

DEPORTATION & RESIDENCE

„INFORMATION,
WARNINGS &
PERSPECTIVES“

CONTENT

1. Introduction

Collective deportations and announcements of these dates often lead to great uncertainty and fear of one's own deportation. Therefore, we want to explain here who is at risk of being deported but also who is not. With these warnings, we aim to inform about the rights of refugees and try to alleviate some of the fear of deportation. It is crucial to determine whether someone is actually threatened with deportation. If so, there are legal options in some cases to prevent deportation. In such situations, consultation with lawyers or advisory services is necessary.

Additional valuable support can come from volunteers, friends, school, or employers. The larger the network, the better.

Please note: This overview does not claim to be comprehensive and does not replace legal advice on residence rights provided by advisory services or lawyers.

2. The following individuals are not at risk

Asylum seekers and recognized refugees

(with a fictitious certificate or residence permit according to § 25 para. 1 and para. 2 sentence 1 AufenthG) do not need to fear deportation. The residence permit is issued for 3 years and is usually extended. After 5 years, under certain conditions, an unlimited residence permit can be granted.

Subsidiary protected individuals and persons with a deportation ban

(with a fictitious certificate or residence permit according to § 25 para. 2 sentence 1 as well as § 25 para. 3 AufenthG) also do not need to fear deportation. The residence permit is initially granted for one year and is usually extended. After 5 years, under certain conditions, an unlimited residence permit can be granted.

Asylum seekers in the ongoing process

(with temporary residence permit „Aufenthaltsgestattung“) cannot be deported as long as their asylum procedure is still in progress. Only when a negative decision from the Federal Office has been delivered, and the appeal period has expired, there may be a risk of deportation. However, it is possible to file an appeal against a negative decision. It is crucial to adhere to the appeal deadline in such cases.

Family members in the asylum procedure

In nuclear families, there is no immediate danger of deportation to the home country if family members are still in the asylum process and possess a temporary residence permit „Aufenthaltsgestattung“. As long as a family member in the nuclear family has an ongoing procedure with protection against deportation, minor children, parents of minor children, or spouses generally cannot be deported.

In case of doubt, please consult an advisory service or lawyer.

Rejected asylum seekers who have filed an appeal against the decision

(and still have temporary residence permit „Aufenthaltsgestattung“) cannot be deported as long as the judicial process is ongoing. Deportation may only be a possibility if the court issues a negative judgment, and the decision becomes legally binding. The appeal process often takes at least a year.

Caution: In cases of appeals against the rejection of a subsequent application or appeals against a negative BAMF decision as „obviously unfounded“ or „inadmissible“ (usually following the Dublin III Regulation), there is no automatic protection against deportation. These individuals can be deported unless deportation protection (suspensive effect) is determined through an urgent application. It is crucial to seek advice from an advisory service or lawyer in these situations.

Unaccompanied minors are not deported

However, they may face the risk of losing granted deportation protection when they reach the age of majority (18th birthday). Upon reaching adulthood, they might once again be at risk of deportation. It is essential to seek advice from an advisory service or lawyer well in advance.

Pregnant individuals in maternity protection

(6 weeks before birth and 8 weeks after birth) are protected from deportation if the immigration authorities have evidence of their pregnancy. Typically, this evidence is provided through the maternity record (Mutterpass) or a certificate from a gynecologist. Pregnant individuals with high-risk pregnancies may also receive a deportation ban before the start of the maternity protection period if they submit a medical certificate and apply for a deportation ban.

Individuals in training with a training permit „Ausbildungsduldung“

(according to § 60c AufenthG): If individuals with a rejected asylum application are enrolled in a qualified training program and have obtained a „training permit,“ deportation is not allowed. Caution: Individuals in training without this „training permit“ are not protected from deportation.

Individuals with a work permit „Beschäftigungsduldung“

(according to § 60d AufenthG) cannot be deported as long as they hold this permit. The work permit is typically granted for 30 months. Afterward, it can be extended, or a residence permit can be applied for.

