

1. Can I work during exceptional leave to remain (Duldung)?

People who have exceptional leave to remain may only work if they have a **valid work permit**. The alien must first look for a job. If he* is offered a job contract, a work permit for this particular job can be applied for at the competent **Aliens' Registration Office**.

It is irrespective whether his exceptional leave to remain contains the remark: "Taking up of gainful employment not permitted", since this is generally** only an indication of the valid legal position and thus does not represent a personal ban on working.

2. How long must I have already been in Germany for?

A work permit can only be issued if the alien living in Germany

- has had exceptional leave to remain for at least one year
- initially had temporary permission to stay (*Aufenthaltsgestattung*) within the preceding 12 months and now has exceptional leave to remain.

3. In which cases will the Aliens' Registration Office reject the application?

a) Entry due to collection of benefits:

An application for a work permit will be rejected if the alien has entered Germany in order to collect benefits in accordance with the Asylum-Seekers' Benefit Act. This, however, can only be assumed if the collection of benefit was of **formative significance** in the decision to enter the country, i.e. if he primarily came to Germany in order to receive social benefits.

b) Hindrance to the execution of measures to end a stay:

An application for a work permit will also be rejected if measures to end a stay, in particular, **deportation**, cannot be executed due to reasons for which the alien is responsible. In this case, it does **not** depend upon whether or not the alien could **leave the country voluntarily**.

4. What does "due to reasons for which the alien is responsible" mean?

The reasons must lie within the alien's area of responsibility, i.e. behaviour that is carried out under his own free will.

The alien is particularly responsible for:

- a) Violation of a statutory duty to cooperate that is incumbent upon him if he is not in possession of a valid passport or substitute passport document, e.g.
 - Refusal to complete a form for the application of identity papers.
 - Refusal to visit the embassy of the country of origin.

The Aliens' Registration Office must, however – in any case, if requested by the alien** – have pointed out **which concrete cooperative action** the alien should undertake. Furthermore, the requested cooperative action must be reasonable and acceptable.

- b) False statements regarding his identity or nationality.

5. When can measures to end a stay due to reasons for which the alien is responsible not be executed?

a) Causality

The reasons for which the alien is responsible must be the **only cause** for the inability to deport him. This is **not** the case if he can also not be deported **for other reasons**, for example, because:

- no deportations to his country of origin are generally made,
- the country of origin does not issue any home-ward journey documents as a matter of principle,
- there is another impediment to the deportation, e.g. inability to travel.

b) The present

The reasons for which the alien is responsible must render deportation impossible at the **current point in time**.

It is therefore irrelevant that deportation has been impeded **in the past** – possibly through refusal to apply for homeward journey documents – as long as deportation is impossible at the current point in time **for other reasons**, for example, because there are no flight connections.

6. Who must prove this?

It is often particularly debatable whether the alien has cooperated sufficiently or has given false statements. In this case, the Aliens' Registration Office has the **onus of presentation and proof****.

a) Onus of presentation

This means that the Aliens' Registration Office must, for example, set out

- that the alien has failed to cooperate and
 - that fulfilment of the duty to cooperate would have led to the issuing of a homeward journey document
- or
- the reasons for which it believes that the alien has given false statements.

b) Onus of proof

If the alien contests these explanations, the Aliens' Registration Office must prove them – for example, by submitting documents. Should the Aliens' Registration Office be unable to do this, it cannot deny him the work permit using this reason.

7. Which decision does the Aliens' Registration Office make?

If there are no reasons for a ban on working (cf. Nos. 3-6), the Aliens' Registration Office makes a **discretionary decision** as to whether, from its point of view, a work permit can be issued. It is disputable, however, as to which points of view can be considered in this case; whether, for example, actions and omissions that lead to a ban on working and migratory-political points of view represent admissible discretionary considerations.**

Should the Aliens' Registration Office have no misgivings with regard to issuing the work permit, it passes on the application to the responsible employment agency (cf. pamphlet entitled "How to obtain a work permit, No. 7").

If the Aliens' Registration Office believes the prerequisites for the issuing of a work permit are not met, it issues a written decision concerning the rejection (cf. pamphlet entitled "How to obtain a work permit, No. 8")

Note:

The content of the pamphlet conveys the author's legal opinion.

* For reasons of clarity and comprehensibility, we only refer to the masculine form, although the feminine form is also meant throughout.

** For further information please refer to www.equal-saga.info/fly.html.

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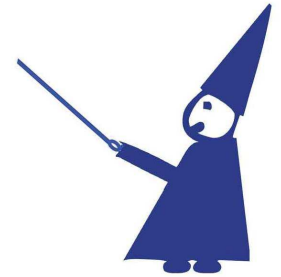
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INFORMATION ON LABOUR LAW

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Arbeitsrechtliche Information

**Work permit for aliens
with exceptional leave
to remain**

(englisch)

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