

# Guide to § 17a of the German Residency Act

 Network "Integration through Qualification (IQ)"

# Imprint

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In cooperation with



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## Preamble

§ 17a of the German Residency Act (AufenthG) entered into force on 1 August 2015. This provision enables skilled workers from third countries to compensate for any substantial differences identified within the scope of a **recognition procedure** by taking part in a training measure in order to achieve professional or occupational recognition or authorisation to practise in Germany. After gaining full **equivalence** or authorisation to practise, such persons are permitted to spend a period of up to one year seeking a job. Skilled workers thus have an opportunity to qualify for full equivalence and become integrated into the labour market. The aim of the present guide is to provide practitioners involved with a handy summary of the areas of responsibility and interfaces involved in procedures conducted in accordance with § 17a of the German Residency Act (AufenthG). The contents included in the guide have been jointly coordinated with relevant stakeholders from the Federal Ministry of Education and Research (BMBF), the Federal Ministry of Labour and Social Affairs (BMAS), the German Foreign Office (AA), the Federal Employment Agency (BA), the Federal Ministry of the Interior (BMI), the Federal Government Commissioner for Migration, Refugees and Integration (IntB) and the Federal Ministry of Health (BMG).

We begin by presenting two charts to localise § 17a AufenthG within the context of migration pathways and to depict the procedure itself. Chapter 3 focuses on the various steps of the procedure and looks at the respective stakeholders and the necessary processes with regard to these individual stages. Chapter 4 addresses the topic of financing. It describes prerequisites for the issuing of funding and the possibilities of individual financial assistance. The guide concludes with a checklist and glossary in order to offer a rapid overview of which documents are needed at which stages of the process and to explain the significance of the individual terminology used.

The information presented in this guide was correct **as of 19 October 2017**.

**Regular updates of the guide** are available on the homepage of the IQ Competence Center for Counselling and Job Training of Migrants at <https://www.netzwerk-iq.de/network-iq-start-page/credential-recognition.html>

An up-to-date **list of FAQs** is also provided on the website.

# 1. § 17a of the German Residency Act (AufenthG) localised within the system of migration pathways to Germany for qualified skilled workers<sup>1</sup>

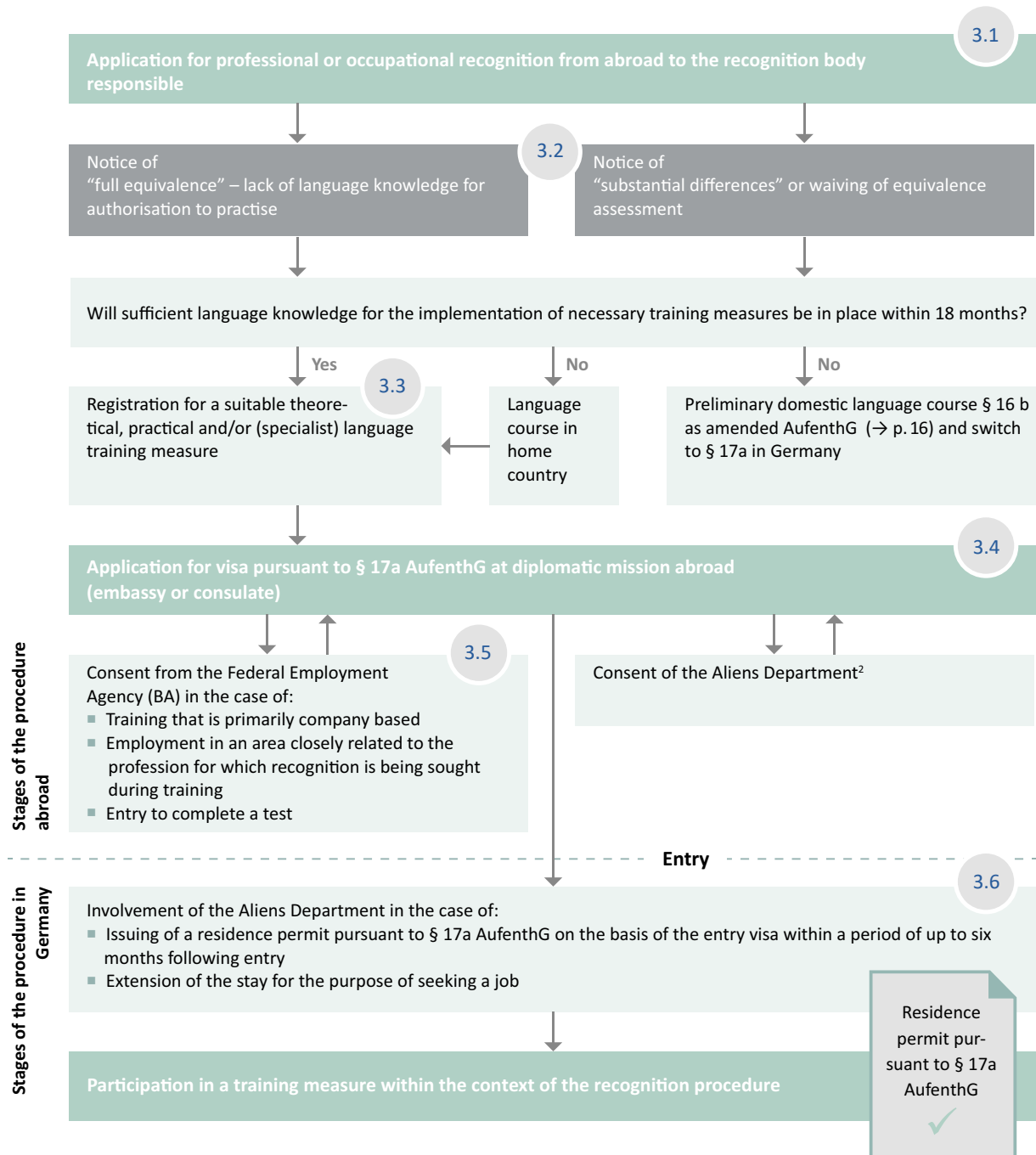
## Migration to Germany with a professional or vocational qualification

Recognition	Academically qualified skilled workers with an EU Blue Card – § 19a AufenthG, § 2 BeschV	<p><b>Target group</b> – highly qualified skilled workers</p> <p><b>Requirements</b></p> <ul style="list-style-type: none"> <li>■ Recognised or comparable higher education qualification via the ANABIN database or certificate of evaluation by the Central Office for Foreign Education (ZAB) if the qualification is not included in the database. In the case of regulated professions, possession of authorisation to practice.</li> <li>■ Job offer in Germany</li> <li>■ Minimum salary</li> <li>■ Consent of the Federal Employment Agency (BA) if required</li> </ul> <p><b>Residency and employment</b> – issuing of a residence permit in Germany by the Aliens Department for up to four years, after the age of 33 or if language knowledge at level B1 is demonstrated a settlement permit may be issued after 21 months.</p>
	Qualified skilled workers who have completed recognised VET – § 18 AufenthG, § 6 Paragraph 2 BeschV	<p><b>Target group</b> – skilled workers with a foreign vocational education and training qualification or a foreign higher education qualification which is recognised as a vocational education and training qualification in Germany.</p> <p><b>Requirements</b></p> <ul style="list-style-type: none"> <li>■ Recognised vocational education and training in an occupation which is included on the BA whitelist.</li> <li>■ Job offer in Germany</li> <li>■ Consent of the BA (check of employment conditions)</li> </ul> <p><b>Residency and employment</b> – residence permit</p>
	Skilled workers for the purpose of recognition of a professional or vocational qualification – § 17a AufenthG	<p><b>Target group</b> – skilled and highly qualified workers who still need to complete further adaptation/training measures in Germany in order to obtain recognition for their qualification/authorisation to practise</p> <p><b>Requirements</b></p> <ul style="list-style-type: none"> <li>■ Professional or vocational qualification from abroad</li> <li>■ Written recognition notice ascertains need for training</li> <li>■ Evidence of participation in training courses (theoretical or practical) or completion of a test in Germany</li> <li>■ Consent of the BA if required</li> <li>■ Proof of financing</li> </ul> <p><b>Residency and employment</b></p> <ul style="list-style-type: none"> <li>■ stay of up to 18 months for training measures within the context of recognition</li> <li>■ Secondary employment possible</li> </ul>

