

STANCE ON EMPLOYMENT OF FOREIGNERS IN POLAND

Employment of foreigners in Poland is a subject that has been repeatedly elaborated on, not only by the Union of Entrepreneurs and Employers on the pages of reports, official positions, and analyzes, but also in television programs, articles in the press and even scientific papers. Over the last few years, it has become a very up-to-date issue of particular importance, because – albeit a problem growing for years – finally, one openly discusses in public discourse the demographic catastrophe that Poland is facing. Of course, we are all glad to see the lowest unemployment rate in the history of free Poland, which has been a trend for many months now, but it should be remembered that one of the reasons for this is the insufficient working age population in Poland. Presently, the demographic low generation is entering the labor market, hence the labor supply is simply relatively small, and the effect is only reinforced by the wave of emigration that we were witness to a few years ago, soon after Poland's accession to the European Union. Entrepreneurs are already complaining about the lack of hands to work – this problem mainly concerns industries in which qualified manual workers are sought after. In the long run, this state of affairs will be harmful to the economy, because entrepreneurs who do not have a sufficient workforce simply will not produce as much as they could, nor will they provide the amount services that they could render. The consequence thereof will be obvious – a much slower economic development. Looking at Poland's demographic situation from an even broader – strategic – perspective, it is impossible not to pay attention to its potential disastrous consequences for the pension system. Of course, there is a standard pay-as-you-go system in place in Poland, with benefits paid out of premiums paid on an ongoing basis, which are already supplemented to a large extent with subsidies from the state budget. Considering the fact that demographic forecasts for Poland are catastrophic (in terms of the age pyramid, throughout the decades to come, the number of people aged 65 and over will increase significantly, whereas the percentage of the working age population will significantly shrink; ultimately, the population of Poland might decrease by up to several million people), the future of our pension system is also rather pessimistic. The financial deficit in the Social Insurance Fund will be ever higher, because fewer and fewer people will work and contribute to it. As a result, budgetary subsidies will have to be gradually increased, which is obviously associated with an increase in the level of income and consumption taxes. Finally, in Poland in 2050, merely a handful of people of working age will be responsible for earning a living not only for themselves and their families,

but also for a growing number of retirees. Despite the efforts made, there will be no chance for the benefits to be high – according to the estimates of the Polish Central Statistical Office, as early as in 2040, every second Pole is to receive only a minimum pension, and the population share of these people is to continue to grow.

What can be done to reverse these negative trends, repair the damage already done, and prevent the tragic scenario outlined above? Actions are required in three areas – a good pro-family policy, encouragement for Poles to return from emigration, but also a wise immigration policy. In terms of the final point, we would like to present three basic proposals which should at least be a starting point for discussion what shape this policy ought to adopt in the coming years. Defining such a strategy will be a necessity – after all, according to available estimates, Poland will need 5 million immigrants by 2050 to maintain the current level of affluence.

1. Declaration of intention to entrust work to a foreigner¹ and a work permit must not be assigned to employment in a specific company

The declaration procedure is a simplified way of employing foreigners in Poland, available to citizens of a specific group of countries, including Ukraine or Belarus, amongst others. We evaluate its existence very positively – instead of issuing, by way of an administrative decision and having completed numerous formalities, a work permit in Poland, an official only registers a declaration of intention to entrust work to a foreigner. At the moment, this process does not contain any arbitrary elements (at least according to the provisions of the law in force – there are, however, cases in which individual offices, without any legal basis, demanded additional requirements to be fulfilled for registration of statements, e.g. payment of a relevant fee), it is very simple and takes little time to be completed. From January 1st, 2018, the situation will look quite differently – it will be possible (and in some cases required by law) to issue an administrative decision refusing to register a statement. The reason behind the optional issue of a negative decision is formulated in a very imprecise way – for instance, circumstances indicate that the statement was drafted to keep up appearances or the entity does not fulfill the obligations related to running a business.

