

ENGLISH

INFORMATION AGAINST THE FEAR RIGHT TO STAY



WE FIGHT
TOGETHER FOR
THE RIGHT TO
STAY

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Information against the fear

With the following information we want to support all people in their struggles for their right to stay. “Solidarity will win“ is a slogan, which became reality in many cases in the past and it will be so in future. By providing information we want to empower everyone to evaluate the situation and not to miss any chance to get a better residency status. We want to encourage to help each other by exchange of experiences and to build mutual solidarity structures.

Lately there are a lot of media-reports about plans to increase the number of deportations from Germany. The German government negotiates with several countries of origin about return programs, they plan to speed up asylum procedures and to carry out more charter deportations supported by the European border agency Frontex. For all those who have been rejected not only by the Bundesamt (BAMF) but also by the court (if they appealed against the BAMF-rejection) and who have only a “Duldung” (toleration status) it seems to get more dangerous.

We try in two brochures to give you useful information against the fear of deportation.

In the brochure “Right to Stay” you find different options how to get a right to stay even if your asylum case was completely rejected. In the brochure “Stop deportation” you find ways how to stop a deportation last minute.

We would like to join hands and build solidarity to not let the authorities succeed with their attempt of creating fear to terrorize people with the threat of deportation. Most importantly: don't panic! If you are afraid to be affected by new readmission agreements, please ask your lawyer or a counselling office to try to figure out with them how to obtain a right to stay. Use also contacts to figure out what might happen in case you decide to flee in other European countries (do this before you take your decision).

Some useful information for your Right to Stay

In case you have only a “Duldung” and don’t know how to continue or also if you just feel afraid, please come for counselling. You can get in touch with your lawyer or in counselling offices and talk about which measures should be taken. You can find contacts here:



<http://w2eu.info/en/countries/germany/contacts>



<https://www.proasyl.de/beratungsstellen-vor-ort/>



<https://adressen.asyl.net/language/en/welcome-to-informationnetwork-asylum-and-migration/>

Or you can ask Pro Asyl: beratung@proasyl.de

Keep yourself informed!

Keep contact with your lawyer and local activist groups. Your lawyer will sometimes have the chance to figure out if there are new options for you and also if the danger of deportation is increasing. Sometimes, activists find out about future charter deportations some days in advance and try to warn people who might be affected (see: <https://noborderassembly.blackblogs.org/deportation-alarm/>). For more information on this please check the “Stop deportation”-brochure.



Passport and identity documents

To some countries also people have been deported, who never provided an ID, a passport or a birth certificate to the German authorities.

For most countries of origin still passports and/or other sorts of identity documents are crucial to carry out a deportation. That is why to present passport or ID-documents for a person with “Duldung” can be very dangerous. Nevertheless, for most of the possibilities to get a right to stay after a negative end of an asylum procedure it is crucial to present a passport to the authorities. And there is also the possibility that you get punished for example with a ban of employment in case you “don’t cooperate to prove your identity”.

That’s why it is very important to understand better and find a good way to keep the balance. On the one hand side not to hand documents to the Ausländerbehörde they can easily use to carry out a deportation before you have security that an application you want to make has the possibility to be successful and on the other hand side also to “cooperate” enough to still be able to get a residence permit that requires certain “cooperation”. In case you have already a ban on employment because you did not cooperate with the foreigners’ office to provide travel documents for return, you should discuss with your lawyer or a counselling office whether there are possibilities to go against this ban.

In general

Build your team! The fight for the right to stay is much easier to win when you don't stay alone. So build your team of friends, supporters, lawyers, doctors, teachers etc.

For several options for right to stay it is crucial that: you learn German, you start to earn your own money (and are not dependent on social welfare) and that you "integrate" (this also means connections to local associations, it can be football, arts, music etc, you try to voluntarily assist someone etc.)

Let's join hands and build solidarity against deportations. Let's join hands against the fear. Each person who is at risk of deportation should have many friends around him/her.

Everybody should help in stopping rumours and false information. If you can, please copy this information and share with friends who are also under deportation-threat.



In the following we summarize different options for right to stay you have after being rejected in your asylum procedure and in the court:

1. The residence of opportunity (“Chancenaufenthalt”) - §104c Residence Act
2. Residence with sustainable integration - §25b Residence Act
3. Residence for well-integrated youths and young adults (14-27 years)- § 25a Residence Act
4. Ausbildungsuldung
5. Petition & Härtefallkommission
6. New asylum procedure (“Folgeantrag”)
7. Family reasons for right to stay
8. For people who are thinking about leaving to another country

The residence of opportunity ("Chancenaufenthalt") - §104c Residence Act

The residence of opportunity according to §104c AufenthG is a temporary right to stay for 18 months. These 18 months are meant for obtaining a passport and taking up a job in order to be able to secure living costs. After 18 months, the residence regulations according to §25a AufenthG or §25b AufenthG can take effect if the requirements are met.

