



CARIM INDIA – DEVELOPING A KNOWLEDGE BASE FOR POLICYMAKING ON INDIA-EU MIGRATION

Co-financed by the European Union

Highly Skilled Indian migrants in Poland

Weronika Kloc-Nowak

CARIM-India Research Report 2013/38



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CARIM-India
Developing a knowledge base for policymaking on India-EU migration

Short Research Report
Highly-Skilled Migration Series
CARIM-India RR2013/38

**Highly Skilled Indian migrants
in Poland**

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CARIM-India – Developing a knowledge base for policymaking on India-EU migration

This project is co-financed by the European Union and carried out by the EUI in partnership with the Indian Council of Overseas Employment, (ICOE), the Indian Institute of Management Bangalore Association, (IIMB), and Maastricht University (Faculty of Law).

The proposed action is aimed at consolidating a constructive dialogue between the EU and India on migration covering all migration-related aspects. The objectives of the proposed action are aimed at:

- Assembling high-level Indian-EU expertise in major disciplines that deal with migration (demography, economics, law, sociology and politics) with a view to building up migration studies in India. This is an inherently international exercise in which experts will use standardised concepts and instruments that allow for aggregation and comparison. These experts will belong to all major disciplines that deal with migration, ranging from demography to law and from economics to sociology and political science.
- Providing the Government of India as well as the European Union, its Member States, the academia and civil society, with:
 1. Reliable, updated and comparative information on migration
 2. In-depth analyses on India-EU highly-skilled and circular migration, but also on low-skilled and irregular migration.
- Making research serve action by connecting experts with both policy-makers and the wider public through respectively policy-oriented research, training courses, and outreach programmes.

These three objectives will be pursued with a view to developing a knowledge base addressed to policy-makers and migration stakeholders in both the EU and India.

Results of the above activities are made available for public consultation through the website of the project: <http://www.india-eu-migration.eu/>

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1. Policy framework on legal labour immigration

Immigration to Poland is regulated by the Act on foreigners of 2003, most recently amended in June 2012. A brand new Act on foreigners is quite advanced on the legislation path and is expected to be passed by mid 2014. Employment of foreigners is regulated by the Act on promotion of employment and labour market institutions of 2004¹, also most recently amended in June 2012, and the regulation issued by Minister of Labour and Social Policy on 20th July 2011. In the current shape of the Polish migration policy and regulation on foreigners, there is no special programme or focus on attracting highly skilled workers, although many professions and categories of highly skilled migrants are eligible for work without applying for a work permit.

According to article 87 of the Act on promotion of employment and labour market institutions of 2004, **foreigners who are eligible for employment in Poland without applying for a work permit** are:

1. refugees granted refugee status by the Republic of Poland
2. foreigners under subsidiary protection scheme granted in Poland
3. holders of settlement permit in Poland
4. holders of the long term EU residency in Poland
5. foreigners granted tolerated stay in Poland
6. foreigners under temporary protection
7. EU citizens
8. EFTA countries citizens
9. citizens of a state with free movement agreement with EU/EFTA
10. holders of a residence permit in Poland for highly skilled employees ("Blue Card").

Numerous categories of foreigners are also granted the **right to work on the basis of their current or former family member status**, on the condition that they have a valid residence permit if required. These are the following:

1. family members of the foreigners mentioned in 7-9, their or their spouse's descendants under 21 or their or their spouses ascendants if they are supported by the foreigner or the foreigner's spouse;
2. family members of EU citizens entitled to stay in Poland after the death of the EU citizen, departure of the EU citizen, divorce or separation;
3. spouses of Polish citizens or of foreigners listed above in points 1-6, who have been granted residence permit in Poland because of marriage;
4. descendents of Polish citizens or foreigners listed in 1-6, if they are under 21 and supported by the Polish citizen or the foreigner;
5. family members of foreigners 1-6, or of "Blue Card" holders or of long-term EU residents from another EU country who want to undertake business, employment, education or prove other important reasons for staying in Poland;
6. foreigners who had been granted residence permit as a family member of a foreigner, after that foreigner's death, divorce or separation, if there are important arguments for the stay of such person in Poland;

¹ Further in the text in the short form: Act on Employment of 2004.

7. foreigners who had been granted residence permit as spouses of Polish citizens, after the Polish citizens death, divorce or separation, if there are important arguments for the stay of this person in Poland.

