

“Sarkozy Law” of November 26, 2003 concerning “The Control of Immigration, the Residence of Foreigners in France, and the Nationality”.

The principal objectives of law # 2033-1119 of November 26, 2003 (JO 27 November) are on the one hand to fight illegal immigration and its networks, and on the other to facilitate the integration of legally admitted aliens. It also regulates the repatriation procedures, and the measures prohibiting entry into the French territory. It amends the Labor Code (*Code du travail*) and **ordinance # 45-2658 of November 2, 1945** with regard to entry and residence of foreigners in France.

The **general provisions** of the new law include the following:

“The Government reports to Parliament once a year on the pluri-annual orientation of immigration policy” (**preamble of the 1945 ordinance, as amended**)¹. “Any foreign citizen age 18 or more who wishes to reside in France must, upon expiration of a period of three months, obtain a “*carte de séjour*” (residency permit), *i.e.* either a “*carte de séjour temporaire*” (temporary residency permit) or a “*carte de résident*” (10-year residency permit)” (**Art. 6**). “Foreign citizens must at all times be able to show, at the request of the officers of judicial police, the certificates or documents which authorize them to circulate or reside in France” (**Art. 8**). The law specifies that the term “in France” includes metropolitan France, as well as its overseas departments” (**Art. 3**).

Based on their experience, the ÉLAN team of expatriation consultants would draw your attention to the following **principal changes** which affect the day-to-day management of impatriation:

1. Citizens of the European Union, of the European Economic Zone (EEE)² and Switzerland

Citizens of these countries no longer need a “*titre de séjour*” (official certification) to establish their residence in France; they may, however, obtain such a certificate upon request. (**Article 9-1 of the 1945 ordinance, as amended**).

Until June 1, 2004³ Swiss citizens who wish to work in France will nevertheless need a work permit (“*autorisation de travail*”).

¹ The texts of the law are either paraphrased or reproduced in free translation.

² A non-exhaustive listing of EEE members includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxemburg, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom.

³ Articles 4 and 10 of the June 21, 1999 Agreement between the Swiss Confederation and the EU on the free movement of persons.

2. Citizens of the new EU member countries⁴

For the time being, citizens of the ten countries expected to join the European Union in May 2004 will still need a “*titre de séjour*”.

3. The “*cartes de séjour temporaires*”

Article 11 of the 1945 ordinance, as amended, provides that the validity of the “*carte de séjour temporaire*” cannot exceed one year and the validity of the documents and visas required for entry into France. The “*carte de séjour temporaire*” may bear the mention “visitor” (for a foreign citizen who does not wish to work in France), “student”, “scientist”, “artistic and cultural activity”, “private and family life” (see also below, for “family regrouping”), or the particular professional activity the foreign citizen is authorized to undertake.

Unless granted a renewal or a “*carte de résident*”, the foreign citizen must leave France upon expiration of the “*carte de séjour temporaire*”.

- **Researchers:** foreign citizens engaged in research or other specified activities may request the renewal of their “*carte de séjour temporaire*” for a period of one to four years (**Art. 13 bis**)
- **Family regrouping:** this right is given to any foreign citizen who has been a regular resident for more than one year. It concerns the foreign resident’s spouse, and children up to age 18. (**Art. 29**). In addition, a temporary residence card “for private and family life” (*carte de séjour temporaire “vie privée et familiale”*) is issued as a matter of right (**Art. 12 bis**) to:
 - any non-polygamous foreigner married to a French citizen, as long as his/her entry into France has been lawful, that they still live together, that the spouse retains his/her French citizenship, and in the event that the marriage has been concluded abroad, that it has previously been recorded in the French “*registre d’état civil*” (official personal record).
 - any foreign citizen married to a foreigner holding a “*carte de séjour temporaire*” with the mention “*scientifique*”, provided that his/her entry into France has been lawful;
 - any foreigner who is the parent of a minor holding French citizenship and residing in France, provided that he/she participates effectively in the raising of the child since its birth, or since more than a year.

⁴ Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia.

- any foreigner born in France, who has resided there without interruption for at least eight years, and who has attended after age ten a French school for at least five years, provided that his/her claim is filed between the ages of 16 and 21.

This “*carte de séjour*” does entitle the holder to undertake any professional activity.

4. The “*cartes de résidents*”

Upon proof of **five years (instead of three) of uninterrupted regular residence in France** a foreign citizen may claim a 10-year “*carte de résident*”. This will be granted or denied depending upon (i) his/her intention to establish a continuing residence in France (ii) his/her means of living, (iii) if appropriate, the conditions of his/her professional activities, and (iv) his/her “republican⁵ integration” (**Art. 14 of the 1945 ordinance, as amended**)

The “*carte de résident*” is also issued, as a matter of right (**Art. 15**):

- to any foreigner who has been married for at least three years (in stead of one) with a French citizen.
- up to age 21, to the dependent foreign child of a French parent.
- to the parents (“*ascendants*”) of a French citizen and his/her spouse, upon proof that they are dependent upon him.

The “*carte de résident*” gives its holder the right to exercise any profession of his/her choice (Art. 17).

The “*carte de résident*” is cancelled if its holder leaves the territory of France for more than three years (**Art. 18**).

5. Minor Children

Under **Article 9 of the 1945 ordinance**, foreign citizens between age 16 and 18 who wish to exert a remunerated professional activity are entitled as a matter of right to a “*carte de séjour temporaire*” or a “*carte de résident*”. Minors up to age 18, as well as minors who have entered France with a visa of more than three months to pursue their studies, will, upon demand, be issued a “*document de circulation*” (traveling document).