To apply for a residence permit according to §104c you need:

- to have the legal status of a so called „Duldung“. Even without a certificate of a “Duldung”, you are generally considered to have this status.
- to have entered the country before 31.10.2017 and at least five years stay in Germany without interruption (“5 years’ previous residence in Germany, 31.10.2022”) with a permit, residence permit or toleration. Interruptions of up to three months are harmless.

Periods of toleration/Duldung due to unclear identity according to §60b AufenthG also count towards the five years of prior residence.

- No offences exceeding 50 daily sentences (general offences) or 90 daily sentences (offences under law on foreigners, e.g. passportlessness). Offences under juvenile criminal law are not as problematic. However, in the case of high penalties or juvenile penalties (custodial sentences), the immigration authorities may also refuse to grant a right to stay.
- No repeated false statements or deception about identity - if someone has repeatedly and intentionally made false statements or deceived about identity/citizenship. The false information must be the only cause for the prevention of deportation.
- Clarification of identity, passport, means of subsistence or visa procedure is NOT required in advance. The immigration authorities are not allowed to require any of these when applying for a residence permit.

ATTENTION!

This residence permit is only valid for 18 months. Within these 18 months you should be ready to apply for a residence permit according to §25b or §25a. In the following you will find what are the requirements. If you cannot fulfil these after the 18 months are finished you can again go back into the “Duldung”.

Unfortunately, the residence permit according to §104c AufenthG does not entitle the holder to family reunification.

Applications for a residence permit based on §104c are only possible until 30.12.2025. Afterwards this possibility ends.

Residence with sustainable integration - § 25b Residence Act

Section 25b of the AufenthaltG has been in existence for some time. With a new law, the Federal Government has slightly changed this residence regulation for sustainable integration. Section 25b of the Residence Act applies as a follow-up option once the 18-month period of opportunity has expired, but you can also apply directly.

To apply for a residence permit according to §25b you need:

- Duration of residence: You must have been in Germany for at least six years (single persons) or four years (families with minor children) on a permitted, approved or tolerated (“Duldung”) basis.
- to have the legal status of a so called “Duldung”. Even without a “Duldung”, you are generally considered to be “tolerated”.

- The identity must be clarified. In most cases, the foreigners' authorities also require a national passport. There can be exceptions from this, when a passport is impossible to get (for example Afghanistan), but then you might need further assistance by a counselling office.
- No offences exceeding 50 daily sentences (general offences) or 90 daily sentences (offences under law on foreigners, e.g. passport violation).
- Commitment to the free democratic basic order & basic knowledge of the legal and social order. You can prove this by taking the "Living in Germany/Leben in Deutschland Test", the "Citizenship Test" or recognised school-leaving certificates.
- Basic means of subsistence: The livelihood for oneself as well as the family must be mostly secured. That means you must prove that you can at least finance 51% of the needs you (and your family) have out of your own income. It is also sufficient if the livelihood can be secured in the future, e.g. if there is no work permit yet but an employment contract already exists. There may be exceptions in the case of illness, advanced age, or ongoing education.

- Language: The immigration authorities require at least A2 level. Usually, you need to prove this with a language certificate.
- When applying for §25b AufenthG, enclose letters of recommendation from school, training, leisure clubs or friends can be useful as well.

ATTENTION!

In case you have problems to fulfil one of the listed criteria try to find assistance as soon as possible to see how to deal with it. The best is to clarify BEFORE doing the application what are the possibilities.

Unfortunately, the residence permit according to §25b AufenthG does not entitle the holder to family reunification.

Residence for well-integrated youths and young adults (14-27 years) - § 25a Residence Act

Section 25a of the Residence Act has been in existence for some time. With a new law, the federal government has slightly changed this residence regulation for adolescents and young adults. Unfortunately, the situation has worsened slightly.

To apply for a residence permit according to §25a you need:

- Age: You must be between ages of 14 and 27 years.
- Duration of residence: You must have been in Germany for at least three years on a permitted, approved or tolerated/geduldet status.
- Duldung: you must be “tolerated” (“geduldet”). Even without a “Duldung” one can usually considered to be “tolerated” by law.
- Pre-toleration period (“Vorduldungszeitraum”): From 01.01.2022, one must be tolerated/geduldet for at least 12 months to be eligible for §25a AufenthG.

This is new and a significant worsening because there is a risk of deportation during this period of 12 months.

- School/education: One must have successfully attended school for at least three years or be able to prove that they have acquired a school-leaving-certification or professional qualification (“Berufsabschluss”) in Germany.
- Clarification of identity: The identity must be clarified. In most cases, the immigration authorities also require a national passport.
- No criminal offences exceeding 50 daily sentences (general offences) or 90 daily sentences (offences under law on foreigners, e.g. passport violation).
- Family: According to §25a Abs. 2 AufenthG, the parents of a minor child may also be granted residence. To do so, they must not have deceived about their identity and must be able to financially sustain themselves.
- When applying for §25a Residence Act, enclose letters of recommendation from school, training place, leisure clubs or friends can be helpful (even if they are not a precondition). It also makes sense to have already completed the test “Living in Germany/Leben in Deutschland”.