Article 53 paragraph 2 of the Act on foreigners of 2003 **defines family member** as:

1. spouse in marital union recognized by the law of the Republic of Poland;
2. a minor child of the foreigner and the foreigner's spouse, including an adopted child;
3. a minor child of the foreigner, including an adopted one, supported by the foreigner and under his/her custody;
4. a minor child of the foreigner's spouse, including an adopted one, supported by that spouse and under his/her custody.

From the above it can be seen that the regulations on employment give a higher age limit ("under 21" instead of "minor child") to right to work for descendents of foreigners who are supported by their foreign parent. Also, the ascendants of third-country nationals residing in Poland are not recognised as family members with right to work, while the ascendants of citizens of EU/EFTA/special freedom of movement agreement countries and of spouses of such foreigners can come to Poland and enjoy right to work without work permit, provided that they are supported by their descendant or his/her spouse residing in Poland exercising their right to free movement. Last but not least, the law of the Republic of Poland recognises only marital unions, not civil partnerships or any other types of cohabitation registered in other states.

With regard to highly skilled mobility in the EU, **the most important professional or educational categories of foreigners who can undertake work in Poland without applying for a work permit** are:

(under art. 87 of the Act on employment of 2004):

- holders of long-term EU residency from another EU country who have proved they want to undertake employment or business activity, studies or professional training or that they have any other important reason for staying in Poland;
- foreigners who want to continue in Poland studies they had undertaken in another EU country;
- scientists/researchers coming to Poland on the basis of an agreement to undertake a scientific project with a research institution recognised by the Polish ministry responsible for science;
- foreigners who hold a residence permit from another EU country, marked "scientist/researcher"², if their agreement for conducting research specifies research to be conducted also on the territory of the Republic of Poland;

(according to the regulation of the Minister of Labour and Social Policy of 2011):

- trainers, trainees, advisors, managers etc. in programmes funded by the EU or any other international assistance scheme;
- language teachers working in preschools, schools, teaching colleges and other institutions under national education regulations³;
- persons giving occasionally (for up to 30 days per year) lectures or presentations of special academic or artistic value, providing their permanent residency is abroad;
- priests, servicemen, clergy working for a recognised church or religious union also working for a legal entity to which a church/ religious union directed them;

² The Polish regulation recognises "scientist/researcher" (in Polish: *naukowiec*) indication on a uniform residence permit issued in any EU country, although such indication is not defined in Council Regulation 1030/2002.

³ i.e. excluding private language schools, private tutoring services etc.

- students enrolled at Polish universities during the months of July August, September;
- students employed in internships organised by international students associations;
- students employed in programmes under international cooperation of employment services, if the need to employ the foreigner is certified by such services;
- students or vocational school students employed for professional apprenticeship up to 6 months per year, under the agreement between the school/university and the employer;
- students from higher education institutions of vocational schools in EU/EFTA directed for professional apprenticeship;
- graduates of Polish secondary schools, of day time⁴ studies in Polish higher education institutions and of day time doctoral studies at Polish universities, Polish Academy of Sciences or a research and development institution;
- persons employed as researchers by research institutions;
- workers delegated for up to 3 months to install or repair machines produced by their foreign employer, to train Polish staff in using such machines of foreign production, to receive machines from a Polish producer or during trade fairs for their foreign employer
- citizens of Belarus, Georgia, Moldova, Russia or Ukraine, for up to 6 months in each 12 months, based on the previous registration of the employer's intention to employ them, stating detailed conditions of planned employment and declaring lack of needed workers on the local labour market⁵.

The Act on foreigners of 2004 art 4. defines an **academic researcher or a scientist** (in Polish: *naukowiec*) as a foreigner holding at least a Master diploma (equivalent to Polish *magister*), enabling to undertake doctoral studies in Poland. According to articles 53 and 56, studying, conducting research as a doctoral student or upon agreement with a research institute (Polish or from another EU country), are all valid reasons for granting a residence permit for one year or shorter, for short research projects. Foreigner has to prove financial resources for supporting oneself, covering the costs of studies and return. Foreigner with residence permit for such reasons is entitled to residence permits for family members who want to reunite with him/her.

Implementation of the Blue Card directive in Poland

The Blue Card directive was implemented in Poland by the Act on changing the acts on foreigners and on promoting employment and labour market institutions, that entered into force in June 2012. The act introduces a new type of residence permit for persons performing work in a profession requiring high skills.

Higher professional qualifications are defined there (in article 4) as gained through studies in a nationally recognised higher education institution, at least 3 years long, certified by a diploma, or gained through 5 years of professional experience on a level comparable to higher studies. Professional experience can be gained through remunerated employment or performing work for somebody regardless of the legal form of the work contract or economic activity.

