



CHANGES IN IMMIGRATION STATUS AND PURPOSES OF STAY IN BELGIUM

STUDY OF THE BELGIAN CONTACT POINT
OF THE EUROPEAN MIGRATION NETWORK (EMN)

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Belgian study and EU comparative study

Belgian report: This is the Belgian contribution to the EMN focused study on “Changes in immigration status and purpose of stay in Belgium”. *Other EMN National Contact Points (NCPs)* produced a similar report on the topic for their (Member) State.

Common template and Synthesis report:

The different national reports were prepared on the basis of a common template with study specifications to ensure, to the extent possible, comparability. References to questions from the common template are made in this report (e.g. “Q3 & Q4 - EMN questionnaire”). In the template, one can also find more information on the scope of the study. On the basis of all national contributions, a *Synthesis Report* is produced by the EMN Service Provider in collaboration with the European Commission and the EMN NCPs. The Synthesis Report gives an overview of the topic in all (Member) States.

Aim: Status changes are a relatively new field of study: the study was launched to collect information and knowledge on existing possibilities for status changes. Therefore, this study addresses the criteria for issuing a particular authorisation to stay/residence permit and the rights associated with the authorisation or permit, while comparing and contrasting *the ways, and extent to which, (Member) States’ existing legal framework allows legally admitted third-country nationals to switch from one status to another.* It also seeks to learn from specific national practices which aim to facilitate such processes and to identify and collect good practices.

Scope of the study: The (national) study includes those migrants holding an authorisation / right to stay who are not in an irregular situation (with the exception of applicants for international protection who have received a final negative decision and applicants for a right to stay on the basis of humanitarian or medical reasons) and situations where the change of status takes place inside the Belgian territory without requirement for the individual to first return to the country of origin. Persons granted the status of long-term resident, beneficiaries of international protection and persons with special identity cards (diplomats etc.) are left out the scope of the study, as well as changes of status resulting from criminal behaviour.

Available on the website: The Belgian report, the Synthesis Report and the links to the reports of the other (Member) States and the Common Template are available on the website: www.emnbelgium.be

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Summary

Legal framework for status changes

Although the general legal rule in Belgium is that a request for a residence permit needs to be submitted at the diplomatic / consular post abroad, the Belgian immigration legislation explicitly foresees a framework for status changes since 2007. **Section I** of this study gives an overview of the existing framework and the applicable procedure:

In general, the legal basis for status changes in Belgium can be found in article 9 of the Immigration Law and article 25/2 of the Royal Decree implementing the Immigration Law. This concerns changes towards the **status of employee, student, researcher, etc. by a foreign national who is in legal stay at the moment of filing the application.**

In case a foreign national wants to change his status to that of a family member of a third-country national (hereafter: TCN) who is already residing in Belgium, the legal basis for the status change is article 9 of the Immigration Law in combination with article 10/10bis and article 12bis or 40ter of the Immigration Law and article 26 or 26/2 of the Royal Decree implementing the Immigration Law.

As a residual category, status changes can also occur on the basis of article 9bis or 9ter of the Immigration Law if a TCN wants to attain an immigration status that is based on **humanitarian or medical reasons. A status change through this procedure is the only possibility for persons with a pending residency application and a temporary residency right or those who do not hold a legal status in Belgium.**

Following the new legislative provisions of 2007 and the flexible practice developed by the federal Immigration Office, TCNs can change their residence status in Belgium to almost any possible other residence status, as long as the TCN is in legal stay at the moment of filing the request and meets the eligibility conditions that are linked to the immigration status that he/she wants to obtain.

In general, Belgium does not have procedural facilitations for a change of status. However, legally staying TCNs who want to change status to economic migrants, enjoy slightly facilitated procedures.

Drivers of the legislators

Section I of the study also provides some background on the drivers of the legislators for introducing this legal framework.

The rationale behind the facilitation of status changes in Belgium initially seemed to be of an economic nature, being to facilitate the stay of TCNs who match the labour market needs. As such, the status changes were made possible for economic migrants who obtained a work permit while being in Belgium and for students who secured a job and a work permit during their stay. Over the years, the scope of status changes was expanded, explicitly including the researcher-status, family reunification and return after absence from the territory. As said, now the Immigration Office allows almost every change of status as long as the applicant meets all the eligibility criteria that are linked to the immigration status that he wants to obtain.

Many possible status changes

In **Section II** of the study, one can find an overview of the admission criteria for every category of TCN, outside the framework of status changes. The requirements for obtaining a residence permit do not differ between a first time application and an application filed in the framework of a status change (**see Section III**). The number of switches is also not restricted by quotas.

Section III also shows that switching from one immigration status to another while in Belgium is possible between most existing immigration categories in Belgium. For instance, a person residing in Belgium on the basis of his student-status may apply for a new residence permit on the basis of, for example, family ties, research, employment, self-employment and victimisation in trafficking in human beings as well as seek asylum, etc.

The only limitation applies to certain TCNs with a pending residency application and a temporary residency right that allows them to stay in Belgium while the application is being processed or those that are illegal. In principle, these TCNs cannot change their status in country (except for exceptional humanitarian or medical reasons).

Level of rights before and after a change of status

The level of rights that is linked to each immigration status following a status change, are fairly similar. Economic migrants have the most favourable status overall (e.g. residence status, social security rights, etc.). The rights associated to an immigration status are not different after a change of status compared to the rights associated with the same immigration status obtained through an application procedure from abroad.

Challenges and good practices

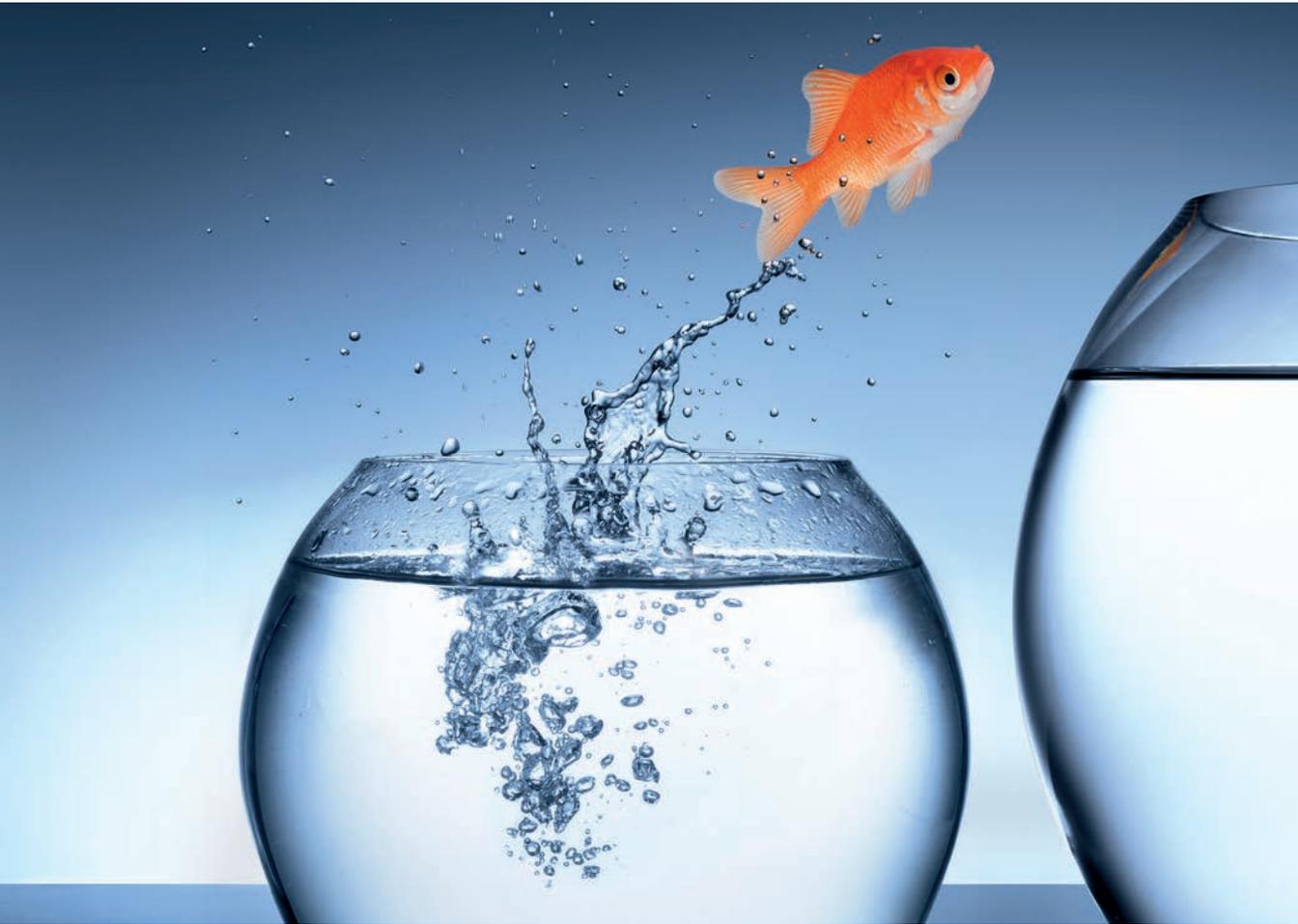
As it is explained in **Section IV**, there are no general obstacles specifically related to status changes for TCNs in Belgium, as long as the TCN is in legal stay in Belgium. The Immigration Office has a flexible approach to the application of the legislative provisions. The only general obstacle is the fact that the ample possibilities to change status are not very well known and that there are no official data available on status changes (see below).

There are however a limited number of specific challenges, for example for a status change into blue card holder.

Most status changes for change into status of economic migrant

At the moment, Belgium cannot provide statistics on status changes. Nevertheless, the practical experience from the Immigration Office shows that requests for status changes are filed on a regular basis⁽¹⁾. **The majority of status changes concern the change into economic migrant on the basis of a work permit/professional card.**

¹ The Immigration Office estimated that 15 to 20% of the work of the Department Long Stay consists of processing applications for status changes.



Overview of the national migration system in place regarding changes of status

1.1. General overview of the national migration system in relation to status changes

A status change in Belgium is a derogation to the general principle that a residence application is filed abroad. Article 9 of the Immigration Law stipulates that any foreign nationals who wants to reside on the Belgian territory for a period exceeding three months must, as a rule, file the residency application in his/her country of origin with the competent Belgian diplomatic post abroad. The third country nationals (hereafter: TCN) can only file the application in Belgium if this possibility is explicitly foreseen in a legislative provision.

Since 2007⁽¹⁾, the national immigration legislation explicitly foresees the possibility to file status changes while the foreign national is on the Belgian territory with the introduction of Articles 25/2, 26 and 26/2 of the Royal Decree⁽²⁾. In general, these provisions state that a status change is possible if a TCN is in legal stay at the moment of filing the request and if he/she meets the eligibility conditions that are linked to the immigration status that he/she wants to obtain.

Legal basis for status changes

- ↘ In general, the legal basis for status changes in Belgium can be found in article 9 of the Immigration Law⁽³⁾ and article 25/2 of the Royal Decree implementing the Immigration Law⁽⁴⁾. This concerns changes towards the **status of employee, student, researcher, etc.**

1 Royal Decree of 27 April 2007 concerning the change of the royal decree on the implementation of the law on the access to the territory, stay, settlement and removal of foreign national, BS 21 May 2007, 27242.

