Union. Up to one third of all migration flows occur with the aim of reunification third-country nationals with their families. According to Eurostat 2015 data, over 440,000 individuals have been reunited with their sponsors<sup>1</sup>. A vast majority of these permits has been issued for sponsors residing in Germany, Italy, Spain, France, Great Britain, Sweden, Belgium and the Netherlands. The share of men and women in the total number of permits issued is balanced. Despite the existence of the Directive on family reunification (2003/86/EC), among Member States there is a great variability in interpretation of the provisions and in practices concerning family reunification. Particularly large differences between the different countries can be noted in procedures and legislation related to sponsors. In some countries only the closest family members, e.g. one's husband or children, are covered by the right to join the immigrant legally residing in the destination country, while in other countries this right applies to further relatives – such as one's grandparents – as well. In Austria, Belgium, Cyprus, the Czech Republic, Finland, Ireland, Luxembourg, the Netherlands, Norway, Slovenia, Sweden and the Great Britain partners who live in registered same-sex partnerships may apply for a visa under the family reunification category. The different countries treat this category of immigrants differently, but in most EU countries these immigrants have access to the labour market. The situation is completely different in Australia, where the family reunification category immigrants have no right to work. Regarding beneficiaries of subsidiary protection

(not covered by the Directive on family reunification), not as many differences are noticeable. The above-mentioned directive applies to family reunification in all Member States, excluding Denmark, Ireland, the Great Britain and Norway. Statistics on residence permits issued on the grounds of family reunification are interesting. In some countries, such as Croatia, Greece, Luxembourg, Spain, Belgium, Italy, Portugal and Germany, these permits constitute as much as half of all permits issued. However, there are countries where the percentage of residence permits issued on the grounds of family reunification is very insignificant. Such situation exists in Lithuania, Cyprus, the Great Britain, Malta, Ireland and Poland. In Poland, the ratio barely reaches 1%, which is the lowest percentage of family reunification permits issued in the total number of permits issued in all of the European Union.

In the recent years, the legal situation of individuals applying for temporary residence permit in Poland has not undergone any significant changes – apart from an increase of the number of applications for temporary residence permit on the grounds of family reunification. In the light of the above-mentioned basis, an important exemption regarding the requirements which the applicants for temporary residence permit should fulfil was only introduced in the Act of 12 December 2013 on Foreigners<sup>2</sup> – its Article 159(2) exempted those, who join their family member who has acquired refugee status or subsidiary protection in Poland and will submit a proper application within 6 months of the date of obtaining the refugee status or subsidiary protection, from the obligation to prove they have a stable and constant source of income, health insurance and guaranteed place of registered residence.

1. In this elaboration, the sponsor is a third-country national legally residing in a Member State, who submits an application (or their family submits an application) for family reunification in order to unite with family who is to come to them.

2. Journal of Laws of 2013, item 1650, as amended.



In Poland, the subject of family reunification has not been a subject of specific research, despite its clear importance. It might be due to the fact that until now, Poland has not been a destination country for immigrants and there are not as many third-country nationals residing in Poland as in Western European countries. Poland maintains balance between respecting the strive for family integrity and providing protection of the national interests as well as respecting the rule of law. In Poland, respect for strive for family integrity is provided through implementation of European and national provisions that regulate the issues related to family reunification. Poland protects its safety by identifying undesirable events, such as cases, where the family relationships are being used to circumvent the law.

When it comes to family reunification, most of the Polish provisions are compatible with the Union provisions. However, it is worth noting that in Poland, a partner is not considered a member of the family if not married to the foreigner or if the partner is of the same sex, since Polish legislation does not provide for such possibility. The main legislation relating to the subject was introduced in Poland by the Act of 12 December 2013 on Foreigners, although the term "family reunification" had already been used earlier. According to Polish legislation, a sponsor is:

- a person who is married to the foreigner and the marriage is recognized under the law of the Republic of Poland;
- a minor who is a child, including an adopted child, of the foreigner and a person whom the foreigner married and the marriage is recognised under the Polish law;
- the foreigner's (sponsor's) child, also a foster child, who is a minor being the foreigner's dependant over whom the foreigner exercises actual parental authority;
- a child, also a foster child, of the spouse joining the foreigner residing in Poland (stepson/step-daughter), who is a minor being the foreigner's dependant over whom the foreigner exercises actual parental authority.

It is worth noting that in Poland, family reunification means uniting only the core of the family without ascendants – only descendants are included in the procedure.

Depending on the category, legalisation of the residence of the above-mentioned individuals is

possible under normal procedure pursuant to Article 159(1) of the Act on Foreigners, used by voivodship offices. In the case of illegal stay provisions of Article 187(6) and Article 187(7) of the Act on Foreigners concerning residence due to the need to respect family life within the understanding of the Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in Rome on 4 November 1950, and leaving the territory of the Republic of Poland infringing the rights of the child set out in the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989<sup>3</sup> to an extent which creates a significant risk for the child's psychophysical development, may apply. Right the above-mentioned individuals enjoy differ depending on the degree of relationship. Minimum time period necessary for a family to unify in Poland is 2 years. The basis for a refusal to issue a permit for temporary residence are reasons of state defences or security, the protection of public safety and order. In relation to non-refugee third-country nationals, refugee families and beneficiaries of subsidiary protection enjoy more facilitations. Even further facilitations with regard to family reunification legislation apply to family members of a citizen of the Republic of Poland. In that situation, it is not required for the foreigner to meet the integration requirements (insurance, registered residence, finances). Moreover, the waiting period which, in general, lasts 2 years, does not apply to this category.

Considering the family reunification requirements, migration authorities do not verify the housing conditions in the procedure of examining the application for temporary residence permit. While documenting the fulfilment of the health insurance requirement, the foreigner should provide health insurance within the meaning of the Act of 27 August 2004 on health care system financed with public resources, or the confirmation that the insurer will cover the medical expenses incurred on the territory of the Republic of Poland. In the case of income source, the fact of the foreigner having a stable and constant source of income which suffices to cover his/her subsistence expenses and the subsistence expenses of family members being his/her dependants should be documented. In relation to the procedures ensuring that

3. *Journal of Laws of 1991, No. 120, item 526; Journal of Laws of 2000, No. 2, item 11 and Journal of Laws of 2013, item 677.*

integration measures are followed. Poland has not introduced additional integration measures referred to in paragraph 1 of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

While verifying relationship-related matters, migration authorities base on, in particular, civil status records provided, which are then checked for authenticity. Considering the duration of the procedure related to examining a family reunification application in Poland, public administration bodies – in line with the Code of Conduct – are required to take action without undue delay. The duration is usually about 2 months. Sometimes there are difficulties with documenting and evaluating family relationships (blood relationship or marriage) of individuals coming from high-risk migration countries, where procedures for issuing civil status records do not guarantee sufficient reliability of the data.

Third-country nationals coming to Poland under family reunification have right to education, including scholarships. However, there are no special facilities dedicated to this group of migrants – only

the general level education is available. Taking into account job-related issues, foreigners who were granted a temporary residence permit under family reunification are relieved from the obligation to own a work permit and they may set up and pursue economic activity in Poland following the same rules as Polish citizens. Taking into account the right to vocational counselling and training, a foreigner holding a temporary residence permit allowing them to stay on the territory of the Republic of Poland for the purpose of family reunification may use labour market services, excluding the right to benefits set out in Articles 41 and 42 of the Act on employment promotion and labour market institutions, i.a. grants, loans etc. granted to the unemployed due to trainings they undertake. Provisions set out in the Act on Foreigners provide for a possibility for a sponsor to apply for a temporary residence permit themselves, after 5 years of stay under temporary residence permits granted for the purpose of family reunification. Access to this right differs slightly depending on the kind of permit the family member receives.

# 1

**Discussing  
the national policy  
on family reunification**



## Discussing the national policy on family reunification

Principles related to the exercise of the right to family reunification are included in the Act of 12 December 2013 on Foreigners, which transposed the provisions of Directive 2003/86/EC into the Polish law. Act on Foreigners refers to Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in Rome on 4 November 1950, as well as to the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989.<sup>4</sup> Regarding the exercise of the right to family reunification, the Act on Foreigners does not specify any limits depending on where the family life has been established.

Migration under family reunification is not a subject of public discussions or a priority of the national policy at the moment; no changes are planned in this regard. Poland has not introduced a private patronage programme, which requires the beneficiary to be a family member of the sponsor.