Conditions that have to be satisfied for a residence permit with „Blue Card” indication, apart from the above defined higher professional qualifications, are:

⁴ Day time studies (in Polish: *studia dzienne*) require residence of students close to the higher education or research institution. Such programmes are usually state funded and more selective. It is a safeguarding against legalising foreigner's residence and work through enrolment for various evening or distance-learning programmes.

⁵ This is not a full labour market test, only the employer's declaration.

1. foreigner has higher professional qualifications, right to perform the profession if such is required by other regulation (e.g. in medicine), health care insurance, job contract or a preliminary job contract for at least 1 year;
2. labour market test result, certified for the employer by the local authorities⁶;
3. the work contract states a salary of at least the amount announced by the Minister of Internal Affairs which is 150% of average gross salary in Polish economy as announced annually by the Central Statistical Office.

Ad 1. Only a work contract allows to apply for a Blue Card residence permit while - very popular in Poland due to lower social contributions - self-employment or civil contracts are not eligible. The list of regulated professions, which require obtaining a licence or the right to perform the profession in Poland has over 350 positions.

Ad 2. The labour market test is not required if the profession is on a regional list of professions exempted from labour market test, the foreigner had already had work permit for this work with this employer or the foreigner had already had a Blue Card for 2 years. The first option, local exemption from labour market test for given professions is used both for the "Blue Card" and for the regular work permits. For example, in a 2009 regulation issued by the Mazowieckie authorities in Warsaw⁷, the list has only 10 items: eight types of skilled construction workers plus bus and truck drivers. On the other hand, the 2011 regulation for Małopolskie⁸ (region with Cracow) lists numerous professions with unsatisfied demand on local labour markets, including many highly skilled professions such as medicine doctors, engineers, IT systems designers, programmers or even a psychologist or a "HR specialist with two foreign languages". Therefore the speed and facility of the procedure of issuing work permit varies not only with profession but also with the location of the potential employer.

Ad 3. In 2012 the minimum salary for obtaining a "Blue Card", calculated basing on the national average salary, was PLN4079.31 gross (ca EUR 688 net) monthly for managers, specialists, higher level administration officers and PLN5099.25 (ca EUR 858 net) for other professions.

Compared to a residence permit tied to the regular work permit, the "Blue Card" permit is granted for a period 3 months longer than the work contract. It also remains valid for up to 3 months (once in its validity period) if the foreigner lost his job, provided that he informed the authorities within a week since the expiry of his work contract. A person who has had a "Blue Card" from another EU country for at least 18 months, when interested in undertaking highly skilled work in Poland, has one month for applying for a Polish "Blue Card". All of these provisions allow more flexibility and professional mobility to a third country national holding a "Blue Card" residence permit than to an immigrant holding a residence permit tied to a regular work permit.

Permanent residence

There are 2 procedures for granting a more permanent residence in Poland. A **settlement permit** is granted to:

- spouse of a Polish citizen after 3 years and at least 2 years on residence permit in Poland

⁶ Labour market test is certified by *starosta powiatowy*, middle level of local authorities, similar to Italian *provincia*.

⁷ *Rozporządzenie nr 14 wojewody mazowieckiego z dnia 30. czerwca 2009 w sprawie kryteriów wydawania zezwoleń na pracę cudzoziemców na terenie województwa mazowieckiego:*
<http://wup.mazowsze.pl/new/images/warszawa/WZPC/kryteria%20wojewody.pdf>

⁸ *Rozporządzenie nr 14/11 wojewody małopolskiego z dnia 8 września 2011 r. zmieniające rozporządzenie w sprawie kryteriów wydawania zezwoleń na pracę cudzoziemców.*
http://www.wrotamalopolski.pl/root_BIP/BIP_w_Malopolsce/root_UW/podmiotowe/Prawo/Rozporzadzenia+wojewody/ROZPORZADZENIE%20NR%2014_2011.htm

- child of a Polish citizen under his/her exclusive custody;
- child born in Poland to a foreigner who has a settlement permit;
- refugee status or subsidiary protection holder after 5 years, person with tolerated stay after 10 years of residence in Poland.

Long-term EU residence is granted to a foreigner who has lived in Poland legally for 5 years and has stable source of income and health care insurance. The periods of residence permit for studying or professional training count only at 50% rate. The "Blue Card" holders can be granted long-term EU residence after 5 years of having this type of permit, provided that the last 2 years were residence in Poland. This way a highly skilled worker from a third country can move within the EU without having to accrue the years towards permanent residence all over again.

