

Englisch/Arbeitserlaubnis

How do I get a work permit?

Information for refugees with

Aufenthalts gestattung and Duldung



About this brochure

If you have an *Aufenthaltsgestattung* (temporary residence permit for the duration of the asylum procedure) (§ 55 AsylG (*Asylgesetz* [Asylum Act])) or a *Duldung* (temporary suspension of deportation according to § 60a AufenthG (*Aufenthaltsgesetz* [Residence Act])), you need a permit to be allowed to work. This brochure will provide you with an overview of the requirements and the procedure for applying for a work permit.

If you have further questions, you can contact an IvAF network in Baden-Württemberg. They can support you with your integration into the job market (see further information at the end of the brochure). Werkstatt PARITÄT and the Refugee Council of Baden-Württemberg (Flüchtlingsrat BW) are both part of the “**Network for the Integration of Refugees into Work**“ (*Netzwerk zur Integration von Flüchtlingen in Arbeit – NIFA*). The Refugee Council of Baden-Württemberg offers an initial consultation by phone or in writing and provides you with information about the advice office responsible for you. Addresses can be found online at:

- www.nifa-bw.de | *Kooperationspartner/-innen*
- www.fluechtlingsrat-bw.de | *Das Netzwerk – Kontaktadressen*

1. Definitions

Paid work (*Erwerbstätigkeit*) is the generic term for dependent employment (*Beschäftigung*) and self-employed paid activities. **Employment** includes all dependent work as part of an employment relationship (also including voluntary year of social service, federal voluntary service, internships, etc.).

2. Employment ban

If you are required to live in an initial reception centre (*Erst-aufnahmeeinrichtung* – EAE), you are banned from employment (§ 61 (1) AsylG). An employment ban is often noted in your identity document with the phrase “**employment not allowed**” („*Erwerbstätigkeit nicht gestattet*“). You may be obligated to live in an initial reception centre for a maximum of six months (§ 47 para. 1 AsylG). As a result of the ban, activities are only allowed that are not considered employment. These include:

- Work opportunities (§ 5 AsylbLG (*Asylbewerberleistungsgesetz* [Asylum Seekers Benefits Act]))
- For refugees with an *Aufenthaltsgestattung*, a special type of work experience is also available, the Refugee Integration Measures (§ 5a AsylbLG)
- Job shadowing (not working but only watching)
- Study
- Purely school-based training is also usually possible

For these activities, you do not need permission from the immigration office. However, it is advisable to inform the immigration office about this.

If you no longer have to live in an initial reception centre and have been in Germany for more than three months, you generally are no longer banned from employment (§ 61 para. 2(1) 1 AsylG and § 32 para. 1(1) BeschV (*Beschäftigungsverordnung* [Employment Directive])). However, before you can start working, you must apply to the immigration office for a work permit. Further information on this can be found under point 3.

2.1. Special case – “safe countries of origin”

If you come from a “safe country of origin” (§ 29a AsylG), you may be required to live in an initial reception centre for more than six months. Under these circumstances the employment ban will continue to apply. If you no longer live in an initial reception centre but applied for asylum after 31 August 2015, you will also be subject to a general employment ban. In this instance, you can only perform activities that are not considered employment (see above).

- The current list of “safe countries of origin” can be found at www.bamf.de | Sonderverfahren

2.2. Employment ban under migration law for persons with *Duldung*

If you have a *Duldung*, the immigration office can issue an employment ban under migration law (*ausländerrechtliches Beschäftigungsverbot*). Then you will also not be able to work even after three months have passed. The immigration office must issue an employment ban under § 60a para. 6 AufenthG

- if you are alleged to have entered Germany for the sole purpose of gaining social benefits, or
- if you are obliged to leave the country and you are alleged to have not cooperated sufficiently for your deportation to be carried out, or
- if you come from a “safe country of origin” and your application for asylum, as filed after 31 August 2015, was rejected.

The second reason is assumed to be the case for suspected deception about the identity or for a lack of cooperation in obtaining a passport. However, the reasons attributable to you must be the sole

cause of the impossibility of deportation for an employment ban to be imposed. You will not be mandatorily banned from working if there are other factors preventing your deportation, for example:

- because deportations to the country of origin are not possible, for example, due to a lack of transport connections,
- in the event of deportation being suspended under § 60a para. 1 AufenthG,
- because of other factors preventing deportation, e.g. inability to travel (sickness, pregnancy, risk of suicide).

