

Directory for asylum seekers and holders of an exceptional leave to remain (*Duldung*) in Brandenburg

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1. Application for Asylum

1.1 The beginning of the procedure for granting the right of asylum

1.1.1 Who can request asylum?

Every human being can request asylum in Germany when he/she is persecuted in his/her home country. First a refugee needs to overcome border control. The member states of the European Union as well as Norway, Iceland, Liechtenstein and Switzerland have agreed that a refugee can only be granted asylum in *one* of these countries. That one state is the state that a refugee has first entered. Public authorities always check if another country is responsible for the asylum procedure. If that is so, the application for asylum is not processed but a transfer to the responsible EU-country is initiated. The refugee will most likely be deported to the respective other EU-country. In case of children under the age of 16 an application for asylum is automatically initiated once the parents request asylum (§14a, AsylVfg). That also happens if the parent’s application for asylum has already been rejected. Once a procedure for granting the right of asylum is initiated for a child the parents will be asked in writing if they will renounce the asylum procedure for their child. It might be useful to do so. Please get further advice from a specialized counselling centre.

1.1.2 How and where does one apply for asylum?

Basically one can request asylum at every police station. The authorities will send you to the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge BAMF*).

There you have to request asylum in person. In Brandenburg the BAMF is located on the grounds of the Central Reception Centre (*Zentrale Erstaufnahmeeinrichtung*):

Erstaufnahmeeinrichtung Brandenburg

Poststr. 72, 15890 Eisenhüttenstadt; Telephone: 03364 – 427 185

- Has the police registered you and sent you to the central aliens department you have to report there immediately. You might receive an appointment. You absolutely need to keep that appointment or inform the authorities in advance why you are unable to keep it. When you miss it without an important reason you risk that your request for asylum will not be processed.
- Have you entered the country without a visa and have not been registered you should contact one of the offices of the Central Reception and Aliens Authority (*ZAAB, Zentrale Aufnahme und Ausländer Behörden*) and the BAMF as soon as possible. When you wait too long, your asylum application is processed like a follow-up application. At the ZAAB your personal information are registered in a central computer. In addition the authorities check if one has applied for asylum in

Germany/the EU at a previous date or has spent time in a European country. More about that later.

- Get advice as early as possible from an independent counselling centre. You can receive addresses from the *Flüchtlingsrat Brandenburg*.
- **Demand a copy from all the documents that you have to hand in. You have a right to get these copies!**

Children who have entered the country alone can apply for asylum in writing through a legal representative. You can also do this when you are holder of a legal residence title for more than six months or you are currently in prison or hospitalized. Your application must be send to the central office of the Federal Office with the following address:

Bundesamt für Migration und Flüchtlinge
Frankenstr. 210
90461 Nürnberg
Telephone: 0911 943-0
Fax: 0911 943 1000

Mailing address:

Bundesamt für Migration und Flüchtlinge
90343 Nürnberg

The Federal Office will compile all information about an application for asylum and decide in the first level of jurisdiction. The refugee will be interviewed personally by a staff member, usually within several days after applying. The appointment is submitted by mail. When you apply in writing for asylum the decision might be made without an interview.

*** You must not miss the interview! The evaluation of the interview is crucial for the decision whether you will receive asylum in Germany or not.**

1.2. The Interview

The interview is the most important event during your asylum procedure. What you say in your interview is decisive and can barely be corrected afterwards. If you have the opportunity, visit a specialized counselling centre before the interview. There you can ask questions beforehand, deal with insecurities, and get helpful advice for your individual situation. A lawyer can advise you before the interview, be present during the interview and even intervene. That is a good control for the correctness of the interview procedure. You can also bring another person who you trust to the interview. You have to register that person beforehand with the BAMF.

Before the interview

- Write down the reasons why you had to flee. Best is to write an exact chronology of your persecution, that lists all important dates and reasons for your asylum application so that you can report everything with confidence and in the right order. During the interview you should best speak freely.

- Should you have health problems ask a doctor for a medical certificate that you can present to the Federal Office. Possibly you cannot be deported to your home country if your health would worsen significantly.
- You have the right to an interview held in your native language. You need to inform the federal office in which language you want to speak during the interview. They will organize a translator or you can bring a translator who you trust.
- You can insist on being interviewed by a woman. You should announce this beforehand.

During the interview

What you say will be recorded in writing in German. That record is the basis for the decision upon your asylum application. In the end the minutes need to be re-translated for you. You need to sign that everything has been written down correctly and completely. You should only sign it if it's truly correct. When the translator urged you to speed up even though you wanted to add something or you didn't understand the question you should not sign the record but add to it in your native language. When the record contains mistakes or is not complete demand corrections. You have to pay attention that not the statement is corrected but the record. If you have forgotten something important you can add it then.

The interview often starts with detailed questions about your travel route. These questions are supposed to clarify if another country is responsible for your asylum application. You have to present all documents (e.g. plane- or train tickets). Should you have entered Germany via another EU-country please get advice from a counselling centre beforehand.

Answer to questions only if you have understood them completely.

- If you have reservations against the translator or if you did not understand something put it on the record and demand another translator. Not every translator employed by the federal office is qualified enough. The interview might have to be postponed. Don't agree to a compromise. Write down specialized terminology in your own language.
- Answer to all questions as elaborately as possible. You have the right to speak as long as needed. The more details you describe, the higher is your credibility.
- Report also events, personal experiences and circumstances that you're not asked about. This is your only occasion to do so.
- Present all proofs (documents, photographs, newspaper clippings). Demand a copy of every piece.
- Also talk about events that are painful and embarrassing for you. It might be hard for you but it's of great importance for the asylum procedure. If you can't do it, then mention at least that you can't continue because your memories are too painful.
- Don't sign the minutes of your interview before it has been re-translated to you word by word and you have checked it for completeness and correctness. Demand a copy of the record to keep with your other papers. If you have a lawyer, send him/her a copy of the record.

After the interview

- After the interview check daily if you have received mail from the Federal Office (*Bundesamt*) at your reception centre. With the delivery of a letter to your reception centre a period within which you can start proceedings against a negative decision is

running. The length of the time period depends on the decision of the Federal Office (*Bundesamt*). Once the decision is there, go to a lawyer or to a counselling centre as quickly as possible.

- Keep the letter with the envelope (!) because the stamp on the envelope marks the date of the mailing of the decision.
- If you move you are obliged to tell the federal office your new address. You also have to inform them about your new address if the reception centre or any other authority asks you to move.

1.3 Who is offered asylum?

There are three possibilities to get the right of residence as a refugee:

1.) Recognition as a “recognized asylum seeker” according to Article 16a of the constitution (*Grundgesetz*)

Or

2.) Recognition as a “refugee” according to the Geneva Conventions on Refugees §60(1) of the *Aufenthaltsgesetz* (residence act)

Both possibilities are equally good for you because you will receive a residence permit for three years, access to benefits according to the code of social law and a work permit.

3.) Protection from deportation according to §60 (2, 3, 5 or 7) of the *Aufenthaltsgesetz* (*residence act*). In this case you’ll receive a residence permit for one year that can be extended.

1.3.1. Requirements for the recognition as a refugee

Fundamental for the recognition as a “refugee” according to §60(1) of the *Aufenthaltsgesetz* (residence act) and Article 16a of the constitution is the definition of the term “refugee” according to the Geneva Conventions. Therefore a refugee is a person who has fled his/her home country because of fear of persecution due to race, religion, nationality, affiliation to a certain social group or political beliefs and who was not protected by that home country. Only if persecution happens because of personal criteria that are listed in the definition recognition can take place. Political persecution is **specific** if a person is persecuted because of his/her race, religion, nationality, affiliation to a certain social group or political beliefs. One example would be Christians in Irak, who are persecuted. Refugees are frequently rejected because the federal office sees the persecutio but does not define it as specific. There needs to be an **inner logic** between the reasons stated by the refugee and the escape. Threat of persecution or persecution already suffered must have caused the escape. If for example a lot of time has passed between the persecution and the escape, the persecution won’t be accepted as reason for the escape.

If you wouldn’t be persecuted in parts of your home country you would have a “**domestic escape alternative**”. Once such an alternative exists the application for asylum will be rejected. In case of a voluntary return or a deportation these territories need to be accessible without danger from Germany.

Since 2005 persecution by others, e.g. marauding gangs or militant groups can count as persecution if those in power can’t offer protection. (non-state persecution). That would also be true once a state doesn’t exist anymore or in case of unclear power structures during a war.

Common reasons for escape: Danger for Life and freedom

Imminent danger for life and freedom can be a reason to get asylum, if the life of the person concerned is frequently threatened for political reasons or strongly affected. But even that does not lead to recognition as a refugee in every case. The threat of imprisonment might not count as a reason if the home country has a legitimate interest to protect itself by incarcerating the refugee.

(Civil) War

Wars and civil wars are not sufficient reasons to receive asylum or any other type of protection in Germany. A chance for recognition is only given in case of concrete personal persecution and danger in addition to the general threat.