Health care professionals

There is no agreement on recruitment of health professionals to work in Poland. Third country nationals educated abroad wishing to perform these professions in Poland are subject to regular work permit procedure (locally they might be exempt from the labour market test) plus they need to obtain the right to perform the profession from a regional doctor's chamber⁹. The procedure, requiring in some cases 15 documents and an exam in medical law and ethics (in Polish), is discouraging. The usual path is staying after studying medicine in a Polish medical university, rather than professionals' migration. According to media reports, in 2012 there were only 819 foreign doctors, mostly from Ukraine and Belarus, working in Poland compared to over 8 thousand Polish physicians who have emigrated since 2004¹⁰.

2. Impact of the legal framework - scale of labour immigration in highly skilled professions in Poland

One year and a half of the availability of the "Blue Card" residence permit is very little to assess its impact. Only by telephone an employee of the Team of Migration Analysis and Statistics in the Office for Foreigners stated there were 2 such residence permits issued in 2012, one of which for an Indian citizen. In 2013, until 24th September, 17 "Blue Card" residence permits have been issued, one of them for an Indian citizen. In the officially published statistics this permit is not even presented as a separate category, but simply included in the "residence permit for fixed period" number.

As the regulations allow many highly skilled workers to work without a work permit, data on registered immigration (from administrative registers of local residents) gives a more complete picture.

⁹ "Informacje szczegółowe dla lekarzy cudzoziemców ubiegających się o prawo wykonywania zawodu w Polsce", Naczelna Izba Lekarska <http://www.oil.org.pl/xml/nil/tematy/komisje/0105/cudzoj/archiwum/info1/info2> (downloaded on 27.09.2013).

¹⁰ "Lekarze z zagranicy szerokim łukiem omijają nasz kraj" 9th March 2012, published online by Gazeta Prawna: http://serwis.gazetaprawna.pl/zdrowie/artykuly/601215,lekarze_z_zagranicy_szerokim_lukiem_omijaja_nasz_kraj.html

Table 1. Top 10 countries of citizenship among immigrants registered for stay over 3 months, all and with higher education, 2011.

Rank	Citizenship	Total number	Citizenship	Higher education
1	Ukraine	17902	Ukraine	3559
2	Belarus	4226	Belarus	1019
3	Germany	3268	Germany	875
4	Viet Nam	3222	Russian Federation	785
5	China	2812	China	646
6	Russian Federation	2310	France	547
7	Turkey	1892	USA	547
8	Armenia	1505	United Kingdom	517
9	Italy	1383	Korea, Republic of	470
10	India	1237	India	394
	Total	65943	Total	15926

Source: based on tab. 53, *Demographic Yearbook 2012*.

Among these immigrants there were 6564 women with higher education, making them 41% of registered temporary immigrants with higher education. Among all 1237 Indian immigrants, 26% (321) were women (numbers from tables 51 and 52 of the *Demographic Yearbook 2012*). Detailed data by nationality, education and gender is not published.

Male domination among Indian immigrants is even more pronounced in data on work permits (Tab. 2).

Table 2. Work permits issued in Poland to Indians, by gender (2011-mid 2013).

Year	Work permits issued in Poland			Work permits for Indian citizens			% of all work permits issued to Indians
	total number	of which women	% of women	total number	of which women	% of women	
2011	40808	12462	31%	1055	60	6%	3%
2012	39144	12848	33%	1090	91	8%	3%
2013 (1st half)	18306	6322	35%	753	54	7%	4%

Source: Foreigners working in Poland - statistics, Department of Labour Market

General data on work permits issued in Poland show that Indians account for 3-4% of all work permits issued. The domination of males among Indian workers (over 93%) is much more pronounced than in the whole population of work permit holders, where men account for two thirds of permits. Gender-disaggregated data by education, profession or sector is not published.

Table 3. Top 5 countries of citizenship of foreigners granted work permit in selected sections of economic activity, 2012.

