

The US-Mexico Free Movement of Citizens (FMC) Agreement

(This proposed agreement is modeled on the **Right of Union citizens and their family members to move and reside freely within the territory of the Member States**, the formal agreement adopted by the European Parliament in April 2004, available at:

http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/l33152_en.htm)

ACT

The (proposed) US-Mexico Free Movement of Citizens Agreement recognizes the right of citizens of Mexico and the United States and their family members to move and reside freely within the territory of the two nations.

BACKGROUND

This agreement seeks to redefine the rights of the citizens of the United States and Mexico in view of the historical and on-going relationship between the two nations. This agreement is designed to reunite the families and communities that have been divided for over a century and a half and encourage the citizens of both nations to exercise their right to move and reside freely in either country. In addition it is intended to reduce to a bare minimum the formalities which citizens and their families must complete to exercise their right of residence.

General provisions

The proposed agreement specifies:

- the conditions under which citizens of Mexico and the US and their families can exercise their right to move and reside freely within the territory of either nation;
- the right of permanent residence;
- restrictions on the above rights on grounds of public policy, public safety, or public health

The right to move and the right of residence for up to three months

The citizens of both countries have the right to enter the other by virtue of having an identity card or valid passport. Entry or exit visas are not required.

Family members who do not have the nationality of either nation have the same rights as the citizen they accompany.

For stays of three months or less, the only requirement on citizens of both countries and their families is that they possess a valid identity document or passport. Host nations may require visiting citizens to register their presence in the country within a reasonable period.

The right of residence for more than three months

The right of residence for more than three months is subject to certain requirements. Applicants must:

- either be engaged in economic activity (on an employed or self-employed basis); or have sufficient resources and health insurance to ensure that they do not become a burden on the social services of the host nation during their stay. The host state may not specify a minimum amount which they deem sufficient, but must take into account personal circumstances;
- or be following vocational training as a student and have sufficient resources and health insurance to ensure that they do not become a burden on the social services of the host country during their stay;
- or be a family member of a citizen of a either nation who falls into one of the above categories.

Residence permits are not required for citizens of either state. However, host nations may require them to register with designated authorities within a period of not less than three months from the date of arrival. Proof of registration will be issued immediately on presentation of:

- An official identity card or valid passport;
- Proof that the above requirements for residency are complied with.

Citizens of the United States or Mexico and family members who are residing in either host nation when the FMC Agreement is signed are entitled to the right of residence under the same rules as new arrivals.

Family members of citizens of either country who are not nationals of the US or Mexico may be required to apply for a special residence permit. These permits will be valid for at least five years from the date of issue.

The death of a citizen of a either nation, his or her departure from a host state, divorce, or annulment of marriage does not affect the right of family members who are not nationals of either country to continue residing in the host state, subject to the terms of their special residence permit.

The right of permanent residence

Citizens of either country acquire the right of permanent residence in the host nation after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right of permanent residence is not subject to any conditions. The same rule applies to family members who are not nationals of either country and who have lived with a citizen of either nation for five years. The right of permanent residence is lost only in the event of more than two successive years' absence from the host country.

Citizens of either nation and their family members who so request will receive a document verifying their right of permanent residence.

Common provisions

Citizens of either nation qualifying for the right of residence or the right of permanent residence and the members of their families are entitled to equal treatment with host-country nationals in the areas covered by the FMC Agreement. However, the host nation is not obliged to grant entitlements to social security during the first three months of residence to other than employed or self-employed workers and their families. Family members of the citizens of either country, irrespective of their nationality, will be entitled to engage in economic activity on an employed or self-employed basis.

Restrictions on the right of entry and the right of residence on grounds of public policy, public safety, or public health

Citizens of either state or members of their families may be expelled from a host nation on the grounds of public policy, public safety, or public health. Expulsion decisions cannot be based on economic grounds. Measures affecting freedom of movement or residence must be based exclusively on the personal conduct of the individual concerned; previous criminal convictions do not automatically justify such measures.

Before making an expulsion decision, the host nation must assess a number of factors such as the period for which the individual concerned has been a resident, his or her age, degree of integration, family situation in the host nation, and links with the country of origin. Only in exceptional circumstances with overriding considerations for public safety can expulsion orders be served on a permanent resident.

The person served with an expulsion order or refused permission to enter or reside in either country must be informed of the grounds for the decision and of the appeals process available to her/him. The FMC Agreement makes provision for a series of procedures that guarantee access to administrative and judicial review in host nations. Except in emergencies, the subject of such decisions must be allowed at least one month in which to leave the host country.

Lifelong exclusions cannot be issued under any circumstances. Individuals subject to exclusion orders can apply for review of his/her case after three years.

Final provisions

The United States and Mexico may adopt the necessary measures to refuse, terminate, or withdraw any right conferred by the FMC Agreement in the case of abuse of rights or fraud, such as marriages of convenience.

The FMC Agreement does not prevent the application of national legislation or administrative arrangements providing for more favorable treatment of temporary or permanent residents.

(end)