Conscientious objection to war

Mostly German courts have ruled against conscientious objection and desertation alone as reasons to get asylum. If somebody is facing particularly high punishment for refusing military service because he or she belongs to a discriminated group that might count as a reason to get asylum. According to the European regulations, "quality guidelines" (2204/83/EG of the council of April 29, 2004 (EU no. L 304 p.12) Art. 9, para.2, letter e) the need of protection is tied to „ punishment when refusing military service in a conflict when military service would include crimes or acts that would fall in the category of exclusion clauses. Desertation from a war of aggression that violates international law would deserve protection under the Geneva Conventions and be a good reason to receive asylum.

Poverty

General states of emergency in the home country like famine or environmental disaster are not considered valid reasons for asylum.

Persecution of women

According to law gender-specific persecution can lead to recognition as a refugee. General discrimination and oppression of women in their home country is not enough. Women and girls who have suffered sexual violence or fear to become a victim of sexual violence (e.g. genital mutilation) can be recognized as refugees. In these cases it is important yet unfortunately difficult to prove that a particular danger exists in the respective individual case.

Religious persecution

The quality guidelines mentioned above also constitute that people have the right to practice their religion openly. If a person is persecuted due to open confession to a religious practice that he/she might be eligible for asylum.

Homosexuality

Persecution of homosexual men and women is potentially a reason to get asylum. It might be very difficult to prove persecution or to prove why one's sexual orientation can't remain a private/secret issue.

1.3.2 Requirements for protection from deportation

§ 60 of the AufenthG lists a number of dangers that might grant you an interim right of residence even though your application for asylum was rejected.

- danger of torture or inhuman/humiliating treatment or punishment
- danger of death penalty
- violation of the freedom of religious practice (as one example for inhuman/humiliating treatment or punishment)
- danger of life, physical integrity or freedom

In every case of asylum the existence of these dangers is automatically checked. You can potentially focus on the obstacles of deportation in your case instead of applying for asylum. The recognition of obstacles of deportation due to "danger of life, physical integrity or freedom" (§60(7) AufenthG) is only possible with a direct connection to the country of destination. Such might e.g. be medical treatment for life threatening illnesses that is not available in the home country. A requirement for temporary residence would be severe damage of one's health or even death once the medical treatment would be discontinued in Germany.

§60(7) also lists protection from dangers for civilians by arbitrary violence in armed conflicts. Even if the federal office does not recognize this as an individual danger, the ministry of interior of the respective federal land can grant a temporary cessation of deportation.

1.3.3 Follow-up application (Folgeantrag)

Have you ever requested asylum in Germany then every additional application is a so-called follow-up application. A follow-up application needs to be made in person at any branch of the BAMF. In these cases the BAMF checks if there are reasons that justify the reopening of the case. Potential reasons would be:

- a change of the situation (e.g. the political situation in the home country)
- a change of the legal situation (e.g. the laws)
- new evidence (e.g. documents, a new medical certificate, a new witness from the home country)

An application for asylum is also a follow-up application once you've been to your home country inbetween. Then you can focus on reasons for your escape that have come up during your last stay there.

A follow-up application needs to be submitted within three months after you have learned about the reasons you'll name to reopen the case.

When you submit a follow-up application make sure to list all your reasons in a written application. It might be best to write the application with a lawyer or with the help of a counseling centre for refugees.

The federal office checks a follow-up application in two steps. 1. If there are valid reasons to reopen the case and 2. if the requirements are met to receive asylum, to be recognized as a refugee or to be spared from deportation.

You can press legal charges against the rejection of a follow-up procedure for granting the right of asylum. You can do it within two weeks of receiving the rejection notification in the mail. To prevent an immediate deportation you have to apply for expedited proceedings at court, best *immediately* and with the help of a lawyer. The goal of the claim is to get a court order to suspend the deportation until the claim is decided.

1.4 Notification from the Federal Office

1.4.1 Improper application for asylum – the Dublin II decree

Most European states have arranged that a refugee can only receive an asylum procedure in one state. Which state that might be is ruled in the Dublin II decree. An application for asylum will not be processed in Germany if

- the person has entered Germany via another “Dublin-state” and the BAMF can prove this
- the person has already requested asylum in another European state
- the person has given his/her fingerprints as an illegal immigrant in another European state
- **the person is under age and has parents or a legal guardian in another European state. The parents have to live there legally and it needs to be possible for the minor to reach them.**

Once another country has accepted to take the refugee the federal office decides to deport that person.

1. The application for asylum is improper. 2. The deportation to (e.g. Poland) is ordered. That means that the person is immediately brought to the “Dublin-state” in charge. Important: that decision does not mean that the application for asylum has been rejected it just needs to be processed in another state, not Germany, but the state where the person is brought to. It is possible to take legal proceedings against a ruling of “improper application”. These legal steps won’t delay the deportation. The refugee will be brought to the “Dublin-state” in charge anyway. According to the wording of the law it’s impossible to apply for interim legal protection (§34a (2) AsylVfG). Due to a ruling of the German Federal Constitutional Court (Verdict of May 14, 1996, BverfG, 2 BvR 1938, 2315/03, BverfGE 94, 49) this law needs to be corrected. In exceptional cases interim legal protection is available, e.g. if a refugee is unfit to travel or lives with his /her family in Germany. Theoretically it’s also possible to argue with potential dangers in the “Dublin-state” or with the threat of a chain-deportation. Practically such arguments won’t most likely be successful, as most courts will consider the “Dublin-states” safe places.

It is best to entrust an experienced lawyer with the expedited proceedings. As deportations to “dublin-states” usually happen very quickly it is important to take precautions ahead of time, before the rejection is obtained.

When the other state has not agreed to take the refugee the federal office will reject the application as “not noteworthy” and will threaten to deport the refugee.

1. *The application for asylum is rejected as not noteworthy. The applicant is asked to leave the Federal Republic of Germany within one week. Should the timeframe be exceeded he/she will be deported to e.g. Poland.*

In such cases one can try to prevent deportation with the help of a lawyer.

- **You only have one week after receiving the letter of rejection to take legal proceedings against the decision of the BAMF. In addition you have to ask for expedited proceedings within the same time.**

Once the deportation to another “Dublin-state” doesn’t work within six months, the BAMF follows up on the application. Has the refugee gone into hiding the other state is in charge for another 1 ½ years. Afterwards the federal office in Germany needs to take care of the application (Dublin II decree, Art. 19, paragraph 4). The BAMF is free to decide the case itself, e.g. to prevent the separation of a refugee from his/her family that is living in Germany.

The “Dublin-states” are: Belgium, Bulgaria, Denmark, Germany, Estonia, Finland, France, Greece, Great Britain, Ireland, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Netherlands, Norway, Austria, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Spain, Czech Republic, Hungary, Cyprus.
The “Dublin II decree” is also used in Switzerland.

1.4.2. Recognition as a refugee

Once the Federal Office accepts an asylum seeker as a recognized refugee the notification will either say “1. The applicant is recognized to have the right of asylum.”, or “1. The application for asylum is rejected. 2. The applicant is recognized as a refugee.”

Both decisions are the best what can happen to a refugee during the asylum procedure. In both cases the people concerned receive refugee status according to the Geneva Conventions, a German passport for refugees and a residence permit, initially limited to three years.

Deportation is prohibited. Three years later the BAMF will re-examine the decision and might revoke it.

1.4.3. Protection from deportation according to §60 (2, 3, 5 or 7) AufenthG

There is one other legal possibility to be protected from deportation at least temporarily. In such cases the Federal Office will write “1. *The application for asylum is rejected.* 2. *The application for recognition as a refugee is rejected.* 3. *Prohibition of deportation according to §60 (e.g. 2, 3, 5 or 7) of the residence act are existent regarding (here a country will be named, e.g. Afghanistan). Incidentally no other prohibitions are existent according to §60, residence act.*”

Once a person is officially spared from deportation he/she usually receives a residence permit for at least one year. They have less rights than recognized refugees. The BAMF decides about deportations.

You have two weeks time to take legal proceedings against the rejection as a refugee. You have another two weeks to give reasons for your complaint. Please get informations from a lawyer or a counselling centre for refugees.

1.4.4 Rejection

Once the application for asylum is rejected the Federal Office writes: “1. *The application for asylum is rejected.* 2. *The application for recognition as a refugee is rejected.* 3. *Reasons for prohibition of deportation according to §60, para.2-7 of the AufenthG are not existent. The applicant is asked to leave the Federal Republic of Germany within one month after the*

notification of this decision. In case of a legal complaint the deadline to exit the country is extended to one month after the incontestable ending of the asylum case. Should the applicant not keep the deadline to leave he/she will be deported to (e.g. Liberia). The applicant can also be deported to any other state he/she can enter or who is obliged to take him/her in."

This means the complete rejection of all protection. The refugee is endangered to be deported if he/she doesn't take legal action in time. You have two weeks time to file a lawsuit in court, another two weeks to present your reasons. You should urgently talk to a lawyer specialized in asylum law. It is even useful if the lawyer is specialized in your home country.