The term "family reunification" was first introduced on 1 May 2014 in the Act of 12 December 2013 on Foreigners. Before 1 May 2014 there were other regulations allowing all members of the foreigner's family to reside in the country. In the currently repealed strategy paper "Polish Migration Policy – Current Situation and Postulated Action"<sup>5</sup>, adopted by the Council of Ministers in 2012, the term "family reunification" was used as well. The document stated that family members of Polish citizens and foreigners residing in Poland (family reunification) should be considered a group of foreigners holding special rights or due to their

situation they need special care and protection on the basis of the rules on respect for family life of the Constitution of the Republic of Poland, Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification and provisions of the Act on Foreigners, and in some cases due to their particular family status. The term "family reunification" is also used in the document "Implementation Plan for Polish Migration Policy – Current Situation and Postulated Action". The document states e.g.: "Foreigners may settle on Polish territory once he or she is granted a permanent residence permit pursuant to the Act of 12 December 2013 on Foreigners or he or she is granted a long-term resident's EU residence permit which are issued for an unspecified period of time. The permit holders shall enjoy the widest scope of rights concerning third country nationals. They e.g. have access to the labour market with no need to receive work permit first, as well as the right to conduct economic activity on the principles applying to Polish citizens, the right to family reunification, access to higher education on the principles applying to Polish citizens and eligibility to social welfare assistance". In the Action Plan for Responsible Development of Poland adopted by the government on 14 February 2017 – currently the most important strategy paper in Poland – one of the mentioned actions to be taken until 2020 is "creation of pathways to integration for certain foreigner categories and family members of these foreigners, i.a. for employees with qualifications and competence required the most by the Polish labour market, including programmes for development and improvement of competences and qualifications (e.g.

4. Journal of Laws of 1991, No. 120, item 526; Journal of Laws of 2000, No. 2, item 11 and Journal of Laws of 2013, item 677.

5. Document of 2012 along with the implementing document have been rejected by the Council of Ministers under decision of 23 October 2016.

language trainings, soft skills trainings, assistance services)". Family-friendly policy support is strongly emphasized in the action plan.

# 2

## Definition of sponsor and family members





## Definition of sponsor and family members

A family member is (temporary residence permits for the purpose of family reunification), according to Article 159 of the Act on Foreigners:

- a person who is married to the foreigner and the marriage is recognized under the law of the Republic of Poland;
- a minor who is a child, including an adopted child, of the foreigner and a person whom the foreigner married and the marriage is recognised under the law of the Republic of Poland;
- a foreigner's child, also a foster child, who is a minor being the foreigner's dependant over whom the foreigner exercises actual parental authority;
- a minor who is a child of a person married to a foreigner, and the marriage is recognised by the law of the Republic of Poland, also of an adopted dependent child over whom the foreigner exercises actual parental authority.

A lineal ascendant or an adult person responsible for the minor in accordance with the law in force in the Republic of Poland shall also be recognised as a family member of a unaccompanied foreign minor enjoying refugee status or granted subsidiary protection, residing on the territory of the Republic of Poland.

According to Article 168 of the Act on Foreigners dated 12 December 2013, temporary residence permits for family reunification are granted upon the request of a foreigner (within the meaning of the Act, i.e. of a third-country national) residing on the territory of the Republic of Poland, to whom a family member arrives or with whom a family member is staying on the territory of the Republic of Poland.

Temporary residence permit is granted under Article 159(1) of the Act on Foreigners to spouses (marriage must be recognised by the Polish law) and

to minor children, including foster children of a foreigner who resides in Poland:

- based on permanent residence permit;
- based on long-term resident's EU residence permit;
- in connection with granting him refugee status;
- in connection with granting him subsidiary protection;
- at least 2 years based on temporary residence permits if the last permit was granted for a period of at least 1 year;
- based on temporary residence permit granted for the purpose of conducting research;
- based on temporary residence permit for the purpose of highly qualified employment;
- in connection with granting an authorisation to stay for humanitarian reasons.

In the case of a foreigner's child, who is not a child of their spouse, it is required to demonstrate, that the child is dependent on the foreigner and that the foreigner exercises actual parental authority over this child. The same applies to the foreigner's stepson/stepdaughter; in this case the minor foreigner shall be dependent on the spouse who shall exercise actual parental authority over him/her.

Temporary residence permit is granted also to parents or to an adult person responsible for a minor foreigner, who enjoys the refugee status or subsidiary protection and to date stayed in Poland unaccompanied.

Polish law does not permit beneficiaries of subsidiary protection to submit the application for family reunification, as in accordance with Article 99(1)(4) of the Act on Foreigners dated 12 December 2013, initiating the procedure for granting temporary residence permit is refused to the foreigner, if he was granted a tolerated stay, an authorisation to stay for

humanitarian reasons, asylum, subsidiary protection or temporary protection or he was granted refugee status in the Republic of Poland.

However, a person, who stays in Poland in connection with granting them the refugee status or subsidiary protection, is entitled, as a so-called "sponsor", to apply for temporary residence permit for a family member in accordance with Article 159(1) (1)(c) and (d) of the Act on Foreigners<sup>6</sup>. However, as for parents, such a possibility is limited only to the situation of an illegal stay of a parent on the territory of Poland.

In accordance with Article 187(7) of the Act on Foreigners, temporary residence permit due to other circumstances may be granted to a foreigner if their exit from the territory of the Republic of Poland would infringe the rights of the child set out in the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989<sup>7</sup> to the extent threatening the child's psychophysical development, and the foreign national resides in the territory of the Republic of Poland illegally.

If the case regards parents of a person full of age, legal situation of the parents shall be examined based on Article 187(6) of the above mentioned Act, according to which a temporary residence permit due to other circumstances may be granted to a foreigner if their stay on the territory of the Republic of Poland is necessary due to the need to respect the right to family life within the meaning of the Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, and the foreign national resides in the territory of the Republic of Poland illegally.

The legislator provided for the possibility of legalization of the residence:

1) for a foreign national being a family member of a person residing on the territory of the Republic of Poland being a citizen of Poland, of other European

Union Member State or of a Member State of European Free Trade Association (EFTA) – a party to the agreement on European Economic Area or Swiss Confederation other than that referred to in Article 2(4) of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members<sup>8</sup>, who stays on the territory of the Republic of Poland together with this citizen in a few cases. One of these cases is financial dependence upon a given foreigner or staying in the same household with him/her in the state from which the foreigner came. Another case regards serious health grounds requiring personal care by this citizen, if the foreigner meets the requirements referred to in the Act (i.e. has health insurance, stable and constant source of income, has an accommodation)

2) a foreigner who leads a family life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms, done in Rome on 4 November 1950<sup>9</sup>, with a Polish citizen or a citizen of another European Union Member State, a member state of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or the Swiss Confederation, residing on the territory of the Republic of Poland, with whom the foreigner stays on that territory, if the foreigner meets the conditions (i.e. he/she has health insurance, stable and constant source of income, has an accommodation).

As regards adult children, according to Article 161 of the Act on Foreigners, a temporary residence permit shall be granted to a foreigner who is a full of age child of a foreigner residing on the territory of the Republic of Poland based on:

a) occurrence of one of the elements referred to in Article 159(1)(1)(a) to (g) and (i), and stays in this territory<sup>10</sup>,

8. a family member – of a foreigner who is or is not an EU citizen: a) a spouse of an EU citizen, b) a descendant of an EU citizen or a descendant of his/her spouse, aged up to 21 or dependent on the EU citizen or his/her spouse, c) an ascendant of an EU citizen or an ascendant of his/her spouse dependent on the EU citizen or his/her spouse;

9. Journal of Laws of 1993, No 61, item 284, as amended

10. Article 159(1). Temporary residence permits for the purpose of family reunification shall be granted to a foreigner if the foreigner meets all the following conditions: 1) stays on the territory of the Republic of Poland or stays on this territory for family reunification and is a family member of a foreigner residing on the territory of the Republic of Poland: a) based on a permanent residence permit, b)

6. Article 159(1). Temporary residence permits for the purpose of family reunification shall be granted to a foreigner if the foreigner meets all the following conditions: 1) the foreigner stays on the territory of the Republic of Poland or stays in this territory for family reunification and is a family member of a foreigner residing on the territory of the Republic of Poland: c) in connection with granting them the refugee status, d) in connection with granting him subsidiary protection (...)

7. Journal of Laws of 1991, No 120, item 526, Journal of Laws of 2000, No. 2, item 11 and Journal of Laws of 2013

b) the permit referred to in Article 159(1)(1)(h), and stays on this territory or on the territory of another Member State of the European Union<sup>11</sup>,

- at least for 5 years based on temporary residence permits for the purpose of family reunification,
- provided that the requirements of Article 159(1)(2) and (3) are met (i.e. he/she has health insurance, source of income which meets the adequate criteria, has an accommodation).

