

Brochure

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

Information for young refugees



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**Baden-Württemberg**

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## **Imprint**

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## **This brochure**

Young people who have a *Duldung* (temporary suspension of deportation) or an *Aufenthaltserlaubnis* (residence permit) under section 104c of the *Aufenthaltsgesetz* (AufenthG, Residence Act) can get a residence permit for well-integrated young people if they fulfil certain conditions. They can apply for this residence permit at the *Ausländerbehörde* (foreigners authority).

This leaflet provides information which should help you to see if such a residence permit is available to you, and to inform you about what you need to consider in this regard.

The Flüchtlingsrat Baden-Württemberg (Refugee Council Baden-Württemberg) can provide you with initial advice by phone or e-mail as well as information about where you can receive more in-depth counselling.

## Glossary

<i>Asylgesetz (AsylG)</i>	Asylum Act
<i>Aufenthaltsgesetz (AufenthG)</i>	Residence Act
<i>Aufenthalterlaubnis</i>	Residence permit
<i>Aufenthaltsgestattung</i>	Permission to remain pending the asylum decision
<i>Ausbildung</i>	Apprenticeship
<i>Chancen-Aufenthaltsrecht</i>	Opportunity Residence Act
<i>Duldung</i>	Temporary suspension of deportation
<i>Freiheitliche demokratische Grundordnung</i>	Liberal democratic basic order
<i>Fiktionsbescheinigung</i>	provisional residence document pending the decision on an application for a residence permit
<i>Härtefallantrag</i>	Hardship application
<i>Härtefallkommission</i>	Hardship Commission
<i>Hauptschulabschluss</i>	A lower secondary school leaving certificate
<i>Sozialamt</i>	Social welfare office
<i>Tagessätze</i>	Daily rates

# 1. Which conditions must you fulfil?

In order to get a residence permit under section 25a AufenthG, you must fulfil the following conditions:

- You have been living in Germany without interruption for at least three years with a residence permit, *Aufenthaltsgestattung* (permission to remain pending the asylum decision) or a *Duldung*.
- You have had a *Duldung* for at least twelve months or you have a residence permit under section 104c AufenthG (so-called *Chancen-Aufenthaltsrecht* or Opportunity Residence Act).

**Important:** If you have had a *Duldung* for less than twelve months, but fulfil all other conditions for the residence permit, then a deportation can be carried out. Sometimes it is not advisable to wait for twelve months before making the applications. Perhaps a *Härtefallantrag* (hardship application) may be an option for you. This application is made to the *Härtefallkommission* (Hardship Commission) with a view to getting a right to stay on urgent humanitarian or personal grounds under section 23a AufenthG. Be sure to seek counselling before doing this! More information about how to submit a hardship application can be found in the brochure which is available via the shop on our website.

- You are at least 14 years old and not yet 27 when you submit your application.
- You have been “successfully” attending school for at least three years or have obtained a recognised school-leaving certificate/vocational qualification in Germany. What does “successful” school attendance mean? You have been attending school regularly, are likely to be promoted to the next class and are likely to obtain a school-leaving certificate (at least *Hauptschulabschluss*, a lower secondary school leaving certificate). It is not a problem if you had to repeat a school year shortly after your arrival in Germany. It is also not a problem if you have to repeat a grade as long as it can be assumed that you will be able to successfully complete school in the future. If you are unable to attend school or graduate due to a physical, mental or psychological illness or disability, proof of school attendance/graduation is not required. You must provide medical certificates to prove your illness or disability and the connection to the lack of school attendance/completion.
- There is a positive prognosis that you can integrate well in Germany. The foreigners authority will determine whether there is a positive prognosis. Criminal offences may mean that a positive prognosis is not assumed.

- You or your parents earn enough to pay for your living expenses. This does not apply to you if you are going to school, undergoing an *Ausbildung* (apprenticeship) or studying. In this case, it is not a disadvantage if you receive money from the *Sozialamt* (social welfare office).
- You must have proven your identity and handed in your passport to the foreigners authority. In rare cases, the foreigners authority will issue the residence permit even if no passport has been presented. This is possible, for example, if you have already applied for a passport but it will still take some time to be issued. Or if you can prove that you cannot obtain a passport despite many efforts or that you cannot reasonably be expected to obtain a passport.

## **2. In which cases are you excluded?**

If you cannot be deported because you provided false information or deceived about your identity or nationality, you cannot obtain a residence permit under section 25a AufenthG.