2 Prior to the creation of article 25/2, 26 and 26/2 Royal Decree, status changes were regulated by a Circular from 19 January 2003 regarding the application of the old article 9, 3th section of the Immigration Law (infra).

3 Law of 15 December 1980 concerning the access to the territory, stay, settlement and removal of foreign nationals, BS 31 December 1980, 14584. (Hereafter: Immigration Law)

4 Royal Decree of 8 October 1981 concerning the implementation of the law on the access to the territory, stay, settlement and removal of foreign national, BS 27 October 1981, 13740. (Hereafter: Royal Decree implementing the Immigration Law)

Status changes can also occur on the basis of article 9bis of the Immigration Law. These changes refer to regularizations of stay on the basis of exceptional circumstances. The applicant can file the application in Belgium if exceptional circumstances justify that he/she does not file the application with the Belgian diplomatic post abroad. The applicant must show the existence of humanitarian reasons for which he/she should be allowed to stay in Belgium.

- ↘ In case a foreign national wants to change his status to that of a family member of a TCN who is already residing in Belgium, the legal basis for the status change is article 9 of the Immigration Law in combination with article 10/10bis and article 12bis or 40ter of the Immigration Law and article 26 or 26/2 of the Royal Decree implementing the Immigration Law.

As a residual category, status changes can also occur on the basis of article 9bis or 9ter of the Immigration Law on the basis of humanitarian (art.9bis) reasons or medical (art.9ter) reasons. A status change through this procedure is the only possibility for persons with a pending residency application and a temporary residency right or those who do not hold a legal status.

1.1.1 Change of status towards employee, student, researcher etc. (article 25/2)

Article 25/2 of the Royal Decree provides for the possibility of status changes for foreign nationals that fulfil the following **conditions**:

1. The foreign national must be in **legal stay at the moment of filing the application**.

- ↘ This could either be **short stay on the basis of a valid passport with an entry stamp or with a Schengen visa or on the basis of a declaration of arrival, OR long stay which is shown by proof of registration in the foreigner's registry⁽⁵⁾.**

Foreign nationals who stay in the country on the basis of a temporary residence permit such as the Orange Card⁽⁶⁾ (**Attest van Immatriculatie / Attestation d'Immatriculation**) and the **Annex 35(7)** are not considered to be in legal stay for the purpose of status changes⁽⁸⁾.

- ↘ Legal stay is the main admissibility criteria for a request of change of status. As long as the application is filed with the local town hall while the applicant

5 A foreign national is registered in the foreigner's registry when he/she is authorized to stay in Belgium for a period exceeding 3 months and if he/she has taken up residency in Belgium. Art. 12 Immigration Law and Art. 6 Law of 19 juli 1991 concerning the civil registry, ID documents and residence cards, BS 3 September 1991, 19075.

6 The orange card is a temporary residence permit that is issued to foreign nationals who have an application pending with the authorities (asylum seekers in the procedure, family members of TCN while the application is pending, students in the procedure, medical regularization once the application is admissible, victims of trafficking in human beings in the procedure).

7 The annex 35 is issued to foreign nationals who lodge an appeal with suspensive effect with the Court of Alien's Law Litigation against a negative decision from the Immigration Office.

8 An asylum seeker with a pending asylum application receives a temporary residence permit while the asylum application is pending. In this regard, asylum seekers are not eligible for the standard status change as foreseen in article 25/2 of the Royal Decree implementing the Immigration Law. If the asylum seeker would obtain a work permit as an employee during the asylum procedure, he/she can only change status in Belgium through the exceptional procedure of regularization. In this regard, the asylum seeker must provide evidence showing that it is impossible to return to his/her country of origin to file the residency application with the Belgian diplomatic post abroad.

is in legal stay, the town hall cannot refuse the application even if certain documents are missing. The applicant retains the possibility to submit outstanding documents at a later stage.

2. The foreign national must fulfil all eligibility criteria linked to the immigration status that he wants to attain, such as the employee-status, self-employed-status, student-status, researcher-status, etc⁽⁹⁾.

NOTE: The official circular on the application of status changes, only refers to five types of status changes that are allowed, being:

- Status change to employee or self-employed individual on the basis of respectively a work permit or professional card;
- Status change to student;
- Status change to researcher;
- Status change to family member of a TCN with a limited right of stay in Belgium;
- Status change in case of return to Belgium after a period of absence from the territory of more than one year⁽¹⁰⁾.

However, in practice, the Immigration Office allows every change of status as long as the applicant meets all the eligibility criteria that are linked to the immigration status that he wants to obtain. The change of status is therefore not limited to the five possibilities listed above⁽¹¹⁾.

The applicable procedure for status changes on the basis of article 25/2 of the Royal Decree implementing the Immigration Law

The process entails that the foreign national files his/her application at the local level with the town hall of his/her place of residence in Belgium⁽¹²⁾. The local authorities verify whether the administrative fee (see section II) has been paid, if all required documents have been submitted and request a police officer to verify whether the individual has taken up residency at the indicated address.

Upon receipt of a positive police report and a complete file, different scenarios apply:

- If it concerns a change of status to employee or self-employed (first authorization), the local authorities assess the application and they can take a positive decision on the merits of the case. They do not need to consult the Immigration Office, only to

9 Please note that the legal basis of the status change will be influenced by the immigration status that the foreign national wants to attain, such as article 61/7 Immigration Law for blue card holders, article 60/11 Immigration Law for researchers and article 58 Immigration Law for students, etc.

10 Circular of 21 June 2007 concerning changes in the regulations on the residency of foreign nationals following the entry into force of the Law of 15 September 2006, BS 4 July 2007.

11 Interview with Jacques Goriya, Head of Section, Department Long Stay of the Federal Immigration Office, 29 October 2015 + 8 April 2016 (by email).

12 Art. 9, 2nd section Immigration Law.

transfer a copy of the file. However, if the file is not complete (e.g. an employee who cannot submit a work permit), the local authorities need to transfer the file to the Immigration Office⁽¹³⁾.

- In other cases and in case of doubt, applications are transferred to the Immigration Office for an assessment and a decision.

While the application is pending, the foreign national cannot request an extension of his previous residence permit⁽¹⁴⁾.

There are no legally prescribed processing times but overall decisions are taken more quickly for a status change towards employee or self-employed than for other status changes⁽¹⁵⁾.

1.1.2 Change of status towards family member (article 26 and 26/2)

Article 26 and 26/2 of the Royal Decree explicitly foresee the possibility of status changes for foreign nationals who want to obtain the status of family member of a TCN who is already legally residing in Belgium. The following conditions apply:

- The foreign national must be in legal stay at the moment of filing the application. This could either be **short stay** on the basis of a valid passport with entry stamp or with a Schengen visa or on the basis of a declaration of arrival, OR **long stay** which is shown by proof of registration in the foreigner's registry.
- NOTE: Foreign nationals who stay in the country on the basis of a temporary residence permit such as the Orange Card (*Attest van Immatriculatie / Attestation d'Immatriculation*) and the Annex 35 are not considered to be in legal stay for the purpose of status changes.
- The foreign national must fulfil all eligibility criteria linked to the immigration status that he wants to attain, such as
 - ↳ The status of family member of a TCN who already has a temporary residency right in Belgium (Article 10bis Immigration Law);
 - ↳ The status of family member of a TCN who already has an unlimited residency right in Belgium (Article 10 Immigration Law);
 - ↳ The status of family member of a student who is legally residing in Belgium (Article 10bis Immigration Law).

13 Art. 25/2, §2, Royal Decree implementing the Immigration Law.

14 'De vreemdelingenwet; een praktische handleiding', Dienst Rechtsbescherming Foyer, September 2013, p. 61.

15 Processing times at local level vary from one municipality to another.

The applicable procedure for status changes on the basis of article 26 or 26/2 of the Royal Decree implementing the Immigration Law

A different process applies to foreign nationals who envisage to change their status to that of a 'family member of a TCN who already legally resides in Belgium'. For these individuals, the standard family reunification process applies⁽¹⁶⁾.

The application is filed at the local level, with the town hall of the applicant's place of residence in Belgium. The local authorities verify whether all required documents are present and request a police officer to verify whether the individual has taken up residency at the indicated address. Upon receipt of a positive police report and a complete file, the local authorities forward the application to the Immigration Office. The processing time for these applications is maximum 6 months (but will soon be 9 months)⁽¹⁷⁾ and the individual receives a temporary residence card to cover his stay in Belgium while the application is pending⁽¹⁸⁾.

1.1.3 Article 9bis (humanitarian reasons) and article 9ter (medical reasons) of the Immigration Law

If a TCN wants to attain an immigration status that is not explicitly foreseen in the legislation and which is based on humanitarian reasons, the legal basis for the status change will be article **9bis of the Immigration Law**. The humanitarian regularisation procedure is an exceptional procedure, which allows a foreign national without a residence permit in Belgium to request an authorization for long stay. To be admissible, the foreign national must show that exceptional circumstances exist which do not allow him/her to file the residency application with the relevant diplomatic post abroad as is in principle required. To obtain the regularisation, the TCN must then provide evidence of the existence of humanitarian reasons which allow him to reside in Belgium. There is no binding list of eligibility criteria⁽¹⁹⁾ and every case is treated on a case by case basis. The applicant does not receive any residency rights while the application is pending. If the application is approved, the TCN receives either a permanent residency right or a limited residency right. The decision on the duration of the residency rights depends on the discretion of the authorities.

Article 9ter of the Immigration Law is the legal basis for **medical regularisations**. A request for medical regularisation is a residency application on the basis of serious medical reasons. The applicant's medical condition or illness must expose the individual to a humanitarian risk. Such a humanitarian risk exists if there is no adequate/accessible medical treatment available

16 The standard family reunification process as described in article 10, 10bis, 40ter and 12bis, §3 Immigration Law.

17 The Belgian Federal Parliament approved a Draft Law at the end of April 2016 to lengthen the maximum processing time for family reunification with TCN to 9 months. More information: <http://www.lachambre.be/kvvcr/showpage.cfm?section=/flwb&language=nl&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=54&dossierID=1726>

18 Art. 26 en 26/2 Royal Decree implementing the Immigration Law.

19 Possible reasons could be that one has been the subject of a very lengthy asylum procedure due to which he/she integrated in society OR children above the age of 18 years that want to stay with their family once they have turned 18/21 years, etc.

in the applicant's country of origin which creates a serious risk for his life or physical integrity or a serious risk to inhuman or demeaning treatment⁽²⁰⁾. The applicant can file the application for medical regularisation in Belgium, even if he/she has no residence permit. If the application is filed correctly and is considered admissible, the applicant receives a temporary residence card to cover his/her stay on the territory while the application is pending. If the application is approved, the TCN receives a temporary residence permit with a one-year validity (renewable).

(Section I (i) - EMN questionnaire)

1.2 Brief overview of the national debate in the Member State

The initial version of the Belgian Immigration Law in 1980 stipulated the following: "foreign nationals who want to reside on the Belgian territory for a period exceeding three months, must file the residency application in their country of origin with the competent Belgian diplomatic post abroad. Only in exceptional circumstances which make it impossible for the foreign national to file the application abroad, can he file the application in Belgium"⁽²¹⁾. This provision acted as the legal basis of requests for humanitarian regularisations.

