



The residence permit as an opportunity is about to come!

Newsletter December 2022

This newsletter is sent in English in an extra mail

Dear Gambia Networkers,

It is finally about to come - the residence permit as an opportunity and other important improvements for tolerated persons in the Residence Act (Aufenthaltsgesetz).

The amendment of the law will still be discussed in the Bundesrat on 16 December. However, the law does not require approval. The Bundesrat cannot in effect overrule the majority decision of the Bundestag. It is therefore virtually certain that the law will come into force in its new form on 1 January 2023.

About 135,000 people of various nationalities whose asylum applications have been rejected and who have been living in Germany as tolerated persons (in Duldung) for years could benefit from the new regulations. Certainly also many Gambians.

Once again, there are many complicated things to understand in detail. That is why this newsletter is rather long and detailed. But for many, the new version of the law opens up great opportunities for their future. So please read carefully!

To Gambians: Discuss the newsletter with your full time and volunteer supporters. Let them explain to you what is not yet fully understood. Organise meetings with people who can explain the new regulations to you.

To the full-time and voluntary supporters: Please once again help the Gambians (and of course the tolerated of all other nations) to the best of your ability, for whom unique opportunities are now opening up.

The contents of the newsletter:

I. The most important improvements in brief.

II. We explain the requirements someone has to fulfil ...

1) ... for the so-called "Chancen-Aufenthalt" for persons in Duldung - the big chance, for example, for all those who have not yet handed in their identity papers and are banned from working.

2) ... for the "Aufenthaltserlaubnis" according to § 25b Residence Act (older adults and families).

3) ... for the "Aufenthaltserlaubnis" according to § 25a AufenthaltsgG (young people)

III. important information for refugees

I.

What are the most important improvements?

What new options do people in toleration have?

1) "Chancen-Aufenthalt": A new paragraph has been added to the law - § 104c. It opens up a completely new option for people with tolerated status (Duldung), the so-called Chancen-Aufenthalt. You don't have to fulfil very many conditions - more on that below.

The key point is: if you have lived in Germany for five years on 31 October 2022, you can get a residence permit "Aufenthaltserlaubnis" with a lot of rights for one and a half years (18 months). More on this below. Above all, however, one is protected from deportation.

In these 18 months, he or she has time to fulfil all the prerequisites and conditions necessary for a "regular" Aufenthaltserlaubnis according to §25a AufenthG or according to §25b AufenthG. If someone cannot fulfil these requirements after the 18 months, he or she goes back to Duldung and no longer has protection against deportation. This period cannot be extended.

2) Earlier "Aufenthaltserlaubnis" for well-integrated people: The time you have to live in Germany before you can apply for a residence permit has been shortened.

You have to meet certain requirements (which we explain below)! Then adults aged 28 and over can get a residence permit after only 6 years in Germany. Previously it was 8 years. The application is made in accordance with § 25b AufenthG.

Parents with children can obtain a residence permit after only 4 years. Previously it was 6 years. Here, too, it is the amended § 25b AufenthG.

3) Earlier "Aufenthaltserlaubnis" for young people: The age for adolescents and young adults has been raised; the residence periods have been shortened. Young people up to the age of 27 (until the day they turn 28) can apply for a residence permit after only 3 years if they go or have gone to school in Germany. They receive the residence permit if they fulfil certain conditions. Previously, it was 4 years, and the regulation only applied to young people up to 21 years of age. The application for this must be made in accordance with § 25a AufenthG.

II.

What requirements must one fulfil?

The following applies to all residence permits ("Aufenthaltserlaubnis") - regardless of whether they are issued under § 25a or § 25b or § 104c (Chancen-Aufenthalt):

There must be almost no sentence for violations of German laws! No residence permit is granted for so-called offenders.

If the sentences are very minor, for example no more than 3 months in prison or small fines, then the persons concerned should definitely contact their lawyer. They must then clarify with them whether or not they can apply for a residence permit.

Those who have repeatedly and demonstrably given false information about themselves or their nationality will also not be granted a residence permit.

1) Chancen-Aufenthalt according to § 104c

Who can get a residence permit?