Unfortunately, the system of statements in its current form, though much better than the solutions to be implemented in 2018, is not free from drawbacks either. One of them is of course the methodology used by clerks, but it varies depending on the institution in question – there are places in Poland where

¹ Beginning on January 1st, 2018, the document is called declaration of intention to entrust work to a foreigner.

this procedure works perfectly fine, but there are also those where the system is failing. One of the main disadvantages of this procedure in the present form is the fact that the registered statement concerns employment limited to a specific employer and specific position. In other words, an employee from another country, e.g. Ukraine, coming to Poland and working on the basis of such a registered statement, cannot take up employment with any other employer than the one that was specified in the statement. One could argue that in case of a change of employment, it would be enough if the new employer registered the statement – however, taking into account the fact that the legislator limited the period within which work based on such a statement is possible, every day and week of delay constitutes already a big problem. Moreover, as of January 1st, 2018, the situation will worsen even further, as it will be possible to issue a negative decision, based on the refusal to register the statement, which will prolong the process. Limiting an employee to a single employer and position negatively impacts not only on his position (he cannot under the registered statement, the de facto title to work legally in Poland, recruit anywhere else where maybe he could be earning more), but it also impacts the labor market as such – the market situation is dynamic, especially during seasonal work, quite often in certain industries there is a temporary shortage of workforce, which in turn forces the raising of wages. An arrangement in which a foreigner cannot take advantage of market dynamics, i.e. he cannot change his job, has a negative impact not only on his situation, but also on the efficiency of employee allocation in particular industries. In other words, the current situation eliminates foreigners employed on the basis of the statement from the labor market, prevents flexibility, and this problem will further deepen significantly after January 1st, 2018. Furthermore, it is also negative from the point of view of the system of employing foreigners as such. Taking into consideration the aforementioned circumstances, some of the foreigners work in a place other than those specified in the statement, but they do it in an unregistered way, in the gray zone. Therefore, we propose that a registered declaration of intention to entrust work to a foreigner involved the possibility of taking up work in any other place. This way, certain dynamics will be maintained on the labor market, leading to its optimization understood as a situation in which entrepreneurs employ where they need employees most, whereas employees work where they can earn the most.

2. The possibility of conducting business for all foreigners

In the current legal state, only a strictly defined group of foreigners, i.e. those who obtained a permanent residence permit or certain temporary residence permits (e.g. granted for the purpose of taking up or continuing full-time university or doctoral studies), refugee status, subsidiary protection,

tolerated stay permit, the Polish Charter, or use temporary protection in our country, may conduct business activities according to the same laws as Polish citizens. All other foreigners may run business only in the form of limited companies, limited partnerships, and limited joint-stock partnerships, and these are in fact possibilities reserved for entrepreneurs operating on a larger scale. Meanwhile, other ways to earn a living, apart from full-time work, are among others the following: sole proprietorship (e.g. the providing professional repair services on one's own), working in a partnership or a simple partnership, such as a general partnership. In order to be operate a business like this in Poland, a foreigner must undergo a complicated administrative route in order to obtain one of the aforementioned titles to conduct business in Poland. We believe that such a limitation of the ability to run a business is completely unjustified and thwarts foreigners wishing to earn money in our country to an unacceptable extent (and at the same time, independently of their own will, it reduces contributions to the Polish budget). Since our long-term goal is to attract several million immigrants to Poland, we must provide them with the opportunity to grow and prosper in our country. On-site economic activity may become a factor that will divert a large number of them from the temptation to choose countries of the European Union located to the West of the river Oder, and we must not forget that other European countries are already starting to compete for migrant workers. We propose that foreigners staying in Poland should be able to run their business in our country. This will not only positively affect both the perception of Poland by immigrants (as a country that gave them a chance to develop) and the state budget, but it will also have a positive influence on the competitiveness of the Polish economy. The consumer is always a key participant in every market. We want Polish entrepreneurs in France to be able to compete with French entrepreneurs. Therefore, we do not see any reason why a person coming to Poland from Belarus, Ukraine or Vietnam could not set up a business in Poland and compete with Polish entrepreneurs without having to go through procedure to obtain a permanent residence permit or the Polish Charter.

