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Relocating to Portugal

Visas and Legal Framework

by

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VISAS AND LEGAL FRAMEWORK

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | Immigration: <i>legal framework</i> | 5 |
| II. | Temporary stay visas: <i>researchers, teachers and highly-skilled workers</i> | 13 |
| III. | Participation in a voluntary service scheme. | 14 |
| IV. | Temporary stay visas: <i>exceptional cases</i> | 15 |
| V. | Family Reunification | 21 |
| VI. | Visas: <i>other considerations</i> | 27 |
| VII. | Long-term Resident Status. | 47 |
| VIII. | Non-Habitual Residents. | 51 |
| | Notes | 55 |

Note from the author

This eBook is an extract of the complete work
“Relocating to Portugal - Useful Information”

Other chapters include:

- Visas and Legal Framework
- Marriage and Cohabitation
- Your Rights to Medical Care
- Access to Education
- Recognition of Qualifications
- Social Security Entitlements
- Acquiring Portuguese Citizenship
- Portuguese Tax Codes
- Golden Residence Permit

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I. Legal Framework

This guide is a compilation of information relating to the rights and obligations of immigrants who choose Portugal as their destination. It is organised into sections, each referring to a specific area: legal framework; temporary stay visas for researchers, teachers and highly-skilled workers, exceptional cases; participation in a voluntary service scheme; long-term resident status; and non-habitual residents.

What are the requirements for entry into Portugal?

To enter Portugal foreign nationals must:

- Be holders of a valid and recognised passport. This document must be valid for a period that is at least three months more than the intended duration of stay, except in the case of a foreign national returning to his country of residence;
- Be holders of an entry visa that is valid and appropriate to the purpose of the visit (the visa only gives the holder the right to present himself at a border checkpoint and request entry into the country, and does not confer an automatic right to enter Portugal);
- Have sufficient means of subsistence during the period of stay and for travel back to the country where they are guaranteed entry. The “means of subsistence” requirement may be dispensed with on presentation of a statement on accommodation/bearing of costs, which is signed by a Portuguese national or a foreign national with permanent residence authorisation and which guarantees the means of subsistence during the stay in Portuguese territory and the reimbursement of removal expenses, in the case of illegal stay.

The acceptance of the statement on accommodation/bearing of costs by SEF (Foreign Office) will depend on proof of the financial capacity of the person making the statement.

Under this law, the statement on accommodation/bearing of costs may by itself form the basis of a claim against that person for payment of the removal expenses in case of illegal stay of the foreign national.

Can I enter Portugal without a visa?

Foreign nationals may enter Portugal without a visa when they are:

- Nationals who have a valid residence permit, an extension of stay permit or, in the case of the staff of accredited embassies and consulates, that have a valid identity card issued by the Ministry of Foreign Affairs;
- Nationals who benefit from a visa exemption under the terms of international conventions to which Portugal is a party.

Can I be refused entry into Portugal?

Yes, your entry into Portugal may be refused if:

- You are not the holder of a valid and recognised passport;
- You are not the holder of a visa that is valid and appropriate to the intended purpose of the visit;
- You have presented a travel document that is false, has been falsified, belongs to another or was illegally obtained;
- You do not have sufficient means of subsistence;
- You represent a danger or serious threat to public order, national safety, public health or international relations;
- You are included persons banned from entering the country.

The decision to refuse entry into Portugal rests with the Director General of *SEF (Serviço de Estrangeiros e Fronteiras)*.

What can I do about the refusal to allow entry?

The decision to refuse entry may be appealed against before the Administrative Courts.

If I appeal against the decision, am I allowed to enter the country?

Appealing against the decision has a devolutive effect (transfers the power to make the decision to another person or body) but does not suspend the decision to refuse entry.

What rights do I have as a foreign national refused entry?

During his stay in the international area of an airport or at a temporary reception centre, the foreign national who has been refused entry into Portugal can:

- Communicate with the diplomatic or consular representative of his country or with any person of his choice;
- Use the services of an interpreter;
- Have access to health care, including the services of a medical practitioner, where necessary;
- Be provided with the necessary support to meet his basic needs;
- Have access to the services of a lawyer (paid for by himself).

In what cases may I not be denied entry into Portugal?

Entry into Portugal cannot be denied to foreign nationals who:

- Were born in Portuguese territory and who have their normal residence in Portugal;
- Have dependent children who are minors and Portuguese nationals, and they exercise parental authority, and for whom they provide maintenance and education;
- Have dependent children who are minors, nationals of a third country and legal residents in Portugal, and in respect of which they exercise parental authority and for whom they provide maintenance and education.

What types of visa are there?

Visas are either issued abroad or at border checkpoints.

What types of visa are issued abroad?

Portuguese embassies and consular posts can issue several types of visas. Each visa has a different purpose, a period of validity and grants temporary stay in the country only for the purpose for which it was granted.

The following types of visa are available:

- Airport Transit Visa (ATV);
- Transit Visa;
- Short-Stay Visa;
- Temporary Stay Visa;
- Residence Visa.

What is an airport transit visa (“ATV”)?

The Airport Transit Visa is issued for international travel connections, and allows the holder to pass through an airport or port, but only gives access to the international area of the airport or sea port. The visa application shall be accompanied by the following:

- A copy of the ticket to the country of final destination;
- Proof that the passenger holds a valid entry visa for that country, where such a visa is required.

What is a transit visa?

This visa allows entry into Portugal to a citizen of a third country en route to another country which has granted him entry. This visa may be granted for one or more entries, but the period of each transit may not exceed five days.

The visa application shall be accompanied by the following:

- A copy of the ticket to the country of final destination;
- Proof that the passenger holds a valid entry visa for that country, where such a visa is required;
- Proof that the passenger has sufficient means of subsistence, both for the period of stay and for travel back to the country where he is guaranteed entry.

What is a short stay visa?

This visa allows the holder to enter Portugal for reasons that are acceptable to the relevant authorities but which do not justify the grant

of another type of visa. This visa may be valid for a period of up to one year (period of use of the visa) but only allows short stays in Portugal for periods not exceeding three months in any half-year.

What are the requirements for a short stay visa?

Short stay visas are granted only to third-country nationals who meet the following conditions:

- Have not been subjected to an order to leave the country and where the period of prohibition of entry into Portuguese territory is still running;
- Are not subject to an alert has been issued by any of the Contracting Parties in the Schengen Information System for the purpose of refusing entry;
- Are not subject to an alert has been issued in SEF's Integrated Information System refusing entry;
- Have sufficient means of subsistence;
- Are holders of a valid travel document;
- Have travel insurance;
- Have a ticket that ensures their return travel.

The visa application shall be accompanied by the following:

- Proof as to the purpose of the stay;
- Proof as to the means of subsistence during the stay.

What is a temporary stay visa?

This visa allows entry into Portugal for the purposes of:

- Medical treatment at officially recognised health care institutions;
- Allowing nationals of member states of the World Trade Organisation to carry out service provision or vocational training actions in other states;
- Carrying out a professional activity as an employee or as a self-employed person, on a temporary basis;
- Conducting scientific research, teaching at a higher education institution or carrying out highly-skilled work;
- Practice of a certified amateur sport activity;

- Stays longer than three months, in special cases and where duly substantiated;
- Accompanying family members who enter the country to receive medical treatment at official or officially recognised health care institutions. This visa is valid for three months except in cases of temporary professional activities where it is valid for the period of the work contract.

