



Training & Employment for Refugees

What's good to know

Guide for asylum seekers with a residence permit (Aufenthaltsgestattung) and persons with a toleration permit (Duldung)

This brochure has been translated into several languages. Find all language versions on the website of the Flüchtlingsrat Brandenburg: www.fluechtlingsrat-brandenburg.de

THANKS:

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Note: The content of the brochure reflects the legal opinion of the authors.

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Preface

Many refugees living in Germany want to work or complete an apprenticeship. There are various things to keep in mind when doing so.

This brochure is aimed at refugees in Brandenburg who are still in the asylum process and have a residence permit, as well as people who are in possession of a toleration permit (Duldung).

Among other things, you can find out here when you are allowed to work, what you need to do to obtain an employment permit or what you need to bear in mind if you want to start vocational training. You will also receive further tips on the subject of access to the labor market.

The brochure serves as an initial orientation. If you have any further questions, please contact your advisors from the *Projektverbund BleibNet proQuali (BpQ)*, the local refugee counseling centers, or a lawyer.¹

¹ Contact persons and addresses can be found at:
www.fluechtlingsrat-brandenburg.de/adressen.

Are you allowed to work during the asylum procedure?

If you are still in the asylum procedure and the Federal Office for Migration and Refugees (BAMF) has not yet decided on your asylum application, or if you have filed a complaint with the administrative court against the rejection of your asylum application, you usually have a special residence permit - a so-called **Aufenthaltsgestattung**.

With a Aufenthaltsgestattung¹ you are allowed to work under the following **conditions**:

1. You have been living in Germany for at least 3 months² and are no longer accommodated in an initial reception facility (Erstaufnahmeeinrichtung).³ (Note: The Aliens' Registration Office can reject your application for an employment permit because it is a discretionary decision (Ermessensduldung) *or*
2. You have been in Germany for at least 9 months and live in or outside an initial reception facility. (Note: In this case you are entitled to an employment permit.)

You must apply for the employment permit at the Aliens' Registration Office (see page 6).

ATTENTION:
Work ban for people from "safe countries of origin"!

People with a residence permit who come from so-called "safe countries of origin (sicheren Herkunftsändern)" and have applied for asylum as of 01 September 2015 are generally not allowed to work. They are subject to an absolute **work ban (Arbeitsverbot)**.⁴

This currently (January 2021) affects people from: EU countries, Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal and Serbia.

Exception: people from "safe countries of origin" who filed an asylum application before September 1, 2015 are allowed to work at the discretion of the foreigners authority (Ausländerbehörde).

¹ Upon issuance of a proof of arrival, residence is considered permitted. |

² § 61 (2) AsylG | ³ §§ 47 (1), (1a) AsylG | ⁴ § 61 (2) 4 AsylG

Are you allowed to work with a toleration permit (Duldung)?

If your asylum application has been finally rejected and you have a toleration permit (Duldung), you also have - at the discretion of the foreigners authority - **access to the labor market if you:**

1. have been living in Germany for at least 3 months¹ and no longer have to live in an initial reception facility,² or
2. have been living in Germany for at least 6 months and still have to live in an initial reception facility.³

However, there are different reasons for people with a toleration permit (Duldung) why the foreigners authority (Ausländerbehörde) can ban you from working:

- The foreigners authority is of the opinion that you are not cooperating sufficiently and are obstructing your deportation yourself. This is the case, for example, if you do not make sufficient efforts to present documents about your identity to the foreigners authority. However, if there are other reasons for the toleration - for example, an illness - a work ban is inadmissible.
- The foreigners authority is of the opinion that you have only entered the country in order to receive social benefits.
- You come from a so-called safe country of origin (see page 4) and submitted your asylum application after August 31, 2015 and it was rejected.⁴
- Your asylum application was rejected with the remark “manifestly unfounded (offensichtlich unbegründet)” or “inadmissible (unzulässig)”.

NOTE: If you believe you have been wrongly banned from working, you can take legal action against this (see page 12)!

¹ § 32 (1) BeschVO | ² § 61 (1) AsylG | ³ § 61 (1) 4 AsylG | ⁴ § 60a (6) 3 AufenthG

You have found a job? Apply for an employment permit!

If you are not subject to a work ban and have access to the labor market, your residence permit (Aufenthaltsgestattung) or toleration permit (Duldung) will probably state “Employment only permitted with the approval of the Foreigners Authority (Beschäftigung nur mit Zustimmung der Ausländerbehörde gestattet)” or a similar wording.

If you have found a job, you must therefore apply to the foreigners authority (Ausländerbehörde) for the granting of the employment permit. You can usually do this informally. To do this, in most cases you must have your employer fill out a form. In this “job description”, the employer must provide precise information about his business, the hours to be worked and the exact working hours.

NOTE: Always apply for the employment permit in writing to your foreigners authority (Ausländerbehörde)!