⁵ This expression refers to the foreigner’s willingness to live according to the French Republic laws, *i.e.* learning French, ... (It has nothing to do with political ideas).

6. The employer of foreign citizens without a “*titre de travail*” (work permit)

The law introduces aggravated sanctions: *five years imprisonment and a fine of 15.000 Euros* for any **employer** (physical or legal person) who employs, directly or indirectly, a foreign citizen who does not have a work permit allowing him to undertake a salaried activity (previous sanction: three years imprisonment, and a fine of 4.500 Euros). This is in fact a violation of **article L.341-6 of the Code du travail**⁶.

The fine is multiplied by the number of illegal foreign workers involved. The sanction is increased to 100.000 Euros and ten years imprisonment, plus seizure of the assets and closing of the premises, where the offense is committed by an organized group (“*bande organisée*”).

The employers are required to verify the existence and validity of the work permits of their foreign employees. They may consult the “Préfectures” to ascertain that the work permit is not counterfeit. The employer’s personnel register must specify the employee’s nationality, as well as the type and number of his/her work permit.

If the guilty employer is himself a foreigner, he may be prohibited from residing in France for a period of up to five years, as well as from entering the French territory for up to ten years, or definitively.

In the National Assembly debate, it had been suggested to reverse the penal responsibility, and punish the foreign worker. This proposal was not retained: the worker is still considered the victim, and his employer the culprit. On the other hand, a foreign worker exercising a professional activity without the appropriate work permit may be deprived of his “*carte de séjour temporaire*” and expelled from the country.

Air or maritime transport firms are also responsible for introducing onto French territory any foreigner without a travel document or, where appropriate, a visa. The penalty amounts to a maximum of 5000 Euros.

Beyond this, any person who has directly or indirectly assisted, or attempted to assist the illegal entry, circulation or residence in France of a foreigner may be punished by imprisonment for up to five years, and – according to current texts – a fine of up to 200.000 French Francs - (**Article 21 of the 1945 ordinance, as amended**).

⁶ “Nobody may, directly or through a third person, retain, maintain at his service or otherwise employ for any period of time a foreign citizen who does not hold a permit authorizing him to carry out a salaried activity in France”.

- **Labor Inspectors:** they are now enabled to inquire about any offenses relating to the illegal entry, circulation and residence of foreigners in France. If they ascertain such an offense, they may on their own issue a notification or “ticket” (*“procès verbal”*). They can also request to be given the identity and address of employers and salaried staff of any firm subject to the Labor Code.
- **Repatriation Expenses:** any firm that employs foreign workers without the appropriate work permit is held to pay a lump sum contribution for their repatriation to the country of origin (in addition to the payments due to the OMI (*“Office de la Migration Internationale”*) – **(Art. 21 quinquies)**).

7. Issuance of the “*titre de séjour*”

Article 12 quarter of the 1945 ordinance, as amended, provides that a “*Commission pour le Titre de Séjour*” is established in each “*Department*” (sub-region). This committee is consulted each time whether a “*carte de séjour*” is not granted or not renewed.

8. Visas: proof of domicile (“*justificatifs d’hébergement*”) (*excerpts from the 1945 ordinance, as amended*)

Article 5

“To enter France, any foreigner must possess:

- (1) The documents and visas required under the international conventions and applicable regulations;
- (2) Certification of domicile (“*justificatif d’hébergement*”), documents concerning his/her means of living, the assumption by a certified insurance operator of the medical and hospital charges, including social assistance, relating to treatment he/she might receive in France, as well as guarantees concerning his/her repatriation;
- (3) Documents required for the exercise of a professional activity.

Any refusal of entry into the territory must be based on a reasoned written opinion.

Article 5-3

“Any foreigner who wishes to remain in France for a period not in excess of three months for a family or private visit, must provide proof of domicile (“*justificatif d’hébergement*”). This takes the form of a signed declaration (“*attestation*”) by the person who proposes to provide a place of living for the visiting foreigner, or that person’s legal representative, and validated by the administrative authority. This declaration constitutes the document specified in the Convention signed in Schengen⁷ on June 19, 1990 to justify the conditions of residence for a private or family visit.”

9. Visas: Fingerprints

Article 8-3 of the 1945 ordinance, as amended, provides that any foreigner who is not a citizen of the European Union, of the EEE or of the Swiss Confederation, who files a request for a residence permit (“*titre de séjour*”) may be fingerprinted and photographed; fingerprints and photographs will be computer-recorded and processed, in line with the conditions set by the CNIL⁸.

A similar measure is extended to foreign citizens who apply with a French consulate outside the Schengen area for a visa to sojourn in France or elsewhere in the Schengen area. If the visa is issued, it will be required that the visitor be fingerprinted and photographed.

10. Foreign official personal records (“*actes d’état civil*”)

Article 34 bis of the 1945 ordinance, as amended, provides that French diplomatic or consular officers may, on their own initiative or where mandated by French authorities, legalize or verify the authority of any foreign official personal record if any doubts arise with respect to it.

⁷ The Schengen area includes the following countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden.

⁸ The CNIL: *Commission Nationale de l’Informatique et des Libertés* – National Committee for Computer Data Processing and Liberty. This committee enforces the law guaranteeing the respect of people’s freedom and privacy when information about them is stored in computers.