

## Admission to Studies, Decree on Groups of Persons, Interpretation of the Term „Centre of Interest of living“ (Lebensinteressen-Empfehlung)

The Federal Ministry for Education, Science and Research recommends, when interpreting the term „centre of interest of living“ (art. 1 para. 3 of the Decree on Groups of Persons 2018 – PersGV 2018, BGBl. II Nr. 63/2019, as amended) in the course of the ascertainment of the special university entrance qualification (art. 65 of the Universities Act 2002 – UG, BGBl. I No. 120/2002, as amended), to take into consideration the following:

1. In the present context, the term „ centre of interest of living“ is a central one. It is an indeterminate legal term which indeed occurs in a few legal areas and in jurisdiction, which, nevertheless, leaves good deal of latitude in the interpretation. It is subject to the free appraisal of evidence according to art. 45 para. 2 of the General Rules for Administrative Proceedings – AVG, BGBl. No. 51/1991.
2. The essential characteristic of the term is the voluntary residence in Austria in connection with the intention to stay here for an unlimited period. Main emphasize in the assessment shall be given to the subjective conditions of the applicant.
3. It is recommended to take into consideration the following three main criteria for interpretation:

Criterion	Possible proofs
Habitation	registration form (but not only) leasing agreement or similar proofs relationship to foreign residences
Subsistence	employment (employment contract or similar proofs) notice on income-tax social insurance financial relationship between the applicant and his or her family
Environment	long-term study (see, conversely, para. 4 subpara. c) cultural network (memberships in associations, religious communities, ...)

4. Examples of criteria which are, *per se*, not considered proper ones, are:
- a. citizenship:
    1. This is not necessarily tied to the centre of interest of living; also many Austrians have their centres of interest of living abroad.
  - b. language:
 

The knowledge of language or its use can only in some cases, but not necessarily be an evidence for the near relationship to a given country.
  - c. parts of studies:
 

A person who takes his/her residence in Austria only for the purpose of executing a smaller part of his or her study programme, without having other points of contact, does presumably not have his/her centre of interest of living in Austria, because the intention to stay here for an unlimited period is missing.
  - d. prison:
 

A prison in Austria causes without any doubt a residence here, but the element of voluntariness is missing.
5. Persons with a legal maintenance obligation in the meaning of art. 1 para. 3 of the Decree on Groups of Persons 2018 shall be the following ones:
- a. first grade:
 

parents (art. 140 of the General Code of Civil Law – ABGB)  
spouses (art. 94 ABGB)
  - b. second grade:
 

grand-parents (art. 141 ABGB)  
former spouses (art. 94 ABGB)
  - c. third grade:
 

children and grandchildren (art. 143 ABGB)
6. For illustration, find below the following extracts of the jurisdiction of the Administrative Court (VwGH):
- a. VwGH GZ 98/14/0026 (legal sentence)
 

*With regard to ascertaining the centre of interest of living, the personal and economic relations form the focal point. The personal relations have effects especially on the formation of family life as well as on social, religious and societal interests and activities. For the determination of the economic relations, in particular the height of incomes in the Contracting Countries is essential.*

*In case of doubt, the personal relations – and in particular formation of family life – has priority for the ascertainment.*
  - b. VwGH GZ 99/19/0005 (legal sentence)
 

*The centre of interest of living remains in existence, even if a foreigner moves for a short period of abroad in order to become occupied there, provided that either his or her family will stay in Austria,*

*or he or she maintains a habitation in Austria for this period. Equal deliberations apply to short-term voyages abroad for other purposes than occupation, too.*

c. VwGH GZ 83/13/0222 (legal sentence)

*The centre of interest of living of a foreign citizen can be considered as to be located in the inland provided that he or she, at the time of marriage, has a residence in the inland, but has neither a permanent nor a usual residence abroad, or that of unavoidable reasons a return to his or her country of origin is not possible and he or she attends regularly to studies or to working activities, and his or her conduct (e.g. purchase of a habitation etc.) gives reason to the conclusion that he or she aims at a permanent settling in the inland (indication to Hofstätter-Reichel, Comment on art. 35 EStG 1972 Tz 3, and to Werner-Schuch, Comment on wages tax, chapter 8 Tz 147).*