

DECISION

Pursuant to Art. 214 para. 1 point 2 in conjunction with Art. 218 para. 1 of the Act of 12 December 2013 on Foreigners (consolidated text in Dz.U. /Journal of Laws/ of 2017 item 2206, as amended) and Art. 104 § 1 of the Act of 14 June 1960 – Code of Administrative Procedure (Dz.U. of 2017 item 1257, as amended)

I deny to Ms Lyudmyla KOZLOVSKA, born on 17.03.1985, national of Ukraine, a permit to stay as a long-term EU resident on the territory of the Republic of Poland.

STATEMENT OF GROUNDS

On 01.03.2018, Ms Lyudmyla KOZLOVSKA filed with the Mazowiecki Voivode an application for a permit to stay as a long-term EU resident on the territory of the Republic of Poland. During the course of the procedure, the Foreigner was represented by her attorney, Ms Alena ZELIANKO.

In accordance with Art. 211 para. 1 of the Act on Foreigners, a permit for a stay as a long-term EU resident shall be granted to a foreigner for an indefinite duration, upon his or her application if the foreigner has been staying on the territory of the Republic of Poland legally and uninterruptedly for 5 years immediately before the filing of the application and meets concurrently the following conditions:

1. has a source of stable and regular income sufficient to cover the costs of maintaining himself/herself and the family members he/she supports;
2. holds health insurance in the meaning of the Act of 27 August 2004 on Health Care Provisions Financed from Public Funds or a confirmation of the coverage of the costs of medical treatment on the territory of the Republic of Poland;
3. has a confirmed command of the Polish language.

In accordance with Art. 214 para. 1 point 2 of the Act on Foreigners, the permit to stay as a long-term EU resident is denied to a foreigner if this is required for reasons of defence or state security or the protection of security and public order.

Before issuing a decision on the granting of the permit to stay as a long-term EU resident, under Art. 207 para. 1 in conjunction with Art. 223 of the Act on Foreigners, the Voivode shall obtain information as to whether the entry into and stay on the territory of the Republic of Poland poses a threat to the defence or security of the state or the protection of security and public order. In accordance with Art. 207 para. 2 of said Act, the information referred to in para. 1 shall be obtained upon a request which is to be filed with the Chief of the Border Guards, the Chief of the Voivodeship Police, the head of the Internal Security Agency.

In reply to said request, this Office has received information classified as “secret”. In view of the foregoing, by the decision of 18.07.2018, the Mazowiecki Voivode, under Art. 74 of the Code of Administrative Procedure (k.p.a.) in conjunction with Art. 8 of the Act of 5 August 2010 on the Protection of Classified Information (Dz.U. of 2018 item 412), denied to the Foreigner the right to review the documents containing classified information which was qualified as “secret” and make notes, copies or excerpts thereof. The decision was served upon the attorney for the party on 23.07.2018. An appeal was filed against this decision through the 1st instance authority, with the head of the Office for Foreigners who, by the decision of 25.09.2018 upheld the appealed decision.

On 31.07.2018, the data of the Foreigner were entered in the list of foreigners whose stay on the territory of the Republic of Poland is undesirable, valid until 26.07.2023. Reference was made in the grounds for the alert to Art. 435 para. 1 point 4 of the Act on Foreigners under which data shall be placed and kept on the list of foreigners if required for reasons of defence or security of the state or the protection of security and public order of the Republic of Poland.

Moreover, it was established during the course of the administrative procedure that the personal data of Ms Lyudmyla KOZLOVSKA were placed in the Schengen Information System for the purpose of denial of entry valid until 31.07.2021.

Having regard to the foregoing and after a thorough assessment of operational materials provided by one of the aforementioned authorities from which the Mazowiecki Voivode obtained information, it was established that the circumstances indicated therein justify the denial of a permit for Ms Lyudmyla KOZLOVSKA to stay as a long-term EU resident for reasons of the protection of security and public order.

In accordance with Art. 6 para. 1 of said Act, the authority issuing the decision or ruling in the procedure conducted under the provisions thereof may decide not to provide a statement of grounds therefor in the part concerning the factual grounds if the reasons of defence or security of the state or protection of security and public order so require.

It is required to be emphasised that the decision issued in the case is a so-called "related decision" due to the phrase used in the provision of Art. 214 para. 1 "shall be denied". The foregoing means that the existence of any of the prerequisites listed in Art. 214 para. 1 of the cited Act shall be an obligatory prerequisite for denial of the permit for permanent stay.

Having regard to the foregoing and in the light of the evidence gathered in the case, I decide as first written above.

INSTRUCTIONS

An appeal can be filed against this decision with the Head of the Office for Foreigners through the authority which has issued this decision within 14 days from its delivery.

In accordance with Art. 127a § 1 of the Code of Administrative Procedure (k.p.a.) during the course of the time limit for filing the appeal, the party may waive the right to file an appeal with the public administration authority which issued the decision. In accordance with Art. 127a § 2 k.p.a. upon the date of delivery to the public administration authority of the statement on the waiver of the right to file an appeal by the last of the parties to the procedure, the decision shall become final and binding. Final decisions are decisions from which an appeal may not be filed through the administrative instances or an application to examine the case. Such decisions may be repealed or changed, or declared invalid, and the procedure may be reopened only in the cases provided for in the Code of Administrative Procedure or special acts (Art. 16 § 1 k.p.a.). Binding decisions are final decisions which may not be appealed against with the court of law (Art. 16 § 3 k.p.a.).

[seal and stamp]
MAZOWIECKI VOIVODE

/signed for/ MAZOWIECKI VOIVODE
Agata Ewertyńska
Director, Department for Foreigners' Affairs

To:

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3. files