Note: Contact an advice office or a lawyer to check if the employment ban is lawful.

3. Restricted access to the job market

Application for a work permit

If you are not banned from working under migration law (see point 2.2.), from the fourth month you are no longer subject to an employment ban. However, you are required to apply for permission to work at the immigration office. Your identity papers state: **“employment only permitted with the approval of the immigration office”** (“*Erwerbstätigkeit nur mit Genehmigung der Ausländerbehörde gestattet*”). You need a work permit for:

- all positions of employment
- company based professional training and
- internships, voluntary year of social service, federal voluntary service.

Once you have found a position of employment, your employer is required to fill out the “job description form” (*Stellenbeschreibung*). You can get this form from the immigration office or the Employment Agency. Precise details about the company, the number of working

hours, the exact work times and the salary must be specified. You are required to submit this form together with your work, training or internship contract.

You will receive a letter from the immigration office either with a rejection of your application or granting you a work permit. In this case, you have to go to the immigration office and the permit is entered directly in your *Aufenthaltsgestattung* or *Duldung*. The work permit may be limited to the job, the employer, the region and a certain amount of time. This means that you have to reapply if there are any changes to the circumstances of your employment.

If you have a work permit for any of the following activities (amongst others), the immigration office alone decides on your application (§ 32 para. 2 BeschV):

- internships within the framework of school education, study or within the framework of an EU funded project, orientation internship up to three months, introductory training (§ 22 (1) *Mindestlohngesetz* [Minimum Wage Act]),
- state-recognized or comparably regulated education,
- work as part of a voluntary service (voluntary year of social service, federal voluntary service)
- highly skilled work
- work as a family member of the employer if you live with him/her.

Note:

- In Baden-Württemberg, subcontracted work is possible from the fourth month of the stay until 5 August 2019 (§ 32 para. 3, para. 5 (3) BeschV).
- The secondary provisions recorded in your residence permit are not always up-to-date. If in doubt, ask your immigration office and have them updated if necessary.

The role of the Federal Employment Agency

In most cases, the Federal Employment Agency (*Agentur für Arbeit*) must approve the work permit before you can start work. Then the immigration office forwards your application to the International Placement Services [*Zentrale Auslands- und Fachvermittlung – ZAV*] of the Federal Employment Agency.

The Federal Employment Agency checks whether there are grounds for refusal. These grounds exist if the working conditions check reveals that your conditions of employment are worse than those of a comparable Germany employee. It is checked whether the offered wage corresponds to the collectively agreed wage, the standard local wage or the minimum wage law, and whether the legal regulations, such as laws on employee protection, are being respected*. The Employment Agency must decide within two weeks. Otherwise consent is considered granted (§ 36 BeschV).

A working conditions check is only carried out in the first four years. If you wish to take up employment from the 49th month of your uninterrupted stay with *Aufenthaltsgestattung* or *Duldung* in Germany, the immigration office alone decides on your application.

Note:

- Ask the immigration office to forward your application to the Federal Employment Agency as quickly as possible.
- You can find an overview of whether you need to apply for an employment permit and who will examine the application at GGUA: www.einwanderer.net | *Übersichten und Arbeitshilfen*.

* An additional priority check is only taking place in a few areas in Germany until August 2019. Here the Employment Agency checks that no other persons with priority access to the job market are available for this position (Germans, EU citizens). This check is not taking place in Baden-Württemberg until August 2019.

4. What can you do if the immigration office rejects your application?

The immigration office must send you a decision in writing. You are entitled to appeal this decision. In doing so, you must respect the deadlines which are found in the explanation of appeal rights at the end of the decision.

If you are acting under the assumption that the employer will offer the position within a short time to another applicant, you should also lodge an urgent appeal along with your appeal. The court is to decide on the urgent appeal quickly and without a hearing.

Note: Contact an advice office or a lawyer to lodge the appeal and urgent appeal.

5. You have a residence permit

As soon as you receive the residence permit, you generally have a work permit. The work permit must be shown on your residence permit (§ 4 (2) AufenthG).