In 1997⁽²²⁾, the Ministry of Internal Affairs issued a Circular to clarify the application of the abovementioned provision. The circular stipulates that the foreign national must not prove the existence of exceptional circumstances when filing the residency application in Belgium if:

- 1 He is legally staying on the territory for a short stay (< 3 months) and files a residency application for long stay as long as he meets all the applicable eligibility requirements for the requested immigration status. The circular gives two examples: a tourist who acquires a work permit while being in the country and a tourist who registers at a Belgian educational institution which allows him to stay as a student.
- 2 The foreign national who is already entitled to long stay and who wants to change his status prior to the expiry of his residency rights can also file the application in Belgium. The example that is provided in the circular is a student who acquires a work permit and wants to stay in Belgium on the basis of that permit. He can change his status from student to employee without having to leave the country.

20 L. DENYS, *Overzicht van het vreemdelingenrecht*, Heule, UGA, 2013, 541p.

21 Old art. 9, third section Immigration Law.

Circular of 19 February 2003 concerning the application of article 9, section 3 of the Immigration Law, BS 17 March 2003.

22 Circular of 9 October 1997 concerning the application of article 9, section 3 of the Immigration Law, BS 14 November 1997.

In a circular of **2003**⁽²³⁾, the application of status changes was clarified further. The circular refers to four types of status changes that are allowed, being:

- ↳ Status change to employee or self-employed individual on the basis of respectively a work permit or professional card;
- ↳ Status change to student;
- ↳ Status change on the basis of family reunification;
- ↳ Status changes for nationals of certain Eastern European countries that want to work in Belgium as self-employed individuals.

With the introduction of article 25/2 and article 26 and 26/2 on status changes in **2007**, the current system came into place. In practice, the Immigration Office now allows every change of status as long as the applicant meets all the eligibility criteria that are linked to the immigration status that he wants to obtain.

As previously stated, the legislators foresaw the possibility of status changes in the first version of the Immigration Law in 1980. Art. 9, 3rd section of the old Immigration Law created the possibility for legally staying foreigners to change status in country without having to return to their country of origin in case of exceptional circumstances. The initial idea behind status changes seemed to be to facilitate the registration of economic migrants who obtained a work permit while being in Belgium and to allow students to stay in Belgium if they secured a job and a work permit during their stay. Over the years, the scope of status changes was expanded, explicitly including the researcher-status, family reunification and return after absence from the territory. **Today**, the Immigration Office allows every change of status as long as the applicant meets all the eligibility criteria that are linked to the immigration status that he wants to obtain.

(Section I (ii) - EMN questionnaire)

1.3 Main drivers/reasons behind changes of status promoted by legislators

The legislators wanted to foresee the possibility for legally staying foreigners to change status in Belgium without having to return to their country of origin. The rationale behind the facilitation of status changes seems to be of an economic nature, being to facilitate the stay of TCNs who match the labour market needs⁽²⁴⁾. As such, the status changes were made possible for **economic migrants** who obtained a work permit while being in Belgium and for students who secured a job and a work permit during their stay. Over the years, the scope of status changes was expanded, explicitly including the **researcher-status**, **family reunification** and return after absence from the territory. Now, the Immigration Office allows every change of status as long

²³ Circular of 19 February 2003 concerning the application of article 9, section 3 of the Immigration Law, BS 17 March 2003, 12902.

²⁴ Ibid.

as the applicant meets all the eligibility criteria that are linked to the immigration status that he wants to obtain.

(Section I (iii) - EMN questionnaire)

Overview of the admission criteria

The table below provides an overview of the national definition and the admission criteria for the categories of TCN covered by the scope of the study.

Table 1: National definition (left) and admission criteria (right) per category of TCN (Q1 - EMN questionnaire)

Family (of a Belgian national or a TCN who is in legal stay in Belgium)	
<p>TCN who entered the Belgian territory for the purpose of family reunification with a Belgian national:</p> <ul style="list-style-type: none">- Spouse of a Belgian national⁽²⁶⁾,- Partner of the Belgian national bound by a registered partnership that is equal to a marriage in Belgium^{(27) (28)},- Partner of the Belgian national bound by a Belgian partnership agreement (legal cohabitation) if they can show that they have a durable and stable relationship:<ul style="list-style-type: none">• The couple has lived together at the same address during at least 1 continuous year prior to the application, either in Belgium or outside of Belgium; OR• The couple knows each other at least 2 years and they have met at least 3 times for a period of at	<ul style="list-style-type: none">- The TCN must pay a retribution (administrative fee) to the Immigration Office prior to filing the application. The standard fee for family members is 160 EUR⁽³⁹⁾.- The Belgian national must show that he/she has sufficient, stable and regular income to support himself and his family member without becoming a burden on the Belgian social security system. The Belgian national must show that he/she has a net monthly income of at least 1360,62 EUR (amount 2016);- The Belgian national must show that he/she has sufficient housing for himself and his family members;- The Belgian national must show that he/she is covered by health insurance in Belgium which will also cover his/her family members;

- least 45 days in those 2 years; OR
- They have a child together.

In addition, both partners cannot be married to a third individual, they cannot be in a durable relationship with a third individual, the partners cannot be family members and neither of the partners may have been the subject of an official decision that refused them a previous marriage⁽²⁹⁾.

- The minor (grand)children of the Belgian national and his spouse/partner who are younger than 21 years, provided that the parent has full custody over the child (in case of shared custody, permission from the other parent is required)⁽³⁰⁾.
- The parent of a Belgian minor child⁽³¹⁾.

TCN who entered the Belgian territory for the purpose of family reunification **with a TCN who is in legal stay on the Belgian territory:**

- Spouse of TCN⁽³²⁾,
- Partner of the TCN bound by a registered partnership that is equal to a marriage in Belgium^{(33) (34)},
- Partner of the TCN bound by a Belgian partnership agreement (legal cohabitation) if they can show that they have a durable and stable relationship⁽³⁵⁾:
 - The couple has lived together at the same address during at least 1

- The family members must provide a medical certificate to show that they are not a threat to Public Health;
- The family members that are aged 18 and above, must provide a police clearance certificate to show that they are not a threat to Public security.
- The children who are older than 21 years, must provide evidence that they are still at charge / dependent upon their parents.
- The parent of a minor Belgian child must show that he and the child are considered as a family unit (through financial/ ties of affection)⁽⁴⁰⁾.
- The TCN must pay a retribution (administrative fee) to the Immigration Office prior to filing the application. The fee for family members is 160 EUR⁽⁴¹⁾.
- The TCN in Belgium must show that he/she has sufficient, stable and regular income to support himself and his family member without becoming a burden on the Belgian social security system. The TCN in Belgium must show that he/she has a net monthly income of at least 1360,62 EUR (amount 2016);
- The TCN in Belgium must show that he/she has sufficient housing for himself and his family members;

continuous year prior to the application, either in Belgium or outside of Belgium; OR

- The couple knows each other at least 2 years and they have met at least 3 times for a period of at least 45 days in those 2 years; OR
- They have a child together.

In addition, both partners cannot be married to a third individual, they cannot be in a durable relationship with a third individual, the partners cannot be family members and neither of the partners may have been the subject of an official decision that refused them a previous marriage.

- The minor single children of the TCN and his spouse/partner, provided that the parent has full custody over the child (in case of shared custody, permission from the other parent is required)⁽³⁶⁾,
- The handicapped child that exceeded the age of 18, with a medical certificate which shows that the child cannot live independently⁽³⁷⁾,
- The parents of a recognized refugee who is younger than 18 and who entered the country as an unaccompanied minor⁽³⁸⁾.

- The TCN must show that he/she is covered by health insurance in Belgium which will also cover his/her family members;
- The family members must provide a medical certificate to show that they are not a threat to Public Health;
- The family members that are aged 18 and above, must provide a police clearance certificate to show that they are not a threat to Public security⁽⁴²⁾.

26 Art. 4obis, §2, 1° Immigration Law. The spouses are subject to an age requirement and cannot be under 21 years old.

27 Belgium recognised the partnerships of the following countries as equal to a marriage: Denmark, Germany, Finland, UK, Iceland, Norway, Sweden. The partners are subject to an age requirement and cannot be under 21 years old.

28 Art. 4obis, §2, 1° Immigration Law.

29 Art. 4obis, §2, 2° Immigration Law. The partners are subject to an age requirement and cannot be under 21 years old.

30 Art. 4obis, §2, 3° Immigration Law. The children who are older than 21 years, must provide evidence that they are still at charge/dependent upon their parents.

31 Art. 4oter Immigration Law.

32 Art. 10, §1, 4° Immigration Law. The spouses must be at least 21 years old. The age limit is lowered to 18 years if the marriage was already concluded prior to the move of the first TCN to Belgium.

33 Belgium recognised the partnerships of the following countries as equal to a marriage: Denmark, Germany, Finland, UK, Iceland, Norway, Sweden. The partners must be at least 21 years old. The age limit is lowered to 18 years if the legal partnership was already concluded prior to the move of the first TCN to Belgium.

34 Art. 10, §1, 4° Immigration Law.

35 Art. 10, §1, 5° Immigration Law. The partners must be at least 21 years old. If the partners have lived together outside of Belgium during one year prior to the arrival of the first TCN in Belgium, the age limit is lowered to 18 years.

36 Art. 10, §1, 4° Immigration Law.

37 Art. 10, §1, 6° Immigration Law.

38 Art. 10, §1, 7° Immigration Law.

39 Article 1/1 and 1/2 Royal Decree implementing the Immigration Law. The administrative fee must be transferred to the bank account of the Federal Immigration Office. The payment of the fee is an admissibility criteria for the application.

40 Art. 4oter Immigration Law.

41 Article 1/1 and 1/2 Royal Decree implementing the Immigration Law. Please note that children under the age of 18 years are exempt from paying the retribution as well as single handicapped children over the age of 18 years.

42 Art. 10, §2 Immigration Law.

Education

A third country national accepted by an establishment of higher education and admitted to the territory of a member state to pursue as his main activity a full-time course of study leading to a higher education qualification recognised by the member state, including diplomas, certificates or doctoral degrees, which may cover a preparatory course prior to such education according to its national legislation.

The TCN student must:

- Pay the retribution (administrative fee) of 160 EUR to the Immigration Office prior to filing the application⁽⁴³⁾;
- Be registered for higher education or a preparatory course for such education;
- Pursue as a main activity a full-time course of study;
- Be registered at an educational institution that is recognized, subsidized or organized by the state;
- Have sufficient resources to support himself during the studies;
- Cannot be a threat to Public Health;
- Cannot be a threat to Public Security⁽⁴⁴⁾.

Note: students enrolled at a private educational institution in Belgium can also request a visa for Belgium on the basis of their education. However, the decision on the issuance of the visa is at the discretion of the authorities. Residency in Belgium for the purpose of studying at a private institution is not a right as such⁽⁴⁵⁾.

If the student filed a residency application on the basis of studies in a private institution, he/she must pay a retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application.