What are the requirements for a temporary stay visa?

In addition to the special requirements that apply to each type of visa, temporary stay visas are granted only to third-country nationals who meet the following conditions:

- Have not been subjected to an order to leave the country and where the period of prohibition of entry into Portuguese territory is still running;
- Are not persons in respect of whom an alert has been issued by any of the Contracting Parties in the Schengen Information System for the purpose of refusing entry;
- Are not persons in respect of which an alert has been issued in SEF's Integrated Information System for the purpose of refusing entry;
- Have sufficient means of subsistence;
- Are holders of a valid travel document;
- Have travel insurance;
- Have a ticket that ensures their return travel.

In addition to the general requirements, what other requirements must I meet?

Depending on the purpose of the temporary stay visa, you must satisfy the following specific conditions:

Temporary stay visa for medical treatment at official or officially recognised health care institutions The application must be accompanied by a medical report and by a supporting document that establishes the applicant's admission to or out-patient

treatment at an official or officially recognised health care institution. Temporary stay visas for transfers of nationals of member States of the World Trade Organisation (WTO). Temporary stay visas are granted to nationals of WTO member States to allow them to carry out service provision or vocational training actions in Portuguese territory, provided that they meet the following requirements:

As regards companies:

The foreign national must be transferred to a branch of the same company or group of companies. In addition, the branch located within Portuguese territory must provide services equivalent to those provided by the parent company in the country from which the national is transferred.

As regards workers:

The transfer must concern partners or employees have been working for the company for at least one year at the branch located in the other member State of the World Trade Organisation, and these workers must satisfy the following conditions:

- They are senior executives of the company and branch or department managers, working under the Management Board;
- They have specific technical knowledge that is essential to the development or management of the activity, the research equipment, and the processes involved;
- They are due to receive vocational training at the branch located in Portuguese territory.

Temporary stay visas for the purposes of carrying out a professional activity, as an employee or as a self-employed person, on a temporary basis Temporary stay visas may be granted to third-country nationals who want to carry out a professional activity in Portugal, as employees or as self-employed persons, on a temporary basis, provided that:

- They hold or have been promised an employment contract to carry out a professional activity as an employee, on a temporary basis; or

- They hold a partnership agreement or a contract for services to carry out a professional activity as a self-employed person, on a temporary basis;
- Where applicable, they have a statement from the appropriate authority that certifies the existence of the special skills necessary for the practice of that professional activity in Portugal;
- They have a statement issued by the IEFPP to the effect that the actual or promised contract is for a job offer available to third-country nationals.

How does this procedure work?

- The IEFPP evaluates the offers for temporary appointments submitted by employers;
- That entity publicises the offers on a specific page of its Internet site, 30 days after the offers were submitted;
- The embassies and consular posts access the information on the IEFPP Internet site and publicise job offers in specific sites and via the diplomatic channels, on the appropriate third country services;
- The third-country nationals wanting to apply for the temporary job, send the application to the;
- After making their selection, the employers notify the successful candidate and send the necessary documentation;
- The worker may then apply for a visa at the consular post.



II. TEMPORARY STAY VISAS

Researchers, Teachers, Highly-skilled Workers

Temporary stay visas may be granted to third-country nationals who are researchers, higher education teachers or highly-skilled workers, and who want to work in Portugal for a period of less than twelve months, provided that:

1. *As regards researchers:*

They have been selected to work in a research centre recognised by the Ministry of Science and Higher Education:

- a) An actual or promised employment contract; or
- b) A contract for services, actual or proposed; or
- c) A scientific research scholarship.

2. *As regards university professors or highly skilled workers:*

- a) An actual or promised employment contract; or
- b) An actual contract for services or equivalent written proposal.

Temporary stay visa for practice of amateur sport activities

Temporary stay visas may be granted to third-country nationals who want to practice an amateur sport in Portugal, provided the activity has been certified by the relevant federation and provided the club or sports association bears the costs of accommodation and health care.

The application shall be accompanied by the following:

- A document issued by the relevant Federation that confirms the practice of the sport;
- A statement by the sports association or club, which declares itself responsible for payment of accommodation, health care and repatriation expenses.



III. PARTICIPATION IN VOLUNTARY SERVICE

- a) They meet the established minimum age requirement;
- b) They have a placement with a voluntary service organisation in Portugal, being an officially recognised organisation.

What are the requirements for a residence visa to facilitate the mobility of students?

You must be a third-country national, have residence as a tertiary student in a European Union Member State, and apply to continue a course of study commenced in another country or to undertake a related course of study, in Portugal.

The application must be accompanied by the following documents:

- A travel document valid for the intended period of stay;
- The written consent of the person(s) who has parental authority over them (in the case of minors);
- Evidence that they satisfy the admission requirements for entry into a higher education institution;
- Evidence of participation in a Community or bilateral exchange programme, or of acceptance as a student in a European Union Member State for a period of not less than 2 years.

The time limit for granting this visa cannot exceed 60 days.



IV. TEMPORARY STAY VISAS – *exceptional cases*

Temporary stay visas may be granted to third-country nationals who need to stay in Portugal for periods of more than three months, in exceptional cases and where duly substantiated. The application shall be accompanied by evidence of the exceptional circumstances. Temporary stay visa for accompanying family members who enter to receive medical treatment. The application shall be accompanied by a document that proves the family relationship. For the purposes of this type of visa, the following persons are considered to be family members: the spouse, legal or de facto, relatives in the ascending line, children or persons with a blood relationship; and where the person seeking the visa is a minor or disabled and there are no family members, the person who has custody or relatives of this person.

What is a residence visa?

This visa allows the holder to enter Portugal for the purposes of applying for a residence permit. This visa allows the holder to stay in Portugal for four months so that he may lodge an application for a residence permit at the SEF. As a rule, the time for making the decision on the visa application is 60 days.

If I have a residence visa, am I considered a resident?

No, you are not. The holder of a residence visa is not a resident, he is only authorised to apply for a residence permit.

I am the holder of a residence visa. Can I be refused permission to reside in Portugal?

Yes. The fact that you have a residence visa does not make it mandatory for SEF to grant you a residence permit. You have to meet other requirements.

How many types of residence visas are there?

There are six types of residence visa, depending on the purpose of the request:

- Residence visa to carry out a professional activity as an employee;
- Residence visa for carrying out a professional activity as a self-employed person or for immigrant entrepreneurs;
- Residence visa for researchers or highly-skilled workers;
- Residence visa for study, student exchange, traineeship or voluntary service;
- Residence visa to facilitate the mobility of tertiary students;
- Residence visa for the purposes of family reunification.

What are the general requirements for a residence visa?

In addition to the special requirements that apply to each type of visa, residence visas are granted only to third-country nationals who satisfy the following conditions:

- Have not been subjected to an order to leave the country and where the period of prohibition of entry into Portuguese territory is still running;
- Are not persons in respect of whom an alert has been issued by any of the Contracting Parties in the Schengen Information System for the purpose of refusing entry;
- Are not persons without an alert has been issued in SEF's Integrated Information System for the purpose of refusing entry;
- Have sufficient means of subsistence;
- Are holders of a valid travel document;
- Have travel insurance;
- Have a ticket that ensures their return travel.

