

Should Russian and Belarusian workers in Latvia be packing their bags under amended Immigration Act? 3/40/22

Effective from 24 September 2022, urgent amendments to the Immigration Act significantly limit the scope for Russian and Belarusian nationals to obtain a Latvian temporary residence permit (TRP), including on employment or business grounds. What awaits nationals of these countries holding a TRP and working for or running a Latvian company? In this article we will sort out the amendments affecting the labour market and explain whether those persons have reason to worry and what happens if a TRP is about to expire.

The gist of the amendments

So far the Immigration Act allowed any foreign person regardless of nationality to obtain a TRP for up to five years based on employment or business, for instance, because the person is a commercially registered sole trader, board or council member, procurator, administrator, liquidator, partner in a partnership, employee in a Latvian-registered company, or one transferred within the company.

The amendments have significantly narrowed the scope primarily for Russian nationals to obtain a first-time or repeat TRP in Latvia and have revised the eligibility of Belarusian nationals for a TRP.

The Immigration Act still authorises the Minister of the Interior to decide on issuing a residence permit to Russian and Belarusian nationals if this is consistent with Latvia's national interests or international law, or done for humane reasons. The Act does not lay down any special conditions or criteria for the minister's decision, so each particular case should be assessed on its merits. A Russian or Belarusian national recognised as a victim of human trafficking is eligible for a TRP. Also, TRP eligibility is extended to Russian and Belarusian nationals who have been illegally employed under particularly exploitative working conditions while staying in Latvia illegally.

As regards other exceptions, the Immigration Act separates the grounds for issuing a residence permit that would apply to Russian nationals from those applicable to Belarusian nationals, leaving just a few for the former and keeping the list fairly long for the latter.

In future a Russian national will be eligible for a residence permit based on employment only:

1. For up to a year if the stay in Latvia is related to employment prescribed by EU law;
2. For up to a year if the stay in Latvia is related to participation in a scientific collaboration project that is carried out jointly with a scientific institution entered on the Register of Scientific Institutions and if such right of residence is prescribed by EU law;
3. For up to a year if he was granted the right to employment in Latvia and was employed in Latvia for at least the last three months before seeking a repeat TRP, with personal income tax (PIT) paid for him during that period, and he continues to exercise the right to employment while seeking a repeat TRP.

As you can see, the list is quite short and any of these grounds entitles Russian nationals to a TRP for one year only. And they are no longer eligible for a TRP based on business or company management.

Belarusian nationals have a longer list of grounds. A Belarusian national has the right to seek a residence permit based on employment or business:

1. For up to five years if he is a commercially registered sole trader;
2. For the term of office, but not to exceed five years, if he is a commercially registered board or council member, procurator, administrator, liquidator, or a partner authorised to act for the partnership;
3. For up to a year if he is a self-employed person;
4. For the period of employment, but not to exceed five years. If an EU blue card is requested for up to a year, this will be issued for a period that is three months longer than the period of the employment contract;
5. For up to three years if he seeks a TRP as an employee transferred within the company who is to be employed as a manager or specialist;
6. For up to a year if he seeks a TRP as a trainee transferred within the company;
7. For up to two years if he works for a foreign company's representative office and the company has been registered abroad for at least five years before seeking a residence permit, has employed more than 50 people in the last year, its annual turnover exceeds EUR 10 million, and it has no tax arrears. After the time limit specified in this paragraph expires, the person has no right to seek a TRP for the purpose stated in this paragraph in the following two years;
8. For up to three years if he plans to carry out activities in Latvia that are consistent with the Support for Startups Act;
9. For up to a year if he was granted the right to employment in Latvia and was employed in Latvia for at least the last three months before seeking a repeat TRP, with PIT paid for him during that period, and he continues to exercise the right to employment while seeking a repeat TRP.

What awaits those who obtained the right to stay in Latvia based on employment or business before the Immigration Act was amended?

If the right to employment and business was obtained before the recast Immigration Act came into force, the residence permit will be valid throughout the period it was issued for. The amendments make no provision for cancelling a TRP before it expires on the sole basis that it is held by a Russian or Belarusian national.

Example 1

In 2021 a Russian national took out a residence permit for five years (until 2026) as an employee of company X. It will not be cancelled and is valid until 2026, as stated by the Citizenship and Migration Office in the decision to issue a residence permit. Under normal procedure the TRP must be registered annually for the following year after confirming that the basis for employment still exists.

A Russian or Belarusian national whose TRP is about to expire can apply again according to the new rules of the Immigration Act.

Example 2

In 2018 a Russian national took out a residence permit as an employee of company X. It is valid until 2023. Since the employment in company X continues, in 2023 he has the right to apply for a repeat permit, but for one year only. The Citizenship and Migration Office will check the documents to see if company X has paid PIT for the employee.

Example 3

A Belarusian national holds a residence permit until 2022 as a member of the board in company Y. Since he continues to sit on the board, once the permit expires he has the right to apply for a repeat permit. If the board member were a Russian national, the situation would be different: once the permit expires he cannot obtain a repeat permit as a member of the board in company Y because the law no longer provides for this.

If you have any questions or concerns about the present or future situation of your company's employees, board or council members, PwC Legal is happy to provide comprehensive advice and assistance in immigration matters.