43 Article 1/1 and 1/2 Royal Decree implementing the Immigration Law.

44 Art. 58 Immigration Law.

45 Interview with Jacques Goriya, Department Long Stay of the federal Immigration Office. Art. 9 Immigration Law, 29 October 2015.

Research

Idem as in EU legislation.

A third country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required.

The TCN Researcher must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁴⁶⁾;
- Hold a guest agreement concluded between him/herself and an in Belgium recognized research institution;
- Hold a valid travel document;
- Cannot be a threat to Public Health;
- Cannot be a threat to Public Security⁽⁴⁷⁾.

46 Art. 1/1 and ½ Royal Decree implementing the Immigration Law.

47 Art. 60/11 Immigration Law.

Blue card

The residency title which allows a TCN to stay in Belgium for a period exceeding 3 months and which simultaneously allows him to work in accordance with the legislation on the employment of foreign nationals⁽⁴⁸⁾.

48 Art. 1, 15° Immigration Law.

The Blue Card holder must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁴⁹⁾;
- Have an employment contract with a duration of at least 1 year;
- Hold at least a bachelor degree;
- Have an annual gross salary of at least 51.494 EUR (amount 2016)⁽⁵⁰⁾;
- Have health insurance which covers all risks in Belgium;
- Cannot be a threat to Public Health;
- Cannot be a threat to Public Security⁽⁵¹⁾.

49 Article 1/1 and ½ Royal Decree implementing the Immigration Law.

50 Art. 15/1 Royal Decree of 9 June 1999 concerning the implementation of the Law of 30 April 1999 on the employment of foreign nationals, BS 26 June 1999, 24162. (Hereafter: Royal Decree on the employment of foreign nationals).

51 Art. 61/27 Immigration Law.

Highly qualified workers

A TCN who holds at least a bachelor degree and a gross annual salary of at least 39.802 EUR (amount 2015)⁽⁵²⁾.

52 Art. 9,6° Royal Decree on the employment of foreign nationals. To date, the Brussels, Flemish and Walloon regions have interpreted this notion in the same way.

The highly qualified worker must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁵³⁾;
- Have at least a bachelor degree;
- Have an annual gross salary of at least 39.824 EUR (amount 2016)⁽⁵⁴⁾,
- Have an employment contract;
- Cannot be a threat to Public Health
- Cannot be a threat to Public Security.

53 Art. 1/1 and 1/2 Royal Decree implementing the Immigration Law.

54 Art. 15/1 Royal Decree on the employment of foreign nationals.

Employee

TCNs who perform employment under the authority of a second party, regardless of the existence of an employment contract⁽⁵⁵⁾.

55 Art. 3, 1 Law of 30 April 1999 on the employment of foreign nationals in Belgium, BS 21 May 1999, 17800.

The general eligibility requirements for a work permit are the following:

- The foreign national must be a national of a state that concluded a manpower agreement with Belgium (Algeria, Kosovo, Macedonia, Morocco, Montenegro, Serbia, Tunisia, Turkey, Bosnia).
- The foreign national has to pass a labour market test⁽⁵⁶⁾. In this regard, the regional employment authorities will check whether there is no-one available on the Belgian or European labour market who is capable of performing the job within a reasonable time frame⁽⁵⁷⁾.

56 Please note that the Belgian legislation on the employment of foreign nationals foresees a number of exemptions from this labour market test (Eg. work permit highly skilled employees, managerial staff, etc.).

57 Art. 8 Royal Decree on the employment of foreign nationals.

- Moreover, the TCN must earn at least the minimum sectoral salary AND have an employment contract.

If the work permit is issued, the employee must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁵⁸⁾;
- Cannot be a threat to Public Health;
- Cannot be a threat to Public Security.

58 Art. 1/1 and 1/2 Royal Decree implementing the Immigration Law.

Self-employed

Self-employed TCNs are TCNs who engage in activities that do not fall within the scope of the legislation on the employment of foreign employees (this includes all self-employed activities in Belgium whether remunerated or not)⁽⁵⁹⁾.

59 Art. 1, Law of 19 February 1965 regarding the exercise of self-employed activities by foreign nationals, BS 26 February 1965, 2007.

The self-employed foreign national must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁶⁰⁾;
- Show basic business management skills;
- Submit proof of educational qualifications or professional experience which indicate that he/she is able to exercise the intended activities;
- Show the importance of the anticipated project for Belgium; interest being assessed in terms of economic benefits, i.e.: it meets an economic need, job creation, useful investments, the economic impact on businesses in Belgium, promoting exports, innovative or specialized activity⁽⁶¹⁾;
- Cannot be a threat to Public Security;
- Cannot be a threat to Public Health.

60 Art. 1/1 and 1/2 Royal Decree implementing the Immigration Law.

61 Royal Decree of 3 February 2003 regarding the professional card exemptions for certain categories of foreign nationals who engage in self-employed activities, BS 4 March 2003, 10517.

Business owner

Belgian legislation does not foresee a definition of immigrant business owners.

The authorities perceive business owners as foreign nationals who either set-up a business in Belgium or who take over an existing business. They can have the status of self-employed individuals or employees⁽⁶²⁾.

The admission criteria for employee/ highly qualified worker/ self-employed are applicable.

62 J. ANTOONS en E. VAN DER ELST, EMN Study Admitting TCN for business purposes in Belgium, February 2015, p. 14.

Seasonal worker⁽⁶³⁾

Seasonal workers are labourers, employed by an employer that is covered by the Joint Committee on Horticulture, Agriculture or Temporary Employment⁽⁶⁴⁾.

The general eligibility requirements for a work permit are the following:

- The foreign national must be a national of a state that concluded a manpower agreement with Belgium (Algeria, Kosovo, Macedonia, Morocco, Montenegro, Serbia, Tunisia, Turkey, Bosnia).
- The foreign national has to pass a labour market test⁽⁶⁵⁾. In this regard, the regional employment authorities will check whether there is no-one available on the Belgian or European labour market who is capable of performing the job within a reasonable time frame⁽⁶⁶⁾.
- Moreover, the TCN must earn at least the minimum sectoral salary AND have an employment contract.

63 Belgium did not yet implement the EU Directive on third-country seasonal workers. The Belgian legislation does not foresee a separate immigration category for seasonal workers. Therefore, they have to follow the standard work permit process.

64 Administrative instructions from the Federal Public Service Social Security concerning occupational workers in agriculture and horticulture, 2015/4, https://www.socialsecurity.be/employer/instructions/dmfa/nl/latest/instructions/socialsecuritycontributions/calculationbase/occasional_agriculture_horticulture.html

65 Please note that the Belgian legislation on the employment of foreign nationals foresees a number of exemptions from this labour market test (Eg. work permit highly skilled employees, managerial staff, etc.).

66 Art. 8 Royal Decree on the employment of foreign nationals in Belgium.

If the work permit is issued, the employee must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁶⁷⁾;
- Cannot be a threat to Public Health;
- Cannot be a threat to Public Security.

67 Art. 1/1 and 1/2 Royal Decree implementing the Immigration Law.

ICT

The ICT directive 2014/66/EU is not yet implemented in Belgium. There is no specific category for ICTs foreseen in the Belgian legislation⁽⁶⁸⁾.

The admission criteria of highly qualified workers are applicable. (Alternatively, the admission criteria for managers and intra-corporate trainees can apply).

68 J. ANTOONS en E. VAN DER ELST, EMN Study Admitting TCN for business purposes in Belgium, February 2015, p. 14. The ICT currently fall under the provisions of the highly qualified worker (Art. 9 6° Royal Decree on the employment of foreign nationals), the managers (Art. 9,7° Royal Decree on the employment of foreign nationals), and the intra-corporate trainees (Art. 9, 18° and 19° Royal Decree on the employment of foreign nationals).

Investor

The Belgian legislative framework does not foresee the possibility for TCN immigrant investors to obtain a (long-stay) residency right for the purpose of making a substantial financial investment in financial products or in a business in Belgium. The mere investment of monetary funds in the Belgian economy does not imply a right to enter or reside on the Belgian territory⁽⁶⁹⁾.

69 J. ANTOONS en E. VAN DER ELST, EMN Study Admitting TCN for business purposes in Belgium, February 2015, p. 11.

D-type visa holder

See other categories.

Asylum seeker⁽⁷⁰⁾

Idem as EU legislation.

A TCN or stateless person who has made an application for international protection for which a final decision has not yet been taken.

⁷⁰ Please note that Belgium does not have a so called 'tolerated/ non removable status'. Applications for a humanitarian or medical status are a separate procedure (see below).

The asylum seeker must show that he is outside the country of his nationality, and is unable to or unwilling to avail himself of the protection of that country owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion OR that he is in severe risk of suffering serious harm due to death penalty, inhuman treatment or torture or armed conflict in his country of origin.⁽⁷¹⁾

⁷¹ Art. 48/3 and 48/4 Immigration Law.

Failed asylum seekers

A failed asylum seeker is a person who's application for international protection was rejected⁽⁷²⁾.

N/A

⁷² The rejection of the asylum application is final after the refusal of the asylum application in first instance if no appeal is lodged within 30 days from the notification of the negative decision OR after a negative decision from the Council for Alien Law Litigation in case the asylum seeker lodged an appeal against the first refusal.

Victim of trafficking

Idem as EU legislation

A TCN subject to an offence regulated by Directive 2011/36/EU, who fulfils the conditions set out by Directive 2004/81/EC and is allowed to stay legally on the territory of a member state.

The victim of trafficking must:

- File an official complaint against the trafficker;
- Cooperate in the judicial investigation of the traffickers;
- They cannot return to the environment of exploitation;
- Seek guidance from one of the recognized reception centres in Belgium⁽⁷³⁾.

⁷³ Art. 61/2 Immigration Law.

Retirement Visa – Temporary residency without gainful occupation

A foreign national who receives sufficient retirement benefits during his/her retirement to support him/herself without becoming a burden on the Belgian social security system, can apply for a retirement visa.

Foreign nationals who have sufficient independent means to support themselves during their stay in Belgium can apply for a rentier visa.

It is required that the foreign national has a pre-existing bond with Belgium to support the application and that his/her income is transferable to Belgium⁽⁷⁴⁾.

The foreign national must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁷⁵⁾;
- Show sufficient ties with Belgium;
- Have sufficient recurring income to support him/herself during the stay in Belgium;
- Cannot be a threat to Public Health;
- Cannot be a threat to Public Security.

⁷⁴ Art. 1/1 and 1/2 Royal Decree implementing the Immigration Law.

⁷⁴ Art. 9 Immigration Law is the legal basis for these applications. Even though the particular residence basis is not stipulated in the legislation, it has been developed through the practice of the Immigration Office.

<http://unitedstates.diplomatie.belgium.be/en/visa-belgium/retiring-in-belgium>

Pending Humanitarian regularisation

The humanitarian regularisation procedure is an exceptional procedure, which allows a foreign national without a residence permit in Belgium to request an authorization for long stay on humanitarian grounds. He/she cannot be eligible for any other immigration status foreseen in the legislation.

The foreign national must:

- Pay the retribution (administrative fee) of 215 EUR to the Immigration Office prior to filing the application⁽⁷⁶⁾;
- Show that he/she is in extraordinary circumstances that do not allow him/her to file the application with a Belgian diplomatic post in his/her country of origin;
- Be in possession of an ID document⁽⁷⁷⁾.

