

Access to the labour market for refugees

The opportunities for refugees to gain access to the labour market, and the conditions under which access is granted, fundamentally depend on their residence status at any one time. The various different residence titles are listed below:

Residence status 1: persons with a residence permit (*Aufenthaltserlaubnis*)



Source: Bundesamt für Migration und Flüchtlinge

The Federal Office for Migration and Refugees (BAMF) decides in the asylum proceedings on four different types of protection, namely the right of asylum, refugee protection, subsidiary protection and prohibition of deportation. Depending on the type of protection, these persons are granted a **residence permit** for a term of one to three years with the possibility of an extension or transformation into permanent residence.

Recognised asylum applicants who have received a **positive notice** from the Federal Office may as a matter of principle work on an employed basis **without restrictions**, and may also engage in self-employment.

If only a **prohibition of deportation** has been determined, the immigration authority decides in the respective individual case whether **permission to engage in work** is issued.

It will be noted on the residence permit as well as on any additional sheet that has been issued whether such permission has been granted.

Residence status 2: persons with permission to reside (*Aufenthaltsgestattung*)



The Federal Office grants **permission to reside** to asylum applicants who are still in the asylum proceedings. This entitles them to live in Germany until the asylum proceedings have been completed, that is **until the decision has been taken on the asylum application**, and to work subject to specific conditions.

Source: Bundesamt für Migration und Flüchtlinge

Residence status 3: persons with temporary suspension of deportation status (*Duldung*)



Persons who are not or are no longer in the asylum proceedings, or whose applications have been turned down but whose deportation has been suspended, receive from the immigration authority a “**certificate of suspension of deportation**”, the so-called *Duldung*.

Source: Bundesamt für Migration und Flüchtlinge

Persons with **permission to reside** or **temporary suspension of deportation status** are subject to special conditions for access to the labour market. These are listed below.

What conditions apply to access to the labour market for persons with permission to reside or temporary suspension of deportation status?

Before persons with permission to reside or temporary suspension of deportation status can take up work, they must obtain **permission to engage in work** from their **immigration authority**. The immigration authority decides in the respective individual case whether **permission to engage in work** is granted.

The authorisation of the local Employment Agency is also necessary as a matter of principle. The immigration authority will obtain the **authorisation of the Employment Agency**, and the individual does **not** need to obtain such authorisation themselves.

Once a person has lived in Germany for **four years**, the authorisation of the Employment Agency is no longer required as a rule.

Specific groups of individuals may however not engage in employment as a matter of principle.

Persons with permission to reside who are obliged to live in a reception facility may not engage in employment as a matter of principle. The **obligation to live in a reception facility (AE-Wohnverpflichtung)** applies for **six weeks**, and can be extended to a **maximum of six months**.

Persons from **safe countries of origin**, such as the Member States of the European Union, Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal and Serbia, who filed their **asylum applications after 31 August 2015** are obliged to live in reception facilities **during** the entire **asylum procedure** (and if their asylum application is turned down, in certain cases until leaving the country), and are therefore not permitted to engage in employment.

Persons who have a **certificate of suspension of deportation** may not engage in employment if they entered the country in order to obtain benefits under the **Asylum-Seekers' Benefits Act (Asylbewerberleistungsgesetz)** if they prevent residence-terminating measures by for instance providing misleading information with regard to their identity or nationality, or if they come from a safe country of origin and their asylum application was filed after 31 August 2015 and has been turned down.

From what time do persons with permission to reside or temporary suspension of deportation status receive authorisation to take up employment?

Persons with permission to reside can be given **permission to take up employment after three months**.

The three-month period starts on the day on which **an asylum request** is **made** to the border authority, an immigration authority or the police.

With regard to persons who entered Germany from a safe third country without a necessary residence title, such as a visa, the period however does not begin until **an asylum application has been formally lodged** with the Federal Office for Migration and Refugees.

With regard to persons who have temporary suspension of deportation status, the waiting period commences when this document is issued, any previous residence being credited towards this time.

Detailed information is provided by the competent immigration authorities.

What are the criteria underlying the authorisation of the Employment Agency?

The authorisation of the Employment Agency to take up work is also known as a priority review. Three criteria are examined here: the impact of the employment on the labour market; whether priority applicants are available, and the concrete working conditions.

The priority review therefore serves to clarify that occupying a post with a foreign applicant does not have any adverse impact on the labour market and that no priority employees (German nationals, citizens of a Member State of the EU or of the EEA or other priority foreign workers) are available for the vacant post. The determination that occupying vacant posts with foreign workers is justifiable in terms of labour market and integration policy can also be made by the Federal Employment Agency globally for individual professional groups or industries. These can be found on the “positive list” at www.arbeitsagentur.de/positivliste.