<sup>1</sup> The chart depicts typical constellations which frequently occur and makes no claim to be complete. For the purpose of this guide, a conscious decision has been made not to depict various other migration pathways. Other possibilities in this regard exist pursuant to § 18 AufenthG in conjunction with § 2 Paragraph 3 Employment Ordinance For Foreign Workers, BeschV, (academically trained skilled workers who do not fulfil the prerequisites of the EU Blue Card), pursuant to § 18 AufenthG in conjunction with § 7 Clause 1 BeschV (graduates of German schools abroad who have completed a recognised foreign higher education qualification) and pursuant to § 18c AufenthG (entry of qualified skilled workers in order to seek a job in Germany).

## 2. The procedure in accordance with § 17a AufenthG<sup>2</sup>

(Checklists for the necessary documentation are provided in Chapter 5)



<sup>2</sup> Consent from the Aliens Department is not required as part of the visa procedure if the training measure is primarily company based and there have been no relevant prior stays in Germany.

## 3. Delineation of the tasks of the stakeholders involved

### 3.1. Application for professional or occupational recognition from abroad

An application for professional or occupational recognition is independent of the place of residence of the applicant. This means that an application for professional or occupational recognition may be submitted from abroad. Applicants are also not required to be in possession of a secured residence permit.<sup>3</sup> This is in line with the clear intention behind the legislation, which is to use the Recognition Act as a vehicle to assist with the targeted immigration of qualified skilled workers. The documents necessary to conduct a comparison of the foreign professional or vocational qualification with a current German professional or vocational qualification (“**reference occupation**”) are stated in a checklist in Chapter 5.

Various contact points and opportunities are available to allow applicants to obtain guidance on the topic of professional and occupational recognition from abroad. Personal advisory services are available from a nationwide network of **advisory centres of Network IQ** and from the “**Hotline Working and Living in Germany**” which is run by the Federal Office for Migration and Refugees (BAMF) and the Central Foreign and Specialist Placement Agency (ZAV). There are also various websites which provide both general and occupation-specific information relating to every aspect of the topic of professional or occupational recognition (including “**Recognition in Germany**”, “**Make-it-in-Germany**” and the “**BQ Portal**”). The German Chambers of Commerce Abroad (AHKs) which participate in the “**ProRecognition**” project offer interested parties in selected countries the opportunity to obtain guidance on the recognition of professional or vocational qualifications.<sup>4</sup>

#### Information for persons with qualifications in **non-academic reference occupations**

Nationals of third countries whose qualification is equivalent to a German training occupation may only take up employment in Germany under the following circumstances.

1. The vocational education and training has been recognised in Germany as being equivalent and

a) is included on the **BA's whitelist** as a shortage occupation or

b) a placement agreement is in place between the country of origin and the BA (this currently only applies in the nursing professions with the countries of Bosnia-Herzegovina, Serbia, the Philippines and Tunisia).

2. Qualified employment may be taken up in the State of Baden-Württemberg irrespective of the BA's whitelist. This has been made possible via a points-based pilot project for foreign skilled workers (PuMa). The prerequisite is that the qualification must have received full or partial recognition. Other criteria regarding the ability to integrate, such as knowledge of German, also must be fulfilled. Participation in the PuMa pilot project is possible up until and including September 2019. Interested applicants can obtain advice on the PuMa pilot project from the Virtual Welcome Centre (VWC) operated by the ZAV.<sup>5</sup>

Without any prospect of employment in Germany, gaining recognition from abroad will usually turn out to be a dead end. The visa offices do not normally accept applications pursuant to § 17a AufenthG if, at the time when the application is made, legal reasons dictate that there is no perspective of employment in Germany at a later date. Such a circumstance means that the purpose of § 17a AufenthG – using the **Recognition Act** to create a bridge to the German labour market – cannot be fulfilled.

The restrictions stated do not apply to nationals of Andorra, Australia, Canada, Israel, Japan, Monaco, New Zealand, San Marino, South Korea and the United States of America. Citizens of these countries may obtain consent to exercise any employment and are thus not subject to the restriction of the BA's whitelist pursuant to § 26 Paragraph 1 of the Employment Ordinance (BeschV). Pursuant to § 26 Paragraph 2 BeschV, this will also apply to citizens of Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia until the end of 2020. However, attention should be drawn to the particular requirements that apply in the case of this so-called “West Balkans” regulation.<sup>6</sup>

3 Cf. BMBF 2015, Report on the Recognition Act 2015, p. 55.

4 The AHKs and German trade delegations are currently providing such advice in Egypt, China, India, Iran, Italy, Morocco, Poland and Vietnam.

5 More information on the PuMa pilot project is available at [www.regional-skilled-workers-initiative.de](http://www.regional-skilled-workers-initiative.de).

6 “Approval may not be issued if the applicant has been in receipt of benefits pursuant to the Asylum Seekers Benefits Act in the 24 months prior to application. Clause 3 does not apply to applicants who submitted an application for asylum after 1 January 2015 and before 24 October 2015, were permitted to stay on German territory on 24 October 2015 either with special leave to remain or as a person subject to deportation and left the country without delay”, § 26 Paragraph 2 Clauses 2 and 3 BeschV.

## 3.2. Implementation of the recognition procedure

### 3.2.1 Equivalence assessment by the competent body

The **competent body** responsible for the professional or occupational recognition uses the available documentation as the basis for carrying out a formal assessment procedure. This involves comparing the foreign professional or vocational qualification and the corresponding German qualification in the **reference occupation (equivalence assessment)**. The current German occupational profile provides the reference point for this process. External experts may also be called upon. In the healthcare professions, the competent bodies may receive support from the Central Assessment Agency for Healthcare Professions at the Central Office for Foreign Education (ZAB). If there are no substantial differences between the foreign professional or vocational qualification and the respective reference occupation, full equivalence is confirmed in the form of a **notice**. In the event that full equivalence is not in place because of an absence of knowledge or skills (for which occupational experience cannot compensate), a notice imposing a **compensation measure** is issued in the case of **regulated professions**.