1.4.5. Rejection as "apparently causeless"

A decision to your disadvantage is a rejection as "apparently causeless". In this case you are immediately in danger to be deported. Your notification will say: *"1. The application for asylum is rejected because it is apparently causeless. 2. The application for recognition as a refugee is rejected because it is apparently causeless. 3. Reasons for prohibition of deportation according to §60, para.2-7 of the AufenthG are not existent. The applicant is asked to leave the Federal Republic of Germany within one week after the notification of this decision. In case of a legal complaint the deadline to exit the country is extended to one month after the incontestable ending of the asylum case. Should the applicant not keep the deadline to leave he/she will be deported to (e.g. Liberia). The applicant can also be deported to any other state he/she can enter or who is obliged to take him/her in."*

There is danger of deportation and you have **only one week** time to take legal steps against the decision of the BAMF. In addition you have to ask in the same time for expedited proceedings. If you won't do this or if the court won't grant you expedited proceedings you can be deported even though your lawsuit has not been decided.

1.5 The court hearing

If you take legal action against a rejection of your application an administrative court will doublecheck the decision of the BAMF. The report of your interview with the federal office is the basis for the new decision. You will be asked to be at the court hearing. It might take some time until the court hearing takes place. You can do the following things to prepare yourself:

- **If the BAMF doubts your credibility or criticizes contradictions or false facts in your statement try to clarify apparent contradictions, so that the judge won't interpret them to your disadvantage.**
- **Try to get new evidence to prove the necessity of your escape, e.g. from relatives in your home country. Also get new information on what you might face once you are deported (Is your house/apartment still there? Did the police come to look for you? In case you are ill and need to take medication: is that medication accessible and available for you in your home country? Is there sufficient medical treatment and –insurance?).**
- **You need to pay close attention to tell the administrative court the same facts that you told the BAMF. If you want to correct statements you made in front of the BAMF you can do so, but you need to explain how those false testimonies happened.**

Once the administrative court has made a decision the asylum case is closed.

2. The exceptional leave to remain/border crossing certificate

Basic principles

The exceptional leave to remain is a document that regulates a person's stay in Germany and is mentioned in the residence act. The formal name is "Certificate about the temporary stay of deportation according to §60, paragraph 2, AufenthG" and it regulates the residence of people who have to leave the country. It is a document for temporary residence and is given to people who will be deported or who will leave. In many cases the exceptional leave to remain is extended again and again and people's stay is not terminated.

Obligation to leave

Once a citizen of a Third country (not German, not EU-citizen, not a family member of an EU-citizen) does not own a residence title (e.g. visa, residence permit) or the title has expired and the person does not have the right of residence according to the agreement of associativity EWG/Turkey. (§50 (1), AufenthG) he/she has to leave Germany.

If he/she does not leave within the legal deadline the alien's department can force that person to leave via deportation (§58 (2) AufenthG). Mostly people are forced to leave after an asylum case has been closed unappealable.

The different types of the exceptional leave to remain

There are basically four reasons to grant an exceptional leave to remain.

Exceptional leave to remain due to entitlement

This one is granted when de facto or formal obstacles will prevent the deportation, yet no residence permit is given (§60a (2) phrase 1 AufenthG). Legal obstacles to deportation are e.g. the protection of marriage and family (Art. 6 Constitution and Art. 8, EMRK), an upcoming marriage with a person who has legal residence, a pregnancy and all legal obstacles to deportation of §60 (1) to (5), AufenthG, as long as there is no residence permit granted. De facto obstacles to deportation are e.g. the lack of passport or other documents, lack of means of transport, lack of a country that is willing to take the person as well as the inability to travel.

Exceptional leave to remain due to witness status

This one is granted when the temporary presence of a person in Germany is wanted due to the necessity of his/her testimonies to court and/or the department of public prosecution (§60a (2) phrase 2 AufenthG).

Exceptional leave to remain due to discretionary power

This one can be granted (discretionary power) when urgent humanitarian or personal reasons or important public interest require the temporary presence of a person in Germany (§60 (2) phrase 3 AufenthG). For examples hereby a person can finish school or an apprenticeship in Germany, can take care of a relative or can continue medical treatment that would not be available in the home country.

Exceptional leave to remain due to a formal deportation stop by the ministries of interior

This one is granted (demand) once the government orders a deportation stop of foreigners to certain states for six months due to humanitarian or international legal reasons. Another reason might be the protection of interests of the Federal Republic of Germany. A deportation stop is mostly granted to regions at war and in crisis.

Another reason to grant an exceptional leave is when a close family member's (wife, husband, under age children) asylum case is still pending (§43 (3) Asylverfahrensgesetz).

Validity of the exceptional leave to remain

The exceptional leave to remain is usually granted for either three or six months. The duty to leave the country remains, even if the exceptional leave has been extended for several years. Once the obstacle to the deportation has ceased to exist the exceptional leave is withdrawn and the deportation can happen. The deportation doesn't need to be announced again. Certain terms and conditions can be attached to the exceptional leave. The exceptional leave can be limited to the district of the local alien's department or to a certain federal land. Caution: the exceptional leave expires when you leave the country, also with short-term departures. The exceptional leave is not a residence permit and residence with an exceptional leave is not legal. On the other hand the stay is not illegal, because the exceptional leave is granted by the alien's department and the stay in the country has not been kept secret from the authorities.

References for advice

Every once in a while the alien's department does not grant an exceptional leave despite existing obstacles to deportation. Instead they hand out a document that permits you to cross the border (GÜB, Grenzübertrittsbescheinigung). This is in fact illegal and gives you a de facto exceptional leave. You can claim it at the Administrative Court.

3. Distribution and Accommodation in Brandenburg

3.1. The distribution

You have arrived in your central reception centre in Eisenhüttenstadt and you have filed an application for asylum. The BAMF will assess with a computer system which federal land will have to provide housing for you, it might not be Brandenburg. You can request particular locations and you should do that as soon as possible. You should give good reasons, e.g.

- You have an illness that can only be treated in particular cities.
- You want to move close to family members (wife, husband, child) relatives or good friends from your home country.

Only if the partner you are married to or an under-age child live in Germany you have the legal right to move to them (§50 (4), §51 AsylverfG), GG, Art. 6). That is a fact, even if you have only an exceptional leave to remain.

Once the authorities have decided that you will remain in Brandenburg you will have to move after three months maximum, mostly sooner, to a collective accommodations centre for asylum seekers and refugees.

3.2. **Life in a group accommodations facility (GAF) in Brandenburg**

It might not be easy for you to get used to life in a group accommodations facility. You might have to share your room with other people who you don't know. According to Brandenburg' law you have the right to 6 m² personal space. In every group accommodations facility you have to comply with a set of rules. If you have questions you should turn firmly and politely to the social workers or the director.

In most collective accommodations facilities you have to share bathroom and kitchen with the other inhabitants. Please think about keeping them clean.

You have a right to privacy. You might have to spend many months or even years in such a group accommodations facility, so you have the right to welcome visitors and to practice your religion. Room checks by facility staff are a doubtful practice. Should they happen you can insist of being present while the room is checked. Staff members are not allowed to open your mail. Should it happen more then once you should complain to the director. If you are planning to have overnight guests you should discuss it on time with the social workers or the director. The rules vary from facility to facility.

If you are facing serious problems in your facility you should turn first to the social workers and/or the director. In case they don't provide help you can turn to a counselling centre or to the Flüchtlingsrat Brandenburg (addresses in the back).

Important: Mail!

Please pay attention to pick up your mail regularly and read it! All important documents regarding your asylum case will be sent to your group accommodations facility. You have to keep the deadlines in the case so it is very important that you read your mail! If you don't understand the letters ask the facility staff or a counselling centre or your lawyer.

3.3. **Moving to another GAF**

If you want to move to another GAF you can apply to move at the local Alien's Department. You have to give very good reasons. Within Brandenburg it is not easy to get permission to move, to get permission to move to another federal land is even harder.

Potential reasons can be:

- You need medical or therapeutic treatment which is only accessible in certain places.
- You are threatened in your accommodations facility or you have been the victim of right wing violence.
- You are in need of care and you want to move to relatives.
- You need to take care of old or sick relatives yourself.
- You can't practice your religion anywhere near the place you live.
- You are an active member of a legal political organization that meets far away from where you live.

After you have submitted the application inquire occasionally at the Alien's Department if you don't receive an answer. Sometimes it helps to introduce yourself at the Alien's Department of the town where you want to move to.

Applications to move are often rejected by the authorities. They have to send a rejection in writing. Afterwards you have the possibility to file a suit within two weeks after receiving the rejection at the Administrative Court.

- **Go to a legal counselling centre or talk to your lawyer!**

3.4.4. Application to move to an apartment

If you have lived in a collective accommodation facility for many years already, especially if you are a family, you should try to apply for the permission to move to an apartment. Place the application and give extensive reasons at the local social welfare office. The social workers at the GAF should help you to write the application. If you feel that you are not getting enough help or the explanatory statement is not detailed enough, then seek the help of a counselling centre.