There are no eligibility criteria stipulated in the legislation. The authorities have discretionary power.

⁷⁶ Art. 1/1 and 1/2 Royal Decree implementing the Immigration Law.

⁷⁷ Art. 9bis Immigration Law. The TCN must not provide an ID document if he/she can show that it is impossible for him/her to obtain the requested document in Belgium OR if the applicant is also an asylum seeker whose application has not yet been rejected in last instance.

Pending Medical regularisation

The medical regularisation procedure allows a foreign national to request an authorization to stay in Belgium for serious medical reasons, under specific conditions.

The foreign national must:

- Show that he/she suffers from an illness/medical condition which poses a real risk for his/her life or physical integrity or a real risk to inhuman or demeaning treatment;
- Show that there is no adequate/ accessible treatment available in his/her country of origin;
- Provide evidence of his/her identity⁽⁷⁸⁾

⁷⁸ Art. 9ter Immigration Law. The TCN must not provide evidence of his/her identity if the applicant is also an asylum seeker whose application has not yet been rejected in last instance.

3

National legal framework on change of status whilst remaining on Belgian territory

3.1 Legal possibilities to change status from within Belgium

Table 2 shows that switching from one immigration status to another one while being in Belgium is **possible between almost all existing immigration categories**. For instance, a person residing in Belgium on the basis of his student-status may apply for a new residence permit on the basis of, for example, family ties, research, employment, self-employment and victimisation in trafficking in human beings as well as seek asylum, etc.

There are however **limitations** to change status for TCNs who hold a temporary residency right while their residency application is pending or those that are irregularly staying on the territory. ([Q2a - EMN questionnaire](#))

79 Article 61/26 Immigration Law explicitly excludes certain categories of individuals from the Blue Card. These categories are: (1) Foreign nationals who enjoy international protection or who have submitted an application to receive that protection (Art. 61/26, 1° and 2°); (2) seasonal workers (Art. 61/26, 8°); (3) foreign nationals who have filed a residency application as researchers as described in directive 2005/71/EG; (4) foreign nationals who resort under the scope of directive 96/71/EC concerning the posting of workers.

80 An asylum seeker with a pending asylum application receives a temporary residence permit while the asylum application is pending. In this regard, asylum seekers are not eligible for the standard status change as foreseen in article 25/2 of the RD implementing the Immigration Law. If the asylum seeker would obtain a work permit as a (highly skilled) employee during the asylum procedure, he/she can only change status in Belgium through the exceptional procedure of regularisation (art.9bis Immigration Law). In this regard, the asylum seeker must provide evidence showing that it is impossible to return to his/her country of origin to file the residency application with the Belgian diplomatic post abroad.

81 A family reunification application with a Belgian principal can be filed while the applicant is in illegal stay. In this regard, (failed) asylum seekers can file a family reunification application with a Belgian principal while their asylum application is pending and even after refusal of the asylum application. The application for family reunification with a TCN principal has to be filed while the applicant is in legal stay. Therefore, the application cannot be filed by a (failed) asylum seeker as the temporary residence document that is issued during the asylum procedure is not accepted as evidence of legal stay and upon refusal of their asylum application, the failed asylum seeker is no longer entitled to stay in Belgium.

Table 2: Possibility for TCN holding a certain immigration status to change into any of the other immigration statuses whilst remaining on the Belgian territory.

From \ Into	Family	Education	Research	Blue cards ⁽⁷⁹⁾	Highly qualified worker	Employee	Self-employed	Business owner	Seasonal worker	ICT	Investor	Pending Asylum	Victim of trafficking	Pending Humanitarian regularisation	Pending Medical regularisation	Retirement Visa
Family	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Education	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Research	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Blue card	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Highly qualified worker	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Employee	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Self-employed	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Business owner	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Seasonal worker	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ICT	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes
Investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes
Pending Asylum ⁽⁸⁰⁾	No No for family members of TCNs Yes for family members of Belgian nationals ⁽⁸¹⁾	No	No	No	No	No	No	No	No	No	No	N/A	Yes	Yes	Yes	No
Failed asylum seeker	No for family members of TCNs Yes for family members of Belgian nationals	No	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes	No
Victim of trafficking	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes
Pending Humanitarian regularisation / after receipt of a final negative decision on the application	No No for family members of TCNs Yes for family members of Belgian nationals	No	No	No	No	No	No	No	No	No	No	Yes	Yes	N/A	Yes	No
Pending Medical regularisation / after receipt of a final negative decision on the application	No No for family members of TCNs Yes for family members of Belgian nationals	No	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes	N/A	No
Retirement Visa	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A

Table 3: Legal base for specific status changes

Immigration status change into ...	Legal basis
Family	Article 9 and 10 OR article 9 and 40ter Immigration Law + Article 12bis Immigration Law + Article 26/1 Royal Decree implementing the Immigration Law. Article 9 and 10bis Immigration Law + Article 12bis Immigration Law + Article 26/2 Royal Decree implementing the Immigration Law.
Education	Article 9 and 58 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law ⁽⁸²⁾ .
Research	Article 9 and 60/11 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Blue Card	Article 9 and 61/27 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Highly qualified worker	Article 9 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Self-employed	Article 9 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
ICT	Article 9 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Asylum seeker	Article 48/3 and 48/4 Immigration Law.
Employee	Article 9 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Seasonal worker	Article 9 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Victim of trafficking	Article 9 and 61/2 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Retirement/Rentier Visa	Article 9 Immigration Law + Article 25/2 Royal Decree implementing the Immigration Law.
Pending Medical Regularisation	Article 9ter Immigration Law
Pending Humanitarian Regularisation	Article 9bis Immigration Law

If a status change is possible, the **requirements for obtaining a residence permit do not differ** between a first time application and an application within the framework of a status change. The

82 If the student is registered at a private education institution, the legal basis for the change of status is article 9 Immigration Law and article 25/2 Royal Decree on the implementation of the immigration law.

number of switches is also not restricted by quotas in Belgium. The legal basis for specific status changes can be found in table 3. (Q2b - EMN questionnaire)

The **Belgian Immigration office** is the administration responsible for status changes. The website of the Immigration Office has no specific information on status changes. Since the criteria for a status change do not differ from a first time application, the applicants can consult the general website of the Immigration Office. (Q4 and Q5 - EMN questionnaire)

There are however **some procedural facilitations** (Q3 - EMN questionnaire) **in case of status changes** when compared with first time applicants from the country of origin. In general, request for a status change have shortened processing times (on average processed within 3 months). Do note that this is not the case for foreign nationals who envisage to change their status to that of a “family member of a TCN who already legally resides in Belgium”. They have to follow the standard family reunification process. The maximum processing time for these applications is 6 months (and will soon be 9 months)⁽⁸³⁾.

Moreover, there are some procedural facilitations for certain status changes:

Status change into the status of highly qualified worker

- Reduced documentary requirements:
 - The police clearance certificate is automatically added to the application by the local authorities. The police clearance certificate must only cover a period of 1 year instead of 5 years.

A medical certificate is not required if the applicant has already resided in Belgium more than 3 months prior to the application on the basis of a residence card⁽⁸⁴⁾.

If the foreign national presents a complete file to the authorities, the municipality is entitled to take the decision on the merits of the case without consultation of the Immigration Office.

Status change into the status of self-employed worker

- Reduced documentary requirements:
 - The police clearance certificate is automatically added to the application by the local authorities. The police clearance certificate must only cover a period of 1 year instead of 5 years.
 - A medical certificate is not required if the applicant has already resided in Belgium more than 3 months prior to the application on the basis of a residence card⁽⁸⁵⁾.
- If the foreign national presents a complete file to the authorities, the municipality is entitled to take the decision on the merits of the case without consultation of the Immigration Office.

[Humanitarian regularisation]

- In specific humanitarian cases, the Immigration authorities have the discretionary power to allow exceptions to the document requirements. Whether or not exceptions are allowed is decided on a case by case basis⁽⁸⁶⁾.

83 The Belgian Federal Parliament approved a Draft Law at the end of April 2016 to lengthen the maximum processing time for family reunification with TCN to 9 months. More information: <http://www.lachambre.be/kvvcr/showpage.cfm?section=/flwb&language=nl&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=54&dossierID=1726>

84 Interview with Jacques Goriya, Department Long Stay of the federal Immigration Office, 29 October 2015.

85 Ibid.

86 Ibid.

Rights linked to an immigration status do not differ between first time applicants and those who changed status. This being said, changing status means that one will have access to the rights linked to the new immigration status. Annex 2 provides a general overview of the level of rights to which each immigration category is entitled. In a separate document⁽⁸⁷⁾ an overview is given of the different changes of status and the impact on the rights enjoyed (enhanced or reduced rights). ([Q2c - EMN questionnaire](#))

3.2 Aims of national policies to permit changes of status without leaving the Belgian territory

The Belgian legislators wanted to foresee the possibility for legally staying foreigners to change status in country without having to return to their country of origin. The rationale behind the facilitation of status changes seems to be of an economic nature, being to facilitate the stay of TCN who match the labour market needs. As such the status changes were made possible for **economic migrants** who obtained a work permit while being in Belgium and for **students** who secured a job and a work permit during their stay. Over the years the ministry expanded the scope of status changes, explicitly including the **researcher-status**, **family reunification** and return after absence from the territory. Nowadays, the Immigration Office allows every change of status as long as the applicant meets all the eligibility criteria that are linked to the immigration status that he wants to obtain. ([Q6a and Q6b - EMN questionnaire](#))

The measures allowing TCNs to change status from within Belgium **have not been subject to in-depth evaluations** (looking into the effectiveness, the change or loss in rights or the impact on the national economy) neither has been examined if changes of status contribute to the prevention of irregular stays in Belgium. In general, the topic is not present in (public) debate and the possibilities to change status are not very well known. ([Q8,Q9 and Q10 - EMN questionnaire](#))

87 Available on www.emnbelgium.be, in annex to this study.



Challenges, good practices and lessons learned

4.1 Challenges and obstacles to measures to enable third-country nationals to change status whilst remaining on Belgian territory

Switching from one immigration status to another while being in Belgium is possible between almost all existing immigration categories. The requirements for obtaining a residence permit do not differ between a first time application and an application within the framework of a status change.

Both the admissibility criteria and document requirements are similar regardless whether the TCN files a first time application with the relevant Diplomatic Post abroad or a status change application in Belgium.

There are no general obstacles specifically related to status changes for TCNs in Belgium, as long as the TCN is in legal stay in Belgium. The only general obstacle that can be identified is the observation that the possibilities to change status (and the flexible approach of the Immigration Office) are not very well known.