In **non-regulated professions**, partial equivalence is certified in these circumstances. Both forms of notice contain a list of the substantial differences identified. In the case of regulated professions, the equivalence assessment forms only part of the procedure leading to authorisation to practise. Alongside full equivalence, other prerequisites (such as language knowledge) may need to be fulfilled before authorisation to practice is granted. These requirements are covered by the specific legislation governing the profession in question.<sup>7</sup>

### 3.2.2 Rationale for local responsibility

An application for professional or occupational recognition must be submitted to the **competent body** in Germany which is locally responsible for the **recognition procedure**. Responsibility is determined by the place in which the occupational activity is planned to be exercised. In all cases, simply an **intention on the part of an applicant** to work in the respective federal state is deemed to be sufficient.<sup>8</sup> The competent bodies may seek substantiation of such an intention by requiring provision of proof, e.g. in the form of evidence of job applications. They may not, however, require submission of evidence of a firm job offer at the time when the application is made. Indeed, this is frequently not possible. Particularly in the field of the **regulated professions**, many employers are not prepared to issue job offers until transparency has been established in respect of comparability of the qualification, i.e. the **equivalence assessment** has been concluded.

Planned participation in a training measure may also constitute rationale for local responsibility of the competent body in the respective federal state (see also 3.3). Precise requirements vary between the individual federal states. In order to accelerate the procedure, applicants in regulated professions such as doctor have the option of waiving the equivalence assessment. Such applicants agree to demonstrate that they are in possession of the knowledge required in the German **reference occupation** by undergoing a **knowledge test**. Within the scope of the application process, the only requirements in this regard are evidence of possession of a qualification in the relevant profession and evidence of authorisation to exercise the profession in the country of origin. The competent body issues the applicant with an **interim notice**, which states the necessity of completing a knowledge test in order to obtain recognition.<sup>9</sup> In the visa process, this replaces the deficit notice pursuant to § 17a AufenthG and, alongside the other required documentation, is sufficient for the issuing of a visa in accordance with § 17a AufenthG.

The competent body may make applicants aware of the possibility of waiving the equivalence assessment at the outset of the procedure.<sup>10</sup>

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7 Cf. BMBF 2014, Report on the Recognition Act 2014, p. 104.

8 Cf. BMBF 2015, Report on the Recognition Act 2015, p. 84.

9 Cf. BMBF 2017, Administrative Implementation Recommendations, p. 2.

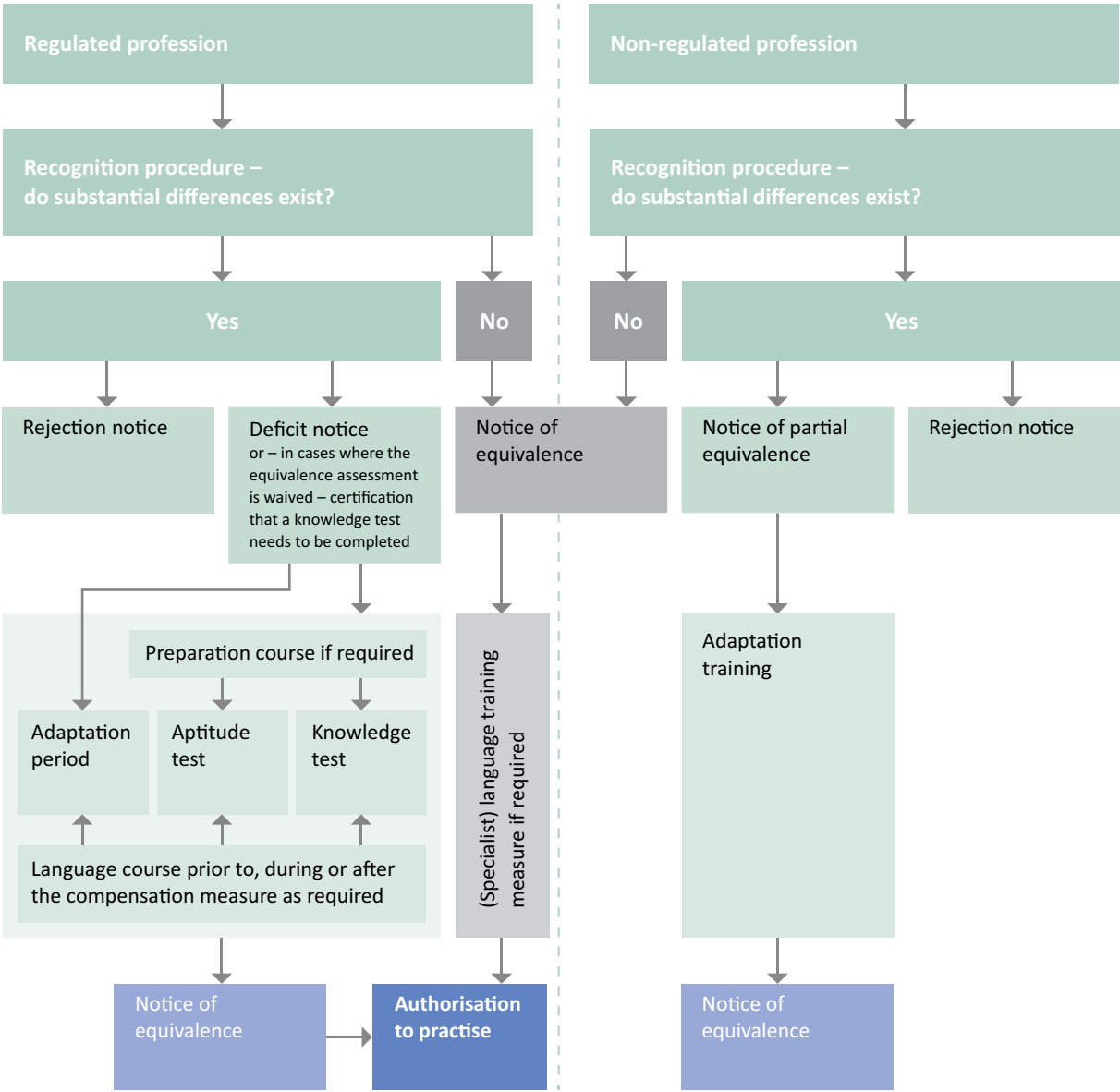
10 Cf. BMBF 2017, Administrative Implementation Recommendations, p. 2



### 3.3. The route to suitable training

#### 3.3.1 Training pathways within the context of § 17a AufenthG

Training may compensate for substantial differences identified within the scope of an **equivalence assessment**. The relevant **reference occupation** dictates what sort of training is suitable for the applicants. In the case of a **regulated profession** in respect of which substantial differences have been identified, there is the option to attend a so-called **adaptation period** or to complete a test (**knowledge test** or **aptitude test**). **Preparation courses** are available to assist with the lead-up to these tests.<sup>11</sup> Participation in a relevant training measure (language course, specialist language programme) may be facilitated in regulated professions where full equivalence has been attested but the applicant lacks the necessary language knowledge for authorisation to practise. In the case of **non-regulated training occupations**, compensation for substantial differences can be achieved via so-called **adaptation training**. This usually comprises a company-based training measure which may also be supplemented with theoretical courses. The figure below shows the various qualification pathways which are relevant pursuant to § 17a AufenthG within the context of the **recognition procedure**.



<sup>11</sup> An aptitude test is stipulated in the case of medical professions for which academic qualifications are required where the qualification in question has been obtained in the EU, EEC or in Switzerland. Applicants from third countries are required to complete a knowledge test

The precise structure of adaptation training or of an adaptation period depends on the substantial differences identified in the **notice**. For this reason, it is crucial both to applicants and to institutions providing guidance subsequent to the **equivalence assessment** that notices issued contain sufficient information regarding missing knowledge. In the case of regulated professions, the **competent bodies** are required to provide specific details of the duration and contents of a **compensation measure** required for the granting of full equivalence. No such provisions are in place for the **non-regulated professions**. Support with the “translation” of differences into training requirements or a training measure may be provided by the institutions below (e.g. advice on job training, chambers of commerce and industry).