- **Get help to write your application to move to an apartment. Explain your individual reasons in detail.**

Potential reasons are:

- You have been living for more than one year in the GAF. Ask at the nearest counselling centre about the legal situation in your city or district. In Brandenburg big differences exist between districts. In Cottbus it is e.g. possible to apply for an apartment already after one year in a GAF.
- You are mentally or physically ill and you need your own space.
- You are sharing one room with your children and the whole family suffers under these conditions. The children's ability to study is limited.

Should your application be rejected you can take legal steps. Your chance for success is limited as the authorities have the right to decide. Court can only check whether the authorities took all possibilities in consideration.

3.5. Residential Restriction

3.5.1. The "Urlaubsschein"

If you are an asylum seeker and you have a residence title for specific purposes you can't leave the district or the town you are assigned to without permission (§56 (1) AsylverfG). If you have an exceptional leave to remain then your residence is mostly limited to entire Brandenburg, but sometimes to your district or city. Usually the authorities stamp the restriction into your papers.

The duty to remain in your district is called residential restriction. The permission to leave is called "Urlaubsschein". In most districts you have to ask for the "Urlaubsschein" at the local Alien's department.

You don't need an "Urlaubsschein" from the Alien's Department if:

- You have an important appointment in court or at some important administrative office.
- You have already been approved as a refugee but you haven't received your papers yet

The Alien's Department should give you an "Urlaubsschein" without any problems if:

- You have to visit your lawyer.
- You want to visit a support organization or a counselling centre.

Further urgent reasons to receive an “Urlaubsschein”:

- Christening of a child, wedding ceremonies, birthdays, death of a relative
- Appointments at a doctor’s office or hospitalizations
- Participation in a religious event
- Sports events, assemblies or legal political events you’d like to participate in
- Participation in your children’s school trips

The “Urlaubsschein” is only valid for the event that you requested it for. You have to carry it with you at all times during your trip.

If you don’t have any particular reason but you are requesting an “Urlaubsschein” to visit a friend, the authorities can refuse to give you one. It is up to their judgement. Definitely get the rejection in writing. You can potentially take legal steps against the rejection.

- If you have problems to get an “Urlaubsschein” to visit a support organization, get an invitation from that organization and show it to the Alien’s Department.
- Should you frequently have problems to get an “Urlaubsschein” you can turn to a counselling centre.

In special cases you can get a “permanent Urlaubsschein”:

- If you need medical or therapeutic treatment outside your district.
- If you found a job outside of your district.
- If you are frequently visiting a religious institution.
- If you are father of a child and need to leave your district to participate in the child’s upbringing.

In such cases you can apply for a permanent “Urlaubsschein” so that you don’t have to return to the Alien’s Department every week. It is up to the judgement of the authorities to grant you the document.

3.5.2. Punishment upon violation of the residential restriction

Asylum seekers and refugees are frequently controlled by the police in Brandenburg, especially on public transportation. The first time you are met in public without an “Urlaubsschein” it is registered as an administrative offense. The second time it happens it’s already a punishable act. It doesn’t matter if you only left your district for a short time or if you had an “Urlaubsschein” that expired. “Punishable act” means that you have to pay a fine. If you cannot pay you have to spend some time in prison. If you have a record of several punishable acts and if you were convicted in court to more than 90 daily rates (you have to pay a certain fee per day) it might endanger your stay.

Every offense is registered in your file at the Alien’s Department. This won’t influence your application for asylum but it might have consequences for your residence later.

If you have to pay a fine ask the administration in charge if you can pay in rates. You should definitely consult a lawyer or a counselling centre because the penalty orders might be issued illegally.

3.5.3. What can you do against residential restriction?

Germany's law of residential restriction and the harsh controls that come with it are unique in Europe and concerns all asylum seekers and people who hold an exceptional leave to remain in Germany. For many years activists and organizations have been protesting against residential restriction. If you want to become active contact *Flüchtlingsrat Brandenburg* or *Flüchtlingsinitiative Brandenburg* (addresses in the back).

4. Social benefits –which benefits am I entitled to?

4.1. General benefits

All asylum seekers as well as people who hold an exceptional leave or are entitled to stay due to humanitarian reasons (§25 (4), phrase 1, §25 (4a) or §25 (5) AufenthG) receive benefits according to the *Asylbewerberleistungsgesetz*. The benefits are approximately 65% of the benefits a German welfare recipient is entitled to.

The following chart contains the current figures:

	Basic Amount	Pocket Money	Total Amount
Head of household/ Solitary person	184,07	40,90	224,97
Household members age 0-6	112,48	20,45	132,93
Household members Age 7-13	158,50	20,45	178,95
Household members age 14 and up	158,50	40,90	199,40

The basic amount of the benefits can be handed out as a chipcard or a voucher. The pocket money needs to be given to the recipients in cash.

Different districts have different policies regarding the benefits in cash or chipcards/vouchers. With both chipcards and vouchers you can only shop in certain stores and you need to spend close to the exact amount that is marked on the voucher. Maximum 10% of the voucher's value are handed back in cash (e.g. if you pay with a Euro 50 voucher maximally Euro 5,- change will be handed back to you.)

Only if a welfare recipient lives in an apartment and needs cash to pay the bills, he/she can take legal steps to receive cash instead of vouchers.

In addition to the basic amount the social welfare office will pay the costs for your housing (either in a collective accommodation facility or an equitable part of your rent for an apartment). As long as you are living in a GAF a flat rate is subtracted for utilities. The flat rate varies from district to district between 20,- to 30,- Euros per head of household/solitary member and 10 to 20,- Euros per additional household member. Once you live in an apartment you have to receive the full sum.

In case of exceptional life events you can apply for additional benefits and the social welfare office will decide upon their own judgement. You can apply for additional benefits if you need special nutrition because you are sick or pregnant, if you need to buy basic equipment for a baby or for a woman in childbirth, if your children are going on a school trip or if you

need to get a passport, including the costs for the trip to the embassy. You have to apply for the additional benefits in writing beforehand. If your application is rejected you can file an objection within four weeks.

4.2. Benefit Cuts

The social welfare office has the right to cut benefits if the recipient claims to have entered Germany only to receive social benefits. Benefits are also cut if the welfare office holds you responsible for delaying your own deportation. The staff has to tell you explicitly how they expect you to cooperate, e.g. showing your passport, going to the embassy, corresponding with your home country etc.). They have to reimburse you for your traveling expenses. If you can't leave Germany because you are sick, then your benefits cannot be cut.

Only the pocket money that you receive in cash can be cut. Most times it's first cut in half, then all. Then you will be provided with housing, food and things for your personal hygiene.

You are always entitled to medical treatment, even if your benefits are cut

The benefits of asylum seekers who hold a residence title for specific purposes or who have filed a follow-up application that has not been decided by the BAMF cannot be cut. If your benefits are cut it is useful in every case to seek help from a counselling centre.

4.3. More benefits after 48 Months

Once you have lived in Germany for more than four years and you have always cooperated with the authorities (see above) you are entitled to benefits according to SGB XII:

Who	Amount in Euro
Solitary members	347,00 E
Two partners of full age each	312,00 E
Household members age 0 –13	208,00 E
Household members age 13 and up	278,00 E

You will receive this money in cash, not in vouchers. You can apply for special benefits if you are e.g. a single parent or if you need special nutrition. You will receive a personal chipcard for your health insurance, that entitles you to medical treatment, medication subscriptions etc. If you visit a doctor or a hospital now you are responsible to pay your charges for medical registration and your share of fees for medications.

As long as a person is still living in a collective accommodation facility the local welfare office can insist on payments in kind "to comply with the local habits".

Once a person moves into his/her first own apartment, he/she can apply for additional benefits to finance furniture and household contents.

4.5. Income allowable against social benefits

If you have a job you are obliged to inform the social welfare office. Your salary is allowable against your social benefits. You can keep 25% of your salary in addition to the remaining benefits. If your salary is higher than your benefits then you have to pay rent to the welfare office for your housing.

4.6. Student Loans (BAFöG)

BAFöG is financial aid for high school and university students. Eligible are asylum seekers, Turkish nationals whose parents entered Germany as migrant workers, and all foreign nationals with permanent residence (§§ 22, 23, 23a, 25 (1 u.2), 28, 37, 38, or 104a). You are also eligible if you are holder of a residence permit according to § 30 or §§ 32 to 34 of the residence act or if your husband/wife is holder of a permanent alien residency. With a residence permit according to §§ 25 (3-5), 31 you can receive BAFöG if you have lived legally in Germany for more than four years consecutively. This also counts if the person holds a residence permit according to § 30 or §§ 32 to 34 of the residence act or if his/her husband/wife is holder of a permanent alien residency.

5. Medical Care

5.1. Visiting a Doctor's Office and Hospitalizations

In all cases of acute illness and acute pain conditions you are eligible to medical and dental care (§ 4 and 6, AsylbLG). Also chronic diseases need to be treated in case of a sudden aggravation of your health condition (e.g. diabetes). Artificial dental work is only financed in exceptional cases, e.g. if there is threat of secondary damage to your health (example: stomach disease because food cannot be chewed anymore).

You will get health insurance certificates from the social welfare office. If you are sick you have to get one in order to see a doctor. These certificates will pay for the treatment of acute illnesses, acute pains and acute conditions of chronic diseases. Your insurance also has to pay for glasses, for trips to the hospital and for psychotherapy if indicated. Your insurance only pays for dental care in cases of acute pain.

