

Brochure

How do I make a hardship application?

Information for persons with a *Duldung*



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This brochure

This brochure provides you with an overview of the *Härtefallantrag* (hardship application). A hardship application is often the last option for obtaining a residence permit in Germany. It should only be submitted if all other options for obtaining a residence permit have been exhausted and you are threatened with deportation. The hardship application must be submitted to the *Härtefallkommission* (Hardship Commission). This is located at the Baden-Württemberg Ministry of Justice.

If your application is successful, you will receive a residence permit in accordance with section § 23a of the Aufenthaltsgesetz (Residence Act). The hardship procedure is regulated separately by each federal state. In Baden-Württemberg, the procedure is laid down in the *Härtefallkommissionsverordnung* (Hardship Commission Ordinance).

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

Glossary

Aufenthaltsgesetz (AufenthG)	Residence Act
Ausländerbehörde	Foreigners authority
Ausweisung	Expulsion
Beschäftigungsduldung	Temporary suspension of deportation for the purpose of employment
Duldung	Temporary suspension of deportation
Härtefallantrag	Hardship application
Härtefallkommission	Hardship Commission
Härtefallkommissionsverordnung	Hardship Commission Ordinance
Regierungspräsidium Karlsruhe	Karlsruhe Regional Council

1. What requirements do you need to fulfil?

For a hardship application to have a chance of success, the following requirements must first be met:

- You must be enforceably obliged to leave the country. In general, this is the case if your asylum application has been rejected.
- No official proceedings, e.g., an application for a residence permit, may be ongoing. The Baden-Württemberg Ministry of Justice states that you are also excluded if you have received a rejection in the asylum procedure because another EU country is responsible (Dublin procedure). In such a case, please contact a counselling centre.
- There must also be no legal proceedings pending, e.g., an appeal against the rejection of your asylum application or a residence permit. You can consider withdrawing the appeal. However, it is essential that you seek advice from a lawyer or a competent advice centre before doing so.
- If you have submitted a petition to the state or federal parliament, a decision must already have been made on this petition. Otherwise, you can consider withdrawing the petition. Seek advice in this case too.

- You must live in Germany. An *Ausländerbehörde* (foreigners authority) in Baden-Württemberg must be responsible for you.
- There must be no grounds for *Ausweisung* (expulsion). You must not have committed any serious criminal offences. Minor offences (e.g., using public transport without a valid ticket) are not usually a reason for rejecting a hardship application, but should be mentioned.
- If you are able to work, you should be able to support yourself for the most part. If you have or have had an employment ban, it will be checked whether it is likely that you will be able to support yourself in the future once the employment ban has been lifted. In this case, enclose letters from a company that would employ you if the work ban were to be lifted. If a person has undertaken to bear your living expenses on a permanent basis (declaration of commitment according to section 68 Aufenthaltsgesetz (AufenthG) / Residence Act), you do not have to be able to secure your livelihood from your own resources.
- If a deportation date has already been set, the hardship application will not be accepted. However, you will not usually be told when your deportation will take place. It is therefore important that the hardship application is not

submitted too late. If possible, discuss the timing with a lawyer.

It does not matter which country of origin you come from. Refugees from so-called “safe countries of origin” (section 29a of the Asylum Act) can also submit a hardship application.

2. What elements should the hardship application contain?

You can submit the hardship application yourself. However, the application can also be submitted by another person, which can have a positive effect. If the application is submitted by a friend or another person of trust, you must sign a power of attorney.

You must apply for a residence permit in accordance with section 23a AufenthG in a covering letter. Your full name, date of birth and address must be stated.

In addition, your situation must be described in detail. The application must state how long you have been living in Germany (without interruption). In the case of a hardship application, the dangers or disadvantages in your country of origin are only marginally relevant, as this has already been exami-

ned in the asylum procedure. Much more important is what you have achieved in Germany, whether you have a job, how good your German language skills are and whether you are active in the community (e.g., volunteering). In addition, you or your children should attend school regularly and successfully if you are subject to compulsory schooling. You must provide proof of everything you state in your application. You should therefore include certificates, employment contracts, your rental contract, payslips and other important documents.

It is also important to show that you have a lot of support from people around you. Supporters can write letters explaining the important contribution you are making and why it is important that you remain in Germany or in your place of residence. Supporters can include acquaintances, friends, employers, colleagues, (language course) teachers, political representatives such as local councillors or the mayor.

