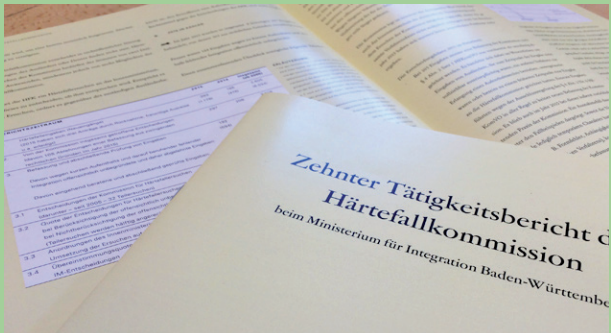




How do I submit a hardship application (*Härtefallantrag*)?

Information for persons with a *Duldung*



About this brochure

This brochure offers you an overview of the hardship application (*Härtefallantrag*). A hardship application is the last chance to get a residence permit in Germany. You should only submit one if all other options of being granted a residence permit have been exhausted and you are at risk of being deported. Your application is only likely to succeed if you are well integrated in Germany, you are obligated to leave the country under an enforceable decision and you have no other ongoing proceedings (e.g. legal action). If your application succeeds, you will be granted a residence permit according to § 23a AufenthG (*Aufenthaltsgesetz* [Residence Act]). The hardship application procedure is handled separately by each federal state. In Baden-Württemberg, the procedure is defined by the hardship commission regulation (*Härtefallkommissionsverordnung*). If you have any questions, you can contact the Refugee Council Baden-Württemberg (Flüchtlingsrat BW). Here you will be offered an initial consultation on the phone or in writing and will be given information about the advice office responsible for you. Addresses can be found online at:

- www.fluechtlingsrat-bw.de | *Das Netzwerk – Kontaktadressen*

1. Which requirements do you have to meet?

In order for your hardship application to be successful you initially need to meet the following requirements:

- It does not matter what your country of origin is. Refugees from so-called “safe countries of origin” according to § 29a AsylG (*Asylgesetz* [Asylum Act]) can also submit a hardship application.
- You have to be obliged to leave the country under an enforceable decision. This is usually the case if your asylum applica-

tion has been rejected.

- If you have submitted an appeal against the rejection and, if applicable, an urgent appeal, the court has to decide on both. If the urgent appeal is rejected but the appeal procedure is still ongoing, you can consider ending the latter. In any case, seek advice from a lawyer or a competent advice office before you withdraw your appeal.
- If you have submitted a petition to the state parliament (*Landtag*) or German parliament (*Bundestag*), this must already be decided. Otherwise you can consider withdrawing your petition. Also seek advice in this case.
- You have to be living in Germany. An immigration authority in Baden-Württemberg has to be responsible for you. If your asylum application was rejected because another EU state is responsible (Dublin procedure), usually no immigration authority in Baden-Württemberg is responsible for you.
- There must not be any reasons for deportation (*Ausweisungsgründe*). This means that you must not have committed any severe crimes. Smaller crimes (e.g. repeated fare evasion) are usually not reason enough for your application to be rejected but should be mentioned.
- If you are able to work, you need to be able to make an independent living. If you are or were banned from working, the commission will check whether it is likely that you will be able to make a living independently in future, once the ban is lifted. If another person has committed to cover the costs of your livelihood (declaration of commitment under § 68 AufenthG), you do not need to make a living independently.
- If your deportation date has already been determined, the hardship application will not be accepted. However, you are

usually not informed about your deportation date. Therefore, it is important that you do not wait too long to submit your hardship application. If possible, discuss the timeframe with a lawyer.

2. What should be included in a hardship application?

You can submit the hardship application by yourself or another person can submit it for you. This can have a positive impact. If the application is submitted by a friend or another trusted person, you have to sign a power of attorney.

You have to apply for a residence permit under § 23a AufenthG in a writing. Your full name, your date of birth and your address must be provided.

You also need to explain your situation in detail. Your application has to mention how long you have been staying continuously in Germany and you also need to describe your efforts to integrate in Germany in detail. The dangers or disadvantages of your country of origin are only of marginal interest because they have already been considered in your asylum application. Your efforts to integrate in Germany and your chances of succeeding in those efforts are much more important. Therefore, what is important is whether you have work, how well you speak German and whether you are engaged in volunteer work. Moreover, you or your children should be regularly and successfully attending school if compulsory education applies to you/them.

You have to send evidence of these kinds of efforts to integrate. These may include reference letters or work contracts but also letters from friends, employers, colleagues, language school teachers, poli-

tical representatives, such as councillors or mayors, etc.

Ask these people to describe the efforts that you have made to integrate that they have observed and to support your hardship application.