Citizenship	Total number of work permits	By selected section of economic activity						
		Information and communication		Financial and insurance activities		Professional, scientific and technical activities		Education
Ukraine	20295	India 210	India 34	Ukraine 1003	USA 85	Ukraine 226		
China	3247	Ukraine 105	USA 32	India 102	Ukraine 57	Mongolia 35		
Vietnam	2302	Belarus 76	Ukraine 28	China 101	Belarus 19	Phillippines 28		
Belarus	1949	China 53	China 22	USA 98	Turkey 17	Tailand 15		
India	1090	Russia 53	Turkey 17	Moldova 85	Mexico 14	China 14		
Total	39144	Total 691	Total 220	Total 2165	Total 314	Total 383		

Source: Foreigners working in Poland - statistics, Department of Labour Market

Indians were in top five nationalities granted work permits in Poland in 2012. They ranked first or second in three of the sections employing mostly highly skilled professionals.

Table 4. Work permits for selected groups of professions, share of Indians in total number (2010-2012).

Year	Citizenship	total number of work permits issued	selected groups of professions							
			IT specialists	lawyers	artists	medical professions	of which:		education specialists	of which:
							doctors	nurses and midwives		language teachers
2010	India	1189	62	3	3	6	2	0	17	1
	Total	36622	290	43	255	78	20	2	389	29
	<i>Indians as % of total</i>	<i>3%</i>	<i>21%</i>	<i>7%</i>	<i>1%</i>	<i>8%</i>	<i>10%</i>	<i>0%</i>	<i>4%</i>	<i>3%</i>
2011	India	1055	36	0	1	8	0	0	3	0
	Total	40808	307	4	208	188	23	2	229	31
	<i>Indians as % of total</i>	<i>3%</i>	<i>12%</i>	<i>0%</i>	<i>0%</i>	<i>4%</i>	<i>0%</i>	<i>0%</i>	<i>1%</i>	<i>0%</i>
2012	India	1090	62	0	1	14	1	0	5	1
	Total	39144	243	6	138	183	12	4	180	7
	<i>Indians as % of total</i>	<i>3%</i>	<i>26%</i>	<i>0%</i>	<i>1%</i>	<i>8%</i>	<i>8%</i>	<i>0%</i>	<i>3%</i>	<i>14%</i>

Source: Foreigners working in Poland - statistics, Department of Labour Market

According to profession, Indian workers are regularly overrepresented among IT specialists and occasionally among lawyers, doctors and teachers for whom work permits have been issued in Poland.

According to article 88 of the Act on promotion of employment and labour market institutions of 2004, there are five types of work permits issued, where type A is for employees of Polish companies, B for foreign board members, C,D and E for various arrangements of employees of foreign companies coming temporarily to work in Poland:

- "C - regarding a non-EU national employed by a foreign employer and seconded to the territory of the Republic of Poland for more than 30 days in a given year to a subsidiary or facility of the foreign entity or an entity connected with the foreign employer within the meaning of the Personal Income Tax Act of 26 July, 1991;
- D – regarding a non-EU national employed by a foreign employer without a subsidiary, facility or other form of business activity located on the territory of the Republic of Poland who has been seconded to the territory of the Republic of Poland in order to realize a service of temporary or occasional nature (export service);
- E – regarding a non-EU national employed by a foreign employer and seconded to the territory of the Republic of Poland for less than three months within the following six months in purpose other than those mentioned in points B, C, D (B type work permit concerns a non-EU national being a member of the board of a legal person registered in the registrar of companies or a limited company within an organization for more than 6 months in the following 12 months)"¹¹;

Table 5. Work permits for Indian and all non-EU workers by type of permit, 2010-2012.

Citizenship	Year	Number of all work permits issued	type A		type B		type C		type D		type E	
			number	% of total								
India	2010	1189	911	77%	59	5%	157	13%	62	5%	0	0%
Total	2010	36622	31613	86%	1391	4%	1788	5%	1828	5%	2	0%
India as % of total		3%	3%		4%		9%		3%		0%	
India	2011	1055	787	75%	43	4%	129	12%	84	8%	12	1%
Total	2011	40808	36189	89%	1048	3%	2136	5%	1342	3%	93	0%
India as % of total		3%	2%		4%		6%		6%		13%	
India	2012	1090	811	74%	34	3%	190	17%	30	3%	25	2%
Total	2012	39144	35416	90%	1052	3%	1526	4%	977	2%	173	0%
India as % of total		3%	2%		3%		12%		3%		14%	

Source: Foreigners working in Poland - statistics, Department of Labour Market

Relatively lower share of type A and higher share of types C,D,E among Indian workers, compared to work permits issued to all nationalities, shows that work of Indians in Poland occurs relatively more often as delegation from a foreign based company (or intra-company transfer?) than in the case of other nationalities.

¹¹ Translation quoted after : *Work permit*, consulted on a commercial site http://cudzoziemiec.eu/?q=en/work_permit .

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