

Changes in the code concerning the entry and residence of foreign nationals¹

January 2005

The so-called “Sarkozy Law” of November 26, 2003 has been followed up by an implementation circular of January 20, and an ordinance of November 24, 2004. This recent ordinance (No.2004-1248) relates exclusively to the **legislative part of the code of entry and residence of foreign nationals**. We shall consider in the ten principles presented below the implications of this ordinance with regard to impatriation

[N.B. The code of entry and residence of foreign nationals, as amended by the November 24, 2004 ordinance, reiterates – often with the identical language – the terms of the Sarkozy Law and its implementation circular, as discussed in our previous articles]

1. European nationals

Article L.121-1 of the code of entry and residence of foreign nationals specifies that European Union and European Economic Space [EEE] nationals are no longer required to have a residence permit issued by the French authorities, but may obtain one upon request.

This same article specifies, however, that **if the treaty by which an EU member has been admitted to the Union provides for transitional measures, its nationals wishing to work in France must obtain a residence permit.**

Concretely, this means that nationals of Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, Slovakia and Slovenia who plan to come to France to work must first apply for a work permit, and once this has been issued apply for a residence permit.

2. Housing attestation (*Justificatif d'hébergement*) and medical insurance

Article L.211-1 of the code of entry and residence of foreign nationals, as amended by the November 24, 2004 ordinance, specifies – in the same terms as stated in the Sarkozy law – that certain categories of foreign nationals planning to come to France must present a housing attestation and proof of coverage by an agreed operator of their medical and hospital expenses.

¹ All quotations from official French texts are free translations.

Paragraphs -3 to -10 of article L.211 provide as follows with regard to the modalities regarding the housing attestation: “any foreign national who wishes to sojourn in France for a period of up to three months for a family or private visit must present an attestation signed by the person (or that person’s legal representative) who intends to provide accommodations for him, and validated by the competent administrative authority.”

The housing attestation must be “**submitted for validation to the mayor of the municipality to be visited.**” This means that neither the police nor the *gendarmerie* can any longer validate the attestation. The host who furnishes the attestation must also “undertake – in the event that the visitor would not himself do so – to cover the visitor’s living expenses while in France”. Whenever necessary, the host may also subscribe to **health insurance** coverage for the visitor.

Note, however, that the mayor may refuse to validate the attestation if it appears “from the documents submitted in support of the attestation, or from an inspection of the host’s domicile, that the visitor cannot be received there under **normal conditions of accommodation.**”

In order to carry out such an inspection, the municipal authorities or the OMI must obtain the host’s written approval, without which they cannot enter his residence. If the host refuses, the mayor will not validate the attestation of housing.

Note that the applications for the validation of housing attestations may be electronically stored “in order to fight against procedural frauds”, but only where so advised by the CNIL².

A 15 Euro fee, paid in the form of fiscal stamps, will be charged to the host for the validation of the housing attestation.

The following visitors are exempted from the requirement of a housing attestation: persons who come to France for humanitarian reasons or for a cultural exchange, for urgent medical reasons, for a funeral, or to visit a close relative suffering from a serious illness.

3. Refusal to issue a visa

Consular authorities who reject a visa application are no longer required to specify in writing the reasons for the refusal, except where the following applicants are concerned (article L.211-2):

- Family members of an EU or EEE national
- Spouses, minor children below age 21, and parents of a French citizen
- Minor children legally adopted by French citizens under the law of their country of origin;
- Foreign nationals who qualify for family regrouping
- Foreign nationals who have been issued a French work permit.

² National Commission for Informatics and Liberties.

4. Temporary residence card

- **General provisions**

The temporary residence card may be issued for a maximum of one year (article L.311-2), and may be renewed for a second period not in excess of one year.

- **Scientific workers** (*“scientifiques”*)

The temporary residence card of scientific workers may be renewed for a period of up to four years (article L.313-4).

Whenever he is granted a renewal for more than one year, the **scientific worker is entitled to be joined by his family under the family regrouping procedure**. Under this procedure, the family members are issued a temporary residence card with the mention *“vie privée et familiale”*, that entitles them to carry out any professional activities they may wish.

Foreign holders of temporary residence cards who are not scientific workers cannot apply for family regrouping. However, their family members may accompany them as “visitors” not authorized to work³.

- **Withdrawal of the temporary residence card by the French administration**

“The temporary residence card may be withdrawn where the foreign national is the object of a penal procedure” (article L.313-5). It may also be withdrawn from the holder who employs foreign workers without the requisite work permits, or to a worker who carries out a professional activity, whether or not salaried, without the appropriate authorization (article L.313-5).

5. Travel document (*“Document de Circulation”*) for minor children

Minor children authorized to reside in France are not given a residence permit. They are issued a “travel document” which is now absolutely required, as provided in article 321-4 of the code concerning the entry and residence of foreign nationals, as amended: **“foreign minors of less than eighteen years of age [...] are issued, upon demand, a ‘Document de Circulation’.”**

³ There is an exception to this rule: the spouses of senior executives who find a job with a gross monthly salary of more than 2000 Euro can request a change of status entitling them to a temporary residence card with the mention “salarie”; this request may not be refused.

Beyond this, foreign children born in France are given a “*titre d'indentité républicain*” upon presentation of the family booklet (“*livret de famille*”) (article L.321-3.)

6. 10-year resident card

- **When issued**

In order to receive a resident card valid for ten years – renewable as a matter of law – giving him the right to work in the profession of his choosing, the foreign national must have lived in France without interruption for a period of at least **five years**. **This period is reduced to two years in the case of family regrouping or marriage** (as long as the joint living [*communauté de vie*] has not been discontinued).

