

Foreign Specialists in Finland ry

Lausunto/Statement 15.08.2024

Asia/Matter: VN/24207/2023

The proposed term of protection during which a residence permit of an employee who has become unemployed could not be withdrawn.

According to the proposal, a work-based residence permit could not be withdrawn during 3 months or 6 months if the residence permit has been valid for at least two years at the time when the employee becomes unemployed. In addition, for specialists, holders of the EU Blue Card, startup entrepreneurs, those in the middle or top management of a company, and managers and specialists referred to in the ICT Act, the term of protection would be 6 months without any other requirements.

Note! The proposed regulation is based on the Government Programme and the EU Directive ((EU) 2024/1233, Article 11, paragraph 4). Moreover, in all cases, the use of the term of protection would require that the residence permit is valid. The regulation would not apply to residence permits with a right to work, such as permits based on family ties and permanent residence permits.

Does the proposed regulation provide a sufficiently long term of protection for holders of work-based residence permits to find a new job?

- Yes
- No**

Statement of reasons for the response and other possible comments on the proposed regulation

The proposed § 58a provides that withdrawal under § 58(5) of the Aliens Act “does not apply” if the period of unemployment has lasted for a maximum of either three or six months. Therefore, once the authority is notified that a permit holder has become unemployed, they may only withdraw the permit after the expiry of the relevant non-withdrawal period.

Assuming that unemployment would be the primary factor for withdrawal of a work-based residence permit under § 58(5), there is no period protection from withdrawal which would be sufficient for all situations, as every individual’s economic and working situation is different. However, if a protection period is taken into use, then at minimum we recommend a protection period of 12 months.

If employment is terminated unexpectedly, 3 months is a particularly short time for the permit holder to send applications, wait for responses, participate in the recruitment processes and conclude contract negotiation. Even 6 months may not be sufficient if there are delays on the side of the prospective employer.

The Government Presentation on page 22, cites a memo by VATT which examined work-based residence permit holder unemployment and reemployment. In 2019, out of 593 number of reported unemployment episodes, 219 (or 49%) lasted greater than 3 months. 41% lasted greater than 6 months. This means that a work-based residence permit holder who becomes unemployed, for any reason, has a significant likelihood of being required to leave Finland. The number for 2020 is considerably worse, showing that an economic crisis resulting in staff reductions puts work-based residence permit holders in a particularly precarious position. However, long-term re-employment prospects are overall good, with around 90% of all work-based residence permit holders who become unemployed finding new employment within one year, meaning that a large share of persons who would otherwise be reemployed face having to leave the country due to a deadline that is too short.

We are also concerned about the secondary effects caused by a future perception that there will be a strict time limit on residence while unemployed:

- For a prospective employee, this increases the perceived risk of relocating to Finland for a job, especially when there are dependent family members who will have their lives disrupted in the event of an enforced move out of the country. It also decreases the incentive to take a job offer with a high-risk high-reward start-up company, because of the perceived risk of company bankruptcy. This would be in contradiction with the government's stated goal of promoting work-related immigration to Finland.
- Within employment relationships, there is an increased risk of abuse by the employer and reduced negotiating power by the employee due to the perceived risk of having to leave the country if employment is terminated or not renewed and new employment is not found quickly.
- When searching for new employment, the permit holder will have a strong incentive to take the first position offered to them and not the one best matching their skills, ability and compensation expectations, which may come later. A strict time limit also significantly reduces the ability of permit holders to negotiate an appropriate level of compensation and incentivises prospective employers who know the permit holder's situation to make below-market compensation offers.

From the perspective of equality, these secondary effects put employees requiring a work-based residence permit in a significantly worse position than persons who have a right to residence and work in Finland through some other means. Even if the overall number of persons having to leave due to too long an unemployment period is small, the secondary effects are based on anticipation which affect all persons staying in Finland with a work-based residence permit.

Employer's obligation to notify when the employee's work ends and the related threat of sanction

According to the proposal, employers would be obligated to notify the Finnish Immigration Service when the work of its employee ends. The current rules already require employers to provide the name and certain information about the employment relationship of a third-country national they employ. Both obligations would involve a threat of sanction, which would be based on the existing regulation on sanctions. In addition, notification would be made more effective by including a precise time limit in the Act by which the notification should be submitted (electronically 7 days, using the form of the Finnish Immigration Service 10 days; now section 82, subsection 2 of the [Aliens Act](#) provides that the information must be submitted without delay, which the occupational safety and health authority has stated to mean one week).

Is the proposed time limit of 7/10 days for notifications sufficient?

- Yes
- No**

Statement of reasons for the response and other possible comments on the proposed Regulation

A fixed time limit is not appropriate. The legislation should provide instead that the employer must notify the authority as soon as practically possible, but should provide some leniency when they are unable to do so due to circumstances beyond their control. We propose that at minimum a time limit of five weeks is appropriate, which should account for holidays or sick leave taken by human resources staff, with additional leniency when there is an appropriate justification.