If an illegal stay is determined, the aforementioned Article 187(6) of the Act on Foreigners<sup>12</sup> may apply.

An important question in the case of “family reunification” in Poland is the definition of marriage according to the national law. There is no such definition in the Polish law, but it can be deduced based on all provisions of the Family and Guardianship Code. On that basis, marriage can be considered to be a permanent union between a woman and a man, created in a formalised manner based on the will of the spouses, and also a mutual legal relationship. This union is about connecting the spouses both in their personal relationship and, very seriously, in terms of rights in property. By this definition, a marriage consists

based on a long-term resident’s EU residence permit, c) in connection with granting him/her refugee status, d) in connection with granting him subsidiary protection, e) for at least 2 years based on further temporary residence permits, including directly before submitting the application for temporary residence permit for a family member – based on a permit granted him/her for a period of stay of at least 1 year; f) based on a temporary residence permit referred to in Article 151(1), g) based on a temporary residence permit granted for the purpose of conducting research, if the foreigner is in possession of a residence permit referred to in Article 1(2)(a) of the Council Regulation (EC) No 1030/2002, bearing the term ‘researcher’ issued by another Member State of the European Union, if the agreement on hosting the foreigner for the purposes of conducting a research project concluded with an adequate research unit of this State provides for research to be carried out also on the territory of the Republic of Poland, i) in connection with granting authorisation to stay for humanitarian reasons;

11. Article 159(1). Temporary residence permits for the purpose of family reunification shall be granted to a foreigner if the foreigner meets all the following conditions: 1) the foreigner stays in the territory of the Republic of Poland or stays in this territory for family reunification and is a family member of a foreigner residing on the territory of the Republic of Poland; h) based on temporary residence permit for the purpose of highly qualified employment,

12. Article 187. Temporary residence permit may be granted to a foreign national due to other circumstances, if: 6) their stay on the territory of the Republic of Poland is necessary due to the need to respect the right to family life within the meaning of the Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, and the foreign national resides in the territory of the Republic of Poland illegally,

particularly in intimacy of relationship, permanent and daily cooperation, mutual assistance as well as living in one dwelling.

The Polish law does not recognise same-sex marriages, same-sex (informal) partnerships or (informal) partnerships of persons of different sex, therefore granting a temporary residence permit in the ordinary course is not possible. Such a permit may be granted only in the case of illegal stay, based on the provisions of the aforementioned Article 187(6) of the Act on Foreigners.

As regards “the dependents”, i.e. persons receiving legal, financial, emotional or material support from a sponsor or his/her spouse/partner (other than those referred to in Article 4 of the Directive 2003/86/EC), family reunification shall be possible with regard to these individuals, however, it shall be limited only to the situation of illegal stay on the territory of Poland, according to the aforementioned Article 187(6) of the Act on Foreigners. This situation concerns mainly minor children and closest adults (parents) sharing the same household; Article 160(1)(a).

As regards other persons, according to the aforementioned Act, a sponsor shall be:

- a person who is married to the foreigner and the marriage is recognized under the law of the Republic of Poland;
- a minor who is a child, including a foster child of the foreigner and a person whom the foreigner married and the marriage is recognised under the Polish law;
- the foreigner’s (sponsor’s) child, also a foster child, who is a minor being the foreigner’s dependant over whom the foreigner exercises actual parental authority;
- a child, also a foster child, of the spouse joining the foreigner residing in Poland (stepson/stepdaughter), who is a minor being the foreigner’s dependant over whom the foreigner exercises actual parental authority.

Legalisation of the residence of the above-mentioned category of persons shall be possible in ordinary course based on Article 159(1) of the Act on Foreigners. In the case of illegal stay, provisions of the aforementioned Article 187(6) and (7) of the Act on Foreigners may apply. The Act does not make a distinction between provisions applicable to children related to and adopted by the applicant.

In the event of polygamous marriages, the

possibility of legalisation of residence shall depend on which of the marriages is recognized by the Polish law. Only a spouse whose marriage is recognized under the Polish law may legalise his/her stay on the territory of Poland pursuant to Article 159(1) of the Act on Foreigners.

In the case of relationships not recognized by the Polish law (other partners in a polygamous marriage, marriages concluded by an attorney), granting temporary residence permit shall be limited only to

cases of illegal stay. Then the appropriateness of granting a permit shall be considered based on their right to family or private life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, in accordance with Article 187(6) of the Act on Foreigners. Therefore, within the meaning of the Act, these relationships shall be treated in a manner equivalent to the manner of treating informal relationships (partnerships).

# 3

## Requirements for exercising the right to family reunification



## Requirements for exercising the right to family reunification

Examining the requirements regarding accommodation, appropriate according to family size and satisfying health and safety standards regarding the exercising of the right to family reunification, submitting documents proving possession of a current place of residence on the territory of the Republic of Poland, current registration, lease agreement of the rented accommodation with the land register reference number for verification of legal title to occupy a residential unit is necessary to confirm it.

The provisions in the Act on Foreigners provide for possibility to grant the sponsor a temporary residence permit irrespective of the fact of him satisfying the requirements for exercising the right to family reunification. In line with the Article 167 of the Act on Foreigners, proceedings on granting the permit with the aim of family reunification takes into account the interest of a minor child, the nature and stability of family ties in the territory of the Republic of Poland, the period of the foreigner's stay in the territory of the Republic of Poland and the existence of family, cultural and social ties with the country of origin. The best interest of a child constitutes an interesting issue. It plays an important role with respect to the interpretation of the Family and Guardianship Code. Article 3 of the Convention on the Rights of the Child is of significant importance here, in line with which in all actions concerning children undertaken by courts of law, administrative authorities, legislative bodies and public or private social welfare institutions, the best interest of the child shall be a primary consideration. In its rule from 11 February 1997 No II CKN 90/96 the Supreme Court indicated, that "the notion of the best interest of a child on the one hand includes all the area of the most crucial personal issues, such as physical and spiritual development, appropriate education and upbringing, as well as

preparing him/her to adulthood, on the other hand, however, it has a clear material dimension. It consists in ensuring that a child has means to live and realise his/her personal goals, and if a child has his/her own property, also in taking care of his/her material interest." Therefore the best interest of a child constitutes the highest value and it is of utmost importance in all cases concerning children. One should not forget about that while deciding about the children's issues.

In the case when the party's interest established in line with the abovementioned guidelines allows granting him permit, the temporary residence permit may be granted irrespective of the fact of him satisfying the requirement for accommodation, health insurance or source of income, satisfying appropriate criteria.

As for the requirements related to social insurance, it is necessary to present documents to confirm health insurance within the meaning of the Act of 27 August 2004 on health care system financed with public resources, or the confirmation that the insurer will cover the medical expenses incurred on the territory of the Republic of Poland.

When financial resources are sufficient to provide for the needs of the sponsor and his/her family, it is necessary to present documents confirming the constant and stable source of income that is sufficient to cover the costs of providing for his/her needs as well as those of his/her dependants, a statement (for a single person – PLN 634 net per month, while for a person in common household – PLN 514 net per month), certificate of income for the last 3 months.

It is not required by the law of the Republic of Poland that the third-country nationals confirm their degree of integration. According to the most current knowledge no changes are planned in the abovementioned scope.

No consequences are foreseen for the family members who do not fulfil the requirements indicated above concerning integration.

The Act on Foreigners stipulates that the minimum waiting period to reunify with family members amount to 2 years. According to the Article 159(1)(1)(e) of the Act on Foreigners, a foreigner acquires the right to reunify with a family member residing in Poland for at least 2 years based on consecutive temporary residence permits, including directly before the submission of the application for the temporary residence permit for a family member – based on a permit granted him/her for the time of stay of at least 1 year.

The other cases constitute a derogation from the above rule resulting:

directly from the Directive 2003/86/EC (prohibition of requiring the transition period from the family members of refugees),

from the preferences resulting from the implementation of other Directives (lack of the period of deferment, e.g. Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents,

from the preferences resulting from national solutions for integration (lack of the period of deferment in the case of sponsor residing in Poland on the basis of permanent residence permit).

As for the refusal to issue a permit for temporary residence, the reasons of state defences or security, the protection of public safety and order constitute a basis for such refusal.

Family reunification regarding refugees and beneficiaries of subsidiary protection is a very interesting issue. They enjoy some facilitation in relation to non-refugee third-country nationals. Pursuant to the Act on Foreigners the transition period when admission requirements are not applied in relation to family members of refugees or to beneficiaries of international protection is 6 months.