### 3.3.2 Finding a suitable training measure

There are various ways in which stakeholders involved within an advisory context can obtain information on current training measures.

#### **KURSNET**

The **KURSNET** database is operated by the Federal Employment Agency and provides a summary of training measures within the context of professional and occupational recognition. All training programmes connected with recognition of foreign qualifications are summarised in the section “Particular provision for persons with a migration background (BAMF funding and recognition)”. The search function takes account both of the profession or occupation in which training took place and of the region. Alongside AZAV-certified training courses<sup>12</sup> (see also 3.4.2) and professional language courses which fulfil the requirements for **German language support pursuant to § 45a AufenthG**, KURSNET also includes training measures that form part of the Network “Integration through Qualification (IQ)”. The “Recognition in Germany” portal offers rapid access to training measures listed in KURSNET by filtering provision according to occupational groups. This service is available via the link: [www.anerkennung-in-deutschland.de/html/de/qualifizierungsangebote.php](http://www.anerkennung-in-deutschland.de/html/de/qualifizierungsangebote.php).

#### **IQ advice on job training**

As well as the advice options in place to accompany the **recognition procedure**, guidance on suitable training measures has also been available since 2015 via the **advice centres run by Network IQ**. Advisory services are provided in consultation with the **recognition body responsible** or with the relevant trade and industry chamber (chamber of commerce and industry/chamber of crafts and trades) and refer people both to internal IQ training measures and to external programmes. The **internal IQ training measures** are publicly funded and may therefore be deemed to be suitable (see also 3.4.2).

#### **Non-publicly funded/non-certified training providers**

Applicants have the further option of taking part in a training measure operated by a non-publicly funded or non-certified provider and may also act on their own initiative in completing a practical company-based phase of training which is not integrated into a publicly-funded training programme.

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<sup>12</sup> AZAV = Ordinance regarding the conditions and procedure for the accreditation of professional bodies and the admission of employment support providers

### 3.3.3. Minimum requirements for confirmation of registration by the training provider

Confirmation of registration must indicate that participation of the applicant in a specific measure is possible at a given point in time or that a place has been made available to the applicant. We recommend the stating of an alternative date in case entry to Germany is delayed.

**In order to ensure that the visa process runs smoothly, it is crucial for the confirmation of registration issued by the training provider to fulfil the necessary criteria:**

- Information on the training provider
- If relevant, evidence of state recognition, evidence of certification in accordance with the AZAV or evidence that public funding is in place
- Time and planned duration of the training (alternative date if relevant)
- Language entry and target level
- Proportion of company-based phases during the training
- Remuneration within the scope of any company-based phases that may be included

In the case of company-based training measures, a detailed **continuing training plan** should also indicate which form/approach/methods will be adopted in order to compensate for the differences listed by the **competent body**. In the case of **preparation courses** for a **knowledge test** which are primarily conducted by the company, the provider of such courses should further indicate that a company-based practical phase will form a component of the preparation course. Because consent from the Federal Employment Agency is required for training which is mainly (>50 %) company based, a statement as to whether this is the case must be made at the time when the application is submitted. For more information on when the assumption should be made that a training course is largely company based, see 3.5.1.

## 3.4. Visa process

### 3.4.1. Target group

A visa pursuant to § 17a AufenthG may be issued if the intention is to seek recognition in Germany of a professional or vocational qualification acquired abroad and if a training measure or test within Germany is required for this purpose. This mainly applies to:

- holders of a non-academic vocational qualification acquired abroad;
- holders of an academic qualification acquired abroad in the **regulated sector**,

who are able to present an **(interim) notice** from a **competent body** in Germany that states that further training measures are necessary for recognition or for authorisation to practise.

In the case of **non-academic vocational qualifications**, consideration needs to be accorded to the fact that restrictions may apply in respect of future employment (see box under 3.1.). Although § 17a AufenthG does not mandatorily require that later employment should be legally possible, the visa offices will question the purpose of issuing a visa in circumstances where there are no prospects of subsequent employment once recognition has taken place (see note under 3.1.).

§ 17a AufenthG does not apply in practice to **academic qualifications** in the non-regulated sector. § 17a AufenthG is aligned towards professional or occupational recognition procedures within the context of the Recognition Act or the relevant federal state laws. In the case of academic qualifications in the non-regulated sector, applicants may be referred to the opportunity to submit a visa application pursuant to § 16 AufenthG. This permits commencement of a follow-up course of higher education study in Germany (§ 16 Paragraphs 1 and 6 AufenthG) or attendance of language courses (§ 16b as amended, see also 3.6.1.).<sup>13</sup>

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<sup>13</sup> Cf. BMBF 2017, Administrative Implementation Recommendations, pp. 2 ff.

The documentation necessary for a visa application pursuant to § 17a AufenthG is stated in a checklist in Chapter 5.

**Please note** – nationals of Australia, Canada, Israel, Japan, New Zealand, South Korea and the United States of America may enter Germany without a visa and apply for the required residence permit from the relevant Aliens Department (§ 41 Paragraph 1 Residence Ordinance). Employment, including a training measure that is primarily company based, may not be commenced until a residence permit allows such a step to be undertaken.

### 3.4.2. Necessity and suitability of the adaptation or training measure (§ 17a Paragraph 1 Clause 2 AufenthG)

The visa office will scrutinise whether the (interim) notice indicates that the planned adaptation measure (adaptation period/adaptation training or knowledge test/preparation course) is necessary. The requirement for an adaptation measure or further qualifications in the regulated sector is substantiated if the (interim) notice states that the applicant needs to complete an adaptation period or test or needs to demonstrate language knowledge. In the non-regulated sector, an indication that the applicant lacks the practical and/or theoretical knowledge for the according of full recognition is sufficient. The visa office does not check the formal or material correctness of the notice.<sup>14</sup>

The following differentiations need to be drawn in respect of the suitability of the intended measures.

- In the case of **training measures that are primarily company based** (proportion of more than 50%), the Federal Employment Agency will check the suitability of the training measure on the basis of the continuing training plan submitted (§ 34 Paragraph 3 BeschV).
- In the case of **training measures that are not primarily company based**, the visa office will check the suitability of the training measure itself.
  - » Suitability will be assumed in the case of **publicly financed/certified measures**. The visa office will not conduct any separate check in this regard.
  - » The visa office is required to carry out an individual scrutiny of suitability for **non-publicly funded training providers or non-certified company-based training provision**. In such an instance, quality assurance cannot be guaranteed at the outset.<sup>15</sup>
    - In the case of *adaptation periods and adaptation training* which serve the purpose of compensating for professional differences identified and lead to full recognition if successfully completed, **confirmation is required from the local recognition authority responsible** that the specific measure is suitable for the attainment of recognition. If such confirmation is in place, the proviso of suitability is fulfilled. Otherwise, the visa cannot be issued in accordance with § 17a AufenthG.<sup>16</sup>
    - In the case of language courses, by way of contrast, it is sufficient for the local recognition authority responsible to confirm that the outcomes achieved will be accepted by the **competent body** in terms of granting authorisation to practise.<sup>17</sup>
    - In the case of preparation courses for the knowledge test, it is incumbent upon the visa office to scrutinise the suitability of the course. The visa office may make enquiries to the competent bodies for this purpose.<sup>18</sup>

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14 Cf. BMBF 2017, Administrative Implementation Recommendations, pp. 5 ff.