What are the specific requirements that apply to a residence visa for carrying out a professional activity as an employee?

In addition to the abovementioned general requirements, you must also satisfy the following:

- To be the holder of an current or future employment contract; or
- To have qualifications, competencies and skills that are recognised and appropriate to the practice of the activity, as well as to have received specific interest in employment by a potential employer.

I would like to work in Portugal. What should I do to obtain a residence visa as an employee?

This type of visa is granted in circumstances where job opportunities exist but have not been taken up by: Portuguese nationals, or nationals of European Union Member States or of the European Economic Area, or nationals of third countries with whom the European Community has an agreement on the free movement of persons, as well as workers who are third-country nationals and legal residents in Portugal. For this purpose, the Government sets an annual overall quota of job opportunities, from which it may exclude those sectors or activities where labour is not needed.

The Institute for Employment and Vocational Training (IEFP) maintains an up-to-date information system accessible via the Internet that advertises the available job offers; these are also passed on to the Portuguese embassies and consular posts.

The embassies and consular posts access the information on the IEFP Internet site and publicise the job offers in specific sites and via the diplomatic channels, on the appropriate services of the third country. The third-country nationals who want to apply for a job send the application to the employer at their address. The employer then sends the candidate the actual employment contract or a promise to contract, as well as a statement issued by the IEFP that the job offer is included in the quota and was not taken by a worker who benefits from preferential status.

What are the requirements for a residence visa for exercising a professional activity as a self-employed entrepreneurs?

- Visas for obtaining residence permits may be granted to third-country nationals who want to carry out professional activities as self-employed workers who meet the following requirements:
 - a) They hold a partnership agreement or a contract for services, or a written proposal for such a contract;
 - b) They are certified with any special criteria required for practice of their professional activity (where applicable);
- Immigrant entrepreneurs who want to make investments in Portugal may be granted a residence visa, provided that:
 - a) They make a statement that they have conducted or intend to conduct investment activities in Portugal, specifying the nature, value and duration of those activities; and
 - b) They have evidence of conducting investment activities; or
 - c) evidence that they have the necessary financial means, including funds obtained from a Portuguese bank, and that they intend to conduct investment activities in Portugal, which activities have been sufficiently identified and described.

The visa request will be evaluated taking into account the economic, social, scientific, technological and/or cultural importance of the investment.

What are the requirements for a residence visa for research or highly-skilled work or for university teaching?

A residence visa for research will be granted provided that:

They are selected to work at a research centre recognised by the Ministry of Science and Higher Education, as demonstrated by:

- An actual or promised employment contract; or
- A contract for services, or an equivalent written proposal; or
- A scientific research scholarship.

Residence visas are granted to third-country nationals for teaching or carrying out highly-skilled work, provided that they have:

- An actual or promised employment contract; or
- An actual contract for services or a written.

The granting of visas to highly-skilled workers must be previously approved by the MCTES in cases where questions arise in relation to the classification of the activity.

The time period for making a decision on the visa application is 20 days, after which the lack of a decision shall be read as an approval.

What are the requirements for a residence visa for study, student exchange, traineeship or voluntary service?

Visas for obtaining residence permits for the abovementioned purposes are granted to third-country nationals, provided that:

Higher Education

- They hold a travel document that is valid for the intended duration of the stay or longer;
- They have the consent of the person with parental authority over them, in the case of minors;
- They satisfy the admission requirements for entry into a higher education institution.

Secondary Education

- They hold a travel document that is valid for the intended duration of the stay or longer;
- They have the consent of the person who has parental authority over them, in the case of minors;
- They meet age requirements as set by regulation;
- They have been admitted to a secondary education institution;
- For the duration of the stay, they are to be hosted by a family that satisfies the conditions established by the exchange programme, or they have otherwise ensured their accommodation.

Unpaid Placement

- They hold a travel document that is valid for the intended duration of the stay or longer;
- They have the consent of the person who has parental authority over them, in the case of minors;
- They have been accepted into an enterprise as unpaid trainees or into an approved vocational training organisation.



V. FAMILY REUNIFICATION

Some immigrants who legally reside in Portugal wish to bring one or more family members into the country. Family reunification may also apply to family members already residing in national territory, provided they have entered the country legally.

I am in Portugal with a Residence Permit and would like my family, who live abroad, to join me. Is this possible?

Yes. Portuguese law recognises that any national who holds a valid residence permit is entitled to family reunification with family members living abroad, provided that they have lived with him in another country, or that they are his dependants, or that they are living with him, whether the bonds were formed prior to or subsequent to the entry of the resident into Portugal.

To which family members does family reunification apply?

The law regards the following as family members:

- The spouse;
- Children who are minors or incapacitated and are dependants of the couple or one of the spouses;
- Minors adopted by the applicant or the spouse;
- Adult children who are dependants of the couple or one of the spouses, if they are single and are studying at an educational institution in Portugal;
- Direct 1st degree ascendant relatives (parents) of the resident or his/her spouse, provided they are his/her dependants;
- Minor siblings under custody of the resident.

I have a Student Residence Permit. May I apply for family reunification for my child?

Yes but you should be aware that as regards the holders of residence permits for study, unpaid professional traineeships or

voluntary work, applications for family reunification are limited to the following family members:

- The spouse;
- Children who are minors or incapacitated and are dependants of the couple or one of the spouses;
- Minors adopted by the applicant or the spouse.

I have a residence permit and I would like my partner (we are not married) to live with me in Portugal. Is that allowed?

Yes. Family reunification is allowed in relation to a non-marital partner regardless of whether the partner is inside or outside national territory, provided that the relationship is recognised under the law.

What about our children? Can they come also?

Yes, family reunification may be granted in respect of children who are minors and/or incapacitated, including children adopted by the non-marital partner provided that the partner has legal custody.

Can I apply for family reunification for my 21-year old child?

The new law allows for family reunification with adult children (aged 18 or more) provided that the children are:

- Dependants of the couple or one of the spouses;
- Single; and
- Studying in an educational institution in Portugal.

How long after I obtain my residence permit may I apply for family reunification?

The law does not establish a minimum period. You can apply for a residence permit and for family reunification simultaneously.

My relative is already in Portugal. Can I apply for family reunification?

Yes but to apply for family reunification you must first hold a valid residence permit. In addition, your relative must have entered the country legally and be your financial dependant or be living with you.

Who may apply for family reunification?

If the relatives are living outside the national territory, the application must be made by the holder of the right to family reunification, that is, the holder of a valid residence permit in Portugal. The application for entry and residence of family members is made at SEF. However, if the relatives are already within national territory, family reunification may also be requested by them or by the residence holder.

What do I have to do to apply for family reunification?

You should submit your application to the Directorate of SEF or the Regional Office in your area of residence, together with the following documents:

- Certified evidence of the claimed family relationship;
- Certified copies of the identification documents of the applicant's relatives;
- Evidence of the availability of housing;
- Evidence of sufficient means of subsistence to provide for the family;
- Relative's consent to a criminal record check by SEF, in cases where the relative has resided within national territory for more than one year over the last five years;
- Criminal record certificate from the relevant authority in the relative's home country and from any country where he resided for more than one year.