The separate review of the working conditions is based on the specific job, and particularly verifies the earnings and the hours worked. This guarantees that persons with permission to reside or who have temporary suspension of deportation status benefit from the same conditions on the labour market as persons with an unrestricted work permit.

The first two criteria of the priority review cease to apply once a person has lived in Germany for 15 months, and only the comparability of the working conditions is reviewed until four years of residence have been completed, at which time employment becomes completely exempt from authorisation.

Are there exceptions when the authorisation of the Employment Agency is not necessary?

Yes. There are **certain types of employment** not requiring the authorisation of the Employment Agency from the outset. These include vocational training, internships for further training purposes, voluntary service or highly-qualified persons taking up work. Whether the specific employment is exempt from authorisation is verified by the immigration authority in each individual case.

The three-month period still applies to employment that is not subject to authorisation for persons with permission to reside, and they may not take up employment during this period. The three-month period does not apply to persons with temporary suspension of deportation status.

May persons with permission to reside or temporary suspension of deportation status work for a temping agency?

Yes. Persons who have permission to reside or temporary suspension of deportation status may **as a matter of principle** temp or take up **employment as temporary workers**. However, the **same criteria apply here as to permanent employment** in terms of whether or not prior authorisation or a priority review is necessary. Detailed information is provided by the local immigration authorities and the Employment Agency.

May persons with permission to reside or temporary suspension of deportation status engage in self-employment?

Persons who have permission to reside may not engage in self-employment as a matter of principle.

By contrast, persons who have temporary suspension of deportation status may engage in self-employment if the immigration authority has explicitly authorised it.

How can employers recognise whether a person with permission to reside or temporary suspension of deportation status may work for them?

Persons with permission to reside and persons with temporary suspension of deportation status can identify themselves vis-à-vis potential employers with their respective documents. Both the permission to reside and temporary suspension of deportation document can be marked by the competent immigration authority with an endorsement providing information on permissible gainful employment. It is always recommended for the job-seeker to discuss the specific job offer with their competent immigration authority.

Does taking up employment or vocational training lead to a residence title being issued?

Persons with permission to reside do **not** receive a **separate right of residence** when they take up employment or training. The individual's efforts towards becoming integrated are not taken into account **when considering the asylum application** with regard to granting protection under the law on asylum.

When it comes to persons with temporary suspension of deportation status, by contrast, the individual **circumstances and efforts towards integration are taken into account** when extending temporary suspension of deportation and issuing a residence title.

Do persons with permission to reside or temporary suspension of deportation status lose their benefit entitlements under the Asylum-Seekers' Benefits Act (*Asylbewerberleistungsgesetz*) when they are in employment?

The earnings are deducted from the benefits granted under the Asylum-Seekers' Benefits Act. The social welfare office with local responsibility will provide more information.

There may be an entitlement to a training scholarship when taking up vocational training, depending on the type of training and the personal circumstances. This leads to the cancellation of the entitlement under the Asylum-Seekers' Benefits Act, but there may still be an entitlement to housing benefit. Further information on vocational training and promotion can be obtained from the careers advisors at the local Employment Agency, and further information on social security is available from the municipal agencies such as the housing benefit office or the training scholarships (*Bafög*) office.

Is an obligatory place of residence an obstacle to taking up work?

No. The **geographical restriction on residence** for persons with permission to reside, known as the residence obligation (*Residenzpflicht*), **ceases to apply** after three months, unless the obligation to live in a reception facility continues to apply. They are then free to choose where they live as a matter of principle.

The immigration authority may however order the geographical restriction once more at any time if the individual has come to the notice of the police or specific measures are required in order to return them to their country of origin. The same applies to persons who have temporary suspension of deportation status.

The residence obligation is replaced by a domicile requirement (*Wohnsitzauflage*).

Does the domicile requirement preclude taking up employment?

The “**domicile requirement**” (*Wohnsitzauflage*) means that individuals who draw social benefits may not freely choose where they live. As a matter of principle, displaced persons are obliged to have their habitual residence (domicile) in the Land to which they were allocated in order to apply for asylum during the first three years from recognition or receiving a residence permit. The domicile requirement can be rescinded if employment subject to mandatory social insurance is taken up amounting to at least 15 hours per week (section 12a subsection (5), sentence 1, No. 1 of the Residence Act [*AufenthG*]).

Do persons with permission to reside and persons with temporary suspension of deportation status receive support in looking for a job?

Yes. Persons with permission to reside and persons with temporary suspension of deportation status can report to their local Employment Agency as job-seekers. The Employment Agency is their contact and can provide them with advice.