During this time the applicant is not required to submit documents confirming the fact of having

a stable and constant source of income of appropriate level or to provide documentation confirming his/her accommodation in the territory of the Republic of Poland and satisfying the requirement of having health insurance within the meaning of the Act of 27 August 2004 on health care system financed with public resources, or the confirmation that the insurer will cover the medical expenses incurred on the territory of the Republic of Poland.

The procedure of prolonging the 6-month period of deferment from the application of admissibility requirements has not been provided for.

It should be indicated that in line with the Article 167 of the Act on Foreigners, proceedings on granting the permit with the aim of family reunification takes into account the interest of a minor child, the nature and stability of family ties in the territory of the Republic of Poland, the period of the foreigner's stay in the territory of the Republic of Poland and the existence of family, cultural and social ties with the country of origin. In the case when the party's interest established in line with the abovementioned guidelines allows granting him permit, the temporary residence permit may be granted irrespective of the fact of him satisfying the requirement for accommodation, health insurance or source of income, satisfying appropriate criteria.

It should also be indicated that in the case of illegal residence, permits granted in a special mode based on the grounds included in conventions resulting from the Convention on the Rights of the Child adopted by General Assembly on 20 November 1989<sup>13</sup> or from the Convention for the Protection of Human Rights and Fundamental Freedoms done in Rome on 4 November 1950, do not require establishing findings in the scope of the abovementioned requirements.

Facilitations regarding families of refugees are not limited by the question of family relations being made before or after entering a Member State. Pursuant to the Act on Foreigners, a lineal ascendant (grandparents, great-grandparents) or an adult person responsible for the minor in accordance with the law in force in the Republic of Poland (a person who was awarded direct custody of a child by the Court) shall also be recognised as a family member of a foreign minor enjoying refugee status or granted subsidiary protection. None of the family reunification rules for

13. Dz. U. [Journal of Laws] of 1991, No 120, item 526, Dz. U. of 2000, No. 2, item 11 and Dz. U. of 2013.



refugees and subsidiary protection beneficiaries has not been changed recently.

Taking into account differences in the requirements to be met for exercising the right to family reunification (under Directive 2003/86/EC or national law in some cases) in comparison to a similar request governed by national law by a (Member) State national who has not exercised his/her free movement rights, a requirement regarding health insurance, source of income and accommodation should be quoted. The abovementioned requirements are necessary for the family members of third-country nationals applying for the temporary residence permit in order to exercise their right to family reunification, while the family members of the Republic of Poland nationals, such as spouse and minor children, are not required to provide documentations confirming fulfilling the integration requirements. Moreover, the waiting period which, in general, lasts 2 years, does not apply to this category.

Sponsors come across difficulties in relation with obtaining the right of family reunification. The most frequent problem was inability to demonstrate

sufficient financial means (especially in the case of large families). Due to the fact, that these difficulties concern economic immigrants, it is not possible to overcome these problems. Economic immigrants come to the country of destination because of the poor living situation, therefore they do not have sufficient financial means necessary to demonstrate that they meet the abovementioned requirement, i.e. PLN 514 per month at the current moment. This amount does not depend on the sex or age of the family members.

No research is currently conducted in Poland that would concern the influence of requirements regarding family reunification applicable in Poland on the right for family reunification and integration of the third-country nationals; influence of measures regarding integration applicable in Poland on the right for family reunification and integration of the third-country nationals or influence of the requirement regarding the minimum age applicable in Poland on prevention of forced marriages or cases of abuse in the scope of family reunification (e.g. marriages of convenience).



# 4

## Submission and examination of the application for family reunification



## Submission and examination of the application for family reunification

Verification of fulfilling requirements regarding family reunification (including those concerning dependency) is conducted according to the general rules based on the current facts on the day of issuing the decision in the case of granting temporary residence permit.

The formal party submitting application for family reunification in Poland is a foreigner residing on the territory of the Republic of Poland, to whom a family member arrives or with whom a family member is staying on the territory of the Republic of Poland. The application for the family member is submitted by a foreigner residing on the territory of the Republic of Poland, to whom a family member arrives or with whom a family member is staying, to the Voivode competent for his/her place of residence. The presence of the family member for whom the application is submitted is not mandatory. However, in the case when the family member resides in the territory of the Republic of Poland, the application needs to be submitted on the last day of his/her legal stay at the latest.

In order to confirm the family member's identity, the applicant needs to present his/her travel document or its copy certified by the Polish diplomatic representation or consular office. In a special, duly documented case, when a family member does not have a valid travel document and it is impossible to obtain one, the applicant can present another document confirming the family member's identity or provide a certified copy of this document. In the case of a document in a foreign language, it is required to present them together with a certified translation into Polish language. In administrative practice this requirement is not applied for the biometric travel documents. Applicant, while submitting the application, should also present a document

entitling him/her to stay on the territory of the Republic of Poland.

As for the documenting family ties, the legislator has not enumerated documents that would confirm the existence of family ties. Therefore, in administrative practice, apart from the civil status record confirming marriage or blood relationship, the evidentiary items include all the documents confirming existence of real, close personal relationships characterised by the mutual interest, attachment and dependency, which are subject to free evidence assessment. When it is suspected that the civil status record may not be authentic, the applicant is required to obtain the apostille certificate for these documents or to have them legalised by the Polish consul after its previous authentication by the competent authority in the country of origin. If the presented certificate arises authority's doubts, the authority addresses by administrative means the authority which issued this document to obtain information if the document had been certified.

Pursuant to Article 160(1) and (3) of the Act on Foreigners, temporary residence permit may be granted to:

- a foreign national being a family member of a person residing on the territory of the Republic of Poland being a citizen of Poland, of other European Union Member State or of a Member State of European Free Trade Association (EFTA) – a party to the agreement on European Economic Area or Swiss Confederation other than that referred to in Article 2(4) of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members, who stays on the territory of the Republic of Poland together with this citizen – due to:

a) being financially dependent on him/her or staying with him/her in the same household in the country from which the foreigner has arrived, or

b) serious health considerations making the foreigner require attendance by such a national

- a foreigner who leads a family life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms, done in Rome on 4 November 1950<sup>14</sup>, with a Polish citizen or a citizen of another European Union Member State, a member state of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or the Swiss Confederation, residing on the territory of the Republic of Poland, with whom the foreigner stays on that territory,

- if the foreigner meets the requirements referred to in Article 159(1)(2) of the Act on Foreigners.

Verification if the family reunification requirements have been met constitutes an important issue. Migration authorities do not verify the housing conditions in the procedure of examining the application for temporary residence permit. While documenting the fulfilment of the health insurance requirement, the foreigner should provide health insurance within the meaning of the Act of 27 August 2004 on health care system financed with public resources, or the confirmation that the insurer will cover the medical expenses incurred on the territory of the Republic of Poland.

Considering the income source, the fact of the foreigner having a stable and constant source of income which suffices to cover his/her subsistence expenses and the subsistence expenses of family members being his/her dependants should be documented (Article 159(1)(2)(b) of the Act on Foreigners). The amount of the monthly income shall be higher than the amount of income which entitles to cash benefits from the social assistance system with respect to the foreigner and each family member dependent on him/her (Article 114(2) in conjunction with Article 163(1) of the Act on Foreigners). Currently, the minimum amount for subsistence expenses per family member is PLN 514 per month (i.e. PLN 6168 per person per year which is around EUR 1,425 per year). This amount does not depend on the sex or age of the family members. However

Article 168(2) of the Act on Foreigners establishes an alternative requirement. Pursuant to this provision the requirement of having a stable and regular source of income is also met when the foreigner's subsistence expenses are covered by a family member responsible for supporting the foreigner and residing on the territory of the Republic of Poland.

The reference period over which this requirement is considered has not been provided for in the Act. A foreigner needs to have a source of income that meets the statutory criteria as for the day of issuing the decision on granting him/her a temporary residence permit. The determination of whether in a specific, individual situation before submitting the application the foreigner had a stable and regular income allows to forecast whether he/she may obtain such income in the future.

In the course of proceedings all legal evidence allowing to conclude that a foreigner has an appropriate income are analysed, including his/her declarations for the previous financial year, documents confirming current income, such as: work agreement, certificate concerning the amount of income from his/her employer, documents confirming the height of income from dividends, etc.