15 Cf. BMBF 2017, Administrative Implementation Recommendations, p. 5

16 Cf. BMBF 2017, Administrative Implementation Recommendations, p. 5.

17 Cf. BMBF 2017, Administrative Implementation Recommendations, p. 5

18 Cf. BMBF 2017, Administrative Implementation Recommendations, p. 5.

### 3.4.3. Necessary language knowledge of applicants

#### Minimum level for the issuing of a visa

A certain level of knowledge of German is fundamentally necessary in order to be able to participate successfully in a training measure. For this reason, evidence of a minimum level of knowledge of German is usually required for admission to the training course.

The visa offices will normally carry out the relevant checks on the basis of recognised certificates submitted. Evidence of language knowledge is provided in the form of a certificate issued by an examination provider certified in accordance with the standards of the ALTE (Association of Language Testers in Europe). Such a provider needs to maintain a branch in the host country staffed by delegates or else operate in Germany. These regulations currently apply in respect of the following language certificates.

- Language certificates issued by the Goethe Institute
- Language certificates issued by telc GmbH (the European Language Certificate, subsidiary of the German Association of Adult Education Centres) (with restrictions)
- Austrian Language Diploma certificates (ÖSD) (with restrictions)
- “TestDaF” certificates issued by the TestDaF Institute (Institute of the Distance Learning University of Hagen and of the Ruhr University of Bochum, test levels start at B2 GER)

The visa offices are guided by the minimum requirements put in place by the training provider for the planned measure. If no information regarding such requirements is available, the visa offices apply the following standards.

- Minimum level of A2, unless prior language acquisition forms part of the planned training measure.
- Minimum level of B1 for doctors or nursing staff, unless prior language acquisition forms part of the planned training measure.

If the **competent body** has accepted evidence of language knowledge from **non-certified training providers** for the purpose of recognition, the visa office is afforded the opportunity to scrutinise language knowledge in greater detail and call for further evidence in cases where there is doubt that such knowledge is sufficient for the implementation of the training measure. The issuing of the visa must be declined if adequate language knowledge cannot be demonstrated.

If no or insufficient language knowledge is in place, the visa office will indicate the possibility of a preliminary stay in Germany for the purpose of acquiring the language knowledge necessary for the training measure pursuant to § 16b as amended (see also 3.6.1.). Notwithstanding this, a visa cannot be issued until certain other requirements are met, including registration for a language course.

Insofar as the intention is that acquisition of language knowledge is to take place parallel to the training measure, investigations should be conducted on an individual case basis as to whether this appears plausible. In cases of doubt, the provider of the training measure should confirm that a lower level of language knowledge will suffice at the beginning of the measure.

## 3.5. Training at the company

### 3.5.1. Training that is primarily company based (§ 17a Paragraph 1 Clause 3 AufenthG)

In the event that the intention is to pursue a training measure that is primarily company based, the consent of the Federal Employment Agency is required before a visa can be issued. Such consent is obtained within the scope of the visa procedure. A measure is deemed to be primarily company based if more than 50% of training takes place at the company and if the programme is deemed to constitute employment within the meaning of § 7 German Social Security Code IV (SGB IV).<sup>19</sup>

Adaptation periods within the scope of certified publicly-funded measures at hospitals may contain company-based elements which do not constitute employment. In such cases, participants may be completing a prescribed course programme which does not involve any performance of work vis-à-vis the hospital. For this reason, they do not receive any remuneration. Despite being conducted within a company, these courses primarily represent theoretical adaptation measures which do not require the consent of the BA. In order to facilitate the visa procedure pursuant to § 17a AufenthG, the training provider concerned should include an explanatory note in the application documentation in such cases.

#### **Prognosis at the point in time when the measure is planned**

When application is made to the visa office, the question as to whether a measure is primarily company based should be related to the time at which the measure is planned. To this extent, the company or provider offering the measure is required to make a prognosis. In cases of doubt, the training providers or companies should assess the company-based proportion of the measure to be above 50% in order to ensure consent from the BA. Subsequent expansion of the company-based proportion to a level above 50% during implementation of the measure is not permissible without the consent of the BA and jeopardises the legal basis for the stay.

#### **Consent from the Federal Employment Agency**

As part of the process of issuing consent, the BA examines the suitability of the intended company-based training measure on the basis of the continuing training plan to be submitted (§ 34 Paragraph 3 BeschV).

Consent is issued without investigation of priority (§ 8 Paragraph 2 Clause 2 BeschV). The BA will scrutinise the employment conditions of the planned measure at the company. Consent from the BA requires that the employment must not take place under less favourable conditions than those accorded to domestic employees. This may ordinarily be assumed if participants receive a remuneration that is at least equal to the training allowance paid in the third year of training. The provisions contained within the Minimum Wage Act must be complied with.<sup>20</sup>

Application of the statutory minimum wage is excluded in the case of the following measures.

- Practical training in the non-regulated sector and practical training within the scope of adaptation periods which are necessary for the attainment of full equivalence and in respect of which a training contract is presented.
- Practical training of a duration of up to three months within the scope of **preparation courses** if substantial differences have been identified in the (interim) notice, if the notice stipulates that a **knowledge** or **aptitude test** is a prerequisite for recognition and if the training provider demonstrates that the practical training forms part of the preparation course.<sup>21</sup>

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<sup>19</sup> Pursuant to § 7 Paragraph 1 SGB IV, employment is non-self employed work, particularly within the context of a contract of employment. Activity that is carried out in accordance with instructions and integration into the work organisation of the party giving the instructions are indications of employment.

<sup>20</sup> Cf. BA 2017, Technical Instructions on the Residency Act, marginal note 17a.08

<sup>21</sup> Cf. BMAS, BMF, BMBF 2017, Joint Interpretation and Practical Guidance for the application of the Minimum Wage Act within the context of recognition of foreign professional and vocational qualifications.

### 3.5.2. Employment opportunities during training (§ 17a Paragraph 2 and 3 AufenthG)

During the training measure, the following employment opportunities are available.

#### **Secondary employment (§ 17a Paragraph 2 AufenthG)**

Secondary employment is only permissible up to an extent of 10 hours per week. Consent from the Federal Employment Agency is not required. The Minimum Wage Act must be complied with.

#### **Employment in an area closely related to the profession for which recognition is being sought (§ 17a Paragraph 3 AufenthG)**

The prerequisite for employment beyond 10 hours per week is that such employment must be in an area which is **close-ly** related to the profession for which recognition is being sought. An example would be employment as a nursing assistant<sup>22</sup> in the case of a person seeking recognition in nursing. By way of contrast, employment of a doctor as a nursing assistant or as a commercial employee in the pharmaceutical sector with a dispensing chemist is not deemed to constitute employment in an area closely related to the profession for which recognition is being sought. A binding job offer in the profession to be exercised subsequent to recognition must also be in place. Consent from the BA is required for employment in such a case. The checks carried out by the BA relate to employment in an area closely related to the profession for which recognition is being sought and to the job offer for the time subsequent to recognition of the professional qualification. Consent from the BA requires that the employment must not take place under less favourable conditions than those accorded to comparable employees. The Minimum Wage Act must be complied with. No investigation of priority is required for employment in an area closely related to the profession for which recognition is being sought (§ 8 Paragraph 2 BeschV). Whether an investigation of priority is conducted for the intended future employment is guided by the facts and circumstances relating to admission to the future employment contained in the BeschV. No time limitation applies in respect of employment in an area closely related to the profession for which recognition is being sought.