Table 4 describes two change specific challenges. ([Q11 - EMN questionnaire](#))

Table 4: Change specific challenges for the Belgian authorities and for applicants concerning measures to enable TCNs to change status

From	Into	Challenges for the Belgian authorities in the design and implementation of measures allowing TCN to change status	Challenges for applicant to change status at both application stage (e.g. requirements, waiting times, fees, etc.)
<p>Researcher / seasonal worker / Pending asylum application</p>	<p>Blue Card</p>	<p>The Belgian authorities used the possibility, foreseen in the Blue Card Directive, to exclude certain categories of TCNs from the scope of the Blue Card. In this regard, the TCNs who are residing in Belgium as a researcher, a seasonal worker or an asylum seeker cannot change their status to blue card holder as they are excluded from applying for a blue card.</p>	<p>The researcher, the seasonal workers and the asylum seeker are excluded from applying for a blue card in Belgium.</p>
<p>Asylum seeker</p>	<p>Highly skilled employee/ employee/ seasonal worker/ self-employed/ researcher</p>	<p>N/A</p>	<p>An asylum seeker with a pending asylum application receives a temporary residence permit while the asylum application is pending. In this regard, asylum seekers are not eligible for the standard status change as foreseen in article 25/2 of the Royal Decree implementing the Immigration Law. If the asylum seeker obtains a work permit as a (highly skilled) employee during the asylum procedure, he/she can only change status in Belgium through the exceptional procedure of regularisation. In this regard, the asylum seeker must provide evidence showing that it is impossible to return to his/her country of origin to file the residency application with the Belgian diplomatic post abroad.</p>

4.2. Good practices and lessons learned

- Belgium allows status changes into almost every existing immigration category for every TCN in legal stay and who fulfils all the eligibility criteria that are linked to the new immigration status that he/she wants to obtain. In this regard, the Immigration Office has a very flexible approach to the application of the legislative provisions on status changes.
- The national legal framework foresees a facilitated process for TCNs who want to change their status into the economic migrant status on the basis of a work permit or a professional card. These TCNs benefit from more flexible document requirements and the local authorities can issue a residence permit without intervention of the Immigration Office.
- Family members, etc. are allowed to change their status into economic migrant if they obtain a work permit independently from their existing residence status (as a highly skilled employee, etc.). Although those TCNs can under certain conditions access the Belgian labour market on the basis of their current residence status, the legislators promote status changes both in the interest of the individual (enhanced associated rights) and in the interest of the labour market that can take maximum benefit from available skilled TCNs legally residing in the country. In this regard, the business can benefit from the available skills on the Belgian labour market.



Conclusions

Although the general legal rule in Belgium states that TCNs must file their application for long stay with the Belgian diplomatic post abroad, TCNs can change their residency status in Belgium to almost any possible other residency status, as long as the TCN is in legal stay at the moment of filing the application and meets the eligibility conditions that are linked to the residence status that he/she wants to obtain.

The only limitations apply to certain TCNs who hold a temporary residence right while their residency application is pending (Orange card or Annex 35) or those that are illegally residing in Belgium.

Following this limitation, asylum seekers are excluded from the standard process for status changes since they only receive a temporary residency right while their asylum application is pending. If the asylum seeker obtains a work permit as an employee during the asylum procedure, he/she can only change status in Belgium through the exceptional procedure of the regularisation. In this regard, the asylum seeker must provide evidence showing that it is impossible to return to his/her country of origin to file the residency application with the Belgian diplomatic post abroad. Given the huge influx of asylum seekers, longer asylum procedures and the current debates on their integration into the labour market of the host country, it could – according to the authors of this report – be interesting to examine ways to facilitate the possibility of status changes for those asylum seekers that secure a work permit (for highly skilled employment), while at the same time avoiding abuses.

The requirements for obtaining a residence permit do not differ between a first time application and an application within the framework of a status change. The number of switches is also not restricted by quotas. In this regard, the Immigration Office has a very flexible approach to the application of the legislative provisions on status changes.

In general, Belgium does not have procedural facilitations for a change of status. However, legally staying TCNs who want to change status to economic migrants, enjoy slightly facilitated procedures. These TCNs benefit from more flexible document requirements and the local authorities can give a positive decision on the residency rights without intervention of the Immigration Office.

The level of rights that is linked to each immigration status following a status change are fairly similar. Economic migrants have the most favourable status overall (e.g. residence status, social security rights, etc.). The rights associated with an immigration status are not different after

a change of status compared to rights associated to the same immigration status obtained through an application procedure from abroad.

The only general obstacle on status changes that can be identified is the observation that the wide spectrum of possibilities to change status are not very well known.

At the moment, Belgium cannot provide statistics on status changes. Nevertheless, the practical experience from the Immigration Office shows that requests for status changes are filed on a regular basis⁽⁸⁸⁾. The majority of status changes concern the change into economic migrant on the basis of a work permit/professional card.

⁸⁸ The Immigration Office estimated that 15 to 20% of the work of the Department Long Stay consists of processing applications for status changes.

Annexes

Annex 1: Statistical annex

Table A1: Applicants for international protection in Belgium (2010-2014)

2010	2011	2012	2013	2014
26.080	31.910	28.075	21.030	22.710

Source: Eurostat (migr_asyappctza), data extracted 10.11.2015

Table A2: All valid residence permits by reason on 31 December in Belgium (2010-2014)

Reason	2010	2011	2012	2013	2014
Total	324.974	342.291	339.689	339.067	351.655
Family reasons	160.286	173.994	178.169	182.672	193.521
Education reasons	10.929	10.698	11.023	11.541	12.104
Remunerated activities reasons	27.596	28.484	28.572	27.956	28.565
Refugee status	11.192	14.199	16.634	18.533	23.044
Subsidiary protection	2.516	3.420	4.813	6.944	8.343

Source: Eurostat (migr_resbc1), data extracted 10.11.2015

Table A3: Number of "EU Blue Cards" granted (2010-2014)

2012	2013	2014
0	5	19

Source: Eurostat (migr_resbc1), data extracted 10.11.2015

Table A4: Issued skilled or highly skilled national labour permits (2010-2014)

Belgium	2010	2011	2012	2013	2014
Walloon Region	929	917	993	869	323
Flemish Region	3930	4082	4283	4352	4285
Brussels Capital Region	3015	3285	3362	3740	3744
German speaking Region	10	7	5	3	1
TOTAL (Belgium)	7884	8291	8643	8638	8353

Source: National data from the Regional administrations and the Federal Public Service Employment, Labour and Social Dialogue (National categories include permits for highly qualified, highly qualified posted, management, management posted)

Table A5: Total number of victims of trafficking (identified and presumed) by assistance and protection: residence permit based on Directive 2004/81 as well as other granted residence permits (2010-2012)

2010	2011	2012
110	73	110

Source: Eurostat (2015) Trafficking in Human Beings, Table A12: Number of victims (identified and presumed) by assistance and protection: residence permit based on Directive 2004/81 as well as other granted residence permits

Annex 2: General overview of the level of rights to which each category is entitled

FICHE 1: FAMILY MEMBERS

Family member of a TCN with a right to stay OR Family member of a Belgian national

Employment Rights

Employment rights for TCN family members of TCNs who already reside in Belgium:

- The family member does not automatically have access to the labour market. He/she needs a work permit or professional card prior to working in Belgium.
- If the principal is in possession of a work permit or a professional card, then the family member has access to the labour market without a labour market test. They are, however, not exempt from the work permit and must apply for a work permit type B for family members of (self-) employed foreign nationals⁽⁸⁹⁾. This work permit allows the family member to work without having to fulfil any eligibility conditions. If the family member wants to engage in self-employed activities, he/she needs a professional card.
- If the principal is not an economic migrant, the family member must either pass the labour market test or fulfil all the eligibility criteria that are linked to the specific types of work permits B.

Employment rights for TCN family members of Belgian nationals:

- Family members of Belgian nationals are exempt from the work permit and professional card requirement as from the moment that they file the family reunification application with the authorities (and receive an annex 19ter or the orange card).

Employment rights for TCN family members of students:

- The family member has no automatic access to the labour market. The family member must either pass the labour market test or fulfil all the eligibility criteria that are linked to the specific types of work permits type B. If the family member wants to engage in self-employed activities, he/she needs a professional card.

Social Security Rights

The Belgian social insurance system is a work-based, contributory system consisting of a separate scheme for employees, self-employed and civil servants. The 3 schemes differ in terms of contributions and benefits. Foreigners who stay legally in Belgium and

89 Art. 9, 16° Royal Decree on the employment of foreign nationals.

who contribute to the system based upon their employment activities in Belgium, enjoy the benefits under the same conditions as Belgian nationals. These benefits include replacement income as well as income supplements to compensate for certain costs (e.g. health care, industrial accidents benefits, old age and death pensions, family allowances, unemployment, etc.). TCNs may however face a number of differences in treatment given the minimum employment period attached to some benefits and the limitation of exportability of benefits⁽⁹⁰⁾.

Any foreign national who is in legal stay in Belgium (registered in the public registry) can register for public health insurance. If one is not working, he/she will have to pay a personal contribution (depending on the level of income) to enjoy health care in Belgium.

If the principal is subject to Belgian social security, the family member at charge of the principal has “derived” social security rights (e.g. health care). If the family member is working himself/herself, he/she has access to the social insurance system, like Belgian nationals.

Next to this work-based social insurance system, there is the social assistance system, which is not work related but which is based on the solidarity principle and financed by the general taxation system. The social assistance system covers a variety of programs such as social interpreters, social aid, guaranteed child benefits, income guarantee for the elderly and disabled persons. The eligibility criteria differ per program. Only in the residual program of social aid, there is a general entitlement for all persons that are legally residing in Belgium. The other programs are reserved to TCNs who have resided in Belgium for at least 5 years or who show a link with the labour market (e.g. income guarantee for the elderly).

Please note that, even though the TCN might be entitled to social welfare or unemployment benefits, the use of these provisions may have a negative impact on the residency status of the temporary immigrant in Belgium. If the temporary immigrant receives social welfare assistance or unemployment benefits, this is a reason to refuse the renewal of residency rights, while legal residency in Belgium is a requirement for social security rights.

⁹⁰ A foreign national must have legally worked in Belgium at least 6 months to be entitled to incapacity to work benefits and during a certain reference period (dependent upon age) to be eligible for unemployment benefits. Working periods are under certain conditions waived by virtue of bilateral social security agreements or the European Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Publ. C-166 of 30 April 2004.

Belgian old age/invalidity/survivor pension rights are as a rule only paid to foreigners that are legal residents in Belgium (exceptions can exist by virtue of bilateral social security agreements and the European regulation 883/2004).

Migrant access to social security – Policy and practice in Belgium, Study for the Belgian national contact point for the European Migration Network, 2014.

Education

In Belgium, all minor children have the right to education regardless of their residency status. Belgium also has compulsory education for all children between the age of 6 and 18 years.

The rules on access to higher education differ for the Flemish region and the Walloon region:

- Walloon region: In principle, TCNs have access to education regardless of their residency status (legal or illegal stay). The rules on the registration fees state that higher registration fees apply to those foreign nationals that cannot be assimilated to Belgian students. In this regard, TCNs without a residence permit have to pay very high fees to have access to higher education.
- Flemish region: In principle, TCNs have access to education regardless of their residency status (legal or illegal stay). Certain categories of TCNs are eligible for obtaining study grants⁽⁹¹⁾.

Duration of stay

Residency rights for TCN family members of TCNs who already reside in Belgium:

- The validity of the residence permit of the family member is aligned on the validity of the residence permit of the principal (in principle limited to one year and renewable annually). Once the TCN who was already in Belgium obtains a right to permanent residency, the family member can also qualify for permanent residency after 3 years of legal stay in Belgium⁽⁹²⁾.