Depending on circumstances, other documents may be needed:

- Proof of incapacity in cases involving dependant incapacitated adult children;
- Certified copy of the Court decision which decreed the adoption, as well as a certified copy of the acknowledgement of the decision by the national authority, where applicable;
- Certified copy of the full birth certificate, evidence of economic dependence and copy of the confirmation of enrolment at an educational institution in Portugal, in cases involving dependant adult children;

- Evidence of economic dependence, in cases involving first degree ascendants;
- Certified copy of the custody decision, as well as a certified copy of the acknowledgement of the decision by the national authority, where applicable, for cases involving minor siblings;
- Written authority of the non-resident parent, certified by a Portuguese consulate, or a copy of the decision granting custody over the minor or the incapacitated child to the resident or his spouse, where applicable;
- Evidence of the non-marital partnership (such as existence of a child, previous periods of cohabitation or the registration of the partnership).

What happens after I submit the application and documents for family reunification with a relative residing abroad?

The application is assessed by SEF who will, as soon as possible, or in any case within three months, notify you of their decision in writing. Under exceptional circumstances, the three-month deadline may be extended for another 3 months but in such cases, the applicant shall be notified of the extension. The lack of a decision within six months shall be taken as an approval of the request (a positive response).

If this period has elapsed and you have not been notified of a decision, you should go to *SEF* and request certification of approval. *SEF* will send the approval decision within eight days, and advise the applicant that his relative should contact the consular authority in his area of residence within 90 days, to formally apply for the issue of a residence visa.

If the relative fails to formally apply for the issue of a visa, SEF's approval decision shall lapse.

This is the normal procedure in cases where the request for family reunification with a relative residing abroad is granted.

What happens after I submit the application and documents for family reunification with a relative already living in Portugal?

If your relative is already in Portugal because he holds a residence visa for family reunification, or because he was already living here and the request for family reunification was accepted, your relative will be issued with a residence permit for the same duration as yours.

What type of residence permit will be issued to my relative?

If your residence permit is temporary, your relative will be issued with a renewable residence permit with the same duration as yours. If your residence permit is permanent, your relative will be issued with a renewable residence permit with a two-year validity period. Two years after the issue of the first temporary or permanent residence permit to a relative, and provided that family bonds continue, that relative shall be entitled to an individual residence permit.

Can you issue an individual residence permit to my relative before the end of the two year period?

Yes, if the holder of the right to family reunification (the resident) has minor children residing in Portugal, those family members are entitled to an individual residence permit.

The first residence permit issued to a spouse under the family reunification provisions is also an individual permit, provided that the couple has been married for more than five years. In exceptional circumstances, such as divorce, death of a spouse, death of an ascendant or descendant relative, or conviction due to a crime of domestic violence, and provided the family member is an adult, an individual residence permit may be issued to him before the end of the two-year period.

Under what circumstances will family reunification be rejected?

Family reunification request may be refused in the following cases:

- When the applicant does not have adequate housing or means of subsistence

- When the relative has been prohibited entry into Portugal
- When the presence of the relative within national territory constitutes a threat to public order, security or public health

How can I challenge a rejection of family reunification request?

You can challenge the decision before a court. You will be notified of the decision as well as the reasons for the decision, your right to appeal the decision and the deadline for making an appeal.

The appeal shall be made to an Administrative Tribunal. The fact of an appeal does not suspend the operation of the initial decision.

The appeal only suspends the operation of the initial decision in the following cases:

- when the family members are already within national territory
- the rejection decision is based on the grounds that the applicant cannot provide adequate housing and means of subsistence

Can I lose the residence permit issued under family reunification?

Yes. The residence permit issued under family reunification will be cancelled if the usual circumstances leading to cancellation apply. In addition, the permit will be cancelled if the marriage, non-marital partnership or adoption was entered into solely for the purpose of allowing the person to enter or reside in Portugal.

How can I challenge the cancellation of the residence permit issued under family reunification?

You can challenge the decision before a court. You will be notified of the decision as well as the reasons for the decision, your right to appeal the decision and the deadline for making an appeal.

The appeal shall be made to an Administrative Tribunal.

In general, the fact of an appeal does not suspend the operation of the initial decision.

However, if the decision was based on the grounds that the marriage, non-marital partnership or adoption was entered into solely for the purpose of allowing the person to enter or reside in Portugal, the appeal suspends the operation of the decision.



VI. VISAS - *other considerations*

What are the requirements for a residence visa for the purposes of family reunification?

The grant of this residence visa follows from the approval of the family reunification request submitted by the applicant to the SEF services in his area of residence (the request must be accompanied by the documentation required by law). On this subject, please consult the Family Reunification chapter VIII.

I arrived in Portugal without a visa. What should I do?

The Director-General of SEF can issue the following types of visas at border checkpoints:

- Transit visa;
- Short stay visa;
- Special visa.

What is a special visa?

The Minister for Home Affairs may, by administrative order, issue a visa allowing entry and temporary stay in the country to foreign nationals who do not meet all the legal requirements, on humanitarian grounds or public interest grounds.

I am a relative of a Portuguese national. Do I have to meet all the above requirements to enter Portugal?

Foreign nationals who are relatives of Portuguese nationals have the same rights as relatives of other European Union nationals.

Can my entry visa to Portugal be cancelled?

Yes. The visa can be cancelled by the issuing entity abroad or by the SEF in Portugal.

On what grounds can my entry visa be declared void?

The visa can be declared void when an alert is issued in the Schengen Information System or in SEF's Integrated Information System for refusing entry to the holder, or where the holder makes false declarations in the application for the visa.

Can I be refused entry into Portugal?

Entry into Portugal may be refused on the following grounds:

- You are not the holder of a valid and recognised travel document (passport);
- You are not the holder of a visa that is both valid and appropriate to the intended purpose of the visit;
- You do not have sufficient means of subsistence;
- You represent a danger or serious threat to public order, national safety, public health or international relations;
- You are a person in respect of whom an alert has been issued in the Schengen Information System or in SEF's Integrated Information System for the purpose of refusing entry.

The decision to refuse entry into Portugal rests with the Director General of *SEF*.

Under what circumstances is an alert issued for the purpose of refusing entry to a foreign national?

Alerts are issued in SEF's Integrated Information System for the purpose of refusing entry to foreign nationals:

- Who have been deported from Portugal;
- Who have been returned to another country under a readmission agreement;
- When there are strong grounds for suspecting that they have committed serious criminal offences;
- When there are strong grounds for suspecting that they intend to commit serious criminal offences, or that they represent a threat to public order, national safety or international relations;
- Who have been taken back to the border.

Alerts are also issued, during a period of three years after the person has left the country, in relation to persons who have received assistance for voluntary return; the alerts may be removed if the persons repay the amounts received together with interest at the rate set by law.

For the purpose of refusing entry, alerts may be issued in relation to foreign nationals who have been definitively sentenced to at least one year's imprisonment, irrespective of whether the sentence was served, or there were other sentences for the same penalty. The Director-general of SEF is responsible for issuing alerts for foreign nationals on the Schengen Information System or on SEF's Integrated Information System for the purpose of refusing their entry.

Can my entry visa to Portugal be cancelled?