They must sign a declaration of consent to the processing of personal data. If someone has submitted a declaration of commitment for you in accordance with section 68 AufenthG (liability for living expenses), this must be enclosed with the hardship application. Further information can be found at:

- <https://bit.ly/3ogI3j7>

3. How does the procedure work?

For a hardship case procedure to begin, an application must be submitted to the office of the Hardship Commission. The address is:

**Ministerium der Justiz und für Migration Baden-
Württemberg**

Geschäftsstelle der Härtefallkommission

Postfach 10 34 61

70029 Stuttgart

or via email to: poststelle@jum.bwl.de

The commission then examines the application in two stages. Firstly, inadmissible applications are rejected in a preliminary review. This concerns all applications that do not fulfil the requirements (see 1.). The remaining cases are then examined on their merits. The commission decides on these cases in the course of its meetings. If the commission concludes that there is a case of hardship, it asks the Ministry of Justice to grant the applicant a residence permit, which has the final decision on the application. In recent years, the Ministry of Justice has not always confirmed the recommendations of the Hardship Commission. In 2022, the Ministry of Justice decided against granting a residence permit in around a quarter of cases.

The Ministry of Justice can also make the granting of a residence permit subject to conditions, e.g., the presentation of a valid passport within a certain period of time. You (or the person who submitted the application) will receive notification of the outcome of your application, regardless of whether it is accepted or rejected. No appeal can be lodged against a rejection by the hardship application.

4. What else needs to be considered?

Read the current *Tätigkeitsbericht* (annual report) of the Hardship Commission. It presents individual cases that the Hardship Commission has decided on. This will help you to assess whether your application has a chance of success or whether something important is still missing.

In urgent cases, you can make an exception to the rule and submit the application even if you do not yet have all the documents together. Further documents can be submitted later as long as the application has not yet been decided on. You should inform the Hardship Commission of any new developments (e.g., change of job).

In its discretionary decision, the Baden-Württemberg Ministry of Justice takes into account, among other things, whether proof of identity is available

or whether attempts are being made to obtain such proof. Thus, if you have already submitted proof of identity to the Regierungspräsidium Karlsruhe or have documented efforts to cooperate in clarifying your identity, it is a good idea to mention this in your application.

Do not have the hardship application written and submitted by a lawyer. A lawyer is very important in asylum and legal proceedings. However, a hardship application is about what you have achieved in Germany. You, your friends, acquaintances and supporters know more about this and can write a much more detailed and convincing application. However, if a lawyer is already looking after your case, it makes sense to inform them about the hardship application and discuss the procedure with them.

5. Can I submit a hardship application if I do not yet fulfil all the requirements for the *Beschäftigungsduldung*?

People with a *Duldung* (temporary suspension of deportation) who have been working for a long time can, under certain conditions, obtain a *Beschäftigungsduldung* (temporary suspension of deportation for the purpose of employment). With a *Beschäftigungsduldung*, you will not be deported and

can obtain a residence permit after 30 months at the latest.

Among other things, you must have been in possession of a *Duldung* for twelve months in order to obtain a *Beschäftigungsduldung*. A hardship application can help to bridge the *Vorduldungszeit* of twelve months (possession of a temporary suspension of deportation for at least 12 months). It therefore often makes sense to submit a hardship application if you fulfil all the requirements for a *Beschäftigungsduldung* except for the twelve months previous possession of a *Duldung*. In your hardship application, point out that you already fulfil all the requirements for a *Beschäftigungsduldung* with the exception of the twelve months with a *Duldung*.

The following applies in Baden-Wuerttemberg: If you entered Germany before 1st March 2016 and meet all the requirements for the *Beschäftigungsduldung* - except for the twelve months with a *Duldung* - your hardship application will not be processed until you have completed the twelve-month period. No deportation may take place during this time. However, the following also applies in other cases: If you fulfil all the requirements for the *Beschäftigungsduldung* except for the twelve-months with a *Duldung*, it often makes sense to submit a hardship application. Contact an advice centre for this.

Note: Sometimes you may fulfil almost all the requirements for a residence permit that is available to people with a *Duldung* (e.g., sections 25a or 25b AufenthG). But as long as you do not fulfil all of the requirements for this, you may be deported. Sometimes it does not make sense to wait until you fulfil the requirements before submitting an application. Perhaps a hardship application is a better option for you. The Hardship Commission will then check whether you can be granted the right to stay due to urgent humanitarian or personal reasons. Seek advice beforehand!

Notes

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**
- **0711 / 55 32 83 4**

You can also find more information on our website:

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

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