

Brochure

Who is granted a right to stay under section 25b AufenthG?

Information for persons with a *Duldung*



A publication of the "Active for Refugees" project funded by:



Baden-Württemberg
MINISTERIUM DER JUSTIZ UND FÜR MIGRATION

Imprint

Flüchtlingsrat Baden-Württemberg

Hegelstraße 51

70174 Stuttgart

Telephone: 0711 55 32 83-4

E-mail: info@fluechtlingsrat-bw.de

Editorial responsibility: Flüchtlingsrat Baden-Württemberg

3rd edition, December 2023

This publication was created in September 2020 as part of the „NIFA - Network for the Integration of Refugees into Work“ project. It was updated in autumn 2023 as part of the „Active for Refugees“ project, supported by the Ministry of Justice and Migration with state funds approved by the Baden-Württemberg state parliament.

This brochure

This brochure provides an overview of the requirements for the right to stay under section 25b AufenthG.

You can call or write to the Flüchtlingsrat Baden-Württemberg (Refugee Council of Baden-Württemberg) for initial advice and for information regarding where you can turn to for more in-depth counselling.

Glossary

Arbeitslosengeld	Unemployment benefits
Aufenthaltserlaubnis	Residence permit
Aufenthaltsgesetz (AufenthG)	Residence Act
Aufenthaltsgestattung	Permission to remain pending the asylum decision
Ausbildung	Apprenticeship
Ausländerbehörde	Foreigners authority
Asylbewerberleistungsgesetz (AsylbLG)	Asylum Seekers' Benefits Act
Bedarfsgemeinschaft	Group of dependents

Beschäftigungsduldung	Temporary suspension of deportation for the purpose of employment
Chancen-Aufenthaltsrecht	Opportunity Residence Act
Duldung	Temporary suspension of deportation
Freiheitliche demokratische Grundordnung	Liberal democratic basic order
Hauptschulabschluss	A (German) lower secondary school leaving certificate
Kurzarbeitergeld	Short-time working allowance
Sozialgesetzbuch II and XII (SGB II/ SBG XII)	Volume II / XII of the Social Code

1. Right of residence under section 25b AufenthaltG

According to section 25b of the Aufenthaltsgesetz (AufenthG, Residence Act), people with a *Duldung* (temporary suspension of deportation) who have been in Germany for a lengthy period of time should receive an *Aufenthaltserteilung* (residence permit) under certain conditions due to “sustainable integration”. You can apply for the residence permit

at the *Ausländerbehörde* (foreigners authority). This residence permit is issued for a maximum of two years.

2. Which requirements must you fulfil?

If the following requirements are met, you will generally be granted a residence permit under section 25b (1) AufenthG.

2.1 Duration of stay: You have a *Duldung* and have been living in Germany for six years or longer without interruption, either with a *Duldung*, *Aufenthaltsgestattung* (permission to remain pending the asylum decision) or with a residence permit. If you are living with an unmarried child under 18, this period is reduced to four years. This child does not necessarily have to be your own.

2.2 Declaration of support for the basic order and basic knowledge of Germany: You are committed to the *freiheitliche demokratische Grundordnung* (liberal democratic basic order) of the Federal Republic of Germany. You also have a basic knowledge of the legal and social order and the way of life in Germany. You can prove your basic knowledge if you have passed the *Leben in Deutschland* test (also known as the orientation course test or naturalisation test) or have a German school-leaving certificate.

2.3 Livelihood: You are able to support yourself and your dependents financially mainly through work; or

it is to be expected that you will be able to do so in the future.

2.4 Language skills: You have oral German language skills at A2 level.

2.5 Compulsory schooling: If you have children of compulsory school age, you must prove that they are actually attending school, e.g. by means of a school certificate and school reports.

2.6 Fulfilment of the passport requirement: You must have a recognized and valid passport from your country of origin. In rare cases, the authorities may waive this requirement at their discretion. You can find more information on the individual requirements in the following chapters.

Important: Even if you do not yet meet all the requirements, you may still be able to obtain a residence permit under section 25b AufenthG. This may be the case if you have achieved more than the law stipulates for some of the requirements (e.g. you have B2 instead of A2 German language skills) or you have done additional special things (e.g. volunteering).