The visa may be cancelled where one of the following applies:

- When the holder does not meet or has ceased to meet the conditions under which the visa was granted;
- When the visa has been issued as a result of false declarations by the applicant, or the use of fraudulent means, or false statements about the reasons for entering the country;
- When the holder has been notified of a deportation order.

Residence visas and temporary stay visas may be cancelled where the holders leave the country for more than 60 days, during the period of validity of the visas, without a valid reason.

The residence visa will be cancelled when the application for a residence permit is dismissed. The decision to cancel a visa, after entry into Portugal, is the responsibility of the Minister, who may delegate this responsibility to the Director-general of SEF.

The period of validity of my visa has expired. What should I do to remain in Portugal?

If you want to remain in Portugal beyond the period of validity of your visa, you can ask the Director General of SEF for an

extension of your stay; the extension will be granted only if the conditions under which you entered Portugal remain the same.

Note: Without prejudice to the sanctions provided by law and only in exceptional circumstances, applications for extension will not be considered when they are submitted 30 days or more after the expiry date of the authorised stay.

Are there limits to the extension of my stay?

An extension of stay will only be granted for a limited period of time, which varies according to the type of visa:

- A period of up to five days, in the case of a transit visa;
- A period of up to 60 days, in the case of a special visa;
- A period of up to 90 days, if the applicant holds a residence visa;
- A period of up to 90 days, renewable for a further 90 days, in the case of a short stay visa or where a visa is not required;
- A period of up to 12 months, renewable for a further 12 months, if the applicant holds a temporary stay visa, except where such visa was granted for carrying out a professional activity, on a temporary basis, in which case the renewal will be for a maximum period of 90 days.

And what about my relatives?

An extension of stay for the relatives of a holder of a temporary stay visa will only be considered under exceptional circumstances, which arose following the legal entry into Portugal; however, the validity and period of the extension may not exceed the validity and period of the original visa granted to the relatives.

Who is considered a legal resident under the immigration law?

Under the current law, a legal resident is a foreign national who holds a residence permit that is valid for one year or more. A residence permit is a document issued in accordance with the rules and uniform format of the EU. It is an authorisation to reside granted to third-country nationals.

What is a residence permit?

A residence permit is an official document issued by the Portuguese authorities which allows foreign nationals to reside in Portugal for a defined or an indefinite period of time, as the case may be. There are two types of residence permit: temporary and permanent.

For legal purposes, the residence permit is regarded as the identity document. The residence permit is the only identity document that proves the status of legal resident in Portugal.

What is a temporary residence permit?

The temporary residence permit is the official document which allows foreign nationals to reside in Portugal for a defined period of time, and has the following characteristics:

- As a general rule, it is valid for one year from the date of issue of the permit;
- It may be renewed for successive periods of two years;
- The residence permit must be reissued if there is any change in the personal data recorded on it.

What is a permanent residence permit?

The permanent residence permit is the official document which allows foreign nationals to reside in Portugal for an indefinite period of time, and has the following characteristics:

- It has no expiry date;
- The residence permit must be reissued every five years or whenever necessary, that is, whenever any alteration to the personal data is required.

What types of residence permits are there?

- For carrying out a professional activity as an employee;
- For carrying out a professional activity as a self-employed person;
- For conducting research activities or other highly-skilled work;
- For study at a secondary education institution;
- For study at a higher education institution;

- For unpaid traineeships;
- For participation in a voluntary service scheme;
- For the purposes of family reunification.

There are also other types of residence permit:

- Residence permits for persons who are victims of trafficking in persons or have been the subject of an action to facilitate illegal immigration;
- Residence permits for persons who have long-term resident status in another European Union Member State.

What are the requirements for a temporary residence permit?

To be granted a temporary residence permit, the applicant must satisfy the following general conditions, as well as other special conditions that depend on the purpose of the permit:

- He must hold a valid residence visa;
- He must be on Portuguese territory;
- Absence of any fact which, had it been known before the visa was issued, would have prevented the granting of the visa;
- He must have sufficient means of subsistence;
- He has accommodation;
- He is registered with the Social Security office;
- Absence of any conviction for a criminal offence which in Portugal is punishable by imprisonment of more than one year;
- He is not prohibited from entering the country as a result of a deportation order;
- He is not a person in respect of whom an alert has been issued in the Schengen Information System;
- He is not a person in respect of whom an alert has been issued in SEF's Information System for the purpose of refusing entry;

The residence permit may be refused for reasons related to public order, public safety or public health.

Who can apply for a residence permit?

The application for a residence permit may be submitted by the applicant himself or by his legal representative, and may be extended to minors over whom the applicant has custody.

Where do I lodge the application?

As a general rule, the application should be submitted to the SEF in the area of residence of the applicant.

What are the requirements for a residence permit for carrying out a professional activity as an employee?

To be granted a temporary residence permit, and in addition to the abovementioned general conditions, the applicant must satisfy the following special conditions:

- He holds a valid employment contract concluded in accordance with the law;
- He is registered with the Social Security office.

In exceptional cases, and upon proposal of the Director General of SEF or the Minister for Home Affairs, the requirement to hold a valid residence visa may be waved, provided that, in addition to the general conditions for granting of a temporary residence permit, the foreign national satisfies the following conditions:

- He is the holder of an employment contract or has an employment relationship certified by a trade union, by an association recognised by the Advisory Council for Immigration, or by the Authority for Labour Conditions;
- He entered Portugal legally and has remained, also legally;
- He is registered with the Social Security office and has complied with all his obligations;
- He is registered with the tax authority.

What are the requirements for a residence permit for carrying out a professional activity as a self-employed person?

To be granted a temporary residence permit, the applicant must also satisfy the following special conditions:

- He has formed a company incorporated under Portuguese law, or has formally declared to the tax authority and the Social Security office that he is working as a sole trader, or he has concluded a professional activity service contract.
- He is qualified to carry out a professional activity as a Sole Trader.
- He has sufficient means of subsistence;
- He is registered with the Social Security office.
- He presents a statement by the relevant professional association that he satisfies affiliation requirements where required.

In exceptional cases, and upon proposal of the Director General of SEF or the Minister for Home Affairs, the requirement to hold a valid residence visa may be dispensed with, provided that the applicant entered Portugal legally and has remained in the country, also legally.

I have a residence permit for carrying out a professional activity as a self-employed person. Can I work as an employee?

You may, provided that:

- You have an employment contract; or
- You have an employment relationship certified by a trade union, or by an association recognised by the Advisory Council for Immigration (COCAI); and
- You are registered with the Social Security office and have complied with all your obligations. In this case, the residence permit will be altered accordingly.

What are the requirements for a residence permit for research or highly skilled work or for university teaching?

To be granted a temporary residence permit, and in addition to the abovementioned general conditions, the applicant must satisfy the following special conditions:

- To have been selected to work at an officially recognised research centre, under an employment contract or a contract for services, or a research scholarship; or
- To have an employment contract or a contract for services that involves either teaching at a higher education institution or carrying out a highly-skilled activity; and
- To be registered with the Social Security office.

The requirement to hold a valid visa may be dispensed with where the applicant has entered Portugal legally and has remained in the country, also legally. Under the law, the holder of a residence permit who has been selected to work at an officially recognised research centre may also work as a teacher.

I am a higher education student. What are the requirements for a residence permit?