Individuals with a suspension of deportation (Duldung) for legal reasons

also cannot be deported. Legal reasons may include: inability to travel, family reasons, ongoing school year. These reasons must be substantiated with certificates, marriage certificates, transcripts, etc., and presented to the immigration authorities. This protection applies only once it has been examined and recognized by the im-

migration authorities.

Practical tip: If you are unsure about the type of suspension of deportation (Duldung) you have, inquire in writing with the relevant immigration authorities or seek assistance from a law firm or an advisory service.



Individuals with a residence permit

(for example, a residence permit according to §§ 18a, 18b, 19c, 19d, 25a, 25b, 25 para. 5, or 23a AufenthG) cannot be deported. The residence permit is initially granted for one year and is usually extended upon application. After 5 years, an unlimited residence permit can be granted.

3. The following individuals are generally at risk:

The following individuals are generally at risk. It is always a case-by-case decision whom the immigration authorities deport. This does not necessarily mean that deportation is always imminent for these individuals, but they could theoretically be deported at any time if they take no action.

Individuals with an obligation to leave the country

People whose asylum application has been definitively rejected are generally at risk of deportation. This includes individuals with a suspension of deportation (Duldung) according to §§ 60a or 60b of the Residence Act, a border-crossing certificate (Grenzübertrittsbescheinigung or GÜB), or no residence document at all. Caution is particularly advised if the immigration authorities no longer issue papers or stamp them as „invalid,“ revoke work permits, schedule appointments with the respective embassy, or inform about appointments for personal appearances. Please consult an advisory service or lawyer.

Long-term tolerated individuals with an obligation to leave the country

In numerous cases, individuals whose asylum applications were rejected many years ago, and who have since been granted a suspension of deportation (Duldung), are also at risk of deportation. They have been living here for a long time, often had a job and their own apartment. These individuals often have lost contact with their lawyers, volunteers, or advisory services. They should definitely apply for a residence permit if they meet the requirements (see 6. „What protects against deportation? - Prospects for staying despite a negative asylum procedure“).

Individuals with a rejection as „obviously unfounded“

The appeal period for this type of rejection is shorter, and filing an appeal does not protect against deportation. This often applies to individuals from so-called Safe Countries of Origin. It is crucial to consult with a lawyer or advisory service immediately.

Warning about deportation detention: Unfortunately, authorities now find it relatively easy to place individuals with an obligation to leave the country in deportation detention or pre-deportation custody. After being detained, it is challenging to establish contact with family, friends, or lawyers. We recommend carrying important phone numbers (such as those of a lawyer or a trusted person) on a separate piece of paper, as phones are often confiscated during detention. For supporters, having a signed power of attorney in the name of the at-risk individual can be helpful in case of detention.



4. Can individuals without a passport or birth certificate be deported?

Yes, in some countries, individuals can be deported without a passport or birth certificate. These countries have agreements with the German government or the European Union. Such agreements can simplify deportations without a passport or birth certificate. Some countries of origin, in collaboration with immigration authorities in Germany, conduct hearings for identity verification. Whether a travel document is issued thereafter depends on the willingness to cooperate of the respective countries of origin.

Practical Tip on Identity Clarification: Identity clarification is crucial for all residence-related procedures. During the asylum process, you do not need to and should not go to the embassy of your home country to apply for your passport. Nevertheless, it is important to address identity clarification during the asylum process, for example by obtaining birth certificates. It is helpful to document all actions taken to prove cooperation before the immigration authorities. Those who have provided false information to authorities should seek advice from a counseling center or lawyer. Many people are afraid to obtain identity documents or passports to avoid participating in their own deportation. On the other hand, a lack of cooperation hinders the potential issuance of residence permits. **Please consult a counseling center or lawyer.**



5. Indicators of an impending deportation

For the immigration authorities, carrying out a deportation is very time-consuming and expensive. Therefore, usually, every effort is made initially to encourage the person to depart voluntarily. If the person does not leave voluntarily after a certain period, various measures are taken to exert pressure on them to obtain their passport and depart voluntarily. In the background, the immigration authorities work on obtaining replacement travel documents.