Residency rights for TCN family members of Belgian nationals:

- The family members receive a residence card type F which gives them a right to unlimited stay. Even though this is an unlimited residency right, it is still conditional upon the existence of the relationship/ family ties during the first 5 years. After 5 years, the family member receives a residence card F+ which entails that they obtain a durable residency right and they are registered in the civil registry.

Legal Assistance

Any foreign national is entitled to legal assistance in Belgium. Whether an individual qualifies for free legal assistance depends on his income level.

Please note that certain categories of foreign nationals are entitled to free legal assistance, regardless of their income. This entitlement comes from the rebuttable presumption that

⁹¹ These categories are the following: (1) foreign nationals whose parents are EER nationals and who have been economically active in Belgium during 12-24 months, (2) TCNs with a permanent residency right, (3) foreign nationals that are recognized as victims of trafficking, (4) TCNs and their children who have resided legally and continuously in Belgium for 12 months – the residency right cannot be based on employment, a pending asylum procedure or education, (5) foreign nationals who are entitled to reside in Belgium following a family reunification process with a Belgian principal or with a principal that already resided legally in Belgium during 12 months on the basis of employment or education, (6) asylum seekers with a pending application and their children.

⁹² The Council of Ministers drafted a legislative proposal on 15 July 2015 to amend the Immigration Act in a way that family members of TCN only qualify for permanent residency after 5 years of legal stay in Belgium, instead of 3 years.

these categories have very low income levels. It concerns asylum seekers and foreign nationals who need assistance with their residency process in Belgium⁽⁹³⁾.

Mobility

- The family member is entitled to reside on the Belgian territory for the validity of his/her residence permit.
- The Belgian residence card acts as a Schengen visa and entitles its holder to stay on the territory of other Schengen states for 90 days in any 180 day period. To travel, the family member must be in possession of a valid Belgian residence permit and a valid passport.
- The family reunification application process takes maximum 6 months (and in the future 9 months)⁽⁹⁴⁾. During these months, the family member is in possession of a temporary residence card, which does not act as a travel document. During the processing times, travel restrictions apply.

Family Reunification

Standard family reunification rules apply (cf. Overview of admissibility criteria in Q1).

Political Rights

TCNs can vote in the municipal elections if they fulfil the following criteria:

- They have had their main place of residency in Belgium for at least 5 years, without interruptions, and are registered in the population or foreigner's registry (including foreigners with a temporary residency right);
- They must file a request to be put on the voters' list.

TCNs may not vote or participate in the federal, regional, provincial and European elections.

TCNs cannot stand for election in Belgium (municipal, regional, federal and European level).

⁹³ Please note that the Office for Free Legal Assistance can always ask the foreign national to provide evidence which shows that he/she has insufficient income which entitles him to free legal assistance.

⁹⁴ The Belgian Federal Parliament approved a Draft Law at the end of April 2016 to lengthen the maximum processing time for family reunification with TCN to 9 months. More information: <http://www.lachambre.be/kvvcr/showpage.cfm?section=/flwb&language=nl&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=54&dossierID=1726>

Employment Rights

Foreign students in Belgium have access to the Belgian labour market:

- The foreign student is entitled to a work permit type C that allows him/her to take up any type of employment for any employer up to maximum 20 hours/week⁽⁹⁵⁾.
- The foreign student is work permit exempt for work performed during the official school holidays.

Social Security Rights

General social security rights principles apply (cf. Fiche 1).

Any foreign student who is in legal stay in Belgium (registered in the public registry) can benefit from health care in Belgium, provided that a personal contribution is paid.

Please note that, even though the TCN might be entitled to social welfare, the use of these provisions may have a negative impact on the residency status of the student in Belgium. If the TCN receives social welfare assistance, this is a reason to refuse the renewal of residency rights.

Education

General education principles apply (cf. Fiche 1).

Foreign students should be able to show progress in the studies for which they received the residence permit in order to obtain a renewal of the residency status.

Duration of stay

A student obtains limited residency rights. The validity of the residence permit is limited to the duration of the studies⁽⁹⁶⁾.

If the foreign student wants to stay in Belgium beyond the validity of his student residence permit, he has to file an application for a status change to another immigration status (e.g. employee status on the basis of a work permit).

⁹⁵ If the foreign national wants to work beyond the restrictions of the above-mentioned work permit, he/she must obtain a work permit according to the standard rules. Please note that a student is supposed to study as his/her main activity in Belgium.

⁹⁶ Usually, the permit is issued for a duration of one year. At the moment of the renewal, the immigration authorities verify the progress of the student in his studies.

Legal Assistance

General rules on legal assistance apply.

Mobility

- The student is entitled to reside on the Belgian territory for the validity of his/her residence permit.
- The Belgian residence card acts as a Schengen visa and entitles its holder to stay on the territory of other Schengen states for 90 days in any 180 day period. To travel, the foreign national needs to be in possession of the valid Belgian residence permit and a valid passport.

Family Reunification

Standard family reunification rules apply.

Political Rights

General rules apply.

The foreign student has generally not resided in Belgium for at least 5 years. In this regard, they have not acquired voting rights.

FICHE 3: RESEARCHERS

Researcher

Employment Rights

The researcher is entitled to engage in all activities related to the research project that acts as the basis of his residency status in Belgium. For any auxiliary activity in Belgium, the foreign researcher must have the appropriate work permit or professional card.

Social Security Rights

General social security rights principles apply (cf. Fiche 1). As researchers contribute by virtue of their status to the Belgian social security scheme of employees, they are entitled to the benefits under the same conditions as Belgian nationals.

Education

General education principles apply (cf. Fiche 1).

Duration of stay

The validity of the residence permit is limited to the duration of the research project.

If the foreign researcher wants to stay in Belgium beyond the validity of his residence card, he has to file an application for a status change to another immigration status (for example: employee status on the basis of a work permit).

After 5 years of legal residency on the Belgian territory, the researcher receives a right to unlimited stay. Please note that the issuance of the unlimited residency is an administrative practice from the Immigration Office and it is not stipulated in the legislation. At that moment, the foreign national might also qualify for the EU Long Term Residency status⁽⁹⁷⁾. Once the foreign national is in possession of a right to unlimited stay, he/she may also qualify for Belgian nationality⁽⁹⁸⁾.

97 A TCN who has legally resided in Belgium during 5 years without interruptions, who has a regular income that meets at least the legally set minimum income level and who has health insurance coverage in Belgium can request the status of EU Long term resident.

98 The foreign national must provide proof of social and economic integration, as well as language skills.

Legal Assistance

General rules on legal assistance apply.

Mobility

- The researcher is entitled to reside on the Belgian territory for the validity of his/her residence permit.
- The Belgian residence card acts as a Schengen visa and entitles its holder to stay on the territory of other Schengen states for 90 days in any 180 day period. To travel, the researcher must be in possession of a valid residence permit and a valid passport.

Family Reunification

Standard family reunification rules apply.

Political Rights

See students.

FIGHE 4: IMMIGRANTS ADMITTED FOR THE PURPOSE OF REMUNERATED ACTIVITIES AND INVESTORS

Blue Card holder

Employment Rights

- During the first two years of employment on the basis of the Blue Card, the foreign national is linked to a specific employer in a specific function. If the Blue Card holder wants to change employment during the first two years of employment, the employer must request a new temporary work authorization to support the Blue Card.
- For any employment activity in Belgium, on top of the duties covered by the Blue Card, the Blue card holder will need to have the appropriate work permit or professional card.
- After 2 years of employment on the basis of the Blue Card, the Blue card holder acquires free access to the Belgian labour market and can easily take-up another highly qualified job with another employer without needing a new work authorization.

Social Security Rights

See researchers.

Education

General education principles apply (cf. Fiche 1).

Duration of stay

- The validity of the Blue Card is limited to 13 months and once renewed for an additional period of 13 months. At the moment of the second renewal, a Blue Card with a validity of 3 years is issued.
- After 5 years of employment on the basis of an EU Blue Card⁽⁹⁹⁾, the Blue Card holder is eligible for the acquisition of the EU Long Term Residency Status (permanent residency right). Once the foreign national is in possession of a right to unlimited stay, he/she may also qualify for Belgian nationality⁽¹⁰⁰⁾.

⁹⁹ The Blue Card holder can accumulate periods of residency acquired in several member states to complete the 5 year period. The residency in other member states must also have been based on a Blue Card to qualify for the EU Long Term Residency System. The 2 years preceding the application have to be spent in Belgium.

¹⁰⁰ The foreign national must provide proof of social and economic integration, as well as language skills.

- Note that the Blue Card holder retains the blue card in case of unemployment provided that the unemployment does not exceed 3 consecutive months and does not occur more than once during the validity of the Blue Card.

Legal Assistance

General rules on legal assistance apply.

Any foreign national is entitled to legal assistance in Belgium. Whether an individual qualifies for free legal assistance depends on his income level. Given the salary threshold for the qualification of a Blue Card, the Blue Card holder will in principle not qualify for free legal assistance.

Mobility

- The Blue Card holder is entitled to reside on the Belgian territory for the validity of his/her Blue Card.
- The Belgian residence card acts as a Schengen visa and entitles its holder to stay on the territory of other Schengen states for 90 days in any 180 day period. The Blue Card holder needs the Blue Card and a valid passport to travel.
- After 18 months of employment on the basis of an EU Blue Card in one member state, the foreign national is entitled to move to another member state to take up employment in that state and request a new Blue Card.

Family Reunification

Standard family reunification rules apply.

At the procedural level, the processing times of the family reunification application for family members of Blue Card holders is limited to 4 months instead of 6 months.

Political Rights

General rules apply.

As most Blue card holders have not resided in Belgium for at least 5 years, they have not acquired political rights under this immigration status.

Highly Qualified worker + Employee + Self-employed + Business Owner + Investor + ICT + Seasonal worker

Employment Rights

- The work permit type B allows the employee to work in Belgium. The work permit is linked to a specific function and a specific employer. If the foreign national wants to change employer or function, that employer has to file a new work permit application.
- The professional card allows the foreign self-employed individual to take-up all activities as described in the application.

Social Security Rights

General social security rights principles apply (cf. Fiche 1).

Note that work permit holders, as a rule, lose their entitlement to unemployment benefits 60 days after expiry of the employment authorisation or termination of the employment contract.

Education

General education principles apply (cf. Fiche 1).

Duration of stay

- The validity of the residence permit of employees is aligned on the validity of the work permit and is usually limited to one year and renewable annually.
- The validity of the residence permit for self-employed individuals is aligned on the validity of the professional card. In this regard, they receive an initial professional card with a validity of 1 or 2 years depending on the discretion of the authorities. The second professional card is usually valid for 3 years.
- After 5 years of legal residency on the Belgian territory on the basis of a work permit or a professional card, the TCN receives a right to unlimited stay. Upon receipt of the right to unlimited stay, the TCN is also work permit exempt. Please note that the issuance of the unlimited residency is an administrative practice from the Immigration Office and it is not stipulated in the legislation. At that moment, the foreign national might also qualify for the EU Long Term Residency

<p>status⁽¹⁰¹⁾. Once the foreign national is in possession of a right to unlimited stay, he/she may also qualify for Belgian nationality⁽¹⁰²⁾.</p>
<p>Legal Assistance</p> <p>General rules on legal assistance apply.</p>
<p>Mobility</p> <p>The employee is entitled to reside on the Belgian territory for the validity of his/her residence permit.</p> <p>The Belgian residence card acts as a Schengen visa and entitles its holder to stay on the territory of other Schengen states for 90 days in any 180 day period. To travel, the TCN needs a valid residence permit and a valid passport.</p>
<p>Family Reunification</p> <p>Standard family reunification rules apply.</p>
<p>Political Rights</p> <p>General rules apply.</p> <p>As most work permit holders have not resided in Belgium for at least 5 years, they will not acquire political rights under this status.</p>

¹⁰¹ A TCN who has legally resided in Belgium during 5 years without interruptions, who has a regular income that meets at least the legally set minimum income level and who has health insurance coverage in Belgium can request the status of EU Long term resident.