To be granted a temporary residence permit, and in addition to the abovementioned general conditions, the applicant must satisfy the following special conditions:

- He must provide evidence of the confirmation of enrolment and payment of fees at the relevant institution;
- He must have sufficient means of subsistence;
- He must be covered by the National Health Service or have health insurance.

The residence permit is valid for one year and may be renewed for further periods of one year. However, if the duration of the course of studies is less than one year, the residence permit shall be valid only for the period of the duration of those studies.

I am a secondary school student. What are the requirements for a residence permit?

To be granted a temporary residence permit, and in addition to the abovementioned general conditions, the applicant must satisfy the following special conditions:

- You must be enrolled at a secondary school;
- You must be covered by the National Health Service or have private health insurance.

The period of validity of the residence permit may not exceed one year but it may be renewed for a further period of one year, provided that the conditions of the grant remain.

I am the holder of a residence permit for study. Am I allowed to work as an employee?

Yes, you are, but only outside school hours and with prior authorisation of SEF, and provided that you have an employment contract concluded in accordance with the law and that you are registered with the Social Security office.

When the application is approved, you will be issued with a new residence permit of the same type and with the same period of validity as the original, with the added mention of the valid work permit.

I came to spend my holidays with relatives in Portugal. I would like to stay with them and go to university here. Can I do that, with my tourist visa?

In exceptional cases, a residence permit may be granted for study at a higher education institution, if you meet these conditions:

- You have entered Portugal and have remained here legally;
- You can provide evidence of the confirmation of enrolment and payment of fees at the relevant institution;
- You have sufficient means of subsistence;
- You are covered by the National Health Service or private health insurance.

I am an unpaid trainee. What are the requirements for a residence permit?

To be granted a temporary residence permit, and in addition to the abovementioned general conditions, the applicant must satisfy the following special conditions:

- You have a residence visa for an unpaid traineeship;
- You are covered by the National Health Service or insurance.
- You submit a traineeship agreement with a company or with an approved vocational training institution, duly certified by the Institute for Employment and Vocational Training (IEFP).

The period of validity of the residence permit shall be the period of duration of the traineeship or a maximum of one year. In exceptional cases, the residence permit may be renewed only once, and strictly for the period of time necessary to obtain an officially recognised professional qualification.

I hold a residence permit for an unpaid traineeship. Can I work?

No, you can't. The holder of a residence permit for an unpaid traineeship is not allowed to work as an employee.

I am a volunteer. What are the requirements for a residence permit?

To be granted a temporary residence permit, and in addition to the abovementioned general conditions, the applicant must satisfy the following special conditions:

1. You have a residence visa for participation in voluntary service;
2. You are covered by the National Health Service or insurance.
3. You present the contract with the organisation responsible for the service scheme in Portugal, including the following details:
 - a) Description of work duties and conditions;
 - b) Working hours;
 - c) Training details, if applicable.

Except for exceptional cases, the validity of the residence permit may not exceed one year. The residence permit is not renewable.

I hold a residence permit for participation in a voluntary service scheme. Can I work?

No, you cannot. The holders of residence permits for participation in a voluntary service scheme are not allowed to work as employees.

I have long-term resident status in another EU state. What are the requirements for obtaining a residence permit for Portugal?

If you remain in Portuguese territory for a period longer than three months, you are entitled to a residence permit provided that you are not employed by a supplier of cross-border services or are not a supplier of cross-border services, and provided that:

- You work as an employee; or
- You work as a self-employed person; or
- You attend a course of studies or vocational training course; or
- You present a credible reason for wanting to reside in Portuguese territory; and
- You have sufficient means of subsistence;
- You have accommodation.

The application for the residence permit must be submitted to SEF no later than three months after the date of entry into Portuguese territory and must be accompanied by the documents which prove that the applicant meets the abovementioned conditions, as well as a document that proves the long-term resident status and a valid passport (or certified copies of those documents).

The decision on the application for the residence permit shall be made within three months; this time limit may be extended for a further period not exceeding three months if the application did not include the aforementioned documents or if the case is unusually complex; the applicant shall be notified of the extension of time.

If a decision is not made within six months, the application for the residence permit shall be taken as approved.

What is the time limit for making a decision on an application for a residence permit?

The decision on the permit application shall be made within 60 days.

Can I work while I wait for the decision on my application for a residence permit?

While the decision on the application for a residence permit is pending (for reasons non-attributable to the applicant), the holder of a residence visa may, in so far as the law allows, carry out a professional activity connected with this type of residence permit.

What must I do to renew a temporary residence permit?

Article 63 of the implementing decree requires that you submit a valid passport or other valid travel document and the request for a Portuguese criminal record check by SEF. The temporary residence permit of third-country nationals will only be renewed if nationals:

- Have sufficient means of subsistence;
- Have accommodation available;
- Have complied with all their obligations as regards the Tax Authority and the Social Security Office;
- Have not been sentenced to a term or terms of imprisonment that, separately or jointly, exceed one year.

The residence permit may not be renewed for reasons related to public order or public safety.

When should I apply for renewal of my residence permit?

An application for renewal of a temporary residence permit must be submitted no later than 30 days before the expiry date of the permit.

What is the time limit for making a decision on renewal of a residence permit?

The decision must be made within 30 days. The lack of a decision within that time limit, for reasons not-attributable to the applicant, shall be taken as an approval of the application.

I am in prison. How can I renew my residence permit?

The residence permit of a foreign national who is serving a sentence of imprisonment can only be renewed if he is not the subject of a deportation order. An application for renewal of an expired residence permit will not give rise to an infringement proceeding if the application is submitted no later than 30 days after the applicant has been released.

Will I be given any proof that I have lodged an application for renewal of my residence permit?

Yes, you will be given a receipt that proves that you have applied for renewal of your residence permit; this receipt constitutes proof of residency, is valid for a period of 60 days and may be renewed.

What can I do if my application for a residence permit or for renewal of my residence permit is refused?

You may appeal against the court decision. You will be notified of the refusal decision as well as the reasons for the decision, your right to appeal the decision and the deadline for making an appeal.

The appeal shall be made to an administrative court. The fact of an appeal does not suspend the operation of the original decision.

Who can apply for a permanent residence permit?

Permanent residence permits may be granted to foreign nationals who meet all of the following conditions:

- They have been holders of temporary residence permits for at least five years.
- During the last five years of residence in Portugal, they have not been sentenced to a term or terms of imprisonment that, separately or jointly, exceed one year.

- They have sufficient means of subsistence.
- They have accommodation available.
- They can show that they have basic knowledge of the Portuguese language.

Do I have to pay for a residence permit?

The application for a residence permit involves the payment of a fee.

Under what conditions may the residence visa requirement be dispensed with when applying for a residence permit?