3. What does it mean to be able to support yourself for the most part or to be able to support yourself in the future?

You are mostly able to support yourself if your own income from work amounts to more than half of your needs. *Arbeitslosengeld I* (unemployment benefit) and *Kurzarbeitergeld* (short-time working allowance) count as income from work, all other benefits (e.g. child benefit, housing benefit, vocational training allowance) do not.

Your needs are calculated by adding the standard rates in *Sozialgesetzbuch II/XII* (SGB XII, Volume XII of the Social Code), any additional needs, the costs of accommodation and heating and health insurance cover for you and, if applicable, your dependents. For example, you have sufficient health insurance cover if you are in employment for which social insurance contributions are being paid.

The livelihood of you and your dependents must be predominantly secured. A *Bedarfsgemeinschaft* (group of dependents) usually exists in particular if you live together with a spouse, partner and/or unmarried children under the age of 25 who are able to work.

If you are temporarily receiving benefits under the *Asylbewerberleistungsgesetz* (AsylbLG, Asylum Seekers' Benefits Act,) this is not a problem in the following cases:

- You are studying at a *Hochschule* (state-recognized university or college), are doing an *Ausbildung* (apprenticeship) in a recognised occupation or are taking part in a state-funded vocational preparation measure.
- You receive supplementary social benefits because you have underage children and are temporarily unable to pay for your own livelihood on your own despite working.
- You are a single parent and have a child under the age of three. Or your children are older, but there is no place in a daycare center (section 10 (1) no. 3 SGB II).
- You are looking after close relatives who are in need of care. This includes, in particular, spouses, parents and siblings. However, depending on the specific situation, other relatives may also be included. The family situation will be assessed on a case-by-case basis to determine whether the person in need of care qualifies as a "close relative".

If you are physically, mentally or psychologically ill or disabled or too old to be unable to earn most of your own livelihood, you may still be eligible for section 25b

AufenthG. However, you must provide evidence of your illness or disability in the form of medical certificates. These must demonstrate why your illness, disability or advanced age prevents you from being able to earn a living.

If you are currently unable to pay for most of your own livelihood and do not qualify for any of the exceptions, the foreigners authority will assess whether you will be able to pay for your livelihood in full in the future. The foreigners authority will look at what you have done in the past and whether it is very likely that you will be able to support yourself in the future (e.g. for people who are still undergoing vocational training). Your (school) education, jobs and family situation are therefore relevant.

4. How do you declare your support for the *freiheitliche demokratische Grundordnung* of the Federal Republic of Germany?

To do this, a form must be signed at the foreigners authority, which is called *Bekanntnis zur freiheitlichen demokratischen Grundordnung/ Loyalitätserklärung* (commitment to the liberal democratic basic order/ declaration of loyalty). The foreigners authority issues the form. It is not enough just to sign the form - you must know and understand its contents. Prepare yourself for questions from the foreigners authority. On our

[Facebook page](#) we explain what the liberal democratic basic order is.

5. How do you prove your German language skills?

You must have oral German language skills at A2 level. This is the case if you can hold simple conversations in German at the foreigners authority without an interpreter.

It is helpful to have proof of this, such as an A2 language certificate. You also have A2 language skills if you have successfully attended school for four years, have at least a *Hauptschulabschluss* (lower secondary school-leaving certificate) or have completed a third-level degree or vocational training.

If you are unable to learn German (sufficiently well) due to a physical, mental or psychological illness or disability or for reasons of age, you may still be able to obtain section 25b AufenthG. However, you must provide medical evidence of your illness or disability. This must show why your illness, disability or advanced age prevents you from learning German (better).

6. In which case are you excluded from the right of residence under section 25b AufenthG?

You cannot be granted the right to stay if you are responsible for the fact that your deportation cannot be carried out because you:

- give false information about your identity,
- deceive about your identity/citizenship or
- do not cooperate in making deportation possible despite requests to do so, e.g. if you do not cooperate sufficiently in obtaining a passport.

However, you may not be excluded from section 25b AufenthG if there is another reason why you cannot be deported. This applies, for example, if you also cannot be deported for health or family reasons.