ATTENTION!

In case you have problems to fulfil one of the listed criteria try to find assistance as soon as possible to see how to deal with it. The best is to clarify BEFORE doing the application what are the possibilities.

Unfortunately, the residence permit according to §25b AufenthG does not entitle the holder to family reunification.

Ausbildungsduldung

Since August 2016, if you follow a vocational training (“Ausbildung”) you can get a so-called “Ausbildungsduldung”. For the whole time you are following the “Ausbildung”, you have the right to keep a “Duldung/toleration status” (and you will not get deported while on this status) and in case you find a job afterwards you have the right to get a residence permit.

That means vocational training effectively can save you from deportation. You must apply for a work permit at the foreigners’ office (“Ausländerbehörde”) if you have found a vocational training place. Sometimes they will not give you the work permit. If they deny, they must do so in written form, and you can again appeal against this decision in front of a court. This appeal is often successful, because it is often unlawful for that office to deny it to you.

Petition & Härtefallkommission

Even if the asylum procedure fails, and you obtain a negative result all the way to the end of the process, there is also the option - via “Petition” to a state parliament and the so-called ‘hardship case commission’ (“Härtefallkommission”) - to get a right to stay based on “integration”.

It is complicated to defend and prevent a person from being deported especially if s/he is accused of criminal offences. If the criminal offence sentence is too high, this also blocks petitions to the “Härtefallkommission”.

Remark: sentences for drug-dealing and other kind of criminal conviction will exclude from all options to get another residence permit and thus cause a big danger of deportation. All people who have a job can try to figure out with a local counselling service if it might make sense to start a petition.

New asylum procedure ("Folgeantrag")

If there are new reasons or evidence (for example new medical problems, a psychological survey that did not exist before etc.) there could be also options to restart a new procedure (Folgeantrag). You should speak about this with your lawyer.

It is very important to document health-related problems from the very beginning by obtaining medical certificates from a doctor. Many of you know the symptoms: sleeplessness, bad dreams, headache-attacks, problems to concentrate etc. This is called "traumatization" or "post-traumatic stress disorder (PTSD)". If you can get medical/psychological certificates about this kind of suffering, these might help you also to make another application for a "forbidden to deport" ("Abschiebeverbot") by the BAMF or the "Ausländerbehörde".

Family reasons for right to stay

If your family situation changes, for example you get married with a German citizen or a person who has already a right to stay here and/or you got a child who has a right to stay in Germany and you are taking care of it, this changes the situation and you have to figure out with your lawyer and/or counselling-office how to present this to the authorities as a new basis for your right to stay.

For example you could be able to apply for a residence permit according to §25.5:

<https://b-umf.de/src/wp-content/uploads/2023/07/kdr-255-factsheet-blanko.pdf>



For people who are thinking about leaving to another country

In case you are considering leaving Germany to go to another country, it can be very helpful to think about it twice to avoid finding yourselves in an even worse situation. There are a lot of information and useful contacts here: <http://w2eu.info>



w2eu.info

Browse by countries

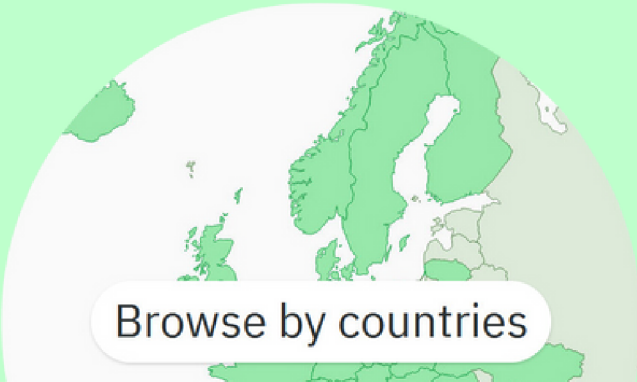
It is crucial to ask for advice BEFORE leaving, so that you know what it is important to keep in mind as you go. In many cases, especially when people have already been registered here and have been here for some time, it would be important to prove the chances for a right to stay in Germany and the concrete danger of deportation before leaving to a second EU-country – especially as there is also the risk of “Dublin” deportations back to Germany.

**Thanks for the pictures to
Bildwerk Rostock (flickr).**



www.w2eu.info

Welcome to Europe is an activist transnational network for freedom of movement on all refugee routes. The web guide w2eu.info provides useful contacts and information in favour of the right to stay, against deportations and for equal rights for all in four languages (English, Arabic, Farsi and French).



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