Taking into account procedures aiming at ensuring the compliance with the integration measures, Poland has not introduced additional integration measures referred to in the first paragraph of the Article 7(2) of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. In line with the Article 167 of the Act on Foreigners, proceedings on granting the permit with the aim of family reunification in the case of requirements referred to in Article 7(1) of the Council Directive 2003/86/EC, takes into account the interest of a minor child, the nature and stability of family ties in the territory of the Republic of Poland, the period of the foreigner's stay in the territory of the Republic of Poland and the existence of family, cultural and social ties with the country of origin.

In the case when the party's interest established in line with the abovementioned guidelines allows granting him permit, the temporary residence permit may be granted irrespective of the fact of him satisfying the requirement for accommodation, health insurance or source of income, satisfying appropriate criteria.

Before granting a foreigner a temporary residence permit, the authority conducting the proceedings

14. Dz. U. of 1993, No 61, item 284, as amended.

(voivode) applies to the Chief of the Border Guard Unit, the voivodeship Police Chief, the Head of the Internal Security Agency, and, if necessary, to the consul competent for the last place of residence of the foreigner abroad or to other authorities for information on whether the foreigner's entry and stay on the territory of the Republic of Poland may pose a threat for the State security or defence or public security and policy.

The entrenched practice is that in the case of obtaining information on the basis of which it is possible to conclude that a foreigner may pose a threat to legally protected goods, the authority conducting proceedings addresses the judicial authorities or law enforcement authorities which monitored or still monitors the foreigner, to obtain detailed information crucial for establishing foreigner's current legal situation and for identifying the breach of law. In parallel, the authority may verify the facts in national criminal record and in the record of wanted persons and imprisoned persons.

Acting in line with principles of adequacy and proportionality, the authority assesses on the basis of established circumstances of the case, if a foreigner poses current and real threat for legally protected goods. While assessing if a foreigner gives a guarantee of lawful behaviour in future, the administrative body takes into account both, the foreigner's criminal past and his/her rehabilitation process, considering, among others, if a foreigner was sentenced for imprisonment, what was the duration of the sentence, repeatability of offences, as well as available documents and opinions issued in relation with the rehabilitation process (e.g. the probation officer's opinion, prison psychologist's opinion, court's decision on early release or on refusing such a release). The community analysis is also conducted, as well as activities with participation of a foreigner and his/her family members (e.g. a questioning).

Another group of immigrants who may submit an application for family reunification are minors. The definition of a "minor child" ("minor") is not included in the Act on Foreigners. This definition is drawn from the Act of 23 April 1964 – the Civil Code. Within the meaning of this Act a minor child is any individual who has not attained eighteen years of age and who is not married (the Act indicates that by marriage a minor achieves maturity. It should be explained that pursuant to Polish law a woman may

get married after attaining 16 years of age).

In the case of a minor foreigner the Act provides for the possibility to submit an application in spite of the lack of capacity to perform legal transactions or limited capacity to perform legal transactions, indicating, that an application for temporary residence permit is submitted by his/her parents or guardians established by the court or one of his/her parents or one of guardians established by the court. In the case of an unaccompanied minor, the temporary residence permit is applied for by the curator on his/her behalf. When an application is submitted for temporary residence permit for a minor foreigner who has attained 6 years of age, his presence is required.

In the case of a minor child of a foreigner who does not have an appropriate residence title entitling him/her to submit an application for temporary residence permit for the purposes of family reunification (he/she is not included in the catalogue of persons indicated in the Article 159(1)(1) of the Act on Foreigners), there is a possibility to grant a temporary residence permit if his/her residence is based on the long-term visa or a temporary residence permit, and a child was born when such long-term visa or such temporary residence permit were valid subject to demonstrating the fulfilment of requirements referred to in Article 159(1)(2) and (3).

In line with the Article 167 of the Act on Foreigners, proceedings on granting the permit with the aim of family reunification takes into account the interest of a minor child. If it is decided that granting temporary residence permit is in the interest of a child, such a permit will be granted even in spite of non fulfilment of admission requirements regarding accommodation, health insurance or source of income meeting appropriate criteria.

Moreover migration authorities endeavour to make the time of examining an application regarding minors as short as possible. The cases involving minors are treated with priority.

While verifying relationship-related matters, migration authorities base on, in particular, civil status records provided, which are then checked for authenticity. Pursuant to Article 3 of the Act of 28 November 2014 – Law on Civil Status Records<sup>15</sup>, civil status record constitutes sole evidence of events stated therein; the fact that they are false can only

15. Dz. U. of 2014, item 1741, as amended.

be proven by court proceedings. The content of the Article 4 of the Act of 29 September 1986 – Law on Civil Status Records<sup>16</sup>, which is no longer applicable, was similar. So far it has been commonly decided in the case law that foreign civil status records have the same evidential value in Poland as Polish civil status records (e.g. Supreme Court decision of 16 March 2007, file No III CSK 380/06, LEX No 457689).

Administrative bodies do not establish blood relationship by means of DNA tests apart from the court proceedings, where the civil status record could be concluded as false. In cases provided for by the Act, the fact of providing actual care of the minor child by a foreigner constitutes a subject of assessment. Moreover the evidence concerning the fulfilment of the requirements regarding health insurance, stable and regular source of income and accommodation is collected and assessed. This assessment is conducted after successful submission of the application for granting minor foreigner a temporary residence permit.

Considering the duration of the procedure related to examining a family reunification application in Poland, public administration bodies – in line with the Code of Conduct – are required to take action without undue delay. Cases requiring investigation procedure, and proceedings for granting temporary residence permit should be considered as such, should be settled no later than within a month; for an especially complex case this period should be no longer than two months since the date of initiating proceedings, and in the appeal proceedings – within a month since the date of receiving the appeal. In practice, the average duration of procedure is around 2 months.

The provisions provide for the possibility of prolonging the proceedings. However a party have to be informed every time about the causes of the failure to settle the case within the deadline and about the new deadline foreseen for the proceedings to be concluded. A party has a possibility to file a complaint for the failure to settle the case within the deadline or for the excessive duration of the case.

Employees of the competent departments in the Voivodeship offices and of the Department of the Legalisation of Stay in the Office for Foreigners (within the appeal proceedings) undergo trainings

necessary for ensuring professional operation of the process of examining the application in cases regarding family reunification.

Voivodeship offices and the Office for Foreigners provide on their websites special information concerning admission requirements and procedures related to granting temporary residence permit. The Office for Foreigners in response to questions sent by foreigners on the email address: [legalizacjapobytu@udsc.gov.pl](mailto:legalizacjapobytu@udsc.gov.pl) provide legal information, including in the scope of family reunification procedure. Moreover a number of campaigns and undertakings is conducted, including in cooperation with non-governmental organisations, in order to enhance legal awareness of foreigners.

During the administrative proceedings a number of verifying actions is conducted, on which depends the settlement of a given case. An example of actions undertaken by the Office for Foreigners is obtaining information from the Commander-in-Chief of the Border Guard Unit, Voivodeship Police commander, and the Head of the Internal Security Agency about the foreigner and about the threat he/she may pose while on the state's territory (Article 109(1) of the Act on Foreigners). Pursuant to § 2 and 3 of the abovementioned Article, the deadline for the established bodies to provide the information is 30 days from the date of obtaining the request or, in duly justified cases, 60 days from the date of obtaining the request (refers to persons who attained 13 years of age).

Difficulties especially concern the documenting and evaluating family relationships (blood relationship or marriage) of individuals coming from high-risk migration countries, where procedures for issuing civil status records do not guarantee sufficient reliability of the data.

In order to confirm authenticity of the produced civil status record, when in doubt, the migration authorities require from the applicant to present the certificate for these documents by legalising them by the Polish consul after its previous authentication by the competent authority in the foreigner's country of origin.

As it is not required from the family member to remain on the territory of the Republic of Poland during the time of examining the application for granting temporary residence permit, it is difficult to assess in the case of marriages if it is not the case

16. Dz. U. of 2011, No 212, item 1264, as amended.



of the marriage of convenience, and in the case of minor children, to make an assessment in the scope of having actual parental custody in the period preceding submitting the application for granting the said permit. Therefore, migration authorities conduct a questioning of the family members present in Poland in the scope of relevant circumstances to establish the abovementioned information. By analysing the content of evidence for its reliability, migration authorities, in a logical way and according to their life experience, compare the content of the evidence with the information from the sponsors file in the archives and possibly with the information from other witnesses, provided documents and own

established information (e.g. documents regarding recorded border crossings). In parallel the applicant is called to complete the evidence with the documents confirming the fact of maintaining the close relationship and contact with the family member staying outside the territory of the Republic of Poland. Migration authorities also make an effort to verify the sponsor's life situation through community interview in his/her place of living and possibly in place of his/her work. In the case when parents of a minor do not live together on the territory of Poland, the verification concerns also the life situation of the other parent, his/her migration situation and his/her plans for the future.