Furthermore, you cannot obtain a residence permit in accordance with section 25a AufenthG if the authorities assume that you are not committed to *Germany's freiheitliche demokratische Grundordnung* (liberal democratic basic order). However, this is only permissible if there is concrete evidence, e.g. of membership of a terrorist organisation.

**Important:** If you are under 18 and your parents provide incorrect information or deceive regarding your identity, you cannot be held responsible. If you are 18 or over, your own behaviour counts. If you have misrepresented your identity in the past but have already corrected it, you cannot be penalised for this by being refused a residence permit under section 25a AufenthG.

### 3. And what about your parents, underage siblings and spouse?

If you are a minor (under 18 years old) and receive a residence permit under this right of residence regulation (section 25a AufenthG), your parents and your minor siblings may not be deported. They will continue to receive at least a *Duldung* until you turn 18.

Your parents can then obtain a residence permit under section 25a AufenthG,

- if they have not committed a criminal offence (sentences of no more than 50 *Tagessätze* (daily rates) or no more than 90 daily rates for offences under the *Aufenthaltsgesetz* or *Asylgesetz* (AsylG, Asylum Act) are not taken into account) and
- if they earn enough money for themselves and your siblings who are younger than 25 and live in the same household.



Your parents cannot obtain a residence permit if the only reason they cannot be deported is because of false information given by them about their identity or nationality. Your parents must also co-operate in removing obstacles to departure (e.g. by applying for identity papers); otherwise they are excluded from the residence permit.

The residence permit for parents and underage siblings is issued for a maximum of three years. It can also be extended when you turn 18. The requirements for this (e.g. securing a livelihood) must continue to be met. If you are married and have underage children, these children and their spouse may not be deported either. You should also receive a residence permit in accordance with section 25a AufenthG if you live together as a family or have close contact. The same conditions apply to spouses as to parents.

#### **4. Special considerations for persons with a *Chancen-Aufenthaltsrecht***

If you have been granted a residence permit in accordance with section 104c AufenthG (*Chancen-Aufenthaltsrecht* or so called Opportunity Residence Act), the residence permit ends after 18 months. It cannot be extended. As soon as the requirements for another residence permit under sections 25a or 25b AufenthG are fulfilled, you should make the appropriate application. You must apply for the

new residence permit while your residence permit under section 104c AufenthG is still valid and before the 18 months are up. If you have applied for a residence permit under sections 25a or 25b AufenthG and your residence permit under section 104c AufenthG expires, you will receive a provisional residence document known as a *Fiktionsbescheinigung* (provisional residence document pending the decision on an application for a residence permit) until a decision is made on your application. Some people fulfil the requirements for both right of residence regulations: sections 25a and 25b AufenthG. In this case, they should apply for and receive both.

There is a special case if you have the right of residence on opportunity and are unable to present a passport. You must then explain in more detail than usual what you have done to obtain a passport. Document all your efforts and collect evidence. If you do not know what else you can do, ask the foreigners authority. Only if the foreigners authority sees that you have done everything reasonable and necessary to obtain a passport may it grant you section 25a/ section 25b AufenthG.

## **5. What else needs to be considered?**

*Please contact a counselling centre or a lawyer BEFORE submitting your application and get good advice!*

The authorities can request a written report from your school about your performance and your social and work behaviour. Together with your counsellor, you should talk to the school about the consequences of this report for your prospects of staying in Germany. You should clarify whether there were any obstacles to a good “prognosis”, e.g. unexcused absences or having to repeat a year.

The residence permit according to section 25a AufenthG is issued for a maximum of three years. If you still fulfil all the requirements, the residence permit will continue to be extended - even after you turn 27. With the residence permit according to section 25a AufenthG, you may be able to obtain other residence permits that have other advantages. For example, the residence permit according to section 18a AufenthG. Seek advice on this.

## **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 (especially of the situation in Baden-Württemberg) and cannot replace individual counseling. You should therefore always contact advice centers or lawyers in individual cases.

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

Contact us by e-mail or phone:

- **[info@fluechtlingsrat-bw.de](mailto:info@fluechtlingsrat-bw.de)**
- **0711 / 55 32 83 4**

You can also find more information on our website:

- **[www.fluechtlingsrat-bw.de](http://www.fluechtlingsrat-bw.de)**

And additional brochures in our shop:

- **[www.fluechtlingsrat-bw.de/material-bestellen](http://www.fluechtlingsrat-bw.de/material-bestellen)**