3. Increase in the number of clerks involved in issuing work permits at the level of voivodeships to speed up procedures

One of the problems occurring when employing foreigners is the excessive length of procedures. A procedure planned as very simple and quick as possible process, might drag on for months – often without the ill will of an official assigned to the case. Without a doubt, this is related to, among others, a sudden increase in the number of foreigners coming to Poland to work. While in 2015, we talked about a wave of immigrants, when by the end of October over 650,000 declarations of intent to entrust

work to a foreigner from Ukraine were registered (it is noteworthy that the number of statements is not equal to the number of actually employed people, but if we take into account the percentage of those who worked in the grey zone, we get a number of about 1 million people, as given by, among others, the National Bank of Poland) – in 2017 only in the first half of the year, over 900,000 statements were registered. Of course, the statements are registered by the Poviats Labor Offices, but such a sharp increase indicates a significant increase in the number of foreigners willing to work in Poland. The number of work permits and residence cards issued has also increased over the last few years. In 2016, over 127 thousand work permits were issued (an increase of 94% compared to 2015). The trend is also visible in 2017 – only in January and February, 30,000 permits were issued, which translates to an over one hundred percent increase year to year. On the other hand, while in 2013, 32.2 thousand decisions were issued regarding a residence permit for a fixed period, or a temporary foreigner's stay in Poland, in 2016, as many as 86.6 thousand applications were approved. While we stand by our convictions that the overstaffing in state administration should be avoided and number of personnel reasonably reduced, we are also aware of the fact that national bureaucracy should be characterized by handling the affairs of the citizens in an efficient manner. As of now, this efficiency cannot be guaranteed. Therefore, in relation to the huge increase in the number of foreigners coming to Poland, we call for an increase in the number of employees in voivodeship offices issuing work permits – whether by relocating staff from other departments or possibly by increasing the number of jobs wherever they are clearly necessary. An alternative solution would be to transfer the competences concerning the issuing of work permits for foreigners to Poviats Labor Offices, where statements concerning the intention to entrust work to a foreigner are already being processed. The experience of Poviats Labor Offices in this field, as well as the human resources that these offices have at their disposal, would certainly allow for more efficient handling of issues related to issuing work permits to foreigners.

The postulates outlined above do not exhaust the subject of the state's approach (as a regulator and architect of individual policies) to the issue of economic migrants in Poland. Certainly, a broader discussion regarding these issues will be required, for the commencement of which we appeal to all political decision-makers. This is the last moment to create real solutions, and if we are successful, they will doubtlessly pay off in the future.

Signed by:

Centrum Pomocy Prawnej im. Haliny Nieć – The Halina Nieć Legal Aid Center

Centrum Wsparcia Imigrantów i Imigrantek – Immigrant and Female Immigrant Support Centre

Francusko-Polska Izba Gospodarcza – French-Polish Chamber of Commerce

Fundacja „Nasz Wybór” – “Our Choice” Foundation

Fundacja Centrum Badań Migracyjnych – Center of Migration Research Foundation

Fundacja dla Somalii – Foundation for Somalia

Fundacja Przeciwko Handlowi Ludźmi i Niewolnictwu „La Strada” – “La Strada” Foundation against Trafficking in Persons and Slavery

Fundacja Refugee.pl im. Małgorzaty Jasiczek-Gerbert – The Małgorzata Jasiczek-Gerbert Refugee.pl Foundation

Fundacja Rozwoju Oprócz Granic – Foundation for Development Beyond Borders

Helsińska Fundacja Praw Człowieka – Helsinki Foundation for Human Rights

Instytut Spraw Publicznych – Institute of Public Affairs

Międzynarodowa Organizacja ds. Migracji – International Organization for Migration

Polskie Forum Migracyjne – Polish Migration Forum

Stowarzyszenie Homo Faber – The Homo Faber Association

Stowarzyszenie Interwencji Prawnej – Association for Legal Intervention

Stowarzyszenie na Rzecz Integracji Społeczeństwa Wielokulturowego „Nomada” – “Nomada”

Association for Multicultural Society Integration

Związek Przedsiębiorców i Pracodawców – Union of Entrepreneurs and Employers