The temporary residence permit requirement may be dispensed with in the case of foreign nationals in the following cases:

- Minors who are children of foreign nationals, born in Portugal;
- Minors, born in Portugal, who have been residing here and attending school, as well as their parents exercising custody;
- Adults, born in Portuguese territory, who have not left Portugal and remained in the country since the age of less than 10 years;
- Minors, subject to guardianship;
- Persons whose right to asylum in Portugal has ceased because the reasons for grant of the asylum no longer apply;
- Persons who suffer from a disease that requires prolonged medical care and not advisable in the home country;
- Persons who have served with the Portuguese armed forces;
- Persons who have lost Portuguese nationality but who have resided in Portuguese territory during the last 15 years;
- Persons who have not left Portuguese territory but whose right to reside has expired;
- Parents of minor children residing in Portugal or who have Portuguese nationality, and exercise parental authority and provide maintenance and education;

- Members of embassies and consulates and their respective spouses, and relatives for whom they are responsible, and have been accredited in Portugal for a period of not less than 3 years;
- Persons who are or have been victims of a criminal offence or involving social deprivation or exploitation in relation to wages and working hours, evidence certified by the Authority for Labour Conditions, provided that those persons have reported those offences or infringements to the relevant authorities and are willing to cooperate with them;
- Holders of residence permits issued to them as victims of trafficking in persons or as the subjects of an action to facilitate illegal immigration;
- Holders of residence permits granted to them for study at higher or secondary education institutions, who intend to work in Portuguese territory as employees or self-employed persons after the completion of the course of studies;
- Holders of temporary stay visas for research or highly-skilled work, who intend to work in Portugal in their field, whether as employees or self-employed persons;
- Persons who have lost their long-term resident status but are not subject to a deportation order.

I do not meet the required conditions for a residence permit. Is there any other way of obtaining such a permit?

Temporary residence permits may be issued to foreign nationals who do not meet the required conditions notwithstanding that the requirements under which the residence visa may be dispensed with do not apply but only in exceptional cases and for national or public interest reasons, or humanitarian reasons or public interest reasons related to the carrying out of significant activities in the areas of research, culture, sports, the

economy or the social area; or for humanitarian reasons and as governed by the right of asylum law. This decision shall be made by the Minister for Home Affairs on his own initiative or upon proposal by the Director General of SEF.

Under what circumstances may I lose my residence permit?

In situations where your application for renewal is refused by SEF, or where your residence permit is cancelled. The decision to cancel shall be made by the Minister for Home Affairs, who may delegate this power to the Director General of SEF. The cancellation shall be notified to the foreign national along with the reasons for the decision, and involves the seizure of the relevant document.

On what grounds may my residence permit be cancelled?

The residence permit will be cancelled in the following situations:

- The foreign resident is the subject of a deportation order; or
- The permit was issued as a result of false or misleading declarations, forged or falsified documents, or fraud; or
- There are strong reasons to believe that the holder of the permit was engaged in serious criminal offences or there are reasonable grounds for such suspicion: or
- For reasons of public order or public safety.

In addition, a residence permit may be cancelled if the holder of the permit leaves the country for long periods without reason, being:

- A period of six consecutive months or eight months in total over the period of validity of the permit, in the case of holders of temporary residence permits; or
- A period of 24 consecutive months or 30 months in total over three years, for holders of permanent residence permits.

An absence beyond the aforementioned limits must be justified under a request to SEF, before the departure from Portuguese territory,

or, in exceptional cases, afterwards. Residence permits will not be cancelled when the holders are absent for periods longer than the prescribed limits provided that they can prove that they were in their home countries and carrying out a professional activity in the cultural or social area.

What can I do when my residence permit is cancelled?

You may appeal against the decision to an administrative court; however, the appeal does not suspend the original decision.

Under what circumstances are the residence permits for study, unpaid traineeships or participation in a voluntary service scheme cancelled or not renewed?

In addition to the abovementioned circumstances, residence permits may be cancelled or not renewed when the holder:

- Does not satisfy or ceases to satisfy the specific conditions under which the visa or residence permit was issued; or
- Carries out a professional activity as an employee when he is not allowed to work or he breaches the conditions under which he is allowed to work; or
- Does not progress in his studies.

What basic precautions should I take from the moment I become a resident in Portugal?

- Always carry your passport, residence document, identity card or other identity document;
- Always carry your consular card and the telephone and fax numbers of your Embassy or Consulate, and their address;
- Always carry the telephone numbers of relatives or friends who can be contacted in the event of an emergency;
- Do not allow the period of validity of your passport, visa, Identity Card, residence permit, or other document to expire;

- Strictly observe Portuguese law, in particular the laws that govern matters related to foreign nationals;
- As a resident foreign national, you must inform the Foreign Nationals and Border Control Service of any changes to your nationality, marital status, occupation and place of residence as well as of any absences from the country.

On what grounds can a foreign national be deported?

Foreign nationals will be deported from Portugal when:

- They enter or remain illegally in Portuguese territory;
- They act against national security or public order;
- Their presence or activities in the country constitute a threat to the interests or dignity of the Portuguese State or its nationals;
- They seriously interfere with the exercise of the rights of Portuguese nationals to political participation;
- They have undertaken actions which, had they been known to the authorities, would have barred their entry into the country;
- There are strong reasons to believe that they have engaged in serious criminal offences or that intend to engage in such offences.

Who has the power to issue a deportation order?

Only judicial or administrative authorities have the power to deport a foreign national. In administrative deportation cases, the power rests with the Director General of SEF. In judicial deportations cases, the power rests with judicial authorities (magistrate's courts and district courts); the order may be issued under a separate court proceeding or as a secondary sentence in a criminal proceeding.

Who may not be deported?

The following foreign nationals may not be deported:

- Persons born in Portugal with habitual residence;
- Persons who have dependent children who are minors and Portuguese nationals and residents in Portugal;

- Parents of children who are minors, who are third country nationals and legal residents in Portugal, exercise parental authority and provide maintenance and education;
- Persons habitually resident in Portugal from before the age of 10.

What can I do if I believe the deportation order was unfair?

You may appeal against the deportation decision to an administrative court.

If I appeal against the deportation order, am I allowed to stay in the country?

No, you are not. The appeal does not suspend the deportation order.

To which country will the foreign national be deported?

In general, foreign nationals can only be deported to their home country or to a third country that accepts them.

Can I return to Portugal after I have been deported?

In administrative deportation cases, the foreign national is prohibited from entering Portugal for at least five years. In judicial deportation cases, the time period is determined by the court.



VII. LONG-TERM RESIDENT STATUS

How can I be granted long-term resident status?

Third-country nationals who reside legally in Portuguese territory may be granted the status of long-term residents provided that they meet the necessary conditions.

What requirements must I meet?

- You must be a legal resident who has been living continuously in Portuguese territory during the five years prior to the submission of the application;
- You must have stable and regular resources which are sufficient to maintain yourself and the members of your family, without recourse to the social assistance system;
- You must have health insurance;
- You must have accommodation;
- You must demonstrate fluency in the Portuguese language.

Where do I lodge the application?

The application should be lodged with the SEF regional office in your area of residence.

What documents should I lodge?

The application must be accompanied by the documents that prove satisfaction of the abovementioned conditions as well as a valid travel document or a certified copy of such document.

Are all legal residents eligible for long-term resident status?

Some foreign nationals are not eligible for this status, namely:

- The holders of residence permits for study, unpaid traineeship or voluntary service;

- Persons authorised to reside under temporary protection or who have applied for a residence permit on that basis and are waiting for a decision on their status;
- Persons authorised to reside under a form of subsidiary protection or who have applied for a residence permit for humanitarian reasons and wait for a decision on their status;
- Refugees or persons who have applied for asylum and are awaiting a final decision;
- Persons interested in being in Portugal for a temporary period.

Under what circumstances may the status be refused?

