



»How do I get a

WORK PERMIT?«

The Preconditions and the Procedure

Introduction

This brochure you can find translated into several languages at www.azf2.de or on the website of the Flüchtlingsrat Niedersachsen e.V., under the heading “Infomaterial” and then “Arbeitserlaubnis” (work permit) www.nds-fluerat.org

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It was then modified and adapted by the »Flüchtlingsrat Brandenburg«, what we, at the »Flüchtlingsrat Niedersachsen e.V.«, did again. We would like to express our gratitude for making the text and the layout available to us.

NOTE: *The contents of this brochure reflect the authors’ legal opinion.*

Date: October 2013

In Germany many migrants initially need a work permit to be allowed to work. But many of them do not know when a work permit must be applied for and how the application procedure works.

This brochure is aimed at people living as refugees in Germany, either with temporary permission to stay (Aufenthaltsgestattung), residence permit (Aufenthaltserlaubnis) or temporary suspension of deportation (Duldung).

In the following you will find a summary of the preconditions and the procedure of filing an application for a work permit as well as addresses of independent advice centres where you can be given personal advice.

If you have any questions or need to clarify anything please contact the Flüchtlingsrat Niedersachsen e.V. or ask a lawyer.

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1 *Are you permitted to work or not?*

Basically there are three different possibilities

a) Work ban

This means that you are **not** allowed to work.

b) Restricted work permit

This means you will have to apply for a work permit at your local Foreigners Authority (Ausländerbehörde) before you start to work. If you obtain a work permit it is only valid for a certain job in a certain enterprise.

c) Unrestricted work permit

This means you can take up any work and do not need to apply for a work permit.

TIP: Even if you do not need to apply for a work permit you should, however, always inform the Foreigners Authority when you take up work.

What kind of work can you be permitted?

You can be permitted to pursue an economic activity (“Erwerbstätigkeit”) or to take up employment (“Beschäftigung”).

“Employment permitted” (Beschäftigung gestattet) means that you are only permitted to work as an employee, i.e. as a jobholder in an enterprise.

“Economic activity permitted” (Erwerbstätigkeit gestattet) means that you are permitted to work as an employee and, what is more, that you are permitted to work self-employed, which means you are also allowed to start your own business.

2 *When do you need to apply for a work permit?*

If your residence document indicates that the pursuit of an economic activity is only permitted with the consent of the Foreigners Authority (“Ausübung einer Erwerbstätigkeit nur mit Erlaubnis der Ausländerbehörde gestattet”). Or if your residence document indicates that the take-up of employment is only permitted with the consent of the Foreigners Authority (“Ausübung einer Beschäftigung nur mit Erlaubnis der Ausländerbehörde gestattet”).

3 *What do you need a work permit for?*

For every *job*, or

for *work-based vocational training*, or

for an *internship / work experience*.

As a general rule, *no work permit is required for school education*.

TIP: There are exceptions, which are listed under point 7!

4 *Who will grant you a work permit?*

The work permit must be applied for at your competent Foreigners Authority (Ausländerbehörde). In most cases you will be able to do this without using a specific form. Some Foreigners Authorities, however, issue a form. From the Foreigners Authority, you will also get the necessary job description („Stellenbeschreibung“) form which the employer will have to complete. On this form, he or she will have to provide exact details on her or his business, the number of hours you will have to work and the exact working times.

5 *Special characteristics of the individual residence titles*

You have been granted...

a)...temporary permission to stay (Aufenthaltsgestattung):

For the *first nine months* of your stay in Germany a so-called *waiting period* applies, during which you are not allowed to work; after that you can apply for a work permit which must be approved by the Foreigners Authority.

Your access to the labour market will then be restricted, and a *priority review* will be carried out. For more information on what that means see point 8.

b) ...temporary suspension of deportation (Duldung):

For the first **twelve months** of your stay in Germany a so-called **waiting period** applies, during which you are not allowed to work. After this waiting period, you can apply for a work permit at the Foreigners Authority.

Your access to the labour market will then be restricted until the end of the fourth year of your stay. A **priority review** will be carried out. For more information on what that means see point 8.

After 48 months your access to the labour market will be **unrestricted**².

You can already take up work-based vocational training without priority review after twelve months¹ of stay in Germany.

ATTENTION: The Foreigners Authorities may nevertheless ban someone from working at any time (see point 6)!

IMPORTANT: YOUR WORK PERMIT IS ONLY VALID AS LONG AS YOUR RESIDENCE PERMIT AND / OR YOUR PASSPORT ARE VALID.