# 5

**Access to rights  
following family  
reunification**



## Access to rights following family reunification

The Polish integration policy does not include detailed provisions regarding this issue. Therefore, general provisions are applicable for this group.

Considering the rights stemming from the family reunification, family members have possibility to participate in courses for adults. There are schools for adults, schools for minors and language courses for foreigners under general rules. There is no system in place that would enable foreigners taking part in free courses, trainings and broadly understood education for foreigners. After obtaining the temporary residence permits for the purpose of family reunification, the family members are automatically granted with the right to employed activity and self-employed activity for the time the permit's validity. Only selected categories of foreign students may apply for material aid accrued to the Polish citizens (i.e. social grant, special grant for the disabled, scholarship of the rector for the best students, minister's scholarship for outstanding achievements), in particular including students who hold long-term residence permit (including settlement permit, long-term resident's EU residence permit issued by Poland or other EU state), are covered by international protection or have been granted residence permit for a specified period due to family reunification. Family members of foreign students studying in Poland may use the family reunification procedure in accordance with the general rules. Foreign students cannot cover their family members with their health insurance. It means that the health care insurance contribution paid by foreign students does not cover his/her family members. If they wish to use health care services financed from public funds, they must have voluntary health insurance, which means they have to pay for it themselves. Foreigners coming to Poland for the purpose of reunification with a family

member who is a foreign student are not eligible to social welfare assistance. Summing up, the conditions on which foreign students can exercise the right to family reunifications are akin to those applicable to other groups of migrants. Family members of a foreign student (spouses and minor children) enjoy a relatively broad range of rights and freedoms. They have vast access to areas that are key from the point of view of their needs, i.e. the labour market and the educational system. It allows relatively smooth integration in the host country. There is no proof of a proposition that the right to family reunification and the conditions of exercising the right in Poland are important factors that influence the decisions of foreign students to come to Poland. Following consultations with voivodeship offices employees the Ministry of Interior and Administration carried out while working on the report, the above-mentioned results were confirmed. They say that the number of foreign students who come to and stay in Poland with their families is very low.

A foreigner holding a temporary residence permit issued under family reunification as set out in Article 159(1) of the Act on Foreigners is released from the obligation to possess a work permit (pursuant to Article 87(2)(4) of the Act on employment promotion and labour market institutions).

A foreigner holding a temporary residence permit issued under family reunification as set out in Article 159(1) of the Act on Foreigners may set up and pursue economic activity in Poland following the same rules as Polish citizens (Article 13(1)(1)(c) of the act on freedom of economic activity).

Taking into account the right to vocational counselling and training, a foreigner holding a temporary residence permit issued in line with Article 159(1) of the Act of 12 December 2013 on Foreigners and

allowing them to stay on the territory of the Republic of Poland for the purpose of family reunification may use labour market services, excluding the right to benefits set out in Articles 41–42a of the Act on employment promotion and labour market institutions, i.a. grants, loans etc. granted to the unemployed due to trainings they undertake (under Article 3(6) of the Act).

In line with provisions set out the Act of 12 March 2004 on social assistance,

Act of 12 December 2013 on foreigners, Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland and the Act of 14 July 2006 on Entry into, Residence in and Exit from the Republic of Poland of EU Nationals and Their Family Members, the right to receive social assistance – as long as international agreements do not state otherwise – applies to i.a. citizens of the European Union Member States or European Free Trade Association (EFTA) States, parties of the EEA agreement or Swiss Confederation citizen and their family members residing in the Republic of Poland, who received a residence permit. Thereby, those entitled to social assistance include: spouse of the EU citizen, EU citizen's descendant or descendant of his/her spouse aged up to 21 or dependent on the EU citizen or his/her spouse, EU citizen's ascendant or ascendant of his/her spouse dependent on the EU citizen or his/her spouse. The term "EU citizen" means a foreigner being a citizen of a Member State of the European Union or a citizen of a country being a party to European Free Trade Association (EFTA) and a citizen of Swiss Confederation.

Provisions set out in the Act on Foreigners provide for a possibility for a sponsor to apply for a permanent residence permit themselves, after 5 years of stay under temporary residence permits granted for the purpose of family reunification. Access to this right differs slightly depending on the kind of permit the family member receives.

The possibility to receive an independent permit has been ensured in Article 161(1) of the Act on Foreigners. According to the Article, temporary residence permit shall be granted to a foreigner who resides in the territory of the Republic of Poland and is married under the Polish law to a foreigner residing on the grounds set out in Article 159(1)(1) (a–g and i), i.e.

- based on permanent residence permit;
- based on long-term resident's EU residence permit;
- in connection with granting him refugee status;
- in connection with granting him subsidiary protection;
- for at least 2 years based on consecutive temporary residence permits, including directly before the submission of the application for the temporary residence permit for a family member
  - based on a permit issued for the time of stay of at least 1 year;
- based on temporary residence permit, as referred to in Article 151(1);
- based on a temporary residence permit granted for the purpose of conducting research, if the foreigner is in possession of a residence permit referred to in Article 1(2)(a) of the Council Regulation (EC) No 1030/2002, bearing the term "researcher" issued by another Member State of the European Union, if the agreement on hosting the foreigner for the purposes of conducting a research project concluded with an adequate research unit of this State provides for research to be carried out also on the territory of the Republic of Poland;
- in connection with granting an authorisation to stay for humanitarian reasons;
  - or a foreigner who is an adult child of a foreigner residing on the above-mentioned grounds, who resides in Poland, provided that it has been documented that he/she fulfils the admission requirements of having health insurance, source of income and accommodation.

The exception is a stand-alone temporary residence permit granted to the spouse or an adult child of a foreigner residing in Poland based on temporary residence permit for the purpose of highly qualified employment, which is granted both in case the foreigner applying for the permit resides in the territory of Poland and in case the foreigner resides in the territory of another EU Member State, provided that the other requirements are met.

In the case of permits issued following a divorce, legal separation or death of a family member (Article 161(2)), there is no differentiation when it comes to requirements in terms of the type of permit granted by a family member, while the range of circumstances of one's stay is limited to the residence basis

principles as set out in Article 159(1)(1) of the Act on Foreigners. In accordance with Article 161(2) of the act, a foreigner residing in the territory of the Republic of Poland on the basis of temporary residence permit for the purpose of family reunification is granted a temporary residence permit, if his/her important interest so requires, in the case of:

1) divorce, legal separation or widowhood of the foreigner, if he/she was married under the Polish law to a foreigner residing on the territory of the Republic of Poland under one of the elements set out in Article 159(1)(1); or

2) death of the foreigner's parent who was a foreigner residing on the territory of the Republic of Poland under one of the elements set out in Article 159(1)(1); or

3) death of the foreigner's minor child who was granted refugee status or was covered by subsidiary protection. Granting a permit does not depend on fulfilment of the requirements regarding health insurance, source of income and accommodation.

The Act on Foreigners foresees the possibility of applying for long-term resident's EU residence permit. The act does not provide for any limitations

in terms of changing the legal grounds for stay and applying for a temporary residence permit for a purpose other than family reunification by the foreigner's family member. Moreover, there are no limitations when it comes to applying for a permanent residence permit. Applying for the above-mentioned statuses is conducted according to the general rules. The foreigner may also apply for Polish citizenship.

Article 159(1)(1)(c-d) of the Act on Foreigners provides for a possibility of granting a refugee family member or a person under subsidiary protection a temporary residence permit for the purpose of family reunification, provided that the requirements regarding health insurance, source of income and accommodation are fulfilled. The requirements do not apply if the application was submitted within 6 months of the date of acquiring the refugee status or protection. The permit is issued for 3 years. The fees related to the permit are charged in accordance with the general rules. The foreigner is required to pay a stamp duty of PLN 340 along with a residence card issuance fee of PLN 50 when being granted a permit.

#### 6: National and international case law

Court of Justice of the European Union, European Court of Human Rights or national case law did not lead to any changes in legislation concerning the policy or practice of family reunification in Poland.