In the field of the medical professions where academic qualifications are required, a residence permit pursuant to § 18 or § 19a AufenthG may be considered if the main intention prior to the issuing of a licence to practise is to pursue employment on the basis of a temporary authorisation to practise. In such a case, the skills necessary for a licence to practise may be acquired alongside employment (e.g. in-service specialist language course or preparation course for the knowledge test).

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22 Authorisation to practise may be required for employment as a nursing assistant.

## 3.6. Arrival in Germany

Following entry to Germany with the necessary visa (if a visa requirement applies), the local Aliens Department in Germany will issue a residence permit pursuant to § 17a AufenthG. If relevant, the local Aliens Department will also make a decision regarding an application for the issuing of other residence permits (change of purpose), e.g. from a residence permit pursuant to § 16b AufenthG as amended (until 01.08.2017 § 16 Paragraph 5 AufenthG) to a residence permit pursuant to § 17a AufenthG.<sup>23</sup>

### 3.6.1. Switch from a general language course to recognition-specific measures (§ 16b AufenthG as amended → § 17a AufenthG)

If an applicant lacks the necessary language knowledge for participation in an occupation-related training measure (e.g. **adaptation training**, specialist language course), a visa for a general language course (residence permit pursuant to § 16b AufenthG) may be initially issued prior to a residence permit in accordance with § 17a AufenthG. However, initial issuing of a permit pursuant to § 16b AufenthG as amended is only necessary if the overall duration of the stay until recognition is expected to exceed 18 months or if no (interim) notice from a competent body is as yet available.<sup>24</sup> § 16b AufenthG as amended does not permit employment.

Following successful completion of the language course, an application to the Aliens Department responsible for a permit pursuant to § 17a AufenthG can be made whilst the applicant is still in Germany without any requirement to leave the country (change of purpose, cf. inter alia 16.5.1.6. General Administrative Regulations AufenthG). Such a possibility has now been expressly made clear in the new § 16b Paragraph 4 AufenthG as amended.

The following [chart](#) presents the procedure for such a case. It depicts an ideal case scenario in which the **equivalence assessment** is able to run parallel to the language course following entry to the country. In cases where a language course precedes, § 16b AufenthG as amended and § 17a AufenthG supplement one another in respect of the objective and purpose of the stay, and § 16b AufenthG as amended is not superseded by § 17a AufenthG as a more specific regulation.<sup>25</sup>

Language knowledge may also be acquired within the scope of § 17a AufenthG. If language knowledge is necessary for recognition or for authorisation to exercise a profession, the language course constitutes an educational measure pursuant to 17a AufenthG. If this is not required, a language course may be attended alongside a training measure pursuant to § 17a AufenthG.

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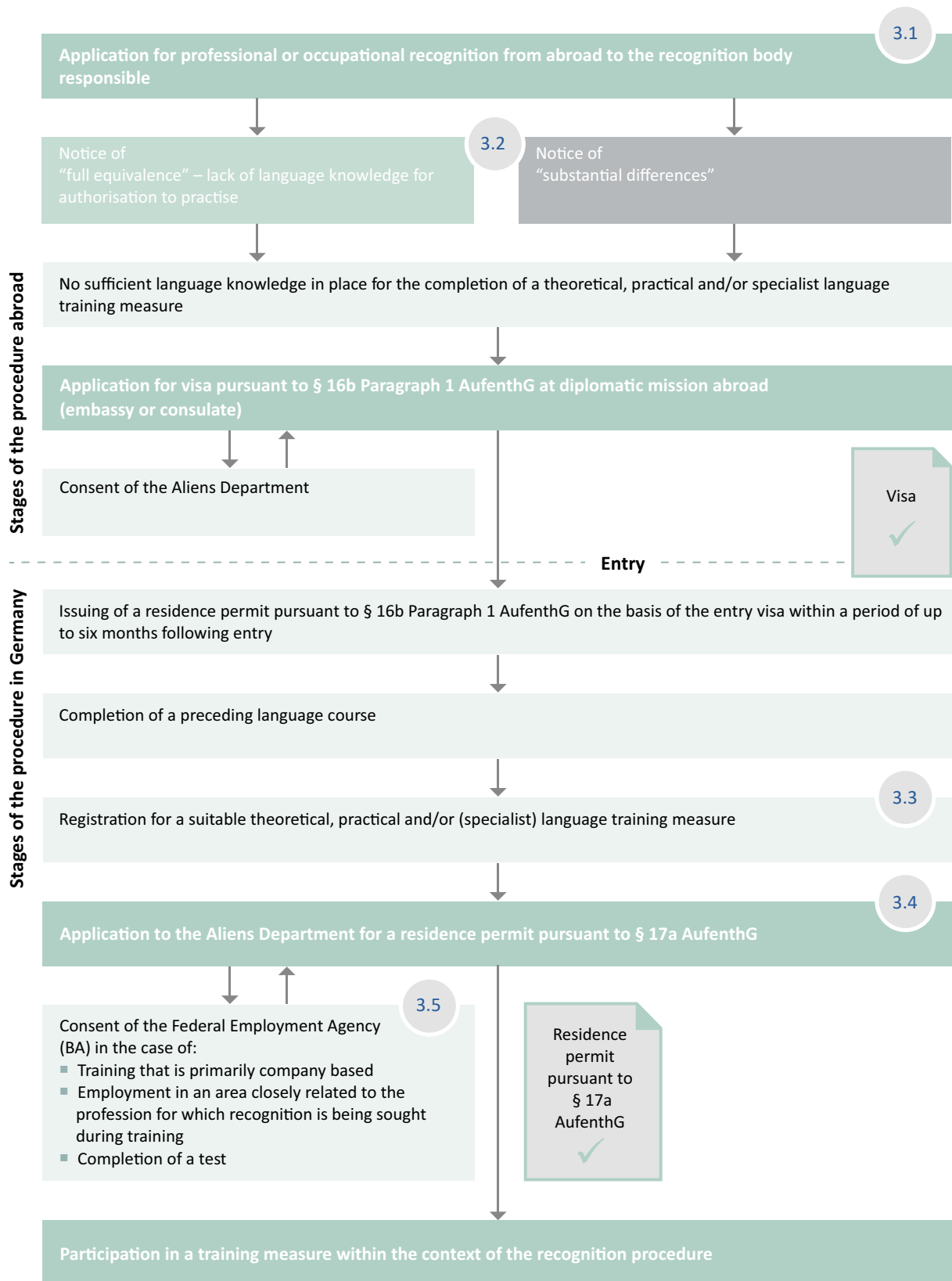
<sup>23</sup> The Aliens Department will provide information on further opportunities and restrictions applicable in Germany regarding a change of purpose from and to a permit in accordance with § 17a AufenthG.

<sup>24</sup> Entry to the country solely via § 16b AufenthG as amended is possible provided that the language knowledge can be acquired within twelve months. However, § 16b AufenthG only allows a stay for the purpose of a language course, not for other training measures.

<sup>25</sup> Cf. BMBF 2017, Administrative Implementation Recommendations for § 16 Abs. 5 AufenthG previous version applicable until 01.08.2017, pp. 3 ff.