In Bavaria, the State Office for Asylum and Repatriation and the Central Foreigners' Authorities of the administrative districts are particularly committed to ensuring that individuals with an obligation to leave the country depart. If an asylum application is rejected, the local immigration authority typically transfers the case to the Central Foreigners' Authority. They have greater capacities for deportation preparation. However, it also occurs that individuals are deported by local immigration authorities.

These warning signs should be taken seriously, and you should promptly seek advice from counseling centers and a law firm to get proper guidance:

- Monetary benefits are reduced.
- Initiation of criminal proceedings due to lack of a passport.
- Restrictions on your freedom of movement - residence obligation limited to the location of your immigration authority.
- Invitations to embassy hearings or hearings with representatives of your state for identity clarification.
- Shorter validity period of the suspension of deportation (sometimes only a few days).
- Revocation of work permit.
- Revocation of suspension of deportation, not extended, or stamped as „invalid.“
- Issuance of a border-crossing certificate.
- No documents are issued at all.
- The immigration authority directly informs you that you will be deported soon or in the near future.

6. What protects against deportation?

Residence perspectives despite a negative asylum

Even if the asylum process has resulted in a negative decision, there is still the possibility for individuals who had a suspension of deportation for a long time to obtain a residence permit. This must be **independently** applied for at the immigration authorities. Please contact a counseling center or legal counsel for assistance.

Residence regulations for adolescents and young adults according to § 25a AufenthG

All refugees who have been living continuously in Germany for 3 years with a temporary residence permit, suspension of deportation (Duldung), or a residence permit can apply for a residence permit for well-integrated adolescents and young adults between the ages of 14 and 27. They must have either attended school for 3 years or already obtained a school or vocational qualification. The identity must be clarified, and ideally, the passport should be available at the time of application. Additionally, no relevant criminal offenses should exist. Moreover, you must have held a suspension of deportation for at least 12 months (Note: A suspension of deportation according to § 60b AufenthG for individuals with an unclear identity does not count here). Minors may also be able to secure residence for their parents and underage siblings through this regulation.

Residence regulations for adults according to § 25b AufenthG

All refugees who have been living continuously in Germany with a temporary residence permit, suspension of deportation (Duldung), or a residence permit for 6 years (for singles) or 4 years (for individuals with a minor child in the household) and are well-integrated can apply for a residence permit. To do so, they must present a passport, largely secure their livelihood, and demonstrate German language skills (A2 level). In certain cases, exceptions to the livelihood requirement are possible, such as for single parents or individuals unable to work. For more information, contact a counseling center or lawyer. No convictions for crimes with more than 50 daily rates under general criminal law or 90 daily rates under immigration criminal law (e.g., conviction for lack of a passport) should exist.

„Chancenaufenthaltsrecht“ according to § 104c AufenthG

All refugees who have been continuously residing in Germany with a temporary residence permit, suspension of deportation (Duldung), or a residence permit on October 31, 2022, for five years can apply for a residence permit for 18 months if a suspension of deportation is in place at the time of the application. This also applies to a suspension of deportation according to § 60b AufenthG for individuals with an unclear identity. Criminal offenses with more than 50 or 90 daily rates are grounds for exclusion in this case as well. The 18 months are intended to obtain passports and find employment for self-sustenance. The residence permit cannot be extended. However, after the 18 months, it is possible to switch to residence permits under § 25a or § 25b AufenthG if the conditions are met (German certificate A2, passport, employment).