What happens to your application?

After you have submitted your application, the Foreigners’ Registration Office will check whether you meet all the conditions to get an employment permit.

In most cases, the Foreigners Authority (Ausländerbehörde) also asks the **Federal Employment Agency (Bundesagentur für Arbeit)** for a labor market check. This mainly checks the conditions of employment,¹ e.g. whether your employer pays you according to the collec-

¹ § 39 (2) AufenthG

tive wage agreement or the minimum wage. This examination is not required in some cases, for example in the case of state-recognized vocational training or if you have already lived in Germany for more than 4 years without interruption.

The labor market examination by the Federal Employment Agency (Bundesagentur für Arbeit) must take place **within 14 days**. Although there is no deadline for the Foreigners Authority (Ausländerbehörde), it is advisable to inquire about the current status about 2 weeks after your application!

If you are allowed to take up employment, this will be noted in writing in your residence permit (Aufenthaltsgestattung) or toleration permit (Duldung).

Until 5.08.2016, according to the law, a **priority check (Vorrangprüfung)** should be carried out if you had applied for an employment permit for a job within the first 15 months of your stay. In this process, it was checked whether other domestic or privileged foreign employees were available for the job.

Such a check was suspended in Brandenburg for a period of three years when the ordinance on the Integration Act came into force on 06.08.2016³.

Since 06.08.2019⁴, there have been **no more permanent priority checks (Vorrangprüfung)** throughout Germany.

**ATTENTION:
Permanent
suspension of
the priority
check (Vorrang-
prüfung) in
Brandenburg!**

¹ § 36 (2) BeschVO | ² Fourth Ordinance Amending the Employment Ordinance (Beschäftigungsverordnung) of 31.07.2016 | ³ Ordinance amending the Ordinance on the Integration Act (Integrationsgesetz) and the Employment Ordinance (Beschäftigungsverordnung) of 22.07.2019

Can you start an apprenticeship?

There are two types of training in Germany: in-company training and school-based training.

For **in-company training**, you must apply for an employment permit from the foreigners authority (Ausländerbehörde). The same requirements apply as for taking up employment (see pages 4 and 5). However, the approval of the Federal Employment Agency (Bundesagentur für Arbeit) is not required.¹

You do not need an employment permit from the foreigners authority (Ausländerbehörde) for **school-based training**. Nevertheless, it is advisable to inform the Ausländerbehörde about the commencement of school-based training.

However, if an **internship** is required as part of this school-based training, an employment permit from the foreigners authority (Ausländerbehörde) is required. This means that you must apply for an employment permit from the Ausländerbehörde.

¹ § 32 (2) BeschVO



Special feature: The “Ausbildungsduldung”

If you are in possession of a toleration permit (Duldung), you have a legal right to be granted a **Ausbildungsduldung** (Duldung for training purposes)¹ if you meet the following requirements:

- You have been in possession of a toleration permit (Duldung) for at least three months
- You have started an apprenticeship during the asylum procedure and would like to continue this after your asylum application has been rejected without a waiting period²
- Your identity has been clarified or you have met the deadlines for clarifying your identity (see below).
- The training lasts at least 2 years and is state-recognized
- There are no reasons for exclusion (see page 10)

The application for a training toleration must be submitted in writing to the foreigners authority (Ausländerbehörde). The Ausbildungsduldung will be granted to you for the entire time of the training.

Important:

You may not be deported as long as you are in possession of a Ausbildungsduldung.³

In addition, you have 6 months following the successful completion of your training to find a job in your learned profession. Once you have taken up employment, you will then receive a regular residence permit (Aufenthaltserlaubnis).

¹ § 60c AufenthG | ² Here, a three-month waiting period is only required if you have submitted your asylum application as of 01.01.2017 | ³ § 60c (3) 4 AufenthG

What are the reasons for refusal of the Ausbildungsduldung?

The foreigners authority can **reject your application** if:

- the foreigners authority (Ausländerbehörde) has already initiated measures to terminate your stay at the time of application and has made concrete preparations for your deportation¹ or
- you have been sentenced to a fine² of more than 50 or 90 daily rates for a criminal offense or
- you are in the Dublin procedure³ or
- you support extremist/terrorist groups or
- you, as a person with toleration, are not granted a work permit for other reasons (see reasons for refusal of an employment permit on page 5).

If you have to discontinue your training before successfully completing it, you are allowed to look for a new training position once within 6 months.⁴

NOTE for **people in the asylum procedure:**

As long as you are still in the asylum procedure and have been living in Germany for at least 3 months, you can complete training with a residence permit. If your asylum procedure is rejected during the training and you receive a toleration, you should immediately apply in writing to your foreigners authority (Ausländerbehörde) for the granting of a training toleration! Except for the three-month waiting period, all requirements for the issuance of a training toleration should be met (see page 9).