- a) You must have already lived in Germany for five years on 31 October 2022.
- b) You must be in Duldung (tolerated stay). It does not matter whether you have been in Duldung for a very short time or for longer.
- c) You have to be committed to the "free democratic basic order" in Germany. In other words, you have to agree that you support democracy and human rights, which are laid down in the German Basic (Constitution).

How one officially gives this consent, whether with a signature on a form or by taking a test, has not yet been clarified.

- d) One must not have committed a criminal offence or deceive the authorities about one's identity.

In principle, that's all there is to it.

This means that someone can also get an opportunity residence permit according to § 104c AufenthaltsgG,

- if one's identity has not yet been fully clarified;
- if one has not yet presented the identification papers and identity documents requested by the Aliens' Registration Office (Ausländerbehörde);
- if you are banned from working;
- if you are in "Duldung light" (toleration light). The Duldung identity card then usually says "Für Personen mit ungeklärter Identität" (for persons with unclear identity);
- if you have no German language skills.
- if you are from a so-called "safe country of origin" (sichere Herkunftsländer) such as Senegal or Ghana.

The "Chancen-Aufenthalt" offers the same rights and advantages as a "regular" residence permit:

- You have protection against deportation as soon as the opportunity residence permit has been issued.
- You are allowed to work, even if you have not yet handed in all proofs of identity, such as the proxy passport in the case of Gambians.
- You no longer have a residence requirement, which means you can move to another place without the approval of the "Ausländerbehörde. (Of course, you still have to inform the Ausländerbehörde if you move).
- You can travel abroad and come back to Germany if you have a passport.

But it must be very clear: This is only a temporary residence permit. At the end of this time, all the conditions and requirements must be fulfilled that one has to show for a "regular" residence permit according to § 25a or § 25b of the Residence Act. That means you have 18 months to do or prove all the things listed in the next section.

If you fail to do so, your residence permit expires and you revert to the toleration status (Duldung). Protection against deportation then no longer exists.

2) Residence permit for well-integrated people in toleration according to §25b AufenthG

The improvements that were introduced will mainly benefit those who already have a permanent job, earn their own living, have handed in their proxy passports and already speak German quite well. This is because they can now already get a "Aufenthaltserlaubnis" after 6 years in Germany (and not only after 8 years) if they fulfil the conditions described below.

But all those who can now get the Chance Residence Permit must also know these conditions. So the request to these people, in their own interest:
Read these conditions carefully. You have to fulfil them if you don't want to fall back into Duldung after the 18 months with the Chance Residence Permit!

Of course, you have to fulfil two conditions in any case:

- You must not have committed a criminal offence.
- You must have fulfilled your passport obligation, i.e. for Gambians: The proxy passport must have been handed in. (Only in rare exceptional cases, if you can prove conclusively that you will not get a passport, the foreigners authorities can waive the passport obligation).

Adults without children are granted a residence permit according to § 25b AufenthG ...

- a) ... if he or she has lived in Germany for 6 years.
- b) ... if he or she is committed to the free democratic basic order in Germany, i.e. supports democracy and human rights as laid down in the "Grundgesetz". In addition, one must demonstrate basic knowledge of how our social order, our legal system and life in Germany works.

How can you prove this?

Unfortunately, different immigration authorities require different proof. If you have successfully taken part in an orientation course or integration course, you should enclose the certificate with your application. However, you are always well advised to do the test "Leben in Deutschland" (Living in Germany) of the BAMF. You can find the questions and answers -

also in English - on YouTube: https://www.youtube.com/watch?v=GeYIIL_91tU (introductory video - 30 more videos with questions and answers follow).

Or at <https://www.lebenindeutschland.eu/test> . Here you can also find the places where you can take the exam.

c) ... if he or she earns most of their living themselves. It is best to have a permanent job through which you also pay for your health insurance. Only students and trainees may also receive a larger share of social benefits.

How do you prove this?

You should enclose your employment contract and pay slips for the last 18 months with your application.

If possible, also enclose all previous employment contracts or write down where you worked and during which period.

It should not be a problem if you have a fixed-term contract (befristeter Arbeitsvertrag) or if you are employed by a temporary employment agency (Leiharbeitsfirma).

