

## Guideline

# Permission to stay status (Aufenthalts- gestattung) – Asylum Procedures and Ac- cess to Education and Work

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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 the permission to stay status.

The first part turns to the questions what a permission to stay status is and when it is granted.

The second part of this brochure gives initial information on the asylum procedures. Among other things, you find information on the Dublin procedure and on the possible decisions in the asylum procedures.

The third part of this brochure provides you with information on the access to education and the job market for people with the permission to stay status.

This guideline aims at giving a first overview of the legal situation for people with the permission to stay status. It does not replace consultations.

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Projekt BLEIBdran

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# 1 Permission to stay status

In this part of the brochure you find information on the questions what a permission to stay status is and when it is granted.

## 1.1 What is as a permission to stay status § 55 AsylVfG?

A permission to stay is a green paper folded twice. It contains information on your identity (name, date of birth, address) and a photo. A permission to stay paper is your identity document during the asylum procedures. The paper is initially issued by the Federal Agency of Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF). As a rule, it is valid between 3 and 6 months. After that period, it has to be extended by your Foreigners' Registration Office until your asylum procedure is closed.

## 1.2 When do you get a permission to stay status?

You have received a permission to stay status. That means that you have made an application for asylum procedures in Germany. However, your application for asylum has not yet been decided on. Even if you have taken legal action against the decision in your asylum procedure, as a rule you keep the permission to stay status. For the asylum procedure is not yet closed. There are exceptions to this situation. Your lawyer or your counselling center will explain them to you.

### **Important information**

To take legal action means that you go to court. In the case of asylum procedures this means that the court re-examines the BAMF decision. The courts in question here are administrative courts. In Thuringia, these are the administrative courts in Meiningen, in Weimar and in Gera. It can take a long time for a legal action to be closed. The best way to proceed is to be assisted by a lawyer.

## 2 Information on the asylum procedures

In this part of this guideline you will find information concerning the asylum procedures. You will also find information concerning the Dublin procedure as well as concerning the possible BAMF-decisions for an application for asylum.

### 2.1 First Orientation

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- The asylum procedures are carried out by the Federal Agency of Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF). Before you are asked to present your personal reasons for seeking asylum, the BAMF checks whether another European country is responsible for you.
- You have finger prints in another European country or you have applied for asylum there, and your application has not yet been decided on or was negative? In such a case, the BAMF can start a Dublin procedure. You find information on the Dublin procedure in part 2.1.
- You have already received a protection status in another European country. In this case, the BAMF can order a transfer to that country. You find information on this case in part 2.2.
- In all other cases, the BAMF has to hear, examine and decide on your application for asylum. You find information on the hearing in part 2.3.
- In part 2.4 you find information on the positive decisions in the asylum procedures, and in part 2.5 on the negative decisions. Additional information on the asylum procedures is given in part 2.6.

#### **Important information**

Please inform the BAMF without delay in case your address changes. Check regularly, preferably daily, whether you have received mail. This is very important. Appointments are often sent in the short term. Moreover, the time for appealing against BAMF decisions is very short. When you receive mail from the BAMF, keep the envelope in any case. The date on it is decisive for the time-limit of bringing an action against the decision.

## 2.2 The Dublin procedure

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You have finger prints in another European country. Or you have applied for asylum there. Either your application has not yet been decided on or is was rejected. In such cases, the BAMF can start what is known as the “Dublin procedure.”

### ■ The Dublin hearing

When you receive an „invitation to a Dublin hearing“ this is NOT a hearing of your reasons for your decision to flee your country. Instead, the Dublin hearing examines whether you can be sent back to the European country in which you were first. During the hearing you can give reasons which oppose such an option.

#### **Prepare well for the Dublin hearing!**

You have family members in Germany? It is absolutely necessary to bring along their names, dates of birth and addresses. Are you sick? It is essential that you list the illnesses you suffer from and which medicines you take. If possible, bring a medical certificate along to the Dublin hearing.

#### **Important information**

You find a leaflet with information on the demands for medical certificates in asylum law here:

<http://www.fluechtlingsrat-thr.de/arbeitshilfen/beratungshilfen>

Recount in detail what happened to you in the country that you do not want to be sent back to. Mention if you were treated badly. Recount if you were detained. Relate if you did not get enough to eat. Mention also if there was no medical care. Report in as detailed a way as possible. Mention also how you felt.

Since you will not directly be asked for all this, you must mention it yourself at the end of the hearing. Moreover, relate in detail what you are afraid of in case you have to return to your country. Be aware of the fact that what you say is being recorded.