The applicant must have the intention of settling permanently in France, and submit proof of his “republican integration” (“*intégration républicaine*”)

“The delivery to the foreign national of a first resident card is contingent upon his republican integration in French society, as demonstrated particularly by a sufficient familiarity with the French language, as well as with the principles governing the French republic. In order to ascertain the degree of integration of the applicant, the competent authority may seek the advice of the mayor of the place of residence of the foreign national who applies for the resident card” (article L-314-2)

- **Special case of claimants or witnesses in penal proceedings**

Whenever a foreign national files a penal claim, or appears as a witness in a penal case, he will be issued a temporary residence permit for the duration of the penal procedure. This permit allows him to work. If the defendants in the penal suit filed by him – or in which he appears as a witness – are definitively sentenced, the foreign claimant or witness may be granted a 10-year resident card (art.L.316-1).

- **Withdrawal of the resident card by the French administration**

No residence card may be issued to a foreign national living in polygamy or to his spouses. If such a card has been issued by mistake it must be withdrawn (article 314-5).

The residence card will also be withdrawn from any foreign national who employs or has employed foreigners without a work permit (article 314-6).

Last, the resident card of a foreign national who has resided abroad for more than three consecutive years will be declared to have expired. This period “may be extended upon demand of the person concerned either before his departure from France, or while he resides abroad.” (article L 3174-7)

7. “Broadened” family regrouping

While the family regrouping procedure was intended for family members whose links with the foreign visitor or resident are considered as “traditional” (e.g. children, parents, married spouses), paragraph seven of article 313-11 refers to a broader concept of “personal and family linkages”. In fact, a temporary residence permit with the mention “*vie privée et familiale*” may be issued to:

- any foreign national not living in polygamy, if his personal and family linkages in France are such that refusing him the authorization to live in France would violate his right to the respect of his private and family life, and would thus amount to a disproportionate sanction as measured against the reasons for the denial.
- The above applies also – although not automatically -- to partners in civil unions (PACS).
- It should be remembered that a temporary residence permit with the mention “*vie privée et familiale*” entitles the holder to exercise any professional activity of his choice.

8. Blank marriage

A blank marriage is a marriage concluded with the sole objective of obtaining – or allowing the other partner to obtain – a residence permit or the French nationality. Blank marriages, or attempts to organize them, are punished with **five years imprisonment and a fine of 15.000 Euro**. If the offense is committed by an organized group, the sanction is increased to 10 years imprisonment and a fine of 750.000 Euro.

The offense may also entail a prohibition to reside or enter the French territory, or to exercise the professional activity which facilitated the blank marriage.

9. Foreign nationals in irregular status

- **The foreign national in irregular status**

Article L 621-1 of the code concerning the entry and residence of foreign nationals specifies that any **foreign national who has entered and resided in France illegally**, or who has remained in the country beyond the period authorized by his visa, “will be punished by one year’s imprisonment and a 3750 Euro fine.

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The court may also prohibit the reentry or residence in France of the person concerned for a period of up to three years. This prohibition implies, as a matter of law, that the authorities can expel the foreign national from the territory of France, as the case may be after serving the sentence of imprisonment.

- **Persons who have helped the illegal entry or residence**

Any person who has helped, directly or indirectly, the illegal entry or residence in France of a foreign national faces a **sanction of five years' imprisonment and a 30.000 fine** (article L 622-1). Moreover, the offender may be **prohibited from residing** (for up to five years) **or entering French territory** (for up to ten years, or definitively); he may be **expelled**; his **driver's permit may be suspended** (for up to five years); **the means of transport used for the illegal entry may be confiscated**; and the offender may be **prohibited from exercising** (for up to five years) **the professional activity** by which he facilitated the foreign national's illegal entry.

The punishment is increased to ten years' imprisonment and a 750.000 Euro fine where the offense is carried out by an organized group, where it endangers the life, integrity and dignity of the foreign national concerned, and/or when it involves minors.

These sanctions are not extended to the offender's family, nor are they applicable where the guilty person acted in response to "an actual or imminent danger", or to "safeguard the life and physical integrity" of the foreign national.

10. Air- or maritime transport companies

Air and maritime transporters are required to exercise due care in verifying the validity of the travel documents, and the documents concerning **the entry** of their passengers into France. In fact, they are liable for the costs incurred if – once disembarked – the passenger is not allowed entry into France.

"When a foreign national is not allowed to enter France (...), the air- or maritime transport enterprise by which he arrived is required to return him, at the request of the competent authorities (...) to the point where he has started to use that enterprise's means of transport or, where this is not possible, to any other place where he may be admitted."

From the moment when his entry into France is disallowed, the transport company that has brought the passenger to France has to assume the cost of his sustenance until he can be repatriated or otherwise removed (article L. 213-4 and -6).

Moreover, the air- or maritime transport company that allows a passenger to disembark on French territory without the appropriate travel document and, as the case may be, the appropriate visa, faces a fine of up to 5.000 Euro. Note, however, that a statute of limitations of one year applies to this penalty.

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If the transport company operates with an agreed digital system [*“un dispositif agréé de numérisation”*], the fine may be reduced to 3.000 Euro. On the other hand, the fine must be paid immediately if the foreign passenger disembarked by the transport company is a minor not accompanied by his legal representative. In case of failure by the transport company to pay this amount, the fine is increased to 10.000 and 6.000 Euro, respectively.

The fine is not applicable if the foreign national is an asylum seeker whose asylum request is not “manifestly unfounded”, or if the transport enterprise can prove that it was shown the required documents, and that they did not present “manifest irregularities”.

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