

Part 2

Entry

Section 13

Border crossing

(1) Entry into and exit from

the federal territory is permitted only at the approved border crossing points and within the stipulated traffic hours, unless exceptions are permitted on the basis of other statutory provisions or intergovernmental agreements. When entering or leaving the federal territory, foreigners are required to carry a recognised and valid passport or passport substitute as referred to in section 3 (1) and to submit to the police control of cross-border traffic.

(2) A foreigner is deemed to have entered the federal territory only after having crossed the border and passed through the border checkpoint. Should the authorities charged with policing cross-border traffic allow a foreigner to pass through the border checkpoint for a specific temporary purpose prior to a decision on the refusal of entry (section 15 of this Act, sections 18, 18a of the Asylum Act) or during preparation, safeguarding or implementation of this measure, this does not constitute entry as defined in sentence 1 as long as the said authorities remain able to monitor the foreigner's stay. In all other cases, a foreigner is deemed to have entered the federal territory when crossing the border.

Section 14

Unlawful entry; exceptional visa

(1) The entry of a foreigner into the federal territory is unlawful if the foreigner

1. does not possess a passport or passport substitute as required in section 3 (1),

2. does not possess the residence title as required in section 4,

2a. does possess a visa required in section 4 upon entry, but obtained it by threat, bribery or collusion or by furnishing incorrect or incomplete information, for which reason it is revoked or annulled retrospectively, or

3. is not permitted to enter the federal territory in accordance with section 11 (1), (6) or (7) unless the foreigner possesses a temporary entry permit as required in section 11 (8).

(2) The authorities charged with policing cross-border traffic may issue exceptional

visa and passport substitutes.

Section 15

Refusal of entry

(1) A foreigner wishing to enter the federal territory unlawfully will be refused entry at the border.

(2) A foreigner may be refused entry at the border if

1. there is a public interest in expelling the foreigner,

2. there is a well-founded suspicion that the foreigner does not intend to stay in the federal territory for the stated purpose,

2a. the foreigner only possesses a Schengen visa or is exempted from the visa requirement for a short-term stay and intends to pursue an economic activity in breach of section 4a (1), sentence 2, or

3. the foreigner does not fulfil the conditions for entry into the territory of the parties signatory in accordance with Article 5 of the Schengen Borders Code.

(3) A foreigner who is exempted from the requirement to have a residence title for a temporary stay in the federal territory may be refused entry if the foreigner does not fulfil the requirements of section 3 (1) and section 5 (1).

(4) Section 60 (1) to (3), (5) and (7) to (9) applies accordingly. A foreigner who has filed an application for asylum may not be refused entry if the foreigner is permitted to stay in the federal territory in accordance with the provisions of the Asylum Act.

(5) In order to ensure that a refusal of entry is effective where a ruling to refuse entry has been issued and cannot be enforced immediately, the foreigner concerned is, as a general rule, to be taken into custody (detention pending exit from the federal territory) by virtue of a judicial order. In all other cases, section 62 (4) applies accordingly. Subsection 1 does not apply in cases in which the judge declines to issue a corresponding judicial order or to extend the period of detention.

(6) Where the foreigner has reached the federal territory by air and has not entered the country as defined in section 13 (2) but has been refused entry, the foreigner is to be taken to the transit area of an airport or to a place of accommodation from which he or she is able to leave the federal territory if detention pending exit from the federal territory is not applied for. The foreigner's stay in the transit area of an airport or in accommodation pursuant to sentence 1 requires a judicial order no later than 30 days after the foreigner's arrival at the airport or, if the time of arrival

is impossible to ascertain, after the competent authorities become aware of the foreigner's arrival. The judicial order is issued to ensure that the foreigner leaves the federal territory. It is permitted only where exit is to be expected within the term of the order. Subsection (5) applies accordingly.

Section 15a

Allocation of foreigners who have entered the federal territory unlawfully

(1) Foreigners who enter the country unlawfully without applying for asylum and who, when their unlawful entry has been detected, cannot be placed in custody pending deportation and deported or expelled directly from custody must be allocated to the Länder before deciding on the suspension of deportation or issuing a residence title. They are not entitled to be allocated to a specific Land or a specific town or location. Allocation to the Länder is carried out by a central allocation agency to be appointed by the Federal Ministry of the Interior. Unless another formula for allocation has been agreed among the Länder, the formula for the allocation of asylum applicants applies. Each Land appoints up to seven authorities to request allocation by the agency appointed in accordance with sentence 3 and to admit the allocated foreigners. If the foreigner furnishes evidence prior to allocation that a household community exists between spouses or parents and their minor children or that other compelling reasons exist which conflict with allocation to a certain place, this is given due consideration in the allocation process.

(2) The foreigners authorities may require foreigners to present themselves to the authority requesting allocation. This does not apply when due consideration is to be given to evidence submitted in accordance with subsection (1) sentence 6. An obligation imposed in accordance with sentence 1 is not contestable. Any legal actions have no suspensive effect.

(3) The central allocation agency informs the authority which has requested allocation which reception centre is obliged to admit the foreigners concerned in accordance with sentences 2 and 3. If the Land whose authority has requested allocation has not filled its admission quota, the Land's reception centre located nearest to this authority having capacity is obliged to admit the foreigners concerned. Otherwise, the reception centre designated by the central allocation agency on the basis of the allocation quota pursuant to section 45 of the Asylum Act and the available accommodation capacities is obliged to admit the foreigners concerned. Section 46 (4) and (5) of the Asylum Act applies accordingly.

(4) In the cases covered by subsection (3) sentence 3 the authority which has

requested allocation pursuant to subsection (3) orders the foreigner to report to the reception centre designated as a result of the allocation process; in the cases covered by subsection (3) sentence 2 it may issue such an order. The foreigners authority forwards the result of the interview to the authority requesting allocation, which notifies the central allocation agency of the number of foreigners, stating the countries of origin and the results of the interview. Spouses and parents and their minor, unmarried children are registered and allocated as a group. The foreigner must stay at this reception centre until re-allocated to another location within the Land, but only until deportation has been suspended or a residence title has been issued; sections 12 and 61 (1) remain unaffected. The Land governments are authorised to regulate allocation within the Land by statutory instrument, unless allocation is regulated by Land law on the basis of this Act; section 50 (4) of the Asylum Act applies accordingly. The Land governments may delegate the said authorisation to other bodies of the Land. Orders pursuant to sentence 1 are not contestable. Any legal actions have no suspensive effect. Sentences 7 and 8 apply accordingly, if an allocation order is issued on the basis of a Land law or a statutory instrument pursuant to sentence 5.

(5) Following allocation, the competent authorities may permit the foreigner to take up residence in another Land. Following a permitted change of residence, the foreigner is deducted from the quota for the Land from which he is released and added to the quota for the receiving Land.

(6) The provisions of subsections (1) to (5) do not apply to persons who verifiably entered the federal territory prior to 1 January 2005.