

The new right to residence of opportunity (Chancenaufenthalt)

On 01.01.2023, several amendments to the law and a new law in the Residence Act (AufenthG) are to come into legal force. Previous regulations on the right to stay, such as §25a of the Residence Act and §25b of the Residence Act, will be changed. New is §104c AufenthG - the residence of opportunity (Chancenaufenthalt).

On the next pages you will find informations about §104 AufenthG (p.1-3), §25a AufenthG (p.4) and §25b AufenthG (p.5). Please note that this is only general information and cannot replace detailed individual advice on the residence law by lawyers or advice centres.

§104c Residence Act: The residence of opportunity

According to the coalition agreement of the Federal Government, the residence of opportunity is intended to end the current practice of issuing Duldungen continuously. The residence of opportunity according to §104c AufenthG is a temporary right to stay for 18-month. These 18 months are meant for obtaining a passport and taking up a job in order to be able to secure living costs. After 18 months, the residence regulations according to §25a AufenthG or §25b AufenthG can take effect if the requirements are met.

Requirements

Status of Duldung

One must have the legal status of a so called „Duldung“. Even without a certificate of a "Duldung", you are generally considered to have this status.

5 years' previous residence

One must have resided in Germany for at least five years without interruption on 31.10.2022 with a permit, residence permit or toleration. This applies to all persons who entered the country before 31.10.2017. Interruptions of up to three months are harmless ([See the Explanatory Statement to the Law on p. 44](#)). Periods of toleration/Duldung due to unclear identity according to §60b AufenthG also count towards the five years of prior residence.

No offences exceeding 50/90 TS

No offences exceeding 50 daily sentences (general offences) or 90 daily sentences (offences under law on foreigners, e.g. passportlessness). Offences under juvenile criminal law are not as problematic. However, in the case of high penalties or juvenile penalties (custodial sentences), the immigration authorities may also refuse to grant a stay of opportunity.

No repeated false statements or deception about identity

The §104c Residence Act will not be given if someone has repeatedly and intentionally made false statements or deceived about identity/citizenship. The false information must be the only cause for the prevention of deportation.

This is not required for the residence permit

clarification of identity, passport, means of subsistence or visa procedure is required in advance. The immigration authorities are not allowed to require any of these when applying for a residence permit.

Application, duration and extension

Apply yourself

You must apply for the residence permit yourself. To do so, submit an informal written application to the responsible immigration authority and sign this application. This can be done by fax, e-mail or mail. Hint: Keep the fax report, e-

mail confirmation or confirmation of registered mail. Here you can find a [sample letter/Musteranschreiben](#) from the Munich Refugee Council.

Apply now

The law will come into legal force on 01.01.2023. According to information from the [Federal Ministry of the Interior](#), the application can be submitted from 01.01.2023. An application for §104c AufenthG can be submitted in the next three years (01.01.2023 - 02.01.2026).

18 months

The stay of opportunity is valid for 18 months.

No extension

The residence permit cannot be extended. After the 18 months, people with a residence permit has to either fulfil the requirements for §25b or §25a of the Residence Act or, if the requirements are not met, the person falls back into the status of Duldung.

Procedural toleration

According to the [information from the Federal Ministry of the Interior](#), persons do not receive a fictitious certificate after submitting an application. The application does not create any new grounds for toleration. It is possible that the foreigners authorities will not issue a toleration certificate until a decision has been made. If someone does not have a toleration certificate: You can try to apply for a procedural toleration according to §60a Abs. 2 S. 1 AufenthG.

Risk of deportation

[The Federal Ministry of the Interior](#) has instructed the foreigners authorities not to carry out any measures terminating residence if someone has filed an application under §104c AufenthG. However, if the application is obviously unfounded, e.g. if someone has been in Germany for significantly less than five years, then there may still be a threat of deportation.

The Bavarian Ministry of the Interior has informed the immigration authorities in a letter dated 05.12.2022 how they should proceed until the right of opportunity to stay comes into force. It says: "*[...] cases of potentially benefiting foreigners are to be treated with special circumspection*". [...] Furthermore, in cases where a toleration or its preconditions cease to apply in the period between the decision of the Bundestag and the entry into force of the law, the granting of a discretionary toleration is to be examined particularly carefully in the light of the decision of the federal legislature." Nevertheless, some people, who do not clearly meet the preconditions may still be threatened with deportation.

Potential problems

No Duldung

Sometimes immigration authorities do not issue "toleration certificates/Duldungsbescheinigungen", but stamp them as "expired", issue border crossing certificates/Grenzübertrittscheinigung or no papers at all. [The Federal Ministry of the Interior](#) states in its instructions that you must be tolerated at the time of application. A certificate of toleration is not absolutely necessary for this. Hint: Immediately apply in writing for a toleration certificate at the immigration authority. When doing so, refer to the letter of the Bavarian Ministry of the Interior to the governments and foreigners authorities dated 05.12.2022. In Fact, periods during which the immigration authority has withdrawn the toleration in the last few years should count and also be harmless. We will have to wait and see whether the authorities see it that way.

Interruption of residence in Germany

The bill §104c AufenthG requires that the applicant [...] must have resided in the territory of the Federal Republic of Germany for five years without interruption on the basis of toleration, permission or a residence permit. According to the explanatory memorandum, interruptions of up to three months are harmless.

