



# LEGAL STATUS OF FOREIGNERS IN SPAIN

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### I.- ENTRY INTO SPAIN.

In accordance with current legislation, foreigners wishing to enter Spain must do so through the posts authorised for this purpose, be in possession of a passport or travel document accrediting their identity, present the documents justifying the purpose and conditions of their stay, prove sufficient means of subsistence for the time they intend to stay in Spain or be in a position to legally obtain such means, and may not be subject to express prohibitions, all of this with certain exceptions, such as those cases in which the foreigner requests the right of asylum, or when they do not meet the entry requirements, there are exceptional reasons of a humanitarian nature, public interest or compliance with commitments acquired by Spain.

#### **Do I need to provide any other documentation?**

In addition to the above requirements, foreigners who intend to enter Spanish territory must be in possession of a validly issued and unexpired visa, issued in their passport or travel document or, where appropriate, in a separate document.

#### **What kind of visa should I apply for?**

The visas I can apply for will be of one of the following types:

- a) **Transit visa**, which entitles the holder to transit through the international transit zone of a Spanish airport or to cross Spanish

territory. This visa shall not be required in cases of transit of a foreigner for the purposes of repatriation or removal by air requested by a Member State of the European Union or by a third State which has signed an international agreement on this matter with Spain.

(b) **Stay visa**, which entitles the holder to an uninterrupted stay or to successive stays for a period or a sum of periods whose total duration does not exceed three months in any six-month period from the date of first entry.

(c) **Residence visa**, which entitles the holder to reside without exercising an occupational or professional activity.

d) **Residence and work visa**, which authorises entry and stay for a maximum period of three months and for the commencement, within this period, of the work or professional activity for which he/she was previously authorised. During this period, the worker must be registered with the Social Security, which will make the residence and work authorisation, whether self-employed or employed, effective. If the period has elapsed without the registration, the foreigner will be obliged to leave the national territory, otherwise he/she will be in breach of the law.

e) **Seasonal work and residence visa**, which entitles the holder to work as an employed person for up to nine months in a period of twelve consecutive months.

f) **Study visa**, which entitles the holder to stay in Spain for the purpose of carrying out courses, studies, research or training work, student exchanges, non-work placements or voluntary services that are not remunerated in terms of employment.

g) **Research visa**, which entitles the foreigner to stay in Spain for the purpose of carrying out research projects within the framework of a hosting agreement signed with a research organisation.

### Do I have to prove a reason for entry?

Foreign nationals seeking to enter the national territory must, if so required, specify the reason for their request for entry and stay. The officials of the National Police responsible for entry control may, depending on the purpose and duration of the journey, among other circumstances, require them to present documents justifying or establishing the plausibility of the reason for entry into Spain invoked, and foreign nationals may, in order to justify this plausibility, present any document or means of proof which, in their opinion, justifies the reasons for entry stated.

## What documentation may I be required to provide?

By way of example, the following documents, among others, may be required:

In relation to any of the grounds for entry applications that may be invoked by foreign nationals: a return or round-trip ticket.

### **a) In addition, for business travel:**

1. An invitation from a company or an authority to participate in meetings of a commercial, industrial or business-related nature.
2. Documents showing the existence of commercial relations or relations linked to the activity.
3. Access cards for fairs and congresses.

### **b) In addition, for travel on tourist or private journeys:**

1. Documentary evidence of the availability of accommodation for the foreign national: either issued by the accommodation establishment or in the form of a letter of invitation from a private individual, the content of which must be exclusively intended to provide evidence of the availability of accommodation at the disposal of the foreign national.

In no case shall the letter of invitation replace the foreign national's proof of the other conditions required for entry.

Without prejudice to the provisions of the preceding paragraph, the document certifying the existence of a place to stay available to the foreign national shall contain information as to whether or not the accommodation covers all or part of his subsistence.

2. Confirmation of the booking of an organised trip.

### **c) In addition, for travel for study or training purposes:**

1. Enrolment or documentation accrediting admission to an educational establishment.

### **d) In addition, for travel for other purposes:**

1. Invitations, reservations or programmes.
2. Certificates of participation in travel-related events, entry cards or receipts.

### Do I have to prove that I have financial means?

At the time of entry, the foreign national must prove that he/she has sufficient resources or financial means to support him/herself and his/her dependants travelling with him/her during the period of stay in Spain, or that he/she is in a position to legally obtain such means, as well as to cover the cost of transfer to another country or return to the country of origin.

### Can I be banned from entering Spanish territory?

The entry of foreigners shall be considered prohibited and they shall be prevented from entering Spanish territory, even if they meet the requirements of the preceding articles, when:

- a) They have been previously expelled from Spain and are within the period of prohibition of entry determined in the expulsion decision, or when they have been the subject of an expulsion decision.
- b) They have been the subject of a return measure and are within the period of prohibition of entry as determined in the relevant return agreement.
- c) It is known, through diplomatic channels, through Interpol or any other means of international judicial or police cooperation, that they are wanted in connection with criminal proceedings arising from serious ordinary offences by the judicial or police authorities of other countries.
- d) They have been the subject of an express entry ban, by virtue of a decision by the head of the Ministry of the Interior, due to their activities contrary to Spanish interests or human rights or due to their well-known connections with national or international criminal organisations.
- e) They are prohibited from entry by virtue of international conventions to which Spain is a party or in accordance with the provisions of EU law, unless an exception is deemed necessary on humanitarian grounds or for reasons of national interest.