The social welfare office has to cover the charges for medical registration (*Praxisgebühr*) and the costs for medications. They also have to pay for prenatal care, birth and aftercare in childbed.

You are eligible to the following **preventive medical checkups**:

- prenatal care during pregnancy, medical care for childbirth and aftercare
- Medical exams for children (U1 for infants to J1 which happens between the ages of 12-14).
- Yearly preventive screenings for cancer for women age 20 and up, for men age 45 and up
- General screenings for people older than 35 (every two years)
- Dental preventive checkups, twice yearly if you are younger than 18, afterwards once a year
- All vaccinations for children
- Vaccinations against tetanus, polio and diphtheria for adults

If you are eligible for benefits according to §3, AsylbLG you need to get a cost transfer from the welfare office to see a doctor, a dentist or a gynecologist. You cannot be denied a cost transfer. To see a specialized doctor you need a referral from your doctor that you have to present to the welfare office. They might ask you to visit a consultant at the public health department to verify the need for the referral.

Once the welfare office approves the referral you will receive the cost transfer to see the specialized doctor, sometimes the cost transfer is mailed there directly. You don't need to pay for the charges for medical registration and for medications.

If you are denied medical care, medications or support you can file an objection at the social welfare office. The decision will be reviewed then. The deadline to file an objection is one

month, if you did not receive the rejection in writing it is even one year. Should the objection be disapproved you can file a complaint at the social court. In urgent cases you can go to court immediately. If you have to file objections or complaints it is best to turn to counselling centres or to a lawyer.

If you are worried because you feel ill or you are in pain but you were refused treatment you can go to the emergency room in the nearest hospital. They have to examine and diagnose you. You can go there without a medical certificate because it is an emergency treatment. If your doctor sees an indication for treatment in the hospital the social welfare office has to pay.

If you are eligible for benefits according to §2, AsylbeLG you will receive a chip card and you can utilize all medical services that your compulsory health insurance offers (like Germans, too). You have to pay 10 Euros per quarter for medical registration both at your general practitioner as well at the dentist's office. You also have to pay for your medications and additional payments if you are hospitalized. If you want to see a specialized doctor you need to get a referral from your general practitioner. Without a referral you will have to pay another 10 Euros for registration again. You can collect all receipts for medical registration charges and medications. Once you have spent more than 2% of your welfare (83, 28 Euros), 1% for chronically ill patients (41, 64), you can ask your health insurance company to exempt you from additional charges for the calendar year. Have you already paid more than the amount required for exemption, you will get reimbursed.

You don't have to pay for medical registration to get preventive medical check-ups and vaccines.

Children under the age of 18 don't have to pay for medical registration at all.

5.2. Medical Emergency Care

If you urgently need medical care at night or over the weekend, you can go to the nearest hospital or call an emergency doctor. In case of an accident or a life-threatening condition you can call an ambulance (hotline free of charge: 112).

In cases of emergency you have to be treated, also without a cost transfer. The cost transfer can be handed in later.

5.3. AIDS and HIV

AIDS is a chronic immune deficiency, caused by the virus HIV. Without treatment it can lead to death. It is important to know early whether you are infected with HIV or not. HIV can be transmitted through body fluids (blood, semen, vaginal fluids, breast-feeding). If you have questions about HIV and AIDS you can ask your doctor, the local health authority or a specialized AIDS counselling centre. You can decide whether you want to take a voluntary HIV test. If you have been exposed to the HIV-virus (e.g. through unprotected sex) you have to repeat the HIV test in three months.

If you have more questions about medical treatment you can ask a social worker in your accommodation facility, a counselling centre or the social welfare office.

5.4. Birth Control and Abortion

5.4.1. Birth Control and Protection from Infectious Disease

To prevent an unwanted pregnancy you should use birth control.

You can get information about the different contraceptives and the costs for contraceptives you can turn to a gynaecologist. Certain contraceptives are paid by your health insurance or the social welfare office. Ask your gynaecologist. If you don't have a medical chip card, you have to ask for a cost transfer before you start the contraceptive. Think about protecting yourself from infectious disease.

You can take a translator to visit the gynaecologist's office. If you ask for a translator well before the doctor's appointment the social welfare office has to cover the costs.

5.4.2. Abortion

In Germany an abortion before the 12th week of pregnancy is legal. The pregnant woman can decide herself to have an abortion, whether she's married or not.

If you are planning to have an abortion or thinking about it you have to go to a specialized counselling centre for parenthood to get counselling. If you have definitely decided not to have the baby you will get a certificate from the counselling centre that you have sought advice. Your health insurance company (not the social welfare office!) will give you a cost transfer if you show them the certificate. Three days need to pass between the appointment at the counselling centre and the abortion.

Your gynaecologist will send you to the hospital or to an outpatient clinic. You have to take all your paperwork. If you are an inpatient at the hospital you will stay there for 1 or 2 days. If you are an outpatient you will go home the same day. Please be cautious if you go home, there is a risk for complications after the abortion that might not be diagnosed and treated.

6. Work, Education, University, Non-Profit Work, Volunteer Work, Language Classes

6.1. Work

Asylum seekers with a residence title for specific purposes and refugees with an exceptional leave to remain are not allowed to work for the first year in Germany. Their papers will be stamped with "Not permitted to work".

After the first twelve month this stamp is replaced by "Work requires authorized approval". Before you start working, you have to ask for a work permit at the Alien's Department. You will only get the work permit if no German, EU-citizen or approved asylum seeker is available to take this particular job. They have priority. You have a lower ranking access to the labour market. The *Agentur für Arbeit* will check the case. They also want to know if you will be hired under different conditions than a German employee. That's called a "salary check". You will only receive a work permit for particular jobs and for a limited time. In cases of refugees who hold an exceptional leave to remain the Alien's Department also checks if the person is cooperative with the authorities. If they claim that you are actively preventing your own deportation by e.g. giving false information or not getting a passport you won't get a work permit and maybe even the stamp "Not permitted to work" in your papers.

You have to take following steps:

- Get two forms from the Alien's Department: "Application for a work permit that requires the permission of the *Agentur für Arbeit*" and "Job Description".
- Look for a job.

- Your potential employer needs to fill out the form. It needs to come across that only you, the applicant, is suitable for this job. Your employer needs to agree that the *Agentur für Arbeit* will publish the job offer. Some weeks should remain between the time where you hand in your application for a work permit and the beginning of the job. Usually it takes a while until an application is processed.
- If there is no other privileged candidate for this job the Alien's Department can give you a temporary work permit for that particular job.
- The work permit can be extended if you apply for extension before it expires.

If refugees who have an exceptional leave to remain have stayed in Germany for more than four years and then apply for a work permit their job will not be offered to other privileged potential candidates first (§10 BeschVerV). This is not true with a residence title for specific purposes. If you have worked in a certain job for more than one year, your work permit can get extended without offering the job to others first.

There are several scenarios of hardship cases with exceptional rules. You can get information at specialized counselling centres.

6.2. School and Job Trainings

There are certain rules for apprenticeships in either schools or companies. You don't need a work permit to go to school or for job trainings that don't take place in commercial businesses. Technical colleges or vocational schools offer full time classes for an apprenticeship, e.g. in foreign languages, social service studies, health care professions, information technology, design, engineering and management. In order to apply you need at least a degree from a *Hauptschule*, in most cases a degree from a *Realschule*. It is useful to have a graduation certificate with good grades as the number of applicants usually outnumbers the places available.

Classes in private schools often cost tuition. Apprenticeships free of charge are available for preschool teachers, disability support workers, midwives, medical-technical assistants and others.

- **Ask the *Arbeitsagentur* for apprenticeships free of charge or check the internet**
- **<http://infobub.arbeitsagentur.de/kurs/index.jsp>**

You can only train inside a company if you have received a work permit. You have to follow the same procedure as described above. Usually you will receive some financial compensation during your apprenticeship. In addition you can apply for financial support for apprentices (BAB), but you don't have a legal claim to it as a refugee. You can receive financial support (BAB) once that it is very likely that you will obtain permanent residence, or if your parents or yourself have stayed in Germany for certain minimum times and have already worked in Germany for a while.

In order to participate in the program "**Preparatory year for work**" (*Berufsvorbereitendes Jahr, BVJ*) you don't need a work permit. The program prepares you for a job or an apprenticeship and maybe enables you to get an equivalent to graduation from *Hauptschule*. In order to participate in the programs "**Voluntary year of social work**" (FSJ) or "**Voluntary year of ecological work**" (FÖJ) you need a work permit from the Alien's Department but the slots aren't offered to other "privileged" persons and your salary is not checked. Both programs offer young people between the ages 16 to 26 (FÖJ ages 16-27) the chance to get some insight and experience in the reality of social, ecological or healthcare professions. Both programs take 12 months. Both are full-time and you can get your participation accredited as an internship. You receive pocket money and sometimes room and board.

6.3. Self-employment

As the holder of an exceptional leave to remain or a residence title for specific purposes you are not allowed to freelance or to open your own business.