If you have a residence permit under § 22 (2), § 23 (2), § 25 (1-2), § 25a or § 25b AufenthG, you are legally entitled to take up any paid work, including self-employment.

If you have a residence permit under § 22 (1), § 23 (1, 4), § 23a, § 24 para. 1, or § 25 (3, 4, 5), you will normally receive a general employment permit. Self-employment is not included here. For this, you must obtain the permission of the immigration office (see point 3).

Note: If you receive benefits from the Job Centre or Employment Agency, you must discuss your employment and self-employment with your case manager.

6. At a glance: Access to the job market

You have an **Aufenthaltsgestattung** (§ 55 AsylG) or a **Duldung** (§ 60 a AufenthG):

- **0 – 3 months: Employment ban**
- **4 – 48 months: Restricted labour market access.** You need a work permit from the immigration office to be allowed to work. Self-employment is not allowed. In most cases, the Employment Agency must also agree.
- **From the 49th month: Restricted labour market access.** Employment is possible with the permission of the Immigration Office. The Employment Agency no longer reviews the application. Self-employment is still not allowed.
- If you have a **Duldung**, you can only work if you are not banned from working under § 60a para. 6 AufenthG. However, you will also require a permit from the immigration office.

You have a **residence permit**:

- As soon as you receive the residence permit, you usually have a work permit. The work permit must be noted on your residence permit (§ 4 (2) AufenthG).

Important laws

Residence Act – AufenthG (Aufenthalts gesetz)

Asylum Act – AsylG (Asylgesetz)

Asylum Seekers Benefits Act – AsylbLG (Asylbewerberleistungsgesetz)

Employment Directive – BeschV (Beschäftigungsverordnung)

Refugee Admittance Act for Baden-Württemberg – FlüAG (Flüchtlingsaufnahmegesetz für Baden-Württemberg)

German Basic Law – GG (Grundgesetz)

The full text of the laws can be found online, for example, here:

- www.gesetze-im-internet.de

The IvAF Networks

support the sustainable integration of refugees into the labour market. In addition, access to the training and labour market is structurally improved, while improvements in the quality of labour market support are also made. Currently in Baden-Württemberg, there are five of the nationwide 41 IvAF networks: Netzwerk zur Integration von Flüchtlingen in Arbeit (Nifa) [the Integration of Refugees in Work], Netzwerk zur Integration von Flüchtlingen in Ostwürttemberg (nifo) [Network for the Integration of Refugees Network in East Württemberg], Netzwerk Bleiben mit Arbeit (NBA) [Staying with Work Network], Integrationsnetzwerk Hohenlohe Main-Tauber [Hohenlohe Main-Tauber Integration Network] und Arbeit und Ausbildung für Flüchtlinge – Projektverbund Baden [Work and Education for Refugees - Project Association Baden]. Further information is available at:

- www.ivaf-netzwerk-bw.de

Materials for further information



Basic information *Aufenthaltsgestattung* (temporary residence permit for the duration of the asylum procedure)

For the duration of the asylum procedure, refugees are granted a temporary resident permit. The flyer summarises the general conditions that people with this status are subject to when accessing work and training, social benefits, medical care, housing and free movement. (A6 leaflet, 16 pages, language: ger/eng/fre/dari/fas/ara)



Basic information *Duldung* (temporary suspension of deportation)

At the end of 2015, more than 155,000 refugees were living in Germany with a *Duldung*. The flyer explains the (non-)status of the temporary suspension of deportation under residence law and the related restrictions on access to education and the labour market, social benefits and freedom of movement – but also the rights and opportunities that exist to overcome this status. (A6 leaflet, 16 pages, language: ger/eng/fre/dari/fas/ara/srp)

The information materials can be ordered:

online: www.nifa-bw.de

Email: info@nifa-bw.de

This information leaflet was updated in January 2019. It is based on a template of the “Netzwerk Bleiberecht Stuttgart - Tübingen – Pforzheim” network. There may since been have been changes. This information also provides only an overview (in particular, about the situation in Baden-Württemberg) and cannot replace an individual consultation. In individual cases, therefore, always contact an IvAF network, an advice office or a lawyer.

The content of the leaflet reflects the legal opinion of the authors.



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