**Option – procedure in accordance with § 17a AufenthG in the case of insufficient language knowledge**



### **3.6.2. Opportunity to seek a job following recognition pursuant to § 17a Paragraph 4 AufenthG**

The regulations contained within § 17a Paragraph 4 AufenthG permit the issuing of a residence permit by the Aliens Department responsible for a duration of up to twelve months following successful completion of the training measure in order to seek a job which may be occupied by foreigners in accordance with §§ 18–20 AufenthG. Any work activity is permitted during the period of the job search. Consent from the Federal Employment Agency is not required. Positive use may be made of the latitude offered. To this extent, the regulation corresponds to § 16b Paragraph 3 as amended and § 17 Paragraph 3 AufenthG.

## 4. Financing

**Important** – the requirement to secure living costs does **not** exclude utilisation of public funding programmes such as scholarship schemes. The intention of the regulation contained in § 5 Paragraph 1 Clause 1 AufenthG is solely to prevent skilled workers migrating to Germany from using the social security system to cover their living costs.<sup>26</sup>

### 4.1. Covering basic living costs

Pursuant to § 5 Paragraph 1 Clause 1 AufenthG in conjunction with § 2 Paragraph 3 AufenthG, the way in which living costs are to be covered should be checked on an individual case basis even if a decision has been taken to issue a visa in accordance with § 17a AufenthG or § 16b AufenthG as amended. The questions that need to be considered are the sum of money that is required to be demonstrated and the period of time for which these funds need to be secured.

#### Sum of money required to be demonstrated

Based on scrutiny practice within the scope of § 17 AufenthG, the visa offices apply a gross guidance figure of €800 per month for a stay in Germany in accordance with § 17a AufenthG. This amount will apply until further notice. This may be a different sum in individual cases where the Aliens Department is involved (e.g. if local living costs are significantly higher). This fixed sum may be deviated from in certain individual circumstances if it can be demonstrated that living costs can be covered by a lower amount of money due to personal or regional reasons. The amount should also be reduced accordingly if evidence is presented that individual costs (e.g. accommodation, food) are not incurred.

#### Period

There is an absolute requirement to show how living costs are to be financed during the **whole of the planned stay** until such time as employment is commenced following recognition. In practice, scrutiny always takes place on an individual case basis. If coherent evidence can be provided that living costs can later be covered by permitted employment (§ 17a Paragraph 2 or 3 AufenthG), then there is no mandatory requirement to demonstrate sufficient funds for the whole of the duration. In such cases, applicants will be made aware of the fact that extension by the Aliens Department can only occur if they commence employment and are thus able to cover their living costs.

If, because of a lack of knowledge of German, a visa to attend a general language course pursuant to § 16b AufenthG as amended is initially issued and a residence permit in accordance with § 17a AufenthG is only granted after the successful completion of such a course, demonstration of funds for a stay **of one year** in Germany is required. If a residence permit pursuant to § 17a AufenthG is subsequently to be issued, the local Aliens Department will not check that living costs are secured for a further period until this time has elapsed. However, the visa office may question how living costs are to be secured as part of the plausibility checks conducted during the visa procedure itself.

For more information on remuneration for training measures that are primarily company based, see section 3.5.1. For further details on using employment to secure living costs during training, see section 3.5.2.

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<sup>26</sup> Cf. BMBF 2017, Administrative Implementation Recommendations, p. 6.

## 4.2. Claiming funding

The requirement to secure living costs does not exclude utilisation of public funding programmes such as scholarship schemes. These enable living and accommodation costs for applicants to be (partially) financed via public funding. Scholarships can also be used to pay for procedural costs. However, most programmes require **residency in Germany** (with the exception of Baden-Württemberg).

### 4.2.1. Scholarship programmes

#### **Hamburg Scholarship Programme (residency in Germany required)**

The Hamburg Scholarship Programme covers both costs for the **recognition procedure** (one-off grant) and living costs during training (monthly payment for up to 36 months via a loan granted under the same terms as the Federal Training Assistance Act, BAföG, 50% in the form of a grant). Further prerequisites are that recipients must have had a main place of residence in Hamburg for at least three months and must have the intention to seek work in Hamburg. More information on the Hamburg Scholarship Programme is available [here](#).

#### **Professional Recognition in Baden-Württemberg scholarship programme (possible from abroad, programme expires in 2018)**

The scholarship programme in Baden-Württemberg also provides support with various costs incurred within the context of the **recognition procedure** or training measures (funding for application fees, translation costs, course fees, teaching materials, living expenses, travel costs and childcare costs). It also differentiates two different forms in that either a one-off payment or a scholarship of up to €1,000 per month may be claimed. In order to be eligible, applicants must have had a main place of residence in Baden-Württemberg for a minimum of three months or else must provide an assurance that they will seek to secure employment in the state. In this case, an application from abroad is possible within the context of § 17a AufenthG. Persons still living abroad may prospectively be granted funding, although only costs incurred after entry to Germany are eligible. More information and further requirements may be consulted [here](#).

#### **“Hardship fund for professional recognition “ state programme (residency in Germany required)**

Berlin also offers an opportunity to receive reimbursement for costs incurred in respect of the **recognition procedure** or training course (fees for courses and tests, travel costs, costs of teaching materials and training measures and translation costs). In order to be eligible, applicants must be in possession of a foreign professional or vocational qualification and must have been primarily resident in Berlin for at least three months. They must also be lawfully resident or else be in possession of leave to remain or special leave to remain. Utilisation of the Hardship Fund is also allowed for the purpose of obtaining a residence permit pursuant to § 17a paragraph 1 AufenthG. Applications from abroad are, however, not possible. More detailed information regarding requirements is available [here](#).

### 4.2.2. Individual support from Network IQ

Funding opportunities are also offered within the scope of Network IQ. Costs which may be reimbursed depend on the local regulations that apply in the individual federal state networks. Funding may be granted if applicants are taking part in IQ training.<sup>27</sup>

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<sup>27</sup> Costs for the initial recognition may be funded for asylum seekers and persons with special leave to remain. Participation in an IQ training scheme is thus not a proviso for this group, although a notice issued from the first recognition procedure is required in connection with § 17a AufenthG.

The following are examples of costs that may be covered, although IQ individual funding provides support based on personal and specific needs rather than encompassing a conclusive catalogue of services.

- Living costs<sup>28</sup>
- Travel costs
- Accommodation
- Learning materials/work equipment
- Childcare
- Costs for the second recognition procedure
- Costs of training measures
- ... and much more

#### 4.2.3. Recognition grant (BMBF)

The recognition grant is funded by the Federal Ministry of Education and Research (BMBF). It provides support with the financing of procedural costs for the recognition of a foreign professional or vocational qualification up to an amount of €600 (e.g. application costs, translation costs). Training measures, test fees and living costs cannot be financed. Applicants need to have lived in their primary place of residence for a minimum of three months or must be ordinarily resident in Germany. Further prerequisites are that annual income is low (under €26,000 for single persons/under €40,000 for married couples) and that no funding is possible via federal state programmes or via SGB II/III (German Social Act).

Within the context of § 17a AufenthG, the recognition grant is an option for applicants who are already in Germany (e.g. for the purpose of attending a language course pursuant to § 16b AufenthG as amended) and who wish to obtain recognition or a change of purpose to § 17a AufenthG.

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<sup>28</sup> When using IQ individual funding to secure living costs, consideration should be accorded to the fact that although the IQ individual support programme allows migrants from abroad to take part in IQ-funded training measures in Germany, a commitment to cover living costs for application for permits to enter Germany pursuant to § 17a AufenthG is not usually made. Migrants already living in Germany form the target group of the individual funding. In the case of persons who are resident in Germany and are in possession of a residence permit in accordance with § 17a AufenthG, the assumption is made that the evidence of coverage of living costs required under residency law for the purpose of obtaining such a permit has already been provided (cf. BMBF 2017, Administrative Implementation Recommendations, p. 7).