We note that such a strict time limit increases the perceived risk by employers in hiring employees requiring a work-based residence permit, which would reduce the incentive for employers to hire such persons. This would reduce the motivation of employers to hire employees requiring a work-based residence permit. This would be in contradiction with the government's stated goal of promoting work-related immigration to Finland.

Is the application of the current regulation on sanctions (e.g. [sections 186–189](#) of the Aliens Act, [Criminal Code](#)) sufficient for cases where the duty to notify has been neglected?

- Yes
- No

Statement of reasons for the response and other possible comments on the proposed regulation

Extension of the right to work to sectors suffering from labour shortages and the authorisation to issue decrees

It is proposed that the sectors suffering from labour shortages may be issued by Government Decree. A draft Government Decree on sectors suffering from labour shortages, including an example of potential sectors, is appended to the proposal. The extension of the right to work would only apply to holders of residence permits for an employed person.

Possible comments on the proposed regulation

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Other comments on the proposal

The proposed protection periods are not well backed up by evidence

The proposal states that the 3 and 6 month protection periods come as a result of the contents of the 2023 Government Programme and subsequent political negotiations between government parties. They are also close to the minimum required protection period in the EU Single Permits Directive, with § 58a(1)(2) being the only deviation. Representatives of the government and the Ministry have effectively admitted that there will be no change to these periods without a new political agreement. Research is only being carried out after the fact to check if the protection periods are proportionate to the goal of preventing abuse of work-based residence permits. In our view, this is not good policymaking. The government should have started with the goal of preventing abuse of work-based residence permits, then examined options to achieve this goal with minimal impact on residence permit holders who genuinely intend to work in Finland.

It is unclear whether the problem that the government is trying to solve with this regulation is actually a significant problem and whether the proposed solution is proportionate to the size of the problem. The purpose of the regulation is to tie work-based residence permits more strongly to work and prevent abuse of work-based residence permits, for example, by the permit holder absconding and continuing to live in Finland without any intention of working, or by the permit holder working in the grey economy. The cited VATT study, obtained via an information request, shows that about 21% of work-based residence permit holders that became unemployed in 2020 remained unemployed for one year or longer. Only 13% remained unemployed for two years or longer. In 2021, the figures are much lower, where only 5% of work-based residence permit holders who became unemployed then remained unemployed for two years or longer. Out of 628 unemployment episodes in 2020, this is only 75 instances (or 0.3% of all work-based residence permit holders) and in 2021 this is only 20 instances out of 419 (or 0.07% of all work-based residence permit holders). This indicates that the overall problem of permit abuse is very small and the long-term re-employment outcomes for work-based residence permit holders who become unemployed are very good.

No work-based residence permit holder hopes to become involuntarily unemployed and the additional anxiety caused to work-based residence permit holders of a potential 49% rate of withdrawal after 3 months of unemployment and a roughly 40% rate of withdrawal at 6 months is not a reasonable trade-off for what appears to be a very marginal problem of permit abuse.

Discretion and Overall Consideration

Ulkomaalaislaki § 58(5) provides that a residence permit **may** be withdrawn if the conditions for it are no longer met. The authority therefore has a discretion on whether or not to cancel the permit. Clearer directions should be provided on how this discretion should be exercised. The directions should provide that both the special circumstances of the case and intention (and any actions consistent with that intention) of the permit holder should be a factor in determining whether to withdraw a permit. This would also be consistent with the Blue Card Act, 719/2018 § 12(5), which requires that the “special circumstances of the case are taken account of and the principle of proportionality shall be taken account of and respected”.

We propose that relevant circumstances to be taken into account in addition to the § 146(1) overall consideration when exercising the discretion should include:

- The reason why the permit holder became unemployed, for example, if it was at their own initiative, own fault or for reasons that were beyond their control, such as unexpected financial difficulties of the employer.
- Injury, sickness or other comparable reason preventing the permit holder from applying for or commencing new employment.
- Legal obstructions to commencing new employment within the field of the applicant’s qualifications, including any non-compete agreements or injunctions that are in force.
- Delays in concluding new employment, such as a prolonged interview process, offer negotiation or external regulatory checks and pre-conditions (for example, SUPO security clearing and/or private background checks).
- Other circumstances that obstruct or delay re-employment which are beyond the control of the permit holder.
- The initiative taken by the permit holder to find new employment, such as applying for new jobs within their field of experience, participation in relevant training courses and/or integration courses.
- Any relevant economic or job-market related conditions in the field of the applicant’s specialty or qualifications.
- The applicant’s capability to support themselves in Finland without recourse to social security (aside from social security benefits paid on the principle of compensation such as the child benefit, or the earnings-related unemployment allowance).
- Any relevant ties the permit holder has to Finland.
- Any relevant ties a family member of the permit holder has to Finland and the impact that cancellation of the primary permit would have upon them.
- The best interests of a child under the age of 18.

