

Guideline

Temporary Withholding of Deportation (Duldung)

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To whom it may concern:

This information brochure was produced by the **Refugee Council for Thuringia, project "BLEIBdran – Berufliche Perspektiven für Flüchtlinge in Thüringen"**. It is addressed to persons with a temporary withholding of deportation status.

The first part explains what a temporary withholding of deportation status is and when it is granted. Moreover, it shows what the reasons for a temporary withholding of deportation can be. The second part of this brochure gives an overview of the various possibilities to proceed from a temporary withholding of deportation status to a permission to stay or to change to a secure residence status.

The third part of this brochure provides information on the access to education and the job market for persons with a temporary withholding of deportation status.

This guideline aims at giving a first overview of the legal situation for persons with a temporary withholding of deportation status. It does not replace consultations.

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1 Temporary withholding of deportation (Duldung)

This part of the brochure answers the following questions: What is a temporary withholding of deportation? When do you get a temporary withholding of deportation? What are the reasons for a temporary withholding of deportation status? Furthermore, you find information on “voluntary” departure.

1.1 What is a temporary withholding of deportation status?

A temporary withholding of deportation status is issued if at present a deportation is not possible. Thus it says on the temporary withholding of deportation paper: Suspension of deportation. Depending on the reason for your permission to stay it is possible that you will be deported soon. A temporary withholding of deportation document is a green paper folded twice. There is a slanted red line on one page. The document contains information on your person (name, date of birth, address ...) and a photo. A temporary withholding of deportation paper is your identity card. It is issued by the Foreigners' Registration Office. A temporary withholding of deportation status is always limited – as a rule, it is valid for 6 months at most. It has to be extended by your Foreigners' Registration Office (*Ausländerbehörde*) for as long as a deportation is not possible.

1.1 When do you get a temporary withholding of deportation?

Various situations can lead to your receiving a temporary withholding of deportation status.

a) Your application for asylum was rejected by the Federal Agency of Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) and – in case of legal action against this decision – by the administrative court as well.

b) Your application for asylum was rejected as “inadmissible.” A possible reason for this decision can be that you already applied for asylum in another country.

c) You applied for asylum. However, this application is not your first application for asylum you submitted in Germany (“asylum *follow-up* application”).

d) In cases of refugee minors who have a legal guardian: No application for asylum was submitted or has not yet been submitted.

e) You studied in Germany, but broke off your studies.

1.3 Reasons for a temporary withholding of deportation

There are many different reasons for getting a temporary withholding of deportation. Some of these reasons are listed in the following.

Departure not possible

It may be that your departure is not (yet) possible. For instance, you get a temporary withholding of deportation if there are no flights to your country. Or you get a temporary withholding of deportation if your country is not willing to permit your re-entry. It is also possible that the Foreigners’ Registration Office just has not yet organized your deportation.

Humanitarian or personal reasons

You can get a temporary withholding of deportation status for humanitarian or personal reasons. This is for instance the case if your spouse or your minor child has a permit of residence. Another reason for such a temporary withholding of deportation status can be a serious illness. A further reason can be that you have taken up vocational training or another education.

Public interest

Another reason for a temporary withholding of deportation status can be a considerable public interest in your presence in the federal territory. For instance, because you are a witness in criminal proceedings.

As long as your reason for the temporary withholding of deportation continues to exist, your temporary withholding of deportation status will be extended.

Important information

The date on your permission to stay does not guarantee that you can stay in Germany up to this date. If the reason for your permission to stay does not exist any longer, the Foreigners' Registration Office can deport you. You have certificates which give evidence that the reason for your temporary withholding of deportation still exists (e.g., current medical reports / doctor's certificates; changes in your family situation)? Or you have documentary proof of a new reason for a temporary withholding of deportation status? Submit them immediately to your Foreigners' Registration Office.

You are not sure of the reason for your permission to stay? Please contact a specialized counselling center.

2 Securing residence status with a temporary withholding of deportation

There are different possibilities to get permanent residence in Germany. Almost all of them have to do with your integration in Germany. Among them are, for instance, your knowledge of German, school, work, studies or training. In addition, voluntary activities or membership in clubs (e.g., sports clubs) can be helpful.

Do you have the feeling that one of the following possibilities could apply to you? Then please contact a counselling center or a lawyer specialized in the field of law on aliens/foreigner law.

2.1 Hardship commission

According to § 23 a Residence Law it is possible to get a residence status for **urgent humanitarian or personal reasons**. One has to contact the hardship commission (*Härtefallkommission*).