You have to sign an agreement for your personal data to be processed. If someone has submitted a declaration of commitment according to § 68 AufenthG (responsibility for livelihood), it has to be included in the hardship application. More information is available at:

- www.im.baden-wuerttemberg.de/de/migration/auslaender-und-fluechtlingspolitik/haertefallkommission/informationen-zur-haertefallkommission/ | *Weiterführende Links*

3. What happens during this procedure?

For the procedure to start you need to submit the application to the hardship commission. The address is:

Härtefallkommission beim Ministerium für Inneres, Digitalisierung und Migration Baden-Württemberg

- Geschäftsstelle -

Postfach 10 34 64

70029 Stuttgart

or by fax to: 0711/279-4444

The commission will then examine your application in two steps. First, inadmissible applications will be discarded in a preliminary examination. These include all applications that do not meet the above mentioned requirements. The remaining cases will then be examined in detail. The commission decides about these cases in meetings. If the commission assumes a hardship case, it will ask the interior ministry to grant the applicant a residence permit. The interior ministry, therefore, has the final decision over the application. In recent years,

it has usually confirmed the decision of the hardship commission. However, in 2017 the interior minister decided against the granting of a residence permit in a third of all cases. The interior ministry can also impose a number of conditions, e.g. to get a passport within a certain timeframe. You or the person who submitted your application will be informed about the decision on your application irrespective of whether it was accepted or rejected.

4. What else should I consider?

Read more about the hardship commission's current activities in their activity report. Individual cases that have been decided by the commission are presented there. This will help you evaluate whether your application has a good chance of succeeding or whether something important is still missing.

As long as your hardship application is being processed you cannot be deported. The fact that a hardship application has been submitted has to be passed on by the interior ministry to the Karlsruhe Regional Council (*Regierungspräsidium Karlsruhe*). To be sure that the Karlsruhe Regional Council has been informed, you (or your lawyer) should inform the authority yourself.

In urgent cases, you can submit the application, even if a few documents are still missing. Other documents can be added as long as a decision in regards to the content of your case has not yet been made.

When evaluating your case, the interior ministry of Baden-Württemberg pays attention to such as things as whether you have submitted proof of identity or whether you are currently in the process of obtaining proof of your identity. If you have already submitted proof of identity or have documented your cooperation with the Karlsruhe Regional Council, it is good to mention this in your application.

Do not have your hardship application written and submitted by a lawyer. A lawyer is important in the asylum and appeal procedure, but a hardship application is about your integration in Germany. You, your friends, acquaintances and supporters are better informed about this and can write a much more detailed and convincing application. If you already have a lawyer accompanying your case, it still makes sense to inform them about your hardship application and speak with them about the best approach.

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-Wuerttemberg, five of the nationwide 41 IvAF networks are being funded: *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] and *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

Important Laws

Residence Act – AufenthG (*Aufenthaltsgesetz*)

Asylum Act – AsylG (*Asylgesetz*)

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

- www.gesetze-im-internet.de

Further information on the hardship application can be found at:

- www.aktiv.fluechtlingsrat-bw.de/von-der-duldung-zum-bleiberecht-perspektiven-fuer-eine-aufenthaltsverfestigung-nach-ablehnung-des-asylantrags.html | *Der Härtefallantrag*

This information sheet was updated in January 2019. It is possible that changes have since occurred. This information only provides you with an overview (especially 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 this leaflet reflects the legal opinion of the authors.

Materials for further information



Who receives a residence permit under § 18a AufenthaltG?

Persons with a *Duldung* who have professional qualifications can be granted a residence permit under certain conditions based on § 18a AufenthaltG. The leaflet explains under which conditions this is possible and what needs to be taken into account. (A6 leaflet, 12 pages, languages: ger/eng/fre/dari/fas/ara)



Who is granted a right to stay based on § 25b AufenthaltG?

At the end of 2015, more than 155,000 refugees were living in Germany with a *Duldung*. Many of them have been living with this status for several years. The flyer explains under what conditions they can receive a residence permit under § 25b AufenthaltG and what must be observed. (A6 leaflet, 12 pages, languages: ger/eng/fre/dari/fas/ara)



Who is granted a right to stay based on § 25a AufenthaltG?

At the end of 2015, more than 155,000 refugees were living in Germany with a *Duldung*. Many of them are teenagers or young adults. This flyer explains under what conditions they can receive a residence permit under § 25a AufenthaltG and what must be observed. (A6 leaflet, 8 pages, languages: ger/eng/fre/dari/fas/ara)

The information materials can be ordered:

online: www.nifa-bw.de

Email: info@nifa-bw.de

contact

Project carrier

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www.nifa-bw.de