¹ § 60c (2) 5 AufenthG | ² § 19d (1) 7 AufenthG | ³ § 60c (2) Nr. 5 e) AufenthG |

⁴ § 60c (6) Nr. 1 AufenthG | ⁵ § 32 II BeschVO i.V.m. § 61 II AsylG

Can you do an internship?

For most **internships**, you must apply for an employment permit from the relevant immigration authority. The regulations differ according to the type and duration of the internship and are very diverse. It is best to visit your counseling center for more information!

NOTE: If you have already found a training position and want to prepare for your training, for example, through vocational preparation measures or an introductory qualification, then you can receive a discretionary temporary suspension for this period. As long as you are in possession of a **discretionary toleration (Ermessensduldung)**¹, the foreigners authority (Ausländerbehörde) may not initiate deportation.

New: The Beschäftigungsduldung

If you entered the Federal Republic of Germany before August 2, 2018 and have been in possession of a Duldung for at least twelve months, you have the possibility to achieve a **long-term perspective of staying** in Germany through employment. You can apply for a **Beschäftigungsduldung** (Duldung for employment purposes) if you meet the following requirements:

- Your identity has been clarified or you have met the deadlines for clarifying your identity (see page 12)
- You have been working for at least 18 months at a rate of 35 hours per week or 20 hours per week if you are a single parent
- Your livelihood has been secured for 12 months and will remain secured by the employment toleration
- You have German language skills at A2 level
- You have no connections to terrorist organizations

The employment toleration is granted for thirty months.

¹ You can assert urgent personal reasons within the meaning of § 60a (2) 3 AufenthG.

Deadline for clarification of identity

- a) If you had entered the Federal territory by December 31, 2016, and were able to prove an employment relationship of at least 18 months on January 1, 2020, your identity had to be clarified at the time of applying for an employment toleration.
- b) If you had entered the territory of the Federal Republic of Germany by December 31, 2016, and on January 1, 2020, you could not prove an employment relationship of at least 18 months, your identity had to be clarified by June 30, 2020.
- c) If you had entered the territory of the Federal Republic of Germany between January 1, 2017, and August 1, 2018, your identity had to be clarified by June 30, 2020, at the latest.
- d) As of January 1, 2020, there is a 6-month deadline for clarifying your identity.

NOTE: As long as you take all steps to clarify your identity or your identity can only be clarified after the specified deadline, the above deadlines are considered granted.

What can you do if the immigration authority rejects your application?

If the Aliens' Registration Office refuses to grant you an employment permit or the training toleration, then you must receive a written notice stating the reasons for the refusal. You have the possibility to file an **objection** against it.

If you are unsuccessful, you can file a **complaint** with the administrative court. It is essential that you observe the deadlines stated at the end of each notice.

If you are threatened with the loss of your job or training position because the Foreigners' Registration Office does not answer your application for a very long time, you can also initiate an **urgent procedure (Eilverfahren)** at the competent administrative court.

Further support from the employment agencies (Agentur für Arbeit)

If you are in possession of a residence permit (Aufenthaltsgestattung) or toleration permit (Duldung), you can register as a job seeker with the Employment Agency (Agentur für Arbeit) and receive support from there. The Agentur für Arbeit will advise you free of charge and help you find a job.

The Agentur für Arbeit can also prepare you for training through various measures or support you during training. For example, you can receive monthly financial support to ensure your livelihood during training or apply for tutoring for the school part of your training. Registration with the Agentur für Arbeit is also often a condition for being allowed to take part in an integration course (Integrationskurs).

Whether you can receive these measures depends on your residence status, your age, the length of your stay and your country of origin.

For more detailed information, please contact one of our counseling centers.

The Projektverbund BleibNet proQuali (BpQ)



In the Projektverbund BleibNet proQuali (BpQ) 7 subprojects of the following institutions are working nationwide:

- **BBAG e.V.**
- **Caritasverband der Diözese Görlitz e.V.**
- **Caritasverband für das Erzbistum Berlin e.V.**
- **IHK-Projektgesellschaft mbH Ostbrandenburg**
- **Förderverein des Brandenburgischen Flüchtlingsrats e.V.**
- **Frauenclub Viet Hong e.V.**

Our **counseling services** are aimed at asylum seekers, refugees and persons with tolerated status who have at least subordinate access to the labor market.

Our project workers **support your professional integration** into the German labor market and help you, for example, to find a suitable language course or to catch up on your school-leaving qualifications. And they will accompany you in your search for a job or a training position.

Your participation in the project is voluntary and **free of charge**.

You can find the contact details and office hours of our employees on our website:

www.bbag-ev.de/arbeitsmarktintegration/bleibnet.



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The brochure serves as an initial orientation. If you have any further questions, please contact your advisors from the Projektverbund BleibNet proQuali (BpQ).

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