The hardship commission in Thuringia consists of eight members. They come from diverse social areas. The members of the hardship commission can under certain conditions engage in getting a permit of residence for persons with a temporary withholding of deportation status. They meet once a month to decide on present hardship cases.

Here the fact that counts most is how well you are integrated in Germany. How well do you speak German? Have you started your education, training or work? Have you made friends who want you to stay here? Are you engaged in voluntary activities or in clubs? However, other circumstances are also important factors, such as serious illnesses. As a first step, you have to make a personal appointment with a member of the hardship commission. When you have such an appointment, you have to bring along all your documents (BAMF, work, school, voluntary activity, doctor's certificate ...) and tell your story. Then the member decides whether he or she accepts your case. If that is the case, he or she makes a hardship application for you.

On top of this, your Foreigners' Registration Office is informed on the fact that your case has been presented to the hardship commission. Then it takes a few months until a decision is made. In the meantime, you continue to have a temporary withholding of deportation status and are protected from deportation. All members of the hardship commission then consult on your case. If at least two thirds of them vote for it, the *Thüringer Ministerium für Migration, Justiz und Verbraucherschutz* (TMMJV – Thuringia Ministry for Migration, Justice and Consumer Protection) can issue the residence status for humanitarian reasons according to § 23a residence law.

Important information

An overview of the members as well as further information on the hardship commission can be found at:

<http://www.fluechtlingsrat-thr.de/arbeitshilfen/h%C3%A4rtefallkommission>

2.2 Education and Training (*Ausbildung*)

A temporary **withholding of deportation** for education and training (*Ausbildungsduldung*) according to § 60a residence law is a relatively good withholding of deportation, since it is **issued for the period the education or training** (2-3 years). You get such a withholding of deportation if you start a qualified vocational training or have already started it. The training or education has to be acknowledged by the state.

If you break off your education or training, you get a temporary withholding of deportation for 6 months. During this time, you can find yourself a new training place or institution. However, this is possible only once. Your employer is obliged to immediately report a breaking off to the Foreigners' Registration Office.

If the company does not accept you into regular employment after your successfully completed training, you get a temporary withholding of deportation for another 6 months. During this period, you can find work for yourself. This work has to correspond to your training. You have found such work or were accepted by your training institution? Now you can apply for a permit of residence according to § 18a article 1a residence law.

Perhaps you have already found a place for training. However, it will take some time before your training begins. Thuringia has found a regulation for such cases. In the period between the training contract and the beginning of the training a temporary withholding of deportation can be issued.

In part 3 of this brochure, you find further information on how to get a temporary withholding of deportation for your training or education or a temporary withholding until the beginning of your training or education.

Important information

You find

- the template for a temporary withholding of deportation until the beginning of your training and the Thuringia legislation (*Thüringer Erlass*)
- the template for temporary withholding of deportation for training and education

at: <http://fluechtlingsrat-thr.de/arbeitshilfen/antragshilfen>

2.3 “Humanitarian Reasons”

Under certain conditions, the Foreigners’ Registration Office can give you a residence status for **humanitarian reasons** according to § 25 article 5 residence law, especially if you have had a temporary withholding of deportation status for at least 18 months.

Prerequisites are:

- a departure to your country of origin is not possible (neither voluntarily nor involuntarily)
- You do not make false statements about your identity or nationality
- It is not your fault that the deportation cannot be executed

If these prerequisites apply to you, you can submit a respective application to your Foreigners’ Registration Office. Make sure to get advice in advance from a counselling center.

2.4 “Well-integrated Young Persons and Adolescents”

Under certain conditions, **well-integrated young persons with a temporary withholding of deportation status** can get a permit of residence according to § 25a Residence Law.

Permit of residence for young persons

Prerequisites are, among others, that you have been in Germany for 4 years. The application for being issued a permit of residence has to be submitted before your 21st birthday. If you are undergoing a school education or a vocational training or a university education, this permit of residence can be applied for despite the receipt of state benefits. If these prerequisites apply to you, you can submit a respective application to your Foreigners’ Registration Office. Make sure to get advice in advance from a counselling center.

Permit of residence for parents

You are still a minor (under 18 years of age) and have a permit of residence according to § 25a Residence Law. Then, under certain prerequisites, your parents can also get a permit

of residence. For instance, they have to secure their livelihood, and they must not have provided false information on their identity.

Permit of residence for spouses and children

You are married and/or have minor children and have a permit of residence according to § 25a Residence Law. Under certain conditions, your spouse and your minor children can also get a permit of residence.