## ■ After the Dublin hearing

After the Dublin hearing you receive the Dublin decision (yellow envelope). It is possible that the BAMF decides that you can conduct the asylum procedures in Germany. However, it is also possible that you have to go back to the other European country. In this case, your application for asylum in Germany was rejected. You receive a letter from the BAMF which states that your application for asylum is inadmissible (“unzulässig”). You can bring legal action against this decision.

## ■ Time limits in the Dublin procedures

The BAMF has found that you have finger prints in another European country or that you applied for asylum there. It then asks the other country whether it can take you back. From the date of that country's agreement on, Germany has 6 months to send you there. In some cases, this period simply expires. If that happens, you can apply for asylum procedures in Germany. In increasingly more cases, the deportation to the country responsible (for you) according to the Dublin Regulation is an imminent danger. In some justified individual cases a church asylum can help to bridge the period in question. Whether a church asylum is granted is solely the decision of the community that carries out the church asylum.

### **Important information**

You are threatened with Dublin procedures. Get advice at a counselling center or by a lawyer specialized in the field. This is particularly advisable for Hungary, Italy, Croatia, Greece and Bulgaria or when your application for asylum in another European country was rejected.

## **2.3 Protection status in another European country**

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You already received international protection in another European country. You either received “refugee protection” according to the Geneva Convention on Refugees or what is known as “subsidiary protection.”

You are not allowed to hand in another application for asylum. However, the BAMF has to check whether there are any reasons why you must not be deported to that country.

It is possible that the BAMF decides that such an “obstacle to deportation” is given. It may, however, be that you have to return to the country in question (“application for asylum inadmissible” – “unzulässig”). You can bring legal action against this decision. Keep the envelope in any case. The date on it is decisive for the time-limit of bringing an action against the decision. The time for appealing against BAMF decisions is extremely short. Unfortunately - and different from the Dublin procedure - there are no time-limits for deportation which expire. That means that you can be permanently threatened with deportation.

### **Important information**

You face the threat of a transfer to another European country because in your asylum procedures you received the protection status there. Get advice as early as possible at a counselling center or by a lawyer specialized in the field. This is particularly advisable for Hungary, Italy, Greece and Bulgaria.

## **2.4 BAMF hearing**

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The hearing is the most important appointment in your asylum procedures. In the hearing, you should relate why you fled your country. You should also recount what you are afraid of in case you have to return. On the basis of what you say (the record), the BAMF examines your reasons for your flight as well as your credibility. **Prepare well for the hearing.**

### **Important information**

You find multilingual information on the hearing at the following links:

<http://www.asyl.net/index.php?id=337>

<http://www.lawclinicmunich.de/wie-bekomme-ich-hilfe/anhoerung>

<http://www.asylindeutschland.de/de/film-2/>

It can be useful to get additional advice at a specialized counselling center or a lawyer specialized in the field.

## 2.5 Positive BAMF decisions

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### ■ The 4 positive BAMF decisions

#### 1. Entitled to asylum

Politically persecuted persons who arrived in Germany by plane receive asylum. They get a residence permit for 3 years and the blue refugee passport.

#### 2. Recognition according to the Geneva Convention of Refugees

Persons who have the justified fear of personal persecution because of their race, religion, nationality, political conviction or their affiliation to a certain social group receive a recognition as refugees. They get a permit of residence for 3 years and the blue refugee passport.

#### 3. Subsidiary protection

Persons who present valid reasons that they are threatened by serious harm (e.g., because of war, the threat of torture or the death penalty) receive subsidiary protection. They get a residence permit for initially 1 year and have to try to get a passport from their own country.

#### 4. Prohibition of deportation

Persons who are threatened by human rights violations or by considerable concrete danger for their body, life or freedom (e.g., the danger of life-threatening impoverishment or because of a life-threatening or extremely serious illness) are given the prohibition of deportation. They receive the permit of residence for at least 1 year and have to try to get a passport from their own country.

### ■ Consequences of positive BAMF decisions

All positive BAMF decisions involve the fact that you get a permit of residence. As a rule, this is on application further extended by the Foreigners' Registration Office. You can find an apartment for yourself. By now at the latest you are entitled to an integration course. You change from the social welfare office to the job center.



## ■ Legal action in connection with positive BAMF decisions

You are of the opinion that your reasons for your flight have not received sufficient attention and that you are entitled to better protection? In this case, you can take legal action against the decision. However, legal action against obstacles to deportation leads to a prolongation of your asylum procedures. Do get advice if you want to take legal action against a positive BAMF decision. Consult a lawyer specialized in the field on the chances of success and the possible negative consequences of legal action. Pay attention to the time limits (2 weeks).