## 5. Checklist – necessary documentation

### Equivalence assessment<sup>29</sup>

- Records of training and final certificates in translated form (including listing of hours and subjects), authenticated or apostille if necessary
- Completed application form
- Proof of identity
- Curriculum vitae in tabular form
- Evidence of occupational experience<sup>30</sup>
- In the healthcare professions – evidence of authorisation to practise in the country of origin

### Application for a visa pursuant to § 17a AufenthG

- Passport
- Written recognition notice (or interim notice) identifying a requirement for adaptation/compensation measures
- Evidence of how the stay in Germany will be financed
- Evidence of required knowledge of the German language

#### For theoretical measures

- Evidence of participation in training courses (e.g. invitation letter, confirmation of registration from the provider or course registration from the body implementing the preparation course)
- Information regarding the course provider (e.g. state recognised/AZAV-certified/financing within the scope of state funding programmes/company concept of the provider)
- Information on the nature and duration of the measure including reference to the substantial differences identified

#### For adaptation periods or adaptation training delivered by non-certified or non publicly-funded providers (not language courses, preparation courses or knowledge or aptitude tests)

- Confirmation from the competent body that the measure is suitable for the achievement of recognition

#### For measures that are primarily company based

- Binding acceptance from the company providing training including job description, continuing training plan and information regarding remuneration

#### For preparation courses for the knowledge test which are primarily company based

- Confirmation from the provider of the preparation course that the planned practical training forms part of the preparation course

#### For the completion of a knowledge test only (§ 17a Paragraph 5)

- Firm job offer from the employer or subsequent contract of employment
- Evidence of completion of a test

<sup>29</sup> Deviations are possible depending on reference occupation and on the federal state in which the competent body processing the application is based.

<sup>30</sup> Applicants may be able to use occupational experience to compensate for substantial differences identified in the equivalence assessment.

## 6. Glossary

The glossary provides an interpretation of the specialist terminology used. It serves as a reference work and thus forms the end of the guide. Terms are listed in alphabetical order.

### Adaptation period

During an adaptation period, a regulated profession is exercised under the supervision of a qualified member of the same profession. The adaptation period may be accompanied by additional theoretical training. An adaptation period solely addresses occupational qualifications which are lacking or which have not been demonstrated on the basis of the notice.

### Adaptation training

No stipulated compensation measures apply in non-regulated professions. Compensation measures in this sector are referred to as “adaptation training”. When selecting the right adaptation training, applicants need to be considered on an individual basis in order to compensate for the substantial differences identified in the notice via company-based training and/or theoretical measures.

### Aptitude test

The aptitude test evaluates the ability of the applicant to exercise a regulated profession. Applicants are required to demonstrate that they are in possession of the knowledge, skills and competences to compensate for the substantial differences identified by the competent body. An aptitude test solely relates to occupational qualifications which are lacking or which have not been demonstrated on the basis of the notice.

### Authorisation to practise

In regulated professions, authorisation to practise is a necessary prerequisite for the exercising of the activity in question. The equivalence assessment forms only one stage within the process leading to an authorisation to practise. Alongside full equivalence of the professional qualification, further points which need to be met include language knowledge and suitability in terms of health.

### Compensation measure

In regulated professions, a compensation measure can be used to remove the substantial differences ascertained by the competent body within the scope of the equivalence assessment. Compensation measures facilitate the acquisition or demonstration of skills and knowledge and lead to recognition or authorisation to practise. Depending on the profession or occupation concerned, the compensation measure may take the form of an adaptation period or test.

### Competent body

The competent body is an authority or other institution (such as a chamber) which carries out the equivalence assessment on the basis of the applicable legal and procedural regulations.

### Continuing training plan

A continuing training plan is drawn up by the provider delivering a training measure. Such a plan is based on the substantial differences identified in the notice. The continuing training plan should indicate the precise approach to be adopted in terms of compensating for the substantial differences and outline the individual stages involved.

### Equivalence assessment

Within the scope of the recognition procedure, the competent body checks whether substantial differences exist between the professional or vocational training completed abroad and the relevant German training. Full equivalence is certified if no substantial differences are identified between the foreign and the domestic qualifications. Persons in possession of a certificate of equivalence then enjoy the same rights as those who hold the corresponding German professional or vocational qualification. If both substantial differences and comparable qualification contents exist vis-à-vis the German reference occupation, the competent body presents the existing qualifications in the notice and provides a description of the differences to the German qualification.

### Knowledge test

Applicants are required to demonstrate that they are in possession of the knowledge, skills and competences necessary to exercise the profession or occupation. The knowledge test refers to the content of the relevant state-administered final examination in Germany. This does not mean that the test can be understood to be equivalent in scope to the state-administered examination. However, all contents of the final examination or the material core subjects of vocational education and training can be examined. A further subject or interdisciplinary area in which substantial differences have been ascertained may also be examined. In the healthcare professions, the contents of the knowledge test are governed by the respective examination regulations.

### Non-regulated professions

In the case of the non-regulated profession, access to and exercising of the profession are not linked to any specific state stipulations. This means that the profession may be performed without state authorisation. Applications within the German labour market or self-employment are therefore possible without recognition.

### (Interim) notice

The result of an equivalence assessment is recorded in a notice. In the case of full equivalence, this accords the applicant the same legal status as those who are in possession of the corresponding German professional or vocational qualification. The authority responsible uses an interim notice to provide information regarding intermediate or preliminary results.

Example 1 – the applicant waives the equivalence assessment. The authority notifies the applicant in writing that a knowledge test will need to be completed and language knowledge must be demonstrated in order to obtain authorisation to practise.

Example 2 – The authority has attested equivalence, but the necessary language knowledge is missing. The authority responsible notifies the applicant that language knowledge needs to be demonstrated before authorisation to practise can be granted.

### Preparation course

If an aptitude or knowledge test is to be undertaken in order to compensate for substantial differences in the sector of the regulated professions, a preparation course provides an opportunity to learn the contents that are relevant to such a test. Preparation courses for the aptitude or knowledge test may incorporate specialist theoretical teaching, integrated language support or company-based practical training.

### Recognition procedure

Professional or occupational recognition involves the assessment of the equivalence of a foreign professional or vocational qualification with the corresponding German qualification. A positive decision leads to confirmation of equivalence. A formal evaluation process is conducted in order to compare the foreign qualification with a German professional or vocational qualification on the basis of criteria such as content and duration of training.



### Reference occupation:

Reference occupation refers to the profession or occupation in Germany with which the competent body compares a foreign professional or vocational qualification within the scope of an equivalence assessment. The current German occupational profile is used as the point of reference, i.e. the German vocational education and training that is currently in force rather than that which applied at the time when the foreign qualification was acquired.

### Regulated professions

Regulated professions are professions which are governed by legal or administrative regulations. These dictate that those wishing to enter or exercise such a profession must be in possession of certain qualifications. For this reason, full recognition is necessary in order to be permitted to carry out the profession in question in Germany.

### Training measure

Within the scope of this guide, “training measure” is an overarching term which is used to refer to all education and training schemes within the context of professional or occupational recognition. Training measures therefore encompass theoretical, practical or (specialist) language aspects which serve the purpose of compensating for substantial differences and/or acquisition of the necessary language knowledge for the profession or occupation.

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