If you have a residence permit according to §23(1), §23a, §25 (3, 4 or 5) AufenthG you have to request permission at the Alien's Department to be self-employed. The Alien's department checks with the chamber of commerce and industry whether there are economical arguments against your self-employment.

What can you do in case of rejection?

If the Alien's Department rejects your application for a work permit, you can file an objection and take legal steps at the Administrative Court against the Alien's Department. If there is the threat of somebody else who might soon get your job you can ask for expedited proceedings at the Administrative Court. In this case court needs to decide fast. Get support from a lawyer or a qualified counselling centre if you choose the legal approach.

6.4. "Charity work"

According to the Asylbewerberleistungsgesetz you can be obliged to do "charitable work" for the community (§5, AsylbLG). This might be cleaning duties in your collective accommodation facility or maybe raking lawns in the public park. You are compensated for this work with 1,50 Euros per hour in addition to your monthly welfare money. This work is not a regular employment. If you don't want to do the work you have to give important reasons (e.g. illness, no childcare etc.) or the social welfare office can cut your money.

6.5. University

Theoretically asylum seekers and people who hold an exceptional leave to remain can go to university. It is up to the judgement of the Alien's Department to prohibit them to go to university. They might stamp a prohibition in your papers but they have to give an explanation in every individual case.

Big obstacles to realize visiting university are residential restriction, the question of how to finance daily life, health insurance, tuition for school and the approval of your school leaving certificate from your home country by a German university.

Asylum seekers and people who hold an exceptional leave to remain can only request a scholarship according to Federal Education and Trainings Assistance Acts (BAFöG) if they have worked legally in Germany for five years or if at least one parent has lived in Germany for six years and has worked for three of those. In exceptional cases six months of legal work are sufficient. To obtain a BAFöG scholarship other prerequisites need to be met, e.g. parent's/partner's income and your choice of class. There is an age limit.

You will find information about BAFöG at www.bafoeg.bmbf.de

You can also check the conditions of the Hans-Böckler-Foundation or Otto-Benecke-Foundation for your eligibility for a scholarship.

6.6. Classes for Integration

Classes for integration are an opportunity for new migrants to learn the new language and some basic information about daily life in Germany and German law. Migrants who have a residence permit can participate. If you have already lived in Germany for a while you can participate if there are still places available. Once you are obliged to participate as an asylum seeker the class is free of charge, if not you have to pay a fee, sliding scale, depending on your income (asylum seekers: 52,30 Euros, social welfare recipients: 73,20 Euros). If you are told to participate in a class by the authorities and you don't do it, you may be punished and endanger your residence permit.

Lots of public and private schools offer German language classes. Most times you have to pay for them.

7. Stabilization of Residence Permits: §25 (5) and 104 a/b AufenthG

7.1. Impossibility of departure by legal or factual reasons: § 25 (5)

Once you are holder of an exceptional leave to remain and either legal or factual reasons make your departure impossible, you might receive a residence title according to § 25 (5) AufenthG. You have to request it in writing at the Alien's Department.

The Alien's department should give you a residence permit if you have stayed with an exceptional leave to remain for at least 18 months. You can request the residence permit already before.

Legal or factual reasons are:

- You cannot travel due to illness
- You don't have a passport or other travel documents and you don't have reasonable means to obtain one. You have to document any attempt you made to obtain the documents, e.g. certified mail, copies, witnesses.
- There is no transport link to your home country.
- Your family would be split up due to your departure, e.g. if your partner or your child has a residence permit for Germany.
- Your departure would not be reasonable due to humanitarian reasons if you have lived in Germany for many years (e.g. your children are born here and have no connection to your home country). Often these reasons are not respected by the Alien's Department. Turn to a lawyer or a counselling centre for support.

The obstacle to your departure needs to persist for at least six months. The Alien's Department will check if both a deportation and/or a voluntary return are reasonable and possible. If you cannot be deported but would have the possibility to return voluntarily you won't get a residence permit according to §25 (5) AufenthG.

Furthermore you will only get a residence permit if it is not your fault that you are hindered from departing. The Alien's Department will claim that it is your fault if:

- you have given false information to the Alien's Department that prevent your departure.
- you have lied about your identity and citizenship.
- you have not cooperated enough to eliminate the obstacle to departure, e.g. if you haven't tried to get a passport.

A residence permit according to §25 (5) is limited to six months at the time for the first 18 months. Afterwards it can be extended for maximum three years.

7.2. Regulations for old cases (§ 104 a/b AufenthG)

Theoretically the deadline to apply for a residence permit according to the regulations for old cases has expired in July 2008. But many applications are still processed and deadlines will be extended. Therefore this chapter will remain in the guide.

Since August 28, 2007 you have the possibility to receive a residence permit according to the regulations for old cases (§104 a/b AufenthG) if you have stayed in Germany for 6/8 years without cease.

The appointed date for the residence time required is **July 1, 2007**. You have to request the residence permit in writing at the Alien's department until **July 1, 2008**. The following prerequisites need to be met:

Group of people:

Theoretically every person who holds an exceptional leave to remain or a residence permit for humanitarian reasons can request a residence permit according to § 104 a/b AufenthG – if you expect to have a better residence title. If your asylum case is not closed yet you might receive a residence permit if you withdraw the application for asylum. Get a written confirmation from the Alien's Department that you will get a residence permit before you withdraw your application. Get support from a lawyer or a qualified counselling centre.

You need to comply with the following residence times:

Entry into Germany at the latest **July 1, 2001** for:

- Families with children under age, if one parent has lived non-stop in Germany for six years. Important: both parents need to meet the prerequisites.
- Children of full age, unmarried, who either comply with the residence times requested or their parents (six years if the parents have more children under age). The prognosis for integration needs to be positive: the Alien's Department has to assess that you speak German and that you can earn your living in the future.
- People who entered Germany as unaccompanied refugees under age. They need to have a positive prognosis for integration as well.

Entry into Germany at the latest **July 1, 1999** for:

- Families without children or who have children of full age.
- Single individuals
- Everybody who doesn't comply with the Six-Years-Regulation.

Prerequisites:

- You have to prove your identity before you get the residence permit. Many Alien's Departments ask to see a passport. Get information from a lawyer or a counselling centre.
- You cannot claim social welfare anymore. You need to have a job where you pay social insurance contribution (you need to earn at least 400,-Euros per month). Child benefits and child credits for parents are added to your income. Your basic income needs to be secured:

- You need to be able to pay for your health insurance and have an equivalent to the income you'd be entitled to according to SGBII. You can have several jobs, be self-employed or add the income of several family members.
- You need to have sufficient housing space.
- You need to prove that all children of compulsory school age actually go to school.
- The Alien's Department will check your German skills in an interview. They demand good fluency in German (Level A2, GERR).

If you meet all the prerequisites you will receive a residence permit according to § 23 (1) AufenthG.

The following group of people doesn't need to prove sufficient income:

- Apprentices in accredited professions, federally supported programs and students
- Families with several children. They can claim additional social welfare for an interim time.
- Single parents with children under the age of 3.
- People incapacitated for work. Yet they cannot claim social welfare.
- People who will be older than 65 years on December 31, 2009, under the premise that they don't have family anymore in their home country but children or grandchildren with a residence permit in Germany. Yet they cannot claim social welfare.

What happens if you don't comply with single prerequisites?

If you don't meet all prerequisites you will receive a residence permit on probation according to §104a, paragraph 1, phrase 1 AufenthG. That will give you time to work on the missing prerequisites. If you are meeting all prerequisites when the residence permit expires it will be extended according to §23 (1), AufenthG. If not, it won't be extended but you will receive an exceptional leave to remain again.

If you couldn't prove sufficient German skills you have a grace period until July 1, 2008. Your residence permit will expire on July 1, 2008. If your German has not improved, it won't be extended. You will receive an exceptional leave to remain again. Exceptions are made if you couldn't improve your German due to illness, disability or old age.

In case your income was not sufficient by the time you requested a residence permit you will receive a permit according to § 104a (1) phrase 1 AufenthG that will expire on dec. 31, 2009. Until then you have to prove sufficient income. It needs to be foreseeable that the income will remain stable in the future. That means that you have to show more income from work than social welfare money in the past two years or complete subsistence since Apr. 1, 2009.

7.3. Independent residence permits for under age youth (§104 b, AufenthG)

You can obtain a residence permit according to §104b AufenthG if you are between the ages of 14 and 17 and if you have lived in Germany since six years. It will be an independent residence permit once your parents don't have a residence permit according to §104 a (anymore). Your parents have to be outside Germany.

You don't have to prove that you can earn your own income, but there need to be people who will take care of you. You need to speak German (level B1, GERR) and you need to have a

positive prognosis for your integration (which you have once you go to school regularly or you are looking for an apprenticeship or you have a high school certificate).