Practical Tip: For many residence permits, it is a requirement that the individuals have possessed a temporary residence permit, a residence permit, or a suspension of deportation without interruption. Often, individuals may not even receive a suspension of deportation. In such cases, the immigration authorities issue a border-crossing certificate, other identity certificates, or no document at all. In many instances, the immigration authorities subsequently refuse to issue a residence permit. Therefore, it may sometimes be advisable to apply for and litigate a suspension of deportation, but this is only possible if there are genuine grounds for suspension. Please consult a counseling center or legal counsel for advice.



Subsequent Asylum Application

Attorneys can assess whether there are grounds for a subsequent asylum application. Grounds for a subsequent application are facts that were not mentioned during the initial asylum hearing or have changed since then. These may include, for example, illnesses, changes in religious affiliation, coming out regarding homosexuality, reconstructive surgery following previous female genital mutilation, or new pieces of evidence. Significant changes in the situation in the country of origin documented in new reports can also be grounds for a subsequent application.

Practical Tip: It is important to inform the immigration authorities about illnesses, upcoming education, completed marriages, pregnancies, births of children, as well as integration efforts such as voluntary work or language course attendance. It often happens that the authorities are not aware of crucial facts that could prevent deportation.



Suspension of Deportation with Training permit „Ausbildungsduldung“

All refugees who have undergone a negative asylum procedure and are already in vocational training during the asylum process are entitled to training tolerance according to § 60c of the Residence Act (AufenthG). This suspension of deportation is valid for the duration of the training and provides protection against deportation during that time. Even after a negative asylum procedure, it is possible to start training and apply for the „Ausbildungsduldung“. However, this is more challenging, as immigration authorities often refuse and issuance is only possible after a three-month pre-tolerance period. During this time, preparations for deportation can be made. After successfully completing the training, a residence permit under § 19d of the Residence Act can be applied for. From March 2024, with the fulfillment of the corresponding requirements, it is also possible to apply for a training permit under § 16 g of the Residence Act. Those who already have a Suspension of Deportation with Training permit should seek information from counseling centers.

Training Permit according to § 16g AufenthG

Starting from March 1, 2024, individuals facing deportation who are engaged in vocational training can obtain a residence permit under the new § 16g of the Residence Act (AufenthG). The requirements are similar to those for the training tolerance: successfully undergoing a qualified vocational training, being able to financially support oneself, and fulfilling passport obligations. In simple terms, those who can secure their livelihood and possess a passport can obtain the residence permit under § 16g AufenthG, while those who do not meet these criteria remain under the training tolerance.

Suspension of Deportation with Work permit „Beschäftigungsduldung“

(according to § 60d AufenthG) The employment suspension according to § 60d Residence Act is intended to provide security for individuals who are obligated to leave the country but have been employed for a long time. The prerequisite for employment suspension is entry into the country by December 31, 2022. Additionally,

there must be a previous employment subject to social insurance contributions for 12 months to secure the livelihood, as well as a pre-suspension period of at least 12 months and sufficient oral German language skills. The employment must cover at least 20 hours per week. Furthermore, the identity must be clarified depending on the entry date until the application for employment suspension or at the latest by December 31, 2024. No relevant criminal offenses should be present. The employment suspension is generally issued for 30 months.

Family reasons - Marriage and Children

Marriage to a German national or a person with a residence permit may, in individual cases, lead to obtaining a separate residence permit. The birth of a child in Germany does not automatically result in a residence permit. If one parent holds a residence permit or German citizenship, a residence permit may be obtained through this connection. However, the immigration authorities may still request departure if necessary. In such cases, the visa procedure for spousal or family reunification may be pursued. Exceptions exist only if departure is currently or in the long term unreasonable.

Residence permit after completing vocational training

According to § 19d Residence Act, individuals with a suspension of deportation and a successfully completed vocational qualification can apply for a residence permit. This residence permit can only be granted if you have a suspension of deportation (Duldung) and have a job prospect or are already employed in a position that corresponds to your professional qualification.