## 2.- STAY AND RESIDENCE STATUS

Once the corresponding visa has been obtained, foreigners may stay or reside in Spain.

### 2.1. STAY STATUS

As a general rule, a foreigner who does not hold a residence permit and is authorised to stay in Spain for an uninterrupted period or the sum of successive periods whose **total duration does not exceed ninety days per six-month period from the date of first entry** is in a short-term stay situation. Once this period has elapsed, in order to remain in Spain, it will be necessary to obtain either an extension of stay or a residence authorisation.

Notwithstanding the above, as any general rule, the stay has its exceptions, whereby a foreigner may be authorised, under the stay regime, to stay in national territory when his/her sole or main purpose is to carry out one of the following activities of a non-labour nature:

- a) To pursue or extend studies.
- b) To carry out research or training activities, without prejudice to the special arrangements for researchers.
- c) To participate in student exchange programmes in any officially recognised public or private educational or scientific institution.
- d) To undertake non-work placements.
- e) To perform voluntary services.

Naturally, the period of validity of the authorisation shall coincide with the duration of the course for which he/she is enrolled, research work, student exchange, internships or voluntary service.

### Can this stay be extended?

The authorisation shall be extended for a maximum of one year in each extension under the terms and for the periods of each activity, provided that the holder demonstrates that it continues to meet the conditions required in the initial authorisation and that it complies with the general and specific requirements for each activity.

### Can I work if I am in a stay situation?

Foreigners admitted for the purposes of study, non-work placements or voluntary work may be authorised to carry out paid work as self-employed or employed persons, as long as this does not restrict the pursuit of their studies or similar activity, and the working day may not exceed 30 hours per week

## 2.2. RESIDENCE STATUS

Foreigners who are in Spain and hold a residence permit are considered to be residents. In turn, residents may be in a situation of temporary residence or long-term residence.

### 2.2.1. Temporary residence

Temporary residence is the situation that authorises a foreigner to stay in Spain for a **period of more than 90 days and less than five years**. Authorisations for a period of less than five years may be renewed, at the request of the interested party, in accordance with the circumstances that led to their granting.

#### What types of temporary residency can I be granted?

Foreigners, in a temporary residence situation, may hold one of the following types of authorisation:

- a) Authorisation for temporary residence for non-gainful purposes.
- b) Authorisation for temporary residence for the purpose of family reunification.
- c) Authorisation for temporary residence and paid employment.
- d) Authorisation for temporary residence and work for research.
- e) Authorisation for temporary residence and work for highly qualified professionals holding an EU Blue Card.
- f) Authorisation for temporary residence and fixed-term employment.
- g) Authorisation for temporary residence and self-employed work.
- h) Authorisation for temporary residence and work in the framework of transnational provision of services.
- i) Authorisation for temporary residence with the exception of work authorisation.

#### What requirements do I have to meet to obtain temporary residence?

- Not to have a criminal record in Spain or in the previous countries of residence for offences existing in the Spanish legal system.
- Not to be listed as rejectable in the territorial space of countries with which Spain has signed an agreement to this effect.

### **What obligations do I have once I have obtained temporary residence?**

Foreigners with temporary residence permits are obliged to inform the competent authorities of any changes in their nationality, marital status and domicile.

### **What will be taken into account for the renewal of temporary residence?**

For the renewal of temporary residence permits, assessment shall be made, where appropriate, of the following elements:

- a) Criminal record, taking into account the existence of pardons or situations of conditional remission of sentence or suspension of custodial sentence.
- b) Non-compliance with tax and social security obligations by the foreigner.
- c) The foreigner's integration effort that makes its renewal advisable, accredited by a positive report from the Autonomous Community certifying attendance to the training actions.

### **If I am a victim of gender-based violence or sexual violence, do I have any special protection regime?**

We start from the premise that foreign women, whatever their administrative situation in Spain, will be guaranteed the rights recognised in Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence and the rights recognised in the Organic Law on Comprehensive Guarantee of Sexual Freedom, as well as, in both cases, the protection and security measures established in current legislation, so it makes no sense for them not to be protected also in terms of administrative regularisation.

For this reason, a modification has been added to the law, in order to make the situation of foreign women equal to that of any other victim who is in a regular situation, and so that as victims they are not left helpless.

### **Can I file a complaint if I am in an irregular situation?**

Yes, and as soon as the situation of irregularity in which the foreign woman complainant finds herself is revealed, the corresponding administrative sanctioning proceedings will not be initiated for being in an irregular situation, and the suspension of said proceedings must be agreed in the



event that they had been initiated prior to the complaint or, as the case may be, the execution of the expulsion or return orders that may have been agreed upon.