Such factors should be explicitly specified either in the law or by government decree. They should also be published on the information pages of the Finnish Immigration Service so that permit holders understand how the discretion is exercised.

Definition of “sufficient funds”

§ 58a(2) provides that if the period of unemployment has lasted for more than three months, the authority may ask the permit holder to provide proof of “sufficient funds”. The threshold of, and what sources of income counts as “sufficient funds” should be defined. We submit that an earnings-related unemployment allowance should be included in the permit holder’s funds, as the employee has earned by meeting an employment condition and by being a paid up member of the fund. We also submit that social benefits paid on the compensatory principle (such as the child benefit

Definition of “unemployment”

The law should define clearly at what moment the conditions for granting the residence permit are no longer met. In particular, the law should clearly specify if and when any of the following are considered “unemployment”:

- A temporary lay-off under chapter 5 of the Employment Contracts Act 55/2001. We submit that such temporary lay-offs, particularly those with a fixed time, should not be considered a period of unemployment.
- Parental, sickness or other personal leave taken in accordance with the terms of employment, a collective agreement or under law. We submit that any such leave should not be considered “unemployment”.
- A situation where the termination of employment is disputed by the employee and employee’s pending claim for wrongful termination due to a breach of chapter 7, section 1 of the Employment Contracts Act is not baseless and pending a hearing or decision in the regional administrative court or is otherwise under appeal. We submit that such situations should not be considered periods of unemployment.
- Termination of business activities, bankruptcy of a business or likewise.

Missing permits in the 6 month scope

§ 58a(1)(2) provides that a residence permit issued under § 73 (specialist), § 74 (top or middle management) or § 80 (startup entrepreneur) shall have a six month period of non-withdrawal. We propose that permits issued under § 75 (graduates of Finnish Universities) and § 79 (business operator) should also be included under § 58a(1)(2), considering that the nature of their employment or business operations may be similar to those issued with a permit under § 73 and § 80. Persons eligible for a permit under § 75 or § 79 should not have to choose between the greater economic freedom afforded by such permits and greater protection from permit withdrawal under § 58a(1)(2) afforded by § 73 permit when applying for a residence permit or an extension.

Unequal position of those holding residence permit with right to work versus work-based residence permit holders with respect to expanded protection after two years

§ 58a(1)(3) provides that the period of non-withdrawal will be six months if the alien has had a residence permit issued “based on employment” for at least two years. The text of this section should be changed to “if the alien has had a residence permit for at least two years” or “if the alien has in Finland maintained employment, operated a business, or studied in Finland for at least two years”. A person may be in employment while holding a residence permit for studies (2018/719 § 7, 7a), a residence permit for research (2018/719 § 6), a residence permit for an internship (2018/719 § 8a), a residence permit based on family ties (§ 50), a residence permit based on family ties to either a union citizen or union state residence permit holder (§ 49a) refugee status (§ 87), secondary protection (§ 88), temporary protection (§ 110), or a residence permit to start or operate a business (§ 79), or a dependent family member. If the basis for this residence permit ends and the person changes to a residence permit based on employment, they are placed in an unequal position compared to persons who have held a residence permit based on employment because the prior time spent in employment on a permit with a right to work does not count under § 58a(1)(3), even if there is no other relevant difference in their situation. The section should also clarify whether the two year period is a continuous period of the last two years, or a cumulative period of two years over any period. We support a cumulative period of two years or less, considering that the Combined Permits Directive allows for such a deviation.

Spouses

The Government Presentation suggests on page 19 that a work-based residence permit will not be cancelled after the protection period if the spouse of the permit holder is employed based on the § 146(1) overall consideration. There is no mechanism for changing the primary permit holder and if the government intends that permit cancellation and deportation should not happen in this situation it should be explicitly provided for in the legislation..

Residence permit to look for work or start a business

Though it is not in the scope of this proposal, we suggest that the eligibility of the residence permit to look for work or start a business (2018/719 § 10) is expanded to all persons living in Finland with a residence permit for a longer than some predefined amount of time. The requirement of sufficient funds to finance the stay during the job search period can be kept as-is. At present, only persons who have graduated with a degree from a Finnish University or University of Applied Sciences, or who have completed research in Finland are eligible to apply for this residence permit.

Support for other statements

We support the statements made by Moniheli ry, Phoenix ry, Business Finland, Finnish Central Chamber of Commerce, Suomen Startup-yhteisö ry, Teknologiateollisuus ry, and the various municipalities and welfare regions on the matter.

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Thomas S. G. Spilsbury (Secretary, Foreign Specialists in Finland ry)