Illness/Inability to travel

An acute and severe illness can sometimes lead to a temporary suspension of deportation or a prohibition of deportation. However, immigration authorities or the Federal Office for Migration and Refugees (BAMF) often do not recognize medical certificates. Medical certificates must meet the requirements of § 60a para. 2c of the Residence Act, which are very stringent. In some cases, a medical examination by an official physician may be ordered. The official physician then assesses whether the diagnosis is accurate. It is advisable to seek advice from a counseling center or a legal professional.

Hardship Case Commission (Härtefallkommission)

Refugees who have been in Germany for more than four years, are working or undergoing training, and are well-integrated can be proposed to the Hardship Com-

mission (HFK). However, caution is advised: even if a case has been proposed to the HFK, there is no automatic protection from deportation. This must be clarified on a case-by-case basis. There are exclusion criteria for the HFK, including relevant criminal offenses and the initiation of deportation-preparatory measures (e.g., flight booking). For a residence permit under hardship grounds according to § 23 of the Residence Act, a passport must be presented. Also, a previously submitted or negatively decided petition before the Bavarian State Parliament serves as a barrier for the Hardship Commission.

State Parliament Petition

There is the possibility to submit a petition to the Bavarian State Parliament. A petition is a complaint to the parliament, directed against the decision of a Bavarian authority, such as an employment ban or a looming deportation. The form for submitting a petition is available online on the Bavarian State Parliament's website. Whether the petition provides protection against deportation depends on the individual case.

Church Asylum

Some endangered individuals can be taken in by churches and granted church asylum. However, there are only a few spaces available for church asylum. Churches often require that there is a legal perspective indicating a chance for securing residence, for example, in cases of Dublin deportations nearing the deadline. Nevertheless, reach out to churches you are familiar with and inquire with others. You can find all necessary information on the website www.kirchenasyl.de.

Departure and Re-entry

For some individuals, it may be an option to temporarily stay in their country of origin or a neighboring state and re-enter with a visa. If deportation is inevitable, „voluntary“ departure and re-entry could be a last resort. It's important to consider that deportations are often highly traumatic. Additionally, after a deportation, immigration authorities typically impose a re-entry ban, often lasting several years. Before re-entering, the deportation costs usually need to be paid.

Prerequisites for departure and re-entry with a visa can include securing qualified employment or education, marriage, or the birth of a child. In the case of a self-determined departure, it is helpful to obtain approval for re-entry from the relevant immigration authority before leaving (known as preliminary approval). For entry with a visa, it usually requires evidence of means of livelihood, housing, employment contract, and German language skills. The embassy in the country of origin, in consultation

with the relevant immigration authority, decides on the visa. It is advisable to seek guidance from a counseling center or a legal professional.

New legal regulations since 2024

The new laws primarily concern the Blue Card EU, as well as residence permits according to §18a and 18b of the Residence Act, and the so-called „change of track“ from humanitarian immigration. They mainly affect professionals and individuals with qualified vocational training. Further information can be found on the website of GGUA e.V. Consult a counseling center if you believe you could benefit from these changes.

Practical tip: Criminal offenses are often ground for exclusion from many residence permits. Individuals who have received more than 50 daily rates for general offenses or more than 90 daily rates for offenses under the Residence or Asylum Act (such as lacking proper documentation or illegal entry) are generally excluded from obtaining residence permits. Sometimes, the threshold may be lower. This means that even small fines can prevent the issuance of a residence permit. If someone receives a penal order, it is strongly recommended to consult with lawyers, preferably those who specialize in both criminal and immigration law.



7. What other options and tips should be considered?

Learn German

German language skills and qualified employment are crucial for your chances of staying. It is important to use the time during the asylum process to learn German and gather certificates of professional qualifications, clear up issues regarding identity or health. If the asylum process has a negative outcome, it can be challenging to enroll in a German course or obtain a work permit later on.

All individuals in an ongoing asylum process can apply for an authorization certificate for an integration course. With this certificate, you can enroll in an integration course, and the costs will be covered by the BAMF (Federal Office for Migration and Refugees). If an asylum application has been denied, this authorization is no longer available.