2.5 “Sustainable Integration”

You have been in Germany for **at least 8 years** (with minor children: **for 6 years**)? Then you can receive a residence permit according to § 25b. Prerequisites in this case are, among others, the predominant securing of your livelihood and an oral knowledge of German (at least level A2). In certain cases, the predominant securing of livelihood can be refrained from.

If these prerequisites apply to you, you can submit a respective application to your Foreigners' Registration Office. Make sure to get advice in advance from a counselling center.

2.6 Asylum follow-up application

In few cases it can make sense to submit an **asylum follow-up application** (*Asylfolgeantrag*) at the *Bundesamt für Migration und Flüchtlinge* (BAMF; Federal Agency of Migration and Refugees).

An asylum follow-up application can make sense if:

- there is a new danger for you in your home country
- the situation in your country of origin has seriously changed or
- new evidence is available which certifies your (political) persecution.

There is a new reason to justify new asylum procedures? You have three months to submit the asylum follow-up application.

The BAMF then checks whether there are reasons to justify further asylum procedures. Only then will new asylum procedures be initiated.

Important information

For proceedings in an asylum follow-up application your original reasons for seeking asylum are NOT considered any more. That means that only what has happened since your first asylum application (in case of several applications: since your last) can be brought forward.

Make sure to get advice before you submit an asylum follow-up application.

3 Access to work and education

In the following, you find initial information on access to work (3.1) and education (3.2) with a temporary withholding of deportation status.

Important information

Advice concerning the subject of training, work and education is offered by the BLEIBdran network: <http://www.ibs-thueringen.de/projekte/ivaf-netzwerk-bleibdran/>

The Federal Labour Office provides lots of information on the subject of training and on the various training occupations at: www.planet-beruf.de

3.1 Work with a temporary withholding of deportation status

In Germany, **work** is differentiated in **employment** and **occupation**. Employment means that you are employed, that is you have a boss. Occupation means that you are self-employed, that is you yourself are the boss. With a temporary withholding of deportation status you are not allowed to work as self-employed. Thus, in the following employment is meant when work is referred to.

■ Access to the job market

If you have been registered in Germany for at least 3 months and do not live in a preliminary reception center any more, you are in general permitted to work. You want to start work? In almost all cases you then need the agreement of the Foreigners' Registration Office. Among the few exceptions are work shadowing, most of the school internships and voluntary work.

■ No access to the job market: the prohibition to work

There are a few reasons that bring about the prohibition to work.

The following constellation leads to a general prohibition to work:

- You come from what is known as a "safe" country of origin (Albania, Montenegro, Bosnia, Kosovo, Serbia, Macedonia, Ghana, Senegal) and
- you made your application for asylum after 31.08.2015 and
- your asylum application was rejected.

The prohibition to work can also be imposed if

- you (allegedly) entered the country only to get benefits under the Asylum Seekers Benefits Act OR

- you are exclusively blamed for the fact that you cannot be deported.

If you get such a prohibition to work, make absolutely sure to get advice.

■ I have found work. – What next?

You have found work. The Foreigners' Registration Office responsible for you has to enter into your temporary withholding of deportation document that you are allowed to work. For this entry you have to make an application to the Foreigners' Registration Office. You have to enclose a copy of your employment contract with the application.

Important information

Always apply for your work permit in writing.

If the Foreigners' Registration Office does not give you a work permit, you need the justified notification in writing in order to proceed against it (appeal / legal action at an administrative court). There is nothing you can do about oral statements.

You find a template for the application at: <http://www.fluechtlingsrat-thr.de/arbeitshilfen/antragshilfen>

If you do not get a work permit, do get advice at a counselling center or a lawyer specialized in the field.

In most cases, the Federal Labour Office (*Bundesagentur für Arbeit*) checks in addition whether the employment conditions (working hours, payment) are in order. This happens without your intervention when you have handed in your application at the Foreigners' Registration Office. Thus you do not need to hand in a second application.

■ „Special cases“ internship § job training

Internship

An internship offers a good entry into the job market. As a rule, an internship is regarded as work. Therefore you need a permit issued by the Foreigners' Registration Office. As a rule, internships are subject to the minimum wage law (that is, you have to earn at least 8,50 euros per hour). If the internship is shorter than three months, this regulation does not apply.

Important information

Please get information before your internship whether you need the agreement of the Foreigners' Registration Office.