¹ With effect from (probably) 01/12/2013

² "Unrestricted" means that no priority review and no review of working conditions will be carried out.

6 **When will a work ban be imposed?**

A general work ban can **only be imposed in the event of a temporary suspension of deportation (Duldung)**, if the Foreigners Authority claims that:

You only came to Germany in order to receive social benefits, or you do not sufficiently cooperate with your deportation (e.g. do not obtain a passport) and therefore cannot be deported **for reasons for which you are responsible**.

If you are banned from working this will always be expressly stated in your identity paper / your suspension of deportation paper (Duldung).

TIP: If the Foreigners Authority bans you from working, you can contact one of the advice centres of our network, a refugee advice centre or a lawyer to have them check the work ban.

7 **Will the Federal Employment Agency (Bundesagentur für Arbeit) be involved in the decision of the Foreigners Authority?**

General rule: approval *is required*.

This applies to refugees who have been in Germany for at least nine months and have been granted temporary permission to stay (Aufenthaltsgestattung), or whose deportation has been suspended (Duldung), but who have been in Germany less than 48 months. The Foreigners Authority will forward your applica-

tion to the Federal Employment Agency. Once all documents have been submitted, the Employment Agency must review the application within two weeks and inform the Foreigners Authority of the result. Then the Foreigners Authority will either grant you a work permit or issue a written notice of rejection.

Exception: no approval *is required*.

The Foreigners Authority can decide without involving the Federal Employment Agency, if you apply for a work permit for one of the following occupational activities:

- continuation of employment after one year of prior employment with the same employer,
- internship in the context of school education/
a course of study
- internship in the context of an EU funded project
- activity as a highly skilled worker
- activity as a family member of the employer if you live with the employer
- activity which mainly supports you in your recovery, reintegration or education ³,
- vocational training in a state-recognised or similarly regulated training occupation (this does not apply to persons with temporary permission to stay),
- voluntary social or ecological year or EU funded voluntary service,
- in the event of hardship cases.

8 What will be examined by the Federal Employment Agency?

The Federal Employment Agency examines whether there are reasons to reject the application.

I. General rule: priority review and review of working conditions

a) Priority review (Vorrangprüfung) means:

Each case will be examined individually and there has to be no privileged employee available for the particular job. Privileged employees are German citizens, nationals of EU countries and foreigners who are already in possession of a work permit.

In addition to the case-by-case assessment mentioned above the Federal Employment Agency can specify certain occupational categories where employment is generally possible and without a case-by-case assessment.

b) Review of working conditions (Arbeitsbedingungsprüfung) means:

You may not be employed on less favourable working conditions than comparable German employees. Therefore it will be examined whether the wage offered meets the collectively agreed wage and whether statutory regulations such as the laws on employee protection are complied with.

II. Exceptions:

No priority review, but a review of working conditions:

- In case employment with the same employer is continued after one year.
- In the event of assessments under the hardship clause the overall circumstances of the individual case will be examined (for example in case of traumatised persons).

³ This applies to e.g. ill or addicted persons, prisoners, etc., but not to traumatised refugees.

9 *What can you do if the Foreigners Authority rejects your application?*

The Foreigners Authority will have to notify you in writing. You can lodge an objection (Widerspruch) against the notice you receive. Be sure to pay close attention to the deadlines indicated in the information on legal remedies at the end of this notice.

If your objection has been unsuccessful you may file an action with the competent administrative court. If you expect the employer to give the job offered to you to another person after a short time, you should also file an urgent motion (Eilantrag) when you file an action. The court will have to rule on this motion soon and without conducting a court hearing.

The information in this brochure is only supposed to give a rough overview. If you have further questions relating to work permits, please do not hesitate to contact one of the advice centres of our network

Four project partners teamed up in Lower Saxony (Niedersachsen) in order to support refugees on their path to employment, training and qualifications.

Our programmes are aimed at all persons entitled to stay and refugees with access to the labour market. Participation is voluntary and free of charge.

A *dresses*

The addresses of the network's advice centres you can find on the website of the network and on the website of the Flüchtlingsrat Niedersachsen e.V. You can also get advice over the phone.

Flüchtlingsrat Niedersachsen e. V. Koordinationsstelle für AZF II

Langer Garten 23 B
31137 Hildesheim
Tel.: 0 51 21/1 56 05
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nds@nds-fluerat.org
www.nds-fluerat.org

Opening hours (advice service):
Mon, Tue, Thu and Fri from 11 a.m. to 03 p.m.,
other times by prior telephone arrangement



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