What possibilities of language promotion exist for persons with permission to reside and for persons with temporary suspension of deportation status?

Persons with permission to reside, as well as persons with temporary suspension of deportation status who have good prospects to remain, have also had access to **integration courses** since November 2015.

All the necessary information, as well as the preconditions for access, can be found on the website of the Federal Office for Migration and Refugees:

<http://www.bamf.de/EN/Willkommen/DeutschLernen/IntegrationskurseAsylbewerber/integrationskurseasylbewerber-node.html>.

A list of **integration course venues** as well as information on the many additional **integration services** or **advice centres** available close by can be found on the website belonging to the information system of the Federal Office for Migration and Refugees (Web-GIS): <http://webgis.bamf.de/BAMF/control>.

Moreover, **vocational language promotion** (within the “ESF-BAMF” courses) can be provided to persons with permission to reside or whose deportation has been temporarily suspended. Attendance is contingent on access to the labour market and language knowledge at a minimum of level A1 (GER). The courses, which are organised and sponsored via the Federal Office on behalf of the Federal Ministry of Labour and Social Affairs (BMAS), combine German lessons, vocational skill-building and opportunities to serve internships.

The local **right-to-remain networks** are responsible for placing candidates in courses. More information is also provided by the Information Service of the Federal Office for Migration and Refugees, language schools, refugee advice centres, as well as the local advisors of the Federal Office.

The **Information Service** of the Federal Office can be reached by telephone on +49 911 943 – 6390 from Monday to Friday from 9 a.m. to 12 a.m.

The ESF **hotline on vocational language courses** can be reached by telephone on +49 221 92426 – 400 and at the following e-mail address: esf-verwaltung@bamf.bund.de. You can find more information on the ESF-BAMF courses here:

<http://www.bamf.de/EN/Willkommen/DeutschLernen/DeutschBeruf/deutschberuf-node.html>

What possibilities exist for young people whose deportation has been suspended and for asylum applicants whose applications have been turned down as a result of the 3+2 arrangement which the Integration Act (*Integrationsgesetz*) has brought about?

The **3+2 arrangement** has created a further possibility for people to have their deportation suspended, thus enabling those in training and their employers to plan for the future because it

secures residence for the duration of the training. Moreover, these trainees can receive a **two-year residence permit once they have successfully completed their training** if they are able to find work commensurate with the training which they have undergone. Parliament has linked the issuance of suspension of deportation with a variety of conditions. No measure to terminate residence may be immanent; the person concerned may not come from a safe country of origin, and may not have caused the termination of residence through his or her conduct. (section 60a subs. 2 sentence 4 and section 18a subs. 1a of the Residence Act [AufenthG])

What happens after the 3+2 arrangement has expired? Residence may be extended.

On what laws is access to the labour market for persons with permission to reside and persons with temporary suspension of deportation status based?

The legal basis underlying access to the labour market for persons with permission to reside and persons with temporary suspension of deportation status is set out in sections 47 and 59 to 61 of the Asylum Act (Asylgesetz – AsylG), sections 39, 40, 60a and 61 of the Residence Act (Aufenthaltsgesetz – AufenthG), as well as sections 26 and 32 of the Employment Ordinance (Beschäftigungsverordnung – BeschV).

Section 60a subs. 6 of the **Residence Act (Aufenthaltsgesetz – AufenthG)** regulates when employment, which includes self-employment (section 2 subs. 2 of the Residence Act), may not be permitted; conversely, employment, and hence also self-employment, may otherwise be permitted.

The changes which were brought about by the Asylum Acceleration Act (*Asylbeschleunigungsgesetz*) of 23 October 2015 have now also opened up the integration courses to asylum applicants with good prospects to remain. These are regulated in **section 44 of the Residence Act (Aufenthaltsgesetz – AufenthG)**. Work-related promotion of German in accordance with **section 45a of the Residence Act (Aufenthaltsgesetz – AufenthG)** can also be provided, following on from the integration course.

What is the impact of the new amendments to the Integration Act (Integrationsgesetz) on the possibilities for displaced persons to gain access to the labour market?

Termination of in-company training

Displaced persons who have a training place receive secure residence status. Even if they drop out of training, their right of residence is now to be extended by six months on a one-off basis in order to enable displaced persons to seek new employment (section 60a subsection (2), sentence 4, of the Residence Act).

The labour market programme entitled "Refugee integration measures"

In addition to language courses, it is possible to work within the labour market programme entitled "Refugee integration measures". These activities entail compensation for additional expenditure, but

do not constitute an employment relationship (section 5a of the Asylum-Seekers' Benefits Act [AsylbLG] and section 421a of Book III of the Social Code [SGB III]).