Exceptions:

You won't obtain a residence permit according to § 104a/b AufenthaltG if you:

- gave obviously false information about e.g. your identity or your nationality
- delayed or prevented your deportation (e.g. through going underground or not organizing a passport). It's crucial whether other factors than your behaviour contributed to delaying the deportation.
- committed criminal acts. Penalties below 50 daily rates won't be considered. If you have been tried for criminal acts that can only be committed by foreigners, e.g. breaking the law of residential restriction, penalties up to 90 days won't be considered. Should one of your family members have committed criminal acts, you might not receive your residence permit. Get help from a lawyer or a counselling centre in such cases.
- are connected to extremist or terrorist groups.
- were deported or expelled from the country once already and re-entered illegally.

8. Regulations of hardship cases

If all legal possibilities of the asylum and foreigner's legislations are exhausted maybe you will receive a residence permit through the regulation of hardship cases (§23 a AufenthaltG). That requires that you will have a hearing with the commission on hardship cases of the federal land of Brandenburg. The commission needs to petition the Minister of Interior of the federal land to grant you a residence permit.

The commission consists of 10 members of different organizations and institutions. They meet on a monthly base to decide about hardship case applications. You have to turn to one of the commission's members so that he/she will introduce your case to the commission.

Once a case is introduced the commission checks if they want to send a petition to the Ministry of Interior due to personal or humanitarian reasons. The commission intentionally doesn't require fixed criteria. Every individual case is checked on circumstances that might justify to stop a deportation.

Certain evidence will help to receive a hardship case status:

- long-time residence
- advanced integration
- good German skills
- financial independence
- special achievements (e.g. in school)
- volunteer commitment
- taking care of family members who have a residence permit in Germany
- if you are/have been a victim of right-wing violence

Unfortunately there are lots of exceptions that will disqualify your hardship case:

- if no Alien's Department from Brandenburg is responsible for you
- if the person concerned has committed crimes
- if the person concerned has given false information about his/her identity or during the asylum case, so that this false information influenced decisions
- if the Alien's Department has already set a date for the deportation

The commission will discuss all cases during their monthly sessions thoroughly and finally take a vote. If a case has two-thirds of the votes off all commission members entitled to vote the commission will submit a petition to the Minister of Interior of the federal land. The minister has the power to make the final decision to grant a residence permit. The minister decides upon his own considerations, not upon the commission's vote. A residence permit may be tied to conditions. In many cases permits were extended if the holder could earn most or all income independent from social welfare.

Further information:

Members of the hardship case commission:

<http://service.brandenburg.de/de/haertefallkommission>

Decree about the constitution of a hardship case commission according to §23a of the residence act:

www.landesrecht.brandenburg.de

Detailed description of the hardship case procedure

www.fluechtlingsrat-brandenburg.de

9. Marriage and family: divorce, birth certificates, children, childcare, school

9.1. Getting married outside Germany or in a consulate

A marriage with a non-German partner according to the law of another country can be accredited according to German law. You have to open a family register at the civil registry office at your city of residence. The civil registry office will let you know which documents you need to present.

In some cases it is sufficient to accredit the foreign wedding certificate at the German embassy in the country where you got married. Alternatively you can present an international wedding certificate or an international family register.

If your asylum case is still open and you are getting married in the consulate of your home country, the German authorities (court, Federal Office) will assume that you are not persecuted by your home country anymore.

If you got married to a German citizen outside Germany or in a consulate, most Alien Departments will only grant you a residence permit according to § 28, AufenthG if you entered Germany with a family reunion visa. According to §5 (3) AufenthG this is not necessary.

To get permanent residence if you are married to a German citizen or a foreigner who has permanent residence in Germany (according to certain legal paragraphs) you have to prove some German skills, sufficient housing space and enough income independent from social welfare.

9.2. Getting married in Germany

If you want to get married in a German civil registry office, you have to apply for a marriage according to German law. The registrar's office will tell you which documents you have to submit. This can vary between federal lands. You always need:

- a valid passport or identity card
- a registration card
- a birth certificate

- a certificate of no impediment

You need accredited translations of an accredited translator of all documents that are not in German. Sometimes your documents will be checked for validity in the German embassy of your home country. You will receive an apostille.

The certificate of no impediment can't be older than six months if you register the marriage at the registrar's office.

If you can't provide documents required because your home country won't issue it the registrar's office can apply for an exemption at the Higher Regional Court. The registrar's office will tell you for which documents this is possible.

Without proof of your identity you can't get married in Germany.

The registrar's office will most likely send all documents to the Higher Regional Court, where they'll be checked for validity. That might take very long. It can be useful to call the court very once in a while to inquire, so that questions they might have can be answered.

If you are married to a German citizen in Germany you will usually receive a residence permit limited to three years according to § 3 AufenthG. Before you receive the permit you have to prove basic German language skills.

In case you did not enter Germany with a family reunion visa some Alien Departments will ask you to leave the country and re-enter with a family reunion visa. According to § 5 (3) AufenthG and §39 (1) AufenthV this is not obligatory. If it's unreasonable for you to leave and re-enter the country but the Alien's Department is not cooperative get help from a lawyer or a counselling centre.

Have you had a residence title due to being married to a German for three years, you can obtain permanent residence. Therefore you have to be financially independent from social welfare. If you receive social welfare your limited residence title will be extended.

If you want to get married to a German partner but you are threatened by deportation you can receive an exceptional leave to remain until you got married. In most cases you have to prove that you already deposited all documents required at the registrar's office and that you speak basic German.

Sometimes the Alien's Department suspects bi-national couples of fictitious marriages, especially if one partner is an asylum seeker or if the age difference between partners is very big. After the marriage the Alien's Department might check whether both partners live together. They also might both be interviewed individually to verify their personal knowledge about each other.

Should you be invited to such an interview seek support from a counselling centre.

9.3. Divorce

If only one partner of a non-German couple has requested asylum, the other partner will lose his/her family asylum residence permit once they get divorced. The other partner has to place an application for asylum individually to not get deported or find another way to get a residence permit.

If a non-German gets divorced from a German partner before he/she received an independent residence permit, the residence permit that you received due to your marriage might not be extended or even limited.

You will receive an independent right of residence if

- You have lived with a partner and a residence permit in Germany for at least two years.
- Your partner has died while you were married.

- Your marriage lasted for a short time but it is not possible for you to return to your home country.
- You have a child with your German partner and you have child custody.

9.4. Benefits for the mother during pregnancy and lactation

If you are pregnant you are entitled to all medical services that are necessary (prenatal care, lab tests, midwife care etc.). You need to let the social welfare office know that you are pregnant, best through showing a booklet called expectant mother's record of prenatal care. If you don't have such a booklet (yet), you have to get a letter from your doctor indicating your due date and the current week of pregnancy. If you are already insured with a regular health care company you'll receive all services on your chipcard. From the 12th week of pregnancy you can apply for additional benefits to your regular welfare for a special diet. Most social welfare offices will refuse the application if you receive benefits according to § 3 or 1a AsylbLG. Some staff members of the social welfare office demand a letter from your doctor explaining why you need more money for your diet. Like against every rejection from the social welfare office you can file an objection within four weeks.

You can also apply for benefits to buy maternity clothes if your old clothes don't fit anymore. It doesn't matter at which stage of the pregnancy you apply. You can also ask the social welfare office to cover the costs for a nursing bra and basic things you need in the hospital (nightgown, bathrobe, slippers, a bag for your cosmetic products). Some social welfare offices will ask you to get these things second hand from charity. You should insist on new things for hygienic reasons. Some social welfare offices will grant you benefits for clothing only during your first pregnancy. You should tell them if you don't have clothes from your first pregnancy anymore.

9.5. Benefits for the baby

From the sixth month of pregnancy you can ask the social welfare office for equipment for the baby, including:

- baby clothes
- a baby bed
- a baby carriage
- blankets
- diapers
- baby bodycare products

The social welfare office has to provide these things, yet they might give you second hand articles from charity. You can apply for financial support at the foundation "Mother and Child". You can *only* apply there *once* with the support of *only one* pregnancy counselling centre. You can only place the application as long as your child isn't born yet. If the foundation gives you money it is in addition to your welfare money. You have to show the pregnancy counselling centre which financial or material support you already received from the social welfare office. After your child is born you have to present them a birth certificate of your child. If you don't do that they might ask you to pay the money back.

9.6. Birth certificates

If you gave birth to a child in Germany you get a birth certificate from the registrar's office in the district where the child was born. Foreign citizens often run into trouble with the documents. If you can't prove your own identity you might only get a copy of the district's register of birth with the comment that you declared all the information. With that copy you can apply for social welfare for the child at the social welfare office.

In case you did prove your identity you'll get a birth certificate and three additional certificates that you can use to apply for child benefits, child welfare payments (Elterngeld) and for religious purposes. Keep them well, they won't be replaced and they are very important for the application of the benefits. Birth certificates will be replaced by the registrar's office. The birth certificate doesn't give any information about the nationality of neither parents nor the child. If you need proof of e.g. the German nationality, you have to get an additional certificate, e.g. a child's travel document from the registry office.

If you have trouble with the registration of your children you can seek support from a counselling centre!