Job training

In order to get a job training in Germany, you as a rule need a school-leaving qualification. A qualified job training takes between two and three years. There is company-based training and school education. Whereas for a school education you only attend a school, for a company-based training you work in addition at a training workplace. You get a training wage during your company-based training. Therefore a company-based training is work. The Foreigners' Registration Office has to enter into your temporary withholding of deportation document that an employment relationship in the training center concerned is given. Attention: sometimes in school education you have to work as well. The job training system in Germany is complicated, please seek consultation.

Important information

You have a temporary withholding of deportation status and have found a training place. This allows you to provide for your stay. At your Foreigners' Registration Office you have to hand in an application for a temporary withholding of deportation because of this training. You find further information on this issue in part 2 of this guideline, in the point "Temporary withholding of deportation for education and training according to § 60a Residence Law."

3.2 Access to education

■ Nursery school, kindergarten, „Kita“

All the children whose habitual residence is in Thuringia are legally entitled to a childcare place from the completed first year of their lives on. If your child is to attend a Kita, you have to register it. In some places, you do this directly at the Kita. Sometimes the registration has to be made by the youth welfare office. Information on and assistance with the registration at a Kita are provided by the youth welfare office and the social welfare office.

Important information

You find multilingual information in the guideline *“Miteinander im Kindergarten”* (“Together at the Kita/kindergarten”) issued by the Ministry of Education, Youth and Sport: https://www.thueringen.de/mam/th10/ab/miteinander_im_kindergarten_-_tmbjs_information_fur_auslandische_eltern.pdf

■ School

In Thuringia, there is compulsory education for all children from their 6th year on. The Thuringian school law requires that all children who have been in Germany for three months get a place at school. Further information for school registration is provided by your social workers in your accommodation, at a counselling center or at the social welfare office responsible for you.

Compulsory education in Thuringia last for 10 years. Children usually start school when they are 6 or 7 years old. In Thuringia, education lasts for 10 or 13 years respectively, depending on the school you attend after elementary school. In some cases it is possible to stay on at school for one or two more years, when the school-leaving certificate has not yet been obtained. You should get information on this at the school or at a counselling center.

For all those too old for regular school and with no school-leaving qualification there is the possibility to enter a year-long preparatory language program (*Berufsvorbereitendes*

Jahr Sprache, BVJ-S). It is offered at vocational schools and provides particularly many German lessons. After a year in the BVJ-S one can proceed to the BVJ, the preparatory vocational year, and then re-sit the school-leaving exam (*Hauptschulabschluss*). After that one can apply for vocational training or continue to go to school to get a secondary school certificate (*Realschulabschluss*) or one's high school graduation (*Abitur*). Young persons whose German is already very good can sometimes immediately begin with the BVJ. To enter the BVJ-S, you have to register with the education authority responsible for you. For the BVJ, you do so at the vocational school.

Sometimes there is the possibility to visit high school (*Gymnasium*) or an interdenominational school (*Gemeinschaftsschule*). This should be possible if you have report cards from your home country which are recognized. In this case, please go directly to the school and get counselling for getting your report cards recognized.

Important information:

You already finished your vocational training or got your school-leaving certificate in your home country? Then you can have your degree recognized. Depending on how the level of your final examination corresponds to German final examinations, you can enter a job training or attend a secondary school. If you have school reports from your country of origin, you should make an appointment with the counselling of the IQ-network to find out about the recognition of your certificate. You find a counselling center near you at: <http://www.iq-thueringen.de/iq-beratung/anerkennungs-und-qualifizierungsberatung>

■ Studies

Persons who want to study in Germany need a university entrance qualification. It is given to persons who received a corresponding degree in a foreign country or who started a course of studies which is recognized here. Persons who graduated from high school or received their vocational baccalaureate diploma in Germany are also eligible for studies. Persons without a German university entrance qualification have to prove their command of German in a special language test and frequently reach the language level of C1. However, there are exceptions and other ways to enter studies in Germany. It is advisable to get information on the terms of admission at the study advisory service of the university or the technical college you want to attend.

Important information

The website of the German Academic Exchange Service offers a lot of information on studies in Germany for refugees and displaced persons: <https://www.daad.de/der-daad/fluechtlinge/de/>

Flüchtlingsrat Thüringen e.V.
May 2017

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Das Thüringer Netzwerk BLEIB*dran* wird im Rahmen des ESF Bundesprogramms „ESF – Integrationsrichtlinie Bund“ im Handlungsschwerpunkt Integration von Asylsuchenden und Flüchtlingen (IvAF) durch das Bundesministerium für Arbeit und Soziales und den Europäischen Sozialfonds gefördert.