### **Will I be able to work during the course of criminal proceedings?**

Furthermore, a foreign woman who is in an irregular situation and immersed in criminal proceedings as a victim of gender-based violence or sexual violence may apply for a residence and work permit for exceptional circumstances from the moment a protection order has been issued in her favour or, failing this, a report from the Public Prosecutor's Office indicating the existence of signs of gender-based or sexual violence. This authorisation will not be terminated until the criminal proceedings are concluded.

### **If I travel with my children, will I be able to regularise them?**

At the time of submitting the application for temporary residence, or at any later time during the criminal proceedings, the foreign woman, by herself or through a representative, may apply for a residence permit for exceptional circumstances in favour of her children who are minors or who have a disability and are objectively unable to provide for their own needs, or for a residence and work permit in the event that they are over sixteen years of age and are in Spain at the time of the complaint.

### **Will the regularisation be provisional or definitive?**

The competent authority shall grant a provisional residence and work permit to the foreign woman and, if applicable, to her children who are minors or disabled, or a residence and work permit if they are over sixteen years of age and are in Spain at the time of the complaint.

Any provisional authorisations granted shall be terminated when the authorisations for exceptional circumstances are definitively granted or refused.

### **What will happen when the criminal proceedings are concluded?**

In this case, there could be two scenarios; on the one hand, that the criminal proceedings are concluded by a conviction or by a court decision from which it is deduced that the woman has been a victim of gender-based violence or sexual violence, and in this case the interested party will be notified of the granting of the authorisations requested and, in the event that they have not been requested, she will be informed of the possibility of granting them, and given a period of time to apply for them; and on the other hand, that the criminal procedure concludes without being able to deduce the situation of gender or sexual violence,

in which case, the administrative sanctioning file will be opened for being in an irregular situation or will be continued, in the event that it was initially suspended.

### 2.2.2. Long-term residence

Long-term residence is the status that authorises you to reside and work in Spain indefinitely, under the same conditions as Spaniards.

#### Who can benefit from long-term residence?

Foreign nationals who have had temporary residence in Spain for five years continuously will be entitled to long-term residence. For the purposes of obtaining long-term residence, the periods of previous and continuous residence in other Member States, as holder of the EU Blue Card, will be taken into account. Residence will be considered to have been continuous, even if the foreigner has temporarily left the national territory for holiday periods or other reasons.

Likewise, the long-term residence permit will also be granted to foreigners who can prove that they are in any of the following situations:

- a) Residents who are beneficiaries of a retirement pension, in its contributory form, included in the protective action of the Spanish Social Security system.
- b) Residents who are beneficiaries of an absolute permanent disability or severe disability pension, in its contributory form, included in the protective action of the Spanish Social Security system or similar benefits obtained in Spain and consisting of a life annuity, non-capitalisable, sufficient to support them.
- c) Residents who were born in Spain and, on reaching the age of majority, have resided in Spain legally and continuously for at least three consecutive years immediately preceding the application.
- d) Foreigners who have been Spaniards by origin and have lost Spanish nationality.
- e) Residents who, on reaching the age of majority, have been under the guardianship of a Spanish public entity for the immediately preceding five consecutive years.
- f) Stateless persons, refugees or beneficiaries of subsidiary protection who are in Spanish territory and whose respective status has been recognised in Spain.
- g) Foreigners who have made a notable contribution to the economic, scientific or cultural progress of Spain, or to the projection of Spain abroad.

### **If I am a long-term resident in an EU Member State, can I apply for long-term residence in Spain?**

In effect, they may apply for it themselves and obtain a long-term residence permit in Spain when they intend to carry out an activity as self-employed or employed persons, or for other purposes, under the conditions established by regulations. However, in the event that foreigners who are long-term residents in another Member State of the European Union wish to retain the long-term resident status acquired in the first Member State, they may apply for and obtain a temporary residence permit in Spain.

### **When does long-term residence cease?**

Termination shall occur in the following cases:

- a) When the authorisation has been obtained fraudulently.
- b) When an expulsion order is issued.
- c) When you are absent from the territory of the European Union for 12 consecutive months.
- d) When long-term residence is acquired in another Member State.
- e) When, after the person to whom another Member State has granted international protection has obtained an authorisation, the authorities of that State have decided to terminate or revoke such protection.

### **Is the termination of long-term residence irrevocable?**

No, foreign nationals who have lost long-term resident status may regain this status by means of a simplified procedure to be developed by regulation, which will apply in particular to persons who have resided in another Member State for study purposes.

## **3. LINKS OF INTEREST**

<https://www.interior.gob.es/opencms/es/servicios-al-ciudadano/tramites-y-gestiones/extranjeria/>

<https://www.interior.gob.es/opencms/es/servicios-al-ciudadano/tramites-y-gestiones/extranjeria/regimen-general/entrada-requisitos-y-condiciones/>

#### 4. REFERENCE LEGISLATION

Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration (hereinafter LO 4/2000).

Royal Decree 557/2011, of 20 April, approving the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009 (hereinafter RD 557/2011).

Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence and the rights recognised in the Organic Law on the Comprehensive Guarantee of Sexual Freedom.

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