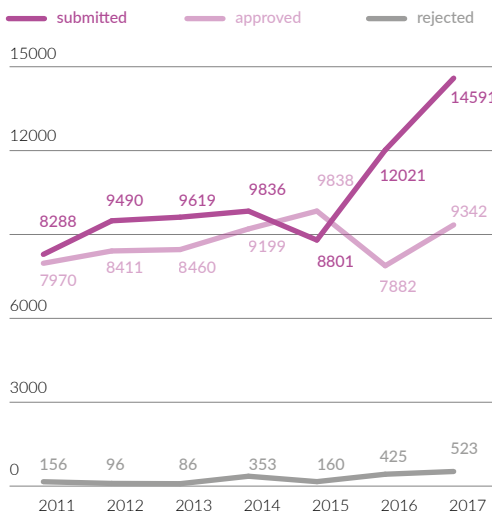
**Summary**



# Summary

In 2017, the number of applications submitted for the purpose of family reunification in Poland reached nearly 15 thousand. It is much less than the number of approved applications which reached ca. 9 thousand in 2017. It shows that Poland, where the number of immigrants is low when compared to Western European countries, has no major experiences with third-country nationals applying for family reunification. The figure below depicts the number of submitted, approved and rejected applications under the family reunification category in 2011–2017.

**Figure 1.** Number of submitted, approved and rejected applications under the family reunification category in 2011–2017.



A few conclusions can be drawn based on the analysis of figure 1. First, every year (except 2016) there is a noticeable increase in the number of approved applications under family reunification category. On average, the increase reached a few percent each time. Regarding the number of applications submitted by individuals applying for family reunification, it kept increasing until 2014. Next, in 2015, the number of submitted applications declined by ca. 10%. In 2016 and 2017, the number of submitted applications sharply rose up to nearly 15 thousand in the last year covered by the analysis. Regarding the rejected applications, their number both increased and decreased in the analysed period. Initially, in 2012, the number of rejected applications plummeted by 40%. In 2013–2014, due to a surge in number of rejected applications, the number was tripled. In the following year – 2015 – the number of rejected applications dropped by almost 200, i.e. by ca. 55%. Since 2016, another surge in the number of rejected applications has been observed, which is probably related to the increased number of applications submitted in the past years. Reason for rejecting the request was changing over the years. In 2014, the main reason for rejecting applications was a failure to comply with the requirement set out in Article 53–53b of the Act on Foreigners of 2003 (in the case of temporary residence) and in Article 100(1) (1) of the Act on Foreigners of 2013, which means a failure to comply with the requirements of granting the foreigner a temporary residence permit because of the declared purpose of residence or because the circumstances that are the reason behind the application for the permit do not justify that person’s residence within the territory of the Republic of Poland for the period of time not exceeding 3 months (temporary residence permit). Rejections

on the grounds of these 2 categories amounted for over 83% of all rejected applications. In 2014, rejections on the grounds of Article 100(1)(1) of the Act on Foreigners of 2013 constituted 67% of all the rejected applications. In early 2016, the domination of applications rejected under Article 100 of the Act on Foreigners of 2013 decreased down to 54% of all

the rejected applications. Another basis for rejecting the applications was Article 104(1) of the Code of Administrative Conduct. Applications rejected on this ground amounted to 42% of the total number of rejected applications.

It is worth analysing how the number of submitted applications has been changing in the different years.

**Tab. 1.** Total number of applications for family reunification in 2011–2017

Year	Total number of applications			Total number of approved applications			Total number of rejected applications		
	M	K	TOTAL	M	K	TOTAL	M	K	TOTAL
2011	4099	4189	8288	3803	4167	7970	97	59	156
2012	4548	4942	9490	4053	4358	8411	56	40	96
2013	4602	5017	9619	4029	4431	8460	58	28	86

In the period covered by the analysis, a stable level of submitted applications can be observed. When it comes to both the total number and the number of accepted applications, women outnumber men each year. It is also noticeable that the prevalence of

women increases each year. The number of men is nearly two times higher than the number of women only when it comes to the number of rejected applications.

**Tab. 2.** Total number of applications for family reunification in 2014–2015

Year	Total number of applications			Total number of approved applications			Total number of rejected applications		
	M	K	TOTAL	M	K	TOTAL	M	K	TOTAL
TOTAL 2014	5162	4674	9836	4279	4920	9199	149	204	353
Including: Individuals covered by international protection: – Refugees – subsidiary protection beneficiaries; – unaccompanied minors (UAMs). – 2014	7	4	11	12	10	22	0	0	0
TOTAL 2015	4943	3858	8801	4419	5419	9838	68	92	160
Including: Individuals covered by international protection: – Refugees – subsidiary protection beneficiaries; – unaccompanied minors (UAMs). – 2015	23	29	52	57	27	84	0	0	0

The table above shows additional information on immigrants applying for family reunification who are placed in the categories covered by international protection, which include refugees, subsidiary protection

beneficiaries and unaccompanied minors. It is significant that in 2015, the number of immigrants covered by international protection was 5 times higher than in 2014.

**Tab. 3.** Total number of applications based on the nationality of the applicant in 2016–2017

YEAR	SUBMITTED	APPROVED	REJECTED
UKRAINE	13360	8242	419
RUSSIA	1530	1048	40
BELARUS	1247	817	32
VIETNAM	1077	665	58
CHINA	1018	779	21

When reviewing the applications submitted by citizens of the different countries it should be noted that the highest number of applications for family reunification was submitted by immigrants of Ukrainian origin. The other four countries submitted a similar number of applications, but even when summed up together, they amount to only 27% of all

submitted applications, while the Ukrainian applications constitute 73% of all applications. When it comes to Russia, citizens of Chechnyan origin were the majority. It is worth noting that in 2017 – when compared to 2016 – the number of submitted applications increased in every category apart from China.

**Tab. 4.** Total number of rejected applications for family reunification based on the reason of rejection – 2014

THE RESIDENCE PERMIT FOR A SPECIFIED PERIOD	
<b>Act of 13 June 2003 on foreigners (codification: journal of laws of 2003 no 128, item 1175 as amended)</b>	
Failure to comply with the requirements set out in Articles 53–53b	67
Decision of the voivode competent for the place of the foreigner's residence	19
No spouse holding Polish citizenship	13
As a member of a family of a foreigner referred to in Article 54 not arriving on the territory of the Republic of Poland or not residing on that territory in order to reunite with family	11
Foreigner is not a spouse or an adult child of the foreigner referred to in Article 54 and for at least 5 years has not resided on the territory of the Republic of Poland on the basis of a residence permit for a specified period of time on the grounds listed above	9
Marriage to a Polish citizen, or to a foreigner residing on the territory of the Republic of Poland referred to in Article 54 that has been entered into in order to circumvent the provisions on the residence permit granting for a specified period	8
Submission of an application or attachment of documents containing false personal data or false information	5

Absence of: health insurance in the meaning of provisions on health care benefits financed from public funds or a proof of an insurer covering the costs of health care on the territory of the Republic of Poland and a stable and constant source of income which suffices to cover his/her subsistence expenses and the subsistence expenses of family members being his/her dependants in the cases referred to in Article 53(1)(1, 2, 7, 9, 13, 14) and Article 53a(1)(1)(b)(2, 3b, 4) and sufficient funds to cover his/her subsistence and return costs in the cases referred to in Article 53(1)(16-18) and in Article 53a(1)(1a)	5
No work permit or an employer's written statement about the intention to employ the foreigner, if the work permit is not required	4
In the course of proceedings for granting a residence permit for a specified period the foreigner has given false testimony or withheld the truth or counterfeited or forged a document which he/she intended to use or used as an authentic document	4
Circumstances of the case indicate that the purpose of the foreigner's entry or stay on the territory of the Republic of Poland is or will be different than declared	4
It is required for reasons of state defences or security, the protection of public safety and order or it is in the interest of the Republic of Poland;	3
Marriage as been entered into in order for the foreigner to circumvent the provisions on the residence permit granting for a specified period on the territory of the Republic of Poland due to lack of spouses' unanimity as for their personal data and other important information concerning them	2
Marriage as been entered into in order for the foreigner to circumvent the provisions on the residence permit granting for a specified period on the territory of the Republic of Poland due to lack of common language between the spouses	2
The foreigner's data are in the Schengen Information System for the purpose of denying entry;	2
Submission of an application or attachment of documents containing false personal data or false information	1
The permit has been applied for on the grounds of a marriage to a Polish citizen, or to a foreigner residing on the territory of the Republic of Poland referred to in Article 54, and the marriage has been entered into in order to circumvent the provisions on the residence permit granting for a specified period	1
Marriage as been entered into in order for the foreigner to circumvent the provisions on the residence permit granting for a specified period on the territory of the Republic of Poland due to lack of compliance with legal requirements arising from entering into marriage by the spouses	1
Marriage as been entered into in order for the foreigner to circumvent the provisions on the residence permit granting for a specified period on the territory of the Republic of Poland due to separate living quarters	1
Lack of economic activity pursuant to regulations in force in the Republic of Poland, which is beneficial to the national economy and which, in particular, contributes to the growth of investments, transfer of technology, implementation of profitable innovations or creation of new jobs	1
Marriage as been entered into in order for the foreigner to circumvent the provisions on the residence permit granting for a specified period on the territory of the Republic of Poland due to the spouses never meeting before entering into the marriage	1
The foreigner was diagnosed with or is suspected to have succumbed to an illness or an infection subject to obligatory treatment pursuant to the Act of 5 December 2008 on Preventing and Combating Infections and Infectious Diseases Affecting Humans (Journal of Laws of 2009, No 234, item 1570; Journal of Laws of 2009, No 76, item 641; and Journal of Laws of 2010, No 107, item 679 and No 257, item 1723) and the foreigner does not consent to the treatment.	1
<b>The Code Of Administrative Procedure</b>	
Issuing a negative decision by the public administration body	4
Issuing a decision resolving the case in whole or in part or concluding the case within a given instance in a different way	3