Penalty orders/criminal proceedings

If one receives a penalty order for e.g. passportlessness or illegal entry, before or during the application for residence under §104c AufenthG, seek legal representation in order to take action against the penalty order.

False statements about identity or deception

A residence permit according to §104c AufenthG should only be denied if the current residence is tolerated due to false identity information. Previous false information already cleared should be harmless. It remains open whether the immigration authorities take a similar stand on this topic. Likewise, missing or false identity details of the parents should not be blamed on their children.

Family reunion

Unfortunately, the residence permit according to § 104c AufenthG does not entitle the holder to family reunification.

Further sources of information

[Application notes for the launch of the Chancenaufenthaltsrecht vom 23. Dezember 2022](#) (Bundesministerium des Inneren und für Heimat)

[Information Sheet on the new ChancenAufenthalt](#) (Bundesministerium des Inneren und für Heimat)

[Information and notes on the §104c AufenthG, §§ 25a + 25b AufenthG](#) (Diakonie Deutschland)

[Checklist §104c AufenthG](#) (Diakonie Deutschland)

[Previous draft law 29. September 2022](#) (Changes of the Bundestag's Committee on Internal Affairs of 29 November 2022 are not yet included here, however).

[Informations sheet on the new Chancenaufenthalt](#): Münchner Flüchtlingsrat

[Working aid on the right of residence – the planned changes](#): Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender e.V. (GGUA)

[Letter from the Bavarian Ministry of the Interior to the governments and foreigners authorities 05. Dezember 2022](#)

[Written statement by the lawyer Anna Fröhlich on the letter from the Bavarian Ministry of the Interior 15. Dezember 2022](#)

§25a Residence Act: Residence for well-integrated youths and young adults (14-27 years)

Section 25a of the Residence Act has been in existence for some time. With the new law, the federal government has slightly changed this residence regulation for adolescents and young adults. Unfortunately, the situation has worsened slightly.

Requirements

Age

Persons between the ages of 14 and 27 can apply for a residence permit.

Duration of residence

You must have been in Germany for at least three years on a permitted, approved or tolerated/geduldet status.

Duldung

People must be "tolerated/geduldet". Even without a "Duldungsbescheinigung" one can usually be considered to be "tolerated" by law.

Pre-toleration period/Vorduldungszeitraum

From 01.01.2022, one must be tolerated/geduldet for at least 12 months in order to be eligible for §25a AufenthG. This is new and a significant worsening. This is because there is a risk of deportation during this period.

School/education

One must have successfully attended school for at least three years or be able to prove that they have acquired a school-leaving-certification or professional qualification (Berufsabschluss) in Germany.

Clarification of identity

The identity must be clarified. In most cases, the immigration authorities also require a national passport.

No criminal offences

No offences exceeding 50 daily sentences (general offences) or 90 daily sentences (offences under aliens law, e.g. passport violation).

Family

According to §25a Abs. 2 AufenthG, the parents of a minor child may also be granted residence. To do so, they must not have deceived about their identity and must be able to financially sustain themselves.

Hints:

When applying for §25a Residence Act, enclose letters of recommendation from school, training place, leisure clubs or friends. It also makes sense to have already completed the test "Living in Germany/Leben in Deutschland".

Further information

[Information and notes on the §104c AufenthG, §§ 25a + 25b AufenthG](#) (Diakonie Deutschland)

[Checklist for §25a AufenthG](#) (Diakonie Deutschland)

[Working aid on the right of residence – the planned changes:](#) Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender e.V. (GGUA)

[The residence permit according to §25a AufenthG:](#) Refugee Council of Lower Saxony

§25b Residence Act: Residence with sustainable integration

Section 25b of the AufenthG has been in existence for some time. With the new law, the Federal Government has slightly changed this residence regulation for sustainable integration. Section 25b of the Residence Act applies as a follow-up option once the 18-month period of opportunity has expired.

Requirements

Duration of residence

You must have been in Germany for at least six years (single persons) or four years (families with minor children) on a permitted, approved or tolerated/geduldet basis.

Duldung

One must be "tolerated/geduldet". Even without a "Duldungs"-certificate, you are generally considered to be "tolerated".

Clarification of identity

The identity must be clarified. In most cases, the foreigners authorities also require a national passport.

No criminal offences

No offences exceeding 50 daily sentences (general offences) or 90 daily sentences (offences under aliens law, e.g. passport violation).

Commitment to the free democratic basic order & basic knowledge of the legal and social order.

You can prove this by taking the "Living in Germany/Leben in Deutschland Test", the "Citizenship Test" or recognised school-leaving certificates.

Basic means of subsistence

The livelihood for oneself as well as the family must be mostly secured. It is also sufficient if the livelihood can be secured in the future, e.g. if there is no work permit yet but an employment contract already exists. There may be exceptions in the case of illness, advanced age or ongoing education.

Language

The immigration authorities require at least A2 level.

Hints

When applying for §25b AufenthG, enclose letters of recommendation from school, training, leisure clubs or friends.

Further information

[Information and notes on the §104c AufenthG, §§ 25a + 25b AufenthG](#) (Diakonie Deutschland)

[Checklist for §25b AufenthG](#) (Diakonie Deutschland)

[Working aid on the right of residence – the planned changes:](#) Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender e.V. (GGUA)

[The residence permit according §25b AufenthG:](#) Refugee Council of Lower Saxony