Important: As a rule, deceptions/false statements or non-cooperation in the past do not exclude you from section 25b AufenthG, if deportation is now possible because you have corrected the deceptions or false statements or are now cooperating. However, please seek good advice before applying for section 25b AufenthG!

You are also excluded from a right of residence under section 25b AufenthG if you have committed certain criminal offenses and, for example, have been sentenced to a prison sentence of at least six months (section 54 (1) and (2) nos. 1 and 2 AufenthG). Even if you have been sentenced to lesser penalties, you may be excluded from section 25b AufenthG.

7. Can your family members also obtain a residence permit under section 25b AufenthG?

If you receive a residence permit in accordance with section 25b AufenthG, your spouse and your unmarried underage children can also receive a residence permit if they are living as part of a family unit with you. They do not have to have been living in Germany for six or four years respectively. They also do not have to have a *Duldung*. Otherwise, however, your relatives must meet all the requirements.

Family reunification of your spouse and/or your unmarried underage children from abroad is possible in certain cases (section 29 (3) AufenthG). Consult a migration counselling centre for advice.

8. Under what conditions can you obtain a residence permit under section 25b AufenthG if you have a *Beschäftigungsduldung*?

You can obtain a residence permit under section 25b AufenthG for yourself, your spouse and your unmarried underage children who are living together as a family unit after a maximum of 30 months of holding a *Beschäftigungsduldung* (temporary suspension of deportation for the purpose of employment) under section 60d AufenthG. This applies even if you have been in Germany for less than six or four years.

The requirements for the *Beschäftigungsduldung* must still be met for the residence permit. These are set out in our brochure on the *Beschäftigungsduldung*. In addition, the following requirement applies to people with section 60d AufenthG: If you have had the opportunity to attend an integration course in the past, you must have oral and written German language skills at language level A2.

Otherwise, the other requirements under Section 25b (1) AufenthG also apply (see above). You already

meet some of the requirements because you also have to meet them for the *Beschäftigungsduldung*. However, there is a difference when it comes to the requirement for securing your livelihood. If you only want to apply for a residence permit for yourself, you must be able to secure your livelihood entirely through your employment. If you also want to apply for a residence permit for your family, you must also be able to secure the livelihood of the other family members.

Important: If you already meet the requirements for section 25b (1) AufenthG (see above) before the 30 months have elapsed, you should submit the application without delay.

9. Under what conditions can you obtain a residence permit under section 25b AufenthG if you currently have a *Chancen-Aufenthaltsrecht*?

If you have a residence permit in accordance with section 104c AufenthG (*Chancen-Aufenthaltsrecht* or so called Opportunity Residence Act), you can obtain a residence permit for yourself, your spouse and your unmarried minor children under section 25b AufenthG. You must submit the application as long as the residence permit according to section 104c AufenthG is still valid.

You must meet all the requirements for section 25b (1) AufenthG (see above). The residence permit can only be issued in very rare exceptional cases if you have not been able to clarify your identity. In this case, however, you must prove that you have done everything possible to clarify your identity (section 25b (8) AufenthG).

Important: If you meet the requirements for section 25b (1) AufenthG (see above) before the 18 months have elapsed, you should submit your application then.

10. What else do I need to consider?

Please seek advice from an advice center or a lawyer BEFORE submitting your application to your local foreigners authority!

Note:

This information sheet was created, based on the current laws at the time, in September 2020 as part of the “NIFA - Network for the Integration of Refugees into Work” project. It was updated in autumn 2023. Changes may have occurred in the meantime. Furthermore, this information only provides an overview (particularly of the situation in Baden-Württemberg) and cannot replace individual counseling. You should therefore always contact advice centers or lawyers in individual cases. The brochure was updated as part of the “Active for Refugees” project, supported by the Ministry of Justice and Migration with state funds approved by the Baden-Württemberg state parliament.

Do you have questions about this brochure or immigration law in general?

Contact us by e-mail or phone:

- **info@fluechtlingsrat-bw.de**
- **0711 / 55 32 83 4**

You can also find more information on our website:

- **www.fluechtlingsrat-bw.de**

And additional brochures in our shop:

- **www.fluechtlingsrat-bw.de/material-bestellen**