You should also enclose a copy of your rental contract or proof that you pay the rent. It is not a problem if one lives in "Anschlussunterkunft" if you pay your rent completely yourself.

d) ... if he or she can speak German at level A2.

How do you prove this?

Of course, the best thing is a certificate from a language school where you have taken a German course and successfully passed the exam.

Otherwise, it is sufficient to prove that you can communicate orally in German at level A2.

According to a court ruling, you do not need a certificate for this. You can take oral exams at many "Volkshochschulen", for example. Or your supporters, colleagues or superiors write a confirmation that they can communicate with you without any problems.

If someone lives with a minor child, he or she can now get a residence permit after four years. In this case, you don't necessarily have to cover all your living expenses yourself.

3) Residence permit according to §25a AufenthG for well-integrated adolescents and young adults who go to school in Germany or have completed school or vocational training.

Adolescents and young adults up to 27 years of age can already apply for a residence permit after 3 years if they go to school in Germany or have completed a German graduation or have successfully completed vocational training. From the day one turns 28, this is no longer possible.

Unfortunately, there is one condition that the FDP nonsensically pushed through at the end: One must have been in toleration for one year before the residence permit is granted.

As is always the case when a residence permit is granted:

- No criminal offences, of course.
- The identity must be clarified, the passport obligation must be fulfilled.
- You must not have given false information about your person or nationality.

The residence permit according to § 25a AufenthG can be granted ...

- a) ... if you have attended school in Germany for 3 years;
or if you have obtained a school leaving certificate here, at least the so-called Hauptschulabschluss;
or if you have completed vocational school in Germany.
- b) ... if you have already been in toleration for one year.
- c) ... if you or your parents earn their own living. This does not apply if you are still at school or undergoing training. In that case, receiving social benefits is not a problem.

III.

Important information for refugees

1) Get advice! The integration managers, social workers, volunteers and lawyers will familiarise themselves with the new legal regulations in the coming weeks and can help you. If possible, only go to one person you trust. Double and triple consultations are a lot of work and sometimes cause confusion.

2) Prepare your application thoroughly and collect all the necessary documents before submitting it. Many foreigners authorities are already completely overloaded. If, at the beginning of the year, a large number of refugees of all nationalities suddenly submit their applications for a "Chancen-Aufenthalt" or a "regular" Aufenthaltserlaubnis (residence permit), the situation will become even worse.

You have to expect long processing times anyway. If applications are submitted without the necessary documents and evidence, the staff of the foreigners authorities have to keep checking and requesting them. This costs time and lengthens the processing times for everyone!

3) The application for a residence permit - regardless of whether it is for an Chancen-Aufenthalt or a Aufenthaltserlaubnis for adults or for adolescents and young adults - is always submitted to the foreigners authority of the district or the city. They decide, and no longer the Regierungspräsidium at Karlsruhe.

Nevertheless, you should always inform the Regional Council in Karlsruhe immediately (best with a copy of the application and the attachments) that you have submitted the

application. They will then know that a decision is pending, which is usually awaited before the Regional Council makes any other decisions.

Since the lower foreigners authorities decide on applications for a residence permit, there are differences on some points as to what proof and evidence they require. For example, there are foreigners authorities for whom the proxy passport and the birth certificate are not sufficient, especially if the documents are not self-consistent.

We advise all Gambians who have the opportunity to travel to The Gambia to obtain a biometric passport. This is definitely a better document than a proxy passport and is usually accepted in Germany without any problems. Even if someone has been granted a Chancen-Aufenthaltserlaubnis, he or she can travel to The Gambia if one can afford it financially.

4) Attention to all those who will receive a Chancen-Aufenthalt in future: The application for a "regular" residence permit according to § 25a or § 25b AufenthG must be submitted in good time, before the 18 months expire. Then you also have to submit evidence that you meet all the requirements.

18 months is not a long time. Especially not if you fulfil almost none of the requirements for the "regular" Aufenthaltserlaubnis.

It will be a hard time and you will have to keep at it and use all your strength and skills.

If you manage to do that, then you really do have a good chance of getting a permanent and secure residence permit in Germany.

Best regards
Birgit Hummler
Kay Bochmann-Riess