## 2.5 Negative BAMF decisions

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### ■ The three negative BAMF decisions

#### 1. The application for asylum is „unfounded“ („unbegründet“)

Your application for asylum was “rejected” because (allegedly) there were no reasons to substantiate one of the decisions presented in 2.4.

#### 2. Application for asylum “obviously unfounded” (“offensichtlich unbegründet“)

Your application for asylum was rejected as “obviously unfounded.” Possible reasons can be that you (allegedly) only came to Germany for economic reasons, that you (allegedly) handed in forged evidence or that you (allegedly) lied in the hearing. If you come from a country considered “safe” (Albania, Bosnia, Ghana, Kosovo, Macedonia, Montenegro, Senegal, Serbia), it is highly probable that your application for asylum will be rejected as “obviously unfounded.”

#### 3. Application for asylum “inadmissible” (“unzulässig“)

Your application for asylum was rejected as “inadmissible.” Possible reasons are that you already have finger prints in another European country or that you have made an application for asylum in that country. You find more information on that topic in chapter 2.1 (Dublin procedure). It is also possible that you already have a protection status in another European country. You find more information on this topic in chapter 2.2 (Protection status in another European country).

## ■ Consequences of negative BAMF decisions

If your application for asylum is rejected, you are asked to leave Germany. You can take legal action against it. Your permission to stay status is taken away from you and you receive a temporary withholding of deportation status.

### **Important information**

If your application for asylum was rejected, get advice as fast as possible at a counseling center or a lawyer specialized in the field.

## ■ Legal action in connection with negative BAMF decisions

Your application for asylum was rejected. You can seek legal action against the decision. You can do so yourself at the competent administrative court. You find which court is responsible in this case in the part on legal remedies at the end of your BAMF decision. However, in most cases it is better to take a lawyer specialized in the field for your legal action.

### **Time-limits for appealing**

If your application for asylum was rejected as “unfounded,” you can seek legal action within 2 weeks. If the rejection was qualified as “obviously unfounded” or “inadmissible,” you have only 1 week to take legal action.

### **Emergency appeal**

Your application for asylum was rejected as “obviously unfounded” or “inadmissible.” If you take legal action, it does not have a suspensory effect. That is the seeking of legal action does not protect you from deportation. It has to be checked whether in addition to legal action an emergency appeal should be made so that you are protected.

## 2.7 Additional information on the asylum procedures

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### ■ Very long asylum procedures

You have waited for the date of a hearing for a very long time? Or your hearing was held a very long time ago, but you have not yet received a decision? It can help to threaten the BAMF with the action for failure to act or to hand in the action for failure to act against the BAMF. The action for failure to act is a legal action because the BAMF does not act. However, you should only press for a decision if your application for asylum has good chances to succeed.

If this is the case with you, get advice at a counselling center or a lawyer.

### ■ Withdrawal of an application for asylum

You are in the asylum procedures and consider a voluntary departure. Do not sign hastily at the Foreigners' Registration Office that you withdraw your application for asylum. Make sure that you seek advice at a competent counselling center before you withdraw your application for asylum. And remember that it is not possible to enter all countries just like that (e.g., Syria).

## 3 Access to education and work

In the following, you find initial information on the access to work (chapter 3.1) and education (chapter 3.2) with the permission to stay status.

### 3.1 Work with permission to stay status

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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 permission to stay 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

In the first 3 months of your stay in Germany or while you live in the preliminary reception center (for a maximum of 6 months), you are not allowed to work. After the third month of your stay in Germany or when you have left the preliminary reception center you get access to the job market. In almost all cases you 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

You come from what is known as a "safe" country (Albania, Montenegro, Bosnia, Kosovo, Serbia, Macedonia, Ghana, Senegal) and you made your application for asylum after 31.08.2015. In this case, the Foreigners' Registration Office cannot give you a work permit.

### ■ I have found work. – What next?

You have found work. The Foreigners' Registration Office responsible for you has to enter into your permission to stay 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, 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 for it 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 permission to stay 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.

## 3.2 Education with a permission to stay status

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### ■ 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. Information on and assistance with the registration at a Kita are provided by the youth welfare office and the social welfare office responsible.

### ■ School

In Thuringia, there is compulsory education for all children from their 6<sup>th</sup> 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/aner kennungs-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 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/>

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Flüchtlingsrat Thüringen e.V.

Mai 2017

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Das Thüringer Netzwerk BLEIBdran 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.