9.7. Childcare

In Germany you are entitled to a place for your child in kindergarden after the third birthday of your child. This is also true for asylumseekers. If you need childcare before you need to prove that you are working, training for a job, participating in German classes without child care etc. You have to find a kindergarden that will accommodate your child, yourself (not all kindergardens take children under the age of three). If you are in desperate need you can turn to the youth welfare office. They will support your search for a place or connect you with a day mother. Day mothers have professional training and take care of a small group of children in their private homes.

The costs for childcare depend on your income and the length of time that your child will be taken care of. The cost for food is usually a fixed amount that the parents have to cover.

9.8. School

The federal land of Brandenburg requires compulsory school attendance. All children who live in Brandenburg need to attend school. School is an obligation until the 18th birthday. School enrollment depends on the maturity and language skills of the child. The health authorities will examine the child. In Brandenburg all children who turn six years before September 30 have to start school on August 1 of the same year. All children who turn six years between Oct. 1 and Dec. 31st can be enrolled in school that same year if their parents request their enrollment at school.

If you think that your child should be enrolled later than officially required you have to give reasons with the help of your pediatrician or other qualified institutions.

If your child is exceptionally mature you can apply for enrollment in second grade. If you need child care after school you can apply for a place in after school care. You are entitled to a place until your child has finished 4th grade but you need to cover the costs yourself. These vary depending on your income and the times you need. You need to pay for food. Ask for sliding scale fees for low-income children. In some cities the school's administration will reimburse you for the food money.

10. "When everything is too late."

10.1. Your asylum case is closed.

Once your asylum case is closed there is no legal option left for you. You will get a letter asking you to leave Germany within a certain timeframe. You can leave “voluntarily”, not necessarily to your home country. You should consider options with your lawyer or a counselling centre. If you don’t want to leave Germany you’ll be threatened with deportation. You can also be taken into custody to secure your deportation.

*** If you get such a letter from the BAMF or if you are asked to leave Germany go IMMEDIATELY to a lawyer or to a counselling centre.**

10.2. Can I really get deported?

You need to clarify the following questions (with your lawyer/a counselling centre):

- Is there a flight connection to your home country?
- Do you have a passport?
- Are you able to travel or are you ill?
- Are you pregnant or even pregnant and at risk?
- Will you be separated from your family? Would the protection of family according to the European Convention on Human Rights be violated?
- Are there regulations in Germany that would prevent a deportation to your home country, e.g. a deportation stop, new rights to remain, e.g. for humanitarian reasons?

- **It is very important to talk to your lawyer and/or a counselling centre!**

10.3. Do I have other options?

10.3.1. Commission on hardship cases

You are staying in Germany with an exceptional leave to remain. You are obliged to leave the country. You are threatened by deportation. If the date for your deportation isn’t set yet (in exceptional cases even if the date is set) you can approach the members of the commission on hardship cases in Brandenburg. Check the chapter “Commission on Hardship Cases”.

- Caution: A petition by the commission on hardship cases doesn’t mean that you won’t be deported. You can’t take legal steps or file an objection against the commission’s decision.

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10.3.2. Refuge in a church

To take refuge in a church means to be taken in by a church parish for a while to save you from your deportation. The parish wants to protect you because a return in your home country would mean immediate danger or big hardship for you. In most federal lands the authorities would not arrest you in a church but the refuge in a church is no legal protection from deportation. But usually you are safe in the church. The time of refuge should be used to inquire further options to get a residence permit in Germany. Your freedom of movement will be very limited because it can be dangerous to leave the church premises. Refuge in a church can last for weeks or month and it can be a hard time for individuals and families. Financially you depend totally on the support of the parish members.

There is no guarantee to change your legal situation through taking refuge in a church. Yet there are many cases that ended with a success, because the authorities could be convinced to grant a permit. Still taking refuge in a church should be seen as the final option.

Get in touch with members of the german working group “Asyl in der Kirche”!

Geschäftsstelle der Bundesarbeitsgemeinschaft Asyl in der Kirche e. V.
Lindenstr. 85, 10969 Berlin, Tel: 030-25898891, Fax: 030-25898964, email:
info@kirchenasyl.de
Opening hours: Mon-Fri von 9.00 AM -12.00 AM

10.3.3. Petitions

You can write a petition to the committee on petitions of the Brandenburg parliament or even the Lower House of German parliament (Bundestag). You can depict your personal situation and ask for a residence permit because you have been living in Germany for many years or a stay of your deportation because you are very ill. The committee will deal with your petition but they might reject it. That happens frequently if your case is already closed in court. The committee on petitions offers just a tiny chance to improve your situation. You can unfortunately get deported while your petition is still processed. It is very important that the Alien's Department knows that you wrote a petition and assures you not to deport you while it's in process. You and your counselling centre should contact members of the committee and inform them personally about your story. That again might improve your chances.

You can write a petition to the Bundestag if you want them to doublecheck the reasons for refusal from the Federal Office. Neither the Committee on Petitions nor the Commission on Hardship Cases can check your reasons for asylum again. They can only give recommendations to the Alien's Department. The Committee on Petitions of the Bundestag can directly approach the Federal Office. But the procedure is difficult: a long waiting period, high rates of rejection, no suspensive effect.

Landtag Brandenburg Petitionsausschuss A2

Leiterin des Sekretariats Petitionsausschuss: Gabriele Lietzmann
Postfach 60 10 64, 14410 Potsdam, Tel: 0331 - 966 11 35, Fax: 0331 - 966 11 39

Petition an den Deutschen Bundestag

An den Deutschen Bundestag, Petitionsausschuss, Platz der Republik 1, 11011 Berlin
Tel: 030 - 227 35 25, Fax: 030 - 227 36 053, vorzimmer.peta@bundestag.de

If nothing works:

You can only choose to depart voluntarily, to return or to migrate to another country if you don't want to live illegally in Germany. In order to migrate, you can get information from the Raphaelswerk Berlin, to return or to leave voluntarily please get information from your lawyer or a counselling centre.

Raphaelswerk Berlin

Beratung für Auswanderer, Auslandstätige, binationale Paare,
weiterwanderungs- und rückkehrwillige Flüchtlinge
Residenzstr. 90, 13409 Berlin
Tel: 030 - 666 33 - 1147, Fax: 030 - 666 33 - 1279, berlin@raphaels-werk.net

Other European Countries

It is not useful to migrate to another European country after your application for asylum was rejected in Germany. According to the Dublin-decree the first European state that you enter is responsible for your asylum procedure. Have you had one in Germany you cannot expect to get a residence permit in another European country. You have to take the risk to live illegally in that country. Please get good information from counselling centres about your options (see also chapter 1.4.1.).

11. Custody to secure deportation

According to the law (§ 62 AufenthG) you can be taken into custody to secure your deportation if

- You have entered Germany illegally, without a visa or valid documents.
- You are living and working illegally in Germany and were arrested by the police on your job.
- You went underground after the time limit to leave the country has expired.
- You have a date for your deportation where you don't appear without an excuse.
- The authorities are convinced that you will try to escape deportation, e.g. because you have done it in the past or you have moved without telling the authorities.

The deportation prison in Brandenburg is in Eisenhüttenstadt, located on the same grounds as the central reception centre for refugees. Custody is like imprisonment. Men and women are separated.

Abschiebungsgewahrsam Eisenhüttenstadt

Poststr. 72, 15890 Eisenhüttenstadt
Tel.:03364 - 427 194 Haftleitung

To take you into custody you have to see a judge at the district court in Eisenhüttenstadt who has to confirm the detention. You have to try to explain in court that none of the reasons for custody applies to you.

Are you pregnant or sick? Let the court know! You can ask for a translator. If you have a lawyer or a person of your trust court has to wait until they are present. Caution: if they cannot come then the district court has to decide. You should ask for an interim decision, so that the final decision about your custody will be made if your lawyer/person you trust is there.

Complaints against imprisonment

You can always ask for a review of your remand in custody. The judge has to decide whether you will remain in custody. Within two weeks you can complain at the district court (ask the staff in prison) against the imprisonment. If you don't have a lawyer you can file the complaint yourself or ask a friend, relative or pastor to do it for you.

If the district court confirms your detention you have the possibility to complain within two weeks at the Higher Regional Court. Get support of a lawyer!

Who can help you in detention?

Legal Advice

If you are in custody waiting for your deportation you can get legal advice. Ask the prison staff to put you on the waiting list for legal advice.

Pastoral Care

A pastor of the protestant church visits regularly in the deportation prison. Ask the staff for the next date of his/her visit. A representative of the Jesuit Refugee Service comes almost every week to the prison. If you want to talk to him, let the staff know. The church representatives might also be able to help you with a lawyer.

Medical Care

You have the right to get medical care in prison. If you feel sick let the staff know. Insist to get treatment. If you don't get help let the pastor or the people who give legal advice know!

Visits

You can have visitors in prison. If you need help you can make a phonecall and ask somebody to come and visit you. There is a payphone in prison but unfortunately you cannot receive calls there.

Date of deportation

Most likely you will be informed very short noticed about your deportation. Try to get in touch with your lawyer!

11. Addresses

Legal Terminology:

<http://www.proasyl.de/de/informationen/asyl-von-a-bis-z/index.html?print=yes>

If you don't have access to the internet, ask staff at a counselling centre to print the list for you.