If your asylum application has already been rejected, and you have a temporary suspension of deportation (Duldung), you can participate in a German course as a self-payer. Inquire at your counseling center whether the course costs can be covered for you even with a temporary suspension of deportation. If you don't have the opportunity to attend volunteer or official German courses, we recommend self-study. There are numerous online services and apps available for this purpose.

The earlier you start learning German, the better. It's never too late. Start today!

Employment

Work alone does not protect against deportation. Nevertheless, employment is important for various residence perspectives (see above). Generally, asylum seekers with a permit in the asylum process are allowed to work in Germany after 6 months, provided that the asylum process has not yet been finally concluded.

Individuals with a suspension of deportation (Duldung), whose identity has been clarified, and who reside outside reception facilities, are generally allowed to work in Germany after 3 months of residence, following approval from the immigration authorities. However, this is not possible if residence termination measures have

already been initiated.

If you have formally applied for a work permit and received a written rejection, contact a counseling center or lawyer. It is crucial to note that qualified employment (with certification after training or studies) holds more value than a position as an unskilled worker. If you work permanently as an unskilled worker, you may be more vulnerable to job loss and earn less. Only qualified employment helps ensure that you can sustain your livelihood independently in the long term.

Supportive Environment

We attempt to inform affected individuals, supporters, and lawyers about collectively known deportation dates and ask them to pass this information on to vulnerable individuals. We often only learn about deportation dates at short notice, leaving little time to contact a lawyer.

In the past, individuals were often not locatable by the police around the day of deportation. Individuals are allowed to be outside their accommodation for a maximum of 3 days and nights without being considered as having gone into hiding. If you are still deregistered, you can challenge it. Seek assistance from a counseling center or lawyer.

We recommend having important phone numbers (e.g., lawyer or a trusted contact in case of detention) readily available. For supporters, having a signed power of attorney in the name of the vulnerable person can be helpful for obtaining information from relevant authorities, for example.

Behavior in School and Workplace

Authorities may also search for individuals in vocational schools and workplaces. Schools and private individuals such as employers are not obligated to assist authorities during deportation attempts. They are not required to provide information about your whereabouts.

For information on how to behave during a deportation, you can also refer to this resource: <https://noborderassembly.blackblogs.org/booklets/>

Important: Evading a deportation attempt does not eliminate the ongoing risk. Immediate steps must be taken to secure residency and avoid the danger of being placed in deportation custody.

Act in time

Most asylum lawyers have a large number of clients. Often, lawyers may not be able to review all of their clients and identify potential options for staying. Therefore, both potentially affected individuals and lawyers need support. In many cases, deportations can be halted if the affected individuals are well-represented or well-advised by lawyers, enabling them to submit necessary applications in a timely manner.

Political Engagement

Those who want to challenge these policies can exert political pressure, for instance, by contacting local representatives or drawing attention to upcoming elections. It can be helpful at times to demand support from representatives to assist a specific individual and halt a pending deportation. Protests and demonstrations are also potential avenues for expressing dissent.

Networking

To inform as many at-risk individuals as possible, effective networking is crucial. The website <https://noborderassembly.blackblogs.org/de/abschiebe-alarm/> provides a list of dates for collective deportations. Connect with refugee initiatives and stay informed about deportation dates and other possibilities. There is no one-size-fits-all solution. Preventing a deportation does not guarantee long-term protection. A combination of the suggested measures here can contribute to success. **Let's try to make a difference together!**

8. For a right to stay for all – No one is illegal!



The Bavarian Refugee Council strongly rejects deportations. The return of refugees should only happen by choice and autonomously. We oppose the exclusion and isolation of refugees through placement in camps and advocate for equal rights for all. Together with you, we fight for genuine right to stay for all refugees and migrants.

Contact

Appointments are only scheduled after prior arrangement. Call or send an email to:

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Tel: 089 – 76 22 34 | Fax: 089 – 76 22 36 | kontakt@fluechtlingsrat-bayern.de

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