¹⁰² The foreign national must provide proof of social and economic integration, as well as language skills.

Asylum seekers

Employment Rights

- Employment rights of asylum seekers:
Asylum seekers are entitled to a work permit C 4 months after filing the asylum application as long as their application is still pending with the authorities. The C work permit allows them to work for any employer without having to meet any specific eligibility conditions. Once the asylum seeker receives the C Work Permit, he or she can continue to work while the asylum application is pending (including during the appeal process, in case of a negative decision on the initial application).
- Employment rights of failed asylum seekers:
Failed asylum seekers are not entitled to work.

Social Security Rights

The asylum seeker is, in principle, referred to a designated reception centre and is entitled to material support from that reception centre. If the asylum seeker decides not to reside in the reception centre, he/she can only benefit from assistance for medical costs.

If the asylum seeker is already entitled to reside in Belgium for a period exceeding 3 months on the basis of another immigration status, he/she is entitled to social welfare assistance.

An asylum seeker is, in principle, entitled to material support while the asylum application is pending⁽¹⁰³⁾. The entitlement stops to exist at the moment of expiry of the appeal period or the notice period given in the order to leave the territory. During the appeal procedure before the Council of State, the asylum seeker is no longer entitled to social assistance.

(Social assistance includes: receiving information on one's rights and obligations, social interpreter's services, medical, sociological and social guidance, legal assistance, financial aid, etc.)

Failed asylum seekers who are in illegal stay and who have exhausted all appeal rights as described above, are only entitled to Urgent Medical Assistance.

¹⁰³ Please note that asylum seekers who file a (second) asylum application after having received a final negative answer on a previous application, are not automatically entitled to material support. The relevant authorities can exclude them from receiving material support. The asylum seeker does however retain the right to assistance for medical expenses. At several stages of the procedure, the asylum seeker can request to receive material support.

Education

General education principles apply (cf. Fiche 1).

Duration of stay

The duration of stay depends on the processing time of the asylum application. Within 8 days from filing the asylum application, the asylum seeker must register with his/her local town hall. At that moment, a police visitor verifies the address of the asylum seeker and upon a positive police report, the asylum seeker receives an orange card which acts as a temporary residency document. The orange card has an initial validity of 3 months, which can be renewed 3 times for a duration of 3 months each. The orange card will be renewed as many times as needed to cover the entire duration of the asylum application.

Upon refusal of the initial application, the asylum seeker receives an order to leave the territory which gives the individual in principle 30 days to leave the territory. If the asylum seeker submits an appeal with suspensive effect against the negative decision, he/she receives a temporary residency document to cover his stay in Belgium while the appeal process is pending.

Legal Assistance

Asylum seekers and failed asylum seekers are entitled to free legal assistance on the basis of their residency status in Belgium¹⁰⁴.

Mobility

The asylum seeker is entitled to reside on the Belgian territory. His temporary residency document does not allow him to travel outside of Belgium.

Family Reunification

No

Political Rights

No

¹⁰⁴ Please note that the Office for Free Legal Assistance can always ask the foreign national to provide evidence which shows that he/she has insufficient income which entitles him to free legal assistance.

FICHE 6: VICTIMS OF HUMAN TRAFFICKING

Victims of Human trafficking

Employment Rights

Victims of human trafficking are entitled to a work permit C that allows them to work for any employer without having to meet any eligibility requirements. The work permit is issued as soon as the applicant receives a temporary residency document which covers his/her right to stay during the residency procedure.

Social Security Rights

For those TCNS that are recognized as victims of human trafficking, the standard social security rights principles apply (cf. Fiche 1).

While the application is pending, the applicants are entitled to social welfare assistance if assigned to a specialised centre. The centre is competent for material support.

Education

General education rules apply.

Duration of stay

Once the applicant is recognized as a victim of trafficking, he/she is entitled to permanent residency in Belgium.

Legal Assistance

General rules on legal assistance apply.

Mobility

The foreign national is entitled to reside on the Belgian territory for the validity of his/her residence permit.

The Belgian residence card acts as a Schengen visa and entitles its holder to stay on the territory of other Schengen states for 90 days in any 180 day period. To travel, the foreign national needs a valid residence permit and a valid passport.

Family Reunification

Standard family reunification rules apply.

Political Rights

Standard rules apply.

FIGHE 7: APPLICANTS FOR OTHER TYPES OF NATIONAL PROTECTION (Fiche 7)

Pending humanitarian regularisation
<p>Employment Rights:</p> <p>The foreign national who files an application for humanitarian regularisation is not entitled to work on the basis of that application.</p>
<p>Social Security Rights:</p> <p>A pending application for humanitarian regularisation does not entitle the applicant to any (temporary) residency rights. In this regard, the applicant is only entitled to urgent medical assistance while the application is pending⁽¹⁰⁵⁾.</p>
<p>Education</p> <p>General education principles apply (cf. Fiche 1).</p>
<p>Duration of stay</p> <p>While the application for humanitarian regularisation is pending, the applicant does not receive any (temporary) residency rights.</p> <p>There are no fixed processing times for the application procedure.</p>
<p>Legal Assistance</p> <p>General rules on legal assistance apply.</p>
<p>Mobility</p> <p>The applicant is not entitled to any (temporary) residency documents. Therefore, he/she cannot travel while the application is pending.</p>
<p>Family Reunification</p> <p>No</p>
<p>Political Rights</p> <p>No</p>

¹⁰⁵ If the applicant already enjoys another residency status in Belgium, he/she will enjoy the social security rights that are linked to that status.

Pending medical regularisation

Employment Rights

The foreign national who files an application for medical regularisation is not entitled to work on the basis of that application.

Social Security Rights

Initially, the application for medical regularisation does not entitle the applicant to any (temporary) residency right. In this regard, the applicant is only entitled to urgent medical assistance.

As soon as the authorities decide on the admissibility of the application, the applicant receives a temporary residency right to cover his stay during the procedure. As from that moment, the applicant is entitled to social welfare assistance.

If the applicant files an appeal against a negative the decision, the appeal does not have a suspensive effect. As a consequence, the foreign national is only entitled to urgent medical assistance during the appeal process.

Education

General education principles apply (cf. Fiche 1).

Duration of stay

Initially, the application for medical regularisation does not entitle the applicant to any (temporary) residency right. As soon as the authorities decide on the admissibility of the application, the applicant receives a temporary residency right to cover his stay during the procedure.

There are no legally set processing times for the regularisation procedure.

Legal Assistance

General rules on legal assistance apply.

Mobility

The temporary residence permit that is issued to the foreign national upon issuance of the decision on the admissibility of the application, does not function as a travel document.

Family Reunification

No

Political Rights

No

Rentier visa/Retirement visa

Employment Rights

The foreign national who qualifies for the rentier visa or retirement visa is entitled to reside in Belgium on the basis of sufficient/recurring income. In this regard, he is not automatically entitled to work in Belgium.

If the foreign national wants to work, he needs to obtain a work permit or professional card according to the standard rules.

Social Security Rights

General social security rights principles apply (cf. Fiche 1).

Education

General education principles apply (cf. Fiche 1).

Duration of stay

In principle, the foreign national obtains a limited residency right, being an electronic residency card type A with a validity of one year. This card is renewable annually. Upon the renewal, the foreign national must show that he/she is not dependent on the Belgian social welfare system.

Legal Assistance

General rules apply.

Mobility

The Belgian residence card acts as a Schengen visa and entitles its holder to stay on the territory of other Schengen states for 90 days in any 180 day period. To travel, the family member must be in possession of a valid Belgian residence permit and a valid passport.

Family Reunification

Standard family reunification rules apply.

Political Rights

General rules apply.

Bibliography

Legislation

Law of 19 February 1965 regarding the exercise of self-employed activities by foreign nationals, *BS* 26 February 1965, 2007.

Law of 15 December 1980 concerning the access to the territory, stay, settlement and removal of foreign nationals, *BS* 31 December 1980, 14584.

Royal Decree of 8 October 1981 concerning the implementation of the law on the access to the territory, stay, settlement and removal of foreign national, *BS* 27 October 1981, 13740.

Law of 19 juli 1991 concerning the civil registry, ID documents and residence cards, *BS* 3 September 1991, 19075.

Circular of 9 October 1997 concerning the application of article 9, section 3 of the Immigration Law, *BS* 14 November 1997.

Law of 30 April 1999 on the employment of Foreign nationals, *BS* 21 May 1999, 17800.

Royal Decree of 9 June 1999 regarding the implementation of the law of 30 April 1999 on the employment of foreign nationals, *BS* 26 June 1999, 24162.

Royal Decree of 3 February 2003 regarding the professional card exemptions for certain categories of foreign nationals who engage in self-employed activities, *BS* 4 March 2003, 10517.

Circular of 19 February 2003 concerning the application of article 9, section 3 of the Immigration Law, *BS* 17 March 2003.

European Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Publ. C-166 of 30 April 2004.

Royal Decree of 27 April 2007 concerning the change of the royal decree on the implementation of the law on the access to the territory, stay, settlement and removal of foreign national, *BS* 21 May 2007, 27242.

Circular of 21 June 2007 concerning changes in the regulations on the residency of foreign nationals following the entry into force of the Law of 15 September 2006, BS 4 July 2007.

Interviews

Interview with Jacques Goriya, Head of Section, Department Long Stay of the Federal Immigration Office, 29 October 2015 and 8 April 2016 (by email).

Others

J. ANTOONS and E. VAN DER ELST, Admitting TCNs for business purposes in Belgium, Study for the Belgian National Contact Point for the European Migration Network, 2015.

Belgian National Contact Point for the European Migration Network, *Migrant access to social security – Policy and practice in Belgium*, 2014.

L. DENYS, *Overzicht van het vreemdelingenrecht*, Heule, UGA, 2013, 541p.

Dienst Rechtsbescherming Foyer, *De Vreemdelingenwet: een praktische handleiding*, September 2013, p. 61.

Federal Public Service Social Security, Administrative instructions concerning occupational workers in agriculture and horticulture, 2015/4.

The European Migration Network was set up with the purpose of providing up-to-date, objective, reliable and comparable information in the areas of asylum and migration for the European institutions, national authorities and other stakeholders.

The Belgian Contact Point is a multi-institutional entity composed of experts from the Federal Public Service Home Affairs (Immigration Office), the Federal Migration Center Myria, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) and the Federal Agency for the Reception of Asylum Seekers (Fedasil).

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The views expressed in this EMN-study are solely those of the authors.

The European Migration Network (EMN) is coordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