<b>Act of 12 december 2013 on foreigners (journal of laws, item 1650)</b>	
Applying the provisions set out in the Act on Foreigners of 2003 to administrative proceedings which have not been concluded by the day of entry into force of said act by a final decision and which had been initiated before that day	6
Revocation of the permit due to the foreigner no longer complying with the requirements of granting him/her a permit because of the declared purpose of residence	1
Refusal to grant or revocation of the permit by decision of the voivode competent for the place of the foreigner's residence	1
<b>TEMPORARY RESIDENCE PERMIT</b>	
<b>The Code Of Administrative Procedure</b>	
Issuing a negative decision by the public administration body	16
<b>ACT OF 12 DECEMBER 2013 ON FOREIGNERS</b>	
No compliance with the requirements of granting the foreigner a temporary residence permit because of the declared purpose of residence or because the circumstances that are the reason behind the application for the permit do not justify that person's residence within the territory of the Republic of Poland for the period of time not exceeding 3 months	62
Refusal to grant or revocation of the temporary residence permit by decision of the voivode competent for the place of the foreigner's residence	10
Lack of compliance with the requirements necessary for family reunification, i.e. the foreigner stays on the territory of the Republic of Poland or stays on this territory for family reunification and is a family member of a foreigner residing on the territory of the Republic of Poland based on a permanent residence permit, based on a long-term resident's EU residence permit, in connection with granting him/her refugee status, in connection with granting him subsidiary protection, for at least 2 years based on further temporary residence permits, including directly before submitting the application for temporary residence permit for a family member – based on a permit granted him/her for a period of stay of at least 1 year; based on a temporary residence permit referred to in Article 151(1), or based on a temporary residence permit granted for the purpose of conducting research, if the foreigner is in possession of a residence permit referred to in Article 1(2)(a) of the Council Regulation (EC) No 1030/2002, bearing the term 'researcher' issued by another Member State of the European Union, if the agreement on hosting the foreigner for the purposes of conducting a research project concluded with an adequate research unit of this State provides for research to be carried out also on the territory of the Republic of Poland, based on a temporary residence permit granted for the purpose of employment in a profession requiring low qualifications, or in connection with granting authorisation to stay for humanitarian reasons	4
Refusal to grant the permit in the cases referred to in Article 100(1)(1-5, 8, 9)	2
The foreigner submitted an application containing false personal data or false information or attached to it documents containing such or information in the proceedings for granting a temporary residence permit	2
For the purpose of family reunification – in the case of a foreigner married to a foreigner referred to in Article 159(1)(1) – when the marriage has been entered into in order to circumvent the provisions of the act	1
For reasons of state defences or security or protection of public safety and order	1
<b>TOTAL</b>	<b>155</b>

In 2014, the main reason for rejecting applications for family reunification was a failure to comply with the requirement set out in Article 53–53b of the Act of 13 June 2003 on Foreigners. Common reasons for refusal also included lack of compliance with the requirements of granting the foreigner a temporary residence permit because of the declared purpose of residence or because the circumstances that are

the reason behind the application for the permit do not justify that person's residence within the territory of the Republic of Poland for the period of time not exceeding 3 months, decision of the voivode competent for the place of the foreigner's residence, issuing a negative decision by the public administration body as well as no spouse holding Polish citizenship.

**Tab. 5.** Total number of rejected applications for family reunification based on the grounds of rejection  
– 2015

<b>The Code Of Administrative Procedure</b>	
Issuing a negative decision by the public administration body	46
<b>Act of 12 december 2013 on foreigners (journal of laws, item 1650)</b>	
No compliance with the requirements of granting the foreigner a temporary residence permit because of the declared purpose of residence or because the circumstances that are the reason behind the application for the permit do not justify that person's residence within the territory of the Republic of Poland for the period of time not exceeding 3 months	107
Submission of the application during an illegal stay on the territory of the Republic of Poland or residing on that territory illegally	2
For the purpose of family reunification – in the case of a foreigner married to a foreigner referred to in Article 159(1)(1) – when the marriage has been entered into in order to circumvent the provisions of the act	2
Refusal to grant or revocation of the temporary residence permit by decision of the voivode competent for the place of the foreigner's residence	1
The foreigner's data are in the Schengen Information System for the purpose of denying entry;	1
The foreigner submitted an application containing false personal data or false information or attached to it documents containing such or information in the proceedings for granting a temporary residence permit	1
<b>TOTAL</b>	<b>160</b>

In 2015, the number of rejected applications remained similar to the last year, but the grounds on which they were rejected appeared to be more heterogeneous. It was mainly due to the fact that the purpose of stay of the foreigner applying for family reunification did not justify his/her stay in Poland.

Negative decisions of the public administration bodies were not as common in relation to applications submitted in the matter covered by the analysis, however, it they still constituted a significant portion of the rejections.

**Tab. 6.** Total number of rejected applications for family reunification based on the grounds of rejection  
– 2016 (the first 6 months)

<b>The Code Of Administrative Procedure</b>	
Issuing a negative decision by the public administration body	14
<b>Act Of 12 December 2013 On Foreigners (Journal Of Laws, Item 1650)</b>	
No compliance with the requirements of granting the foreigner a temporary residence permit because of the declared purpose of residence or because the circumstances that are the reason behind the application for the permit do not justify that person's residence within the territory of the Republic of Poland for the period of time not exceeding 3 months	18
The foreigner submitted an application containing false personal data or false information or attached to it documents containing such or information in the proceedings for granting a temporary residence permit	1
<b>TOTAL</b>	<b>33</b>



In 2016 – despite only data from the first 6 months being available – the number of rejected applications for family reunification dropped significantly. Like in the previous years, the reasons behind refusals were lack of justification of the foreigner's stay in Poland and negative decisions of the public administration bodies. These two reasons amounted to 97% of all negative decisions concerning applications for family reunification.

Polish legislation on family reunification is formulated properly and adapted to the current situation of Poland. When it comes to family reunification, most of the Polish provisions are compatible with the Union provisions. However, it is worth noting that in Poland, a partner is not considered a member of the family if not married to the foreigner or if the partner is of the same sex, since Polish legislation does not provide for such possibility. Liberalisation of provisions introduced in the Act of 12 December 2013 on Foreigners waived some of the requirements concerning family members who were already

granted refugee status or subsidiary protection in Poland. Regarding violations of the law in the field of family reunification in Poland, such situations are merely occasional incidents related mainly to sham marriages.

The only problems occurring in the process of consideration of applications are huge bureaucracy and difficulties related to documenting and evaluating family relationships. However, the cooperation between Polish authorities should be considered positive in this context. During the administrative proceedings a number of verifying actions is conducted, on which depends the settlement of a given case. An example of such actions is the cooperation between the Office for Foreigners and the Commander-in-Chief of the Border Guard Unit, Voivodeship Police commander, and the Head of the Internal Security Agency concerning the foreigner and about the threat he/she may pose while on the state's territory.





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Stats about residence permits look interesting for reasons related to family reunification. In some countries, they account for around half of all applications issued – Croatia, Greece, Luxembourg, Spain, Belgium, Italy, Portugal and Germany belong to such countries. There are also countries where permits for a family reunification constitute a very small percentage of issued permits. This is the case in Lithuania, Cyprus, Great Britain, Malta, Ireland and Poland. In Poland, the above indicator is only 1%, being the lowest percentage of permits for family reunion in the total number of permits in the entire European Union. The number of accepted applications for family reunification submitted in 2017 by third-country nationals in Poland amounted to only 9,000. Poland maintains a balance between respect for the pursuit of family integrity and ensuring protection of the interests of the state and respect for the rule of law.