This status may be refused for reasons of public order or public safety, taking into consideration the seriousness and nature of the offence against public order or public safety, and the harm that may result from that person remaining on Portuguese territory.

Who has the power to grant or refuse long-term resident status?

The decision to refuse or grant the status of long-term resident rests with the Director General of SEF.

What is the time limit for making a decision?

The decision shall be made as soon as possible, with a maximum of six months, and the applicant shall be notified in writing.

Can this time limit be extended?

Yes. This time limit may be extended for three months if the case is unusually complex. The applicant shall be notified of the extension.

What happens if SEF does not make a decision on my application within nine months?

The lack of a decision within the time limit of nine months shall be taken as an approval of the request. If conditions have been satisfied and the applicant does not represent a serious threat to public order or public safety, long-term resident status will be granted.

What type of document will be issued?

Long-term residents will be issued with a long-term residence permit.

What is the period of validity of the EC document?

The EC long-term residence document has a minimum period of validity of five years, and is automatically renewed upon request at the end of the period of validity.

What rights arise from the long-term resident status?

Persons with that status have the same rights as Portuguese nationals, namely as regards:

- Access to professional work as self-employed or employee;
- Access to the employment and work conditions established by law, including dismissal and payment conditions;
- Access to education and vocational training;
- Recognition of professional diplomas, certificates and other evidence of formal qualifications;
- Access to Social Security, social welfare and protection services;
- Tax exemptions or reductions;
- Access to health care;
- Freedom to move freely within the whole of Portuguese territory.

On what grounds may I lose the long-term resident status?

Long-term residents shall lose the long-term resident status in the following cases:

- Fraudulent acquisition of the long-term resident status;
- Adoption of a judicial deportation measure;
- In the event of absence from the European Union territory for a period of 12 consecutive months;
- Acquiring long-term resident status in elsewhere in the EU.
- In the event of absence from Portuguese territory for a period of six consecutive years.

When justified by specific or exceptional reasons, the absences from European Union territory or from Portuguese territory do not give rise to loss of the long-term resident status.

Who has the power to cancel my residence permit?

The power to cancel the residence permit of a long-term resident rests with the Minister for Home Affairs, who may delegate this power to Director General of SEF.

What can I do if my application is denied or if I lose my status?

You can appeal the decision to an administrative court, and the operation of the decision will be suspended.



VIII. NON-HABITUAL RESIDENCE

The status of *Non-Habitual Resident*, in force in Portugal since 2009, offers both opportunity and risk to the potential migrant to Portugal. On the one hand, there is the promise of an attractive tax rate for professional income (20%) and full exemption from other income earned outside of Portugal. On the other, there is a great deal of ambiguity and uncertainty, both in the wording of the legislation and its subsequent interpretation and implementation. The designated specialties that qualify for this status are listed in Ministerial Decree 12/2010. They include scientists, artists, auditors & tax consultants, medical doctors & dentists, university professors, computer engineers and technicians, investors and company directors & managers.

Up until now, the implementation of this new regime has been riddled with logistical problems: lack of information at local tax offices, prolonged delays and confusing bureaucracy. In addition, no mention nor clarification has been made regarding Social Security obligations – a considerable accessory expense for anyone working. Someone with the intelligence necessary to qualify for one of these “value-added” professions is unlikely to jump into such a long-term commitment without greater assurances of success.

This legislation was introduced with the specific purpose of attracting highly skilled professionals to move to Portugal and contribute to the country’s development. To achieve this status, we understand as implicit that one must be actively engaged in a qualifying activity and subsequently compensated in Portugal, either via salaried employment or as self-employed in the field. This compensation currently enjoys the special tax rate of 20% and additional income earned outside of Portugal becomes tax exemption under most circumstances. The extrapolation to any and all pensioners has been a subsequent interpretation that has led to on-going controversy.

Taxation of Pensions for Non-Habitual Residents

Category H income (pensions) received abroad by non-habitual residents shall be exempt from tax in Portugal when:

- 1) for the part in which that income, where it arises from contributions, did not give rise to deduction (*for Social Security*) for the purposes of article 25^o (2) of the Personal Income Tax Code;
- 2) or where:
 - a) it is taxed in the State of origin in accordance with the relevant Double Taxation Convention; or
 - b) in accordance with article 18^o of the Personal Income Tax Code, it cannot be considered that this income was obtained in Portugal.

Despite being tax exempt under the conditions described above, this income must be aggregated in order to determine the tax rate applicable to the remaining taxable income.

Finally, because this status does not allow for a double exemption, it should be mentioned that the Decree-Law gives non-habitual residents the possibility to waive the right to exemption in favour of the method of tax credit.

Our Concerns

We are uneasy with fundamental problems regarding the current Non Habitual Residents status:

1) Instability

Since the introduction of “NHR” legislation four years ago, there has been nothing but confusion and complications at all levels. While there has been some improvement in resolving these issue, there is little doubt that the foreign retiree is entering an arena of instability that we view as less than desirable.

2) Potential Retaliations

Even if most of the “teething problems” are in the past, other worries loom on the horizon. Within Portugal, painful pay and

benefit cuts to nationals will not make tax holidays for foreigners popular. Beyond Portugal, Northern European countries may review their own no-tax policies on pensions in light of the Portuguese tax holiday. Given the chronic shortfalls in revenues throughout the EU, a “tax war” is not out of the question. Alternatively, more reliable, consistent norms may be imposed via an EU Pension Directive.

3) **Viable Alternatives**

Finally, stable alternatives already exist in Portuguese legislation that achieve similar objectives for occupational pensions that been successfully implemented for foreign resident since 1996. It is difficult to fathom why discriminating pensioners would not prefer more stable, time-tested solutions.

The Portuguese Tax System already offers ample ways to minimise taxation without the need for further incentives.

- no Wealth Tax;
- no Inheritance Tax;
- Innumerable Tax Exclusions ranging from 33% to 85% across almost every category of income. For example, holiday letting income is taxed at only 5% after an 80% exclusion;
- Roll-Over Relief – If you sell your principal residence and fully reinvest the proceeds in a new primary home, there is full exemption on the capital gain.
- Fiscal Territoriality – many taxes are only domestic in scope. The corollary to this rule is that many forms of investments from abroad may be tax exempt.

While Portugal may not be known as a Tax Haven within Europe, knowledge, *know-how* and foresight may be able to achieve considerably more tax relief than the *Non-Habitual Resident* status without the disarray, reversals and limitations.

Existing Pension Exclusion

Under the Portuguese IRS tax code, contributions to pension plans may be seen as having already satisfied tax obligations and be treated as “capital”. In this case, only the subsequent growth portion of the Pension Fund is taxable upon withdrawal. If the appropriate statutory criteria have been satisfied, 85% of pension income may be excluded with the remaining 15% liable for assessment.

Example: In fiscal year 2013, a couple, each earning €50,000 in qualifying occupational pensions, will have a total gross tax (before deductions) of just €259 on the total income of €100,000 after the exclusions.

With tax treatment like this on the books for many years, who needs the confusion and disarray of the Non-Habitual Residence status in the first place?



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 - 29) Golden Residence Visa
- 30) Leaving Portugal - *Moving Back*
- 31) Non-Habitual Residence Status and the Alternatives
- 32) Trusts, Foundations and Fiduciary Structures