

## Part 5

Residence granted for reasons of international law or on humanitarian or political grounds

### **Section 22**

#### **Admission from abroad**

A foreigner may be granted a temporary residence permit for the purpose of admission from abroad for reasons of international law or on urgent humanitarian grounds. A temporary residence permit is to be granted if the Federal Ministry of the Interior or the body designated by it has declared, so as to uphold the political interests of the Federal Republic of Germany, that the foreigner is to be admitted.

### **Section 23**

#### **Granting of residence by the supreme Land authorities; admission when special political interests apply; resettling persons seeking protection**

(1) The supreme Land authority may order a temporary residence permit to be granted to foreigners from specific states or to certain groups of foreigners defined by other means, for reasons of international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. The order may be issued subject to the proviso that a declaration of commitment be submitted in accordance with section 68. In order to ensure a nationwide uniform approach, the order requires the approval of the Federal Ministry of the Interior. The residence permit does not entitle the holder to pursue an economic activity; the order may stipulate that the temporary residence permit to be granted allows such activity or that such activity may be permitted under section 4a (1).

(2) In order to safeguard special political interests of the Federal Republic of Germany, the Federal Ministry of the Interior may, in consultation with the supreme Land authorities, order the Federal Office for Migration and Refugees to grant foreigners from specific states or certain categories of foreigners defined by other means approval for admission. No preliminary proceedings take place pursuant to section 68 of the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung). The foreigners concerned are to be granted a temporary residence permit or permanent settlement permit, in accordance with the approval for admission. The permanent settlement permit may be issued subject to a restriction on the permissible place of residence.

(3) The order may provide for section 24 to be applied accordingly, either in part or in full.

(4) In consultation with the supreme Land authorities, the Federal Ministry of the Interior may, within the context of resettling persons seeking protection, order the Federal Office for Migration and Refugees to grant approval for admission to certain persons seeking protection who have been selected for resettlement (resettlement refugees). Subsection (2) sentences 2 to 4 and section 24 (3) to (5) apply accordingly.

### **Section 23a**

#### **Granting residence in case of hardship**

(1) In derogation from the prerequisites for granting and extending residence titles as stipulated in this Act as well as in sections 10 and 11, the supreme Land authority may, on petition from a hardship commission established by the Land government by virtue of a statutory instrument, order a temporary residence permit to be issued to a foreigner who is enforceably required to leave the federal territory (hardship petition). According to the individual case concerned, the said order may be issued with due consideration as to whether the foreigner's subsistence is ensured or a declaration of commitment is submitted in accordance with section 68. A case of hardship will not generally be considered if the foreigner has committed a serious offence or if a concrete date has already been set for the foreigner's removal. The authority to grant residence represents the public interest only and does not constitute any rights on the part of the foreigner.

(2) The Land governments are authorised to establish a hardship commission in accordance with subsection (1) by virtue of a statutory instrument, to specify the procedure, grounds for exclusion and qualified requirements pertaining to a declaration of commitment pursuant to subsection (1) sentence 2, including conditions to be met by the party submitting such a declaration, and to assign the authority to issue orders pursuant to subsection (1) sentence 1 to other bodies. The hardship commissions take action solely on their own initiative. No third parties may require a hardship commission to take up a specific individual case or to make a specific decision. A hardship commission may decide to file a hardship petition only after establishing that urgent humanitarian or personal grounds justify the foreigner's continued presence in the federal territory.

(3) If a foreigner who is dependent on social welfare and who has been issued a temporary residence permit in accordance with subsection (1) relocates to the area of responsibility of another institution, the social welfare institution in whose area of

responsibility a foreigners authority has issued the temporary residence permit is required to reimburse the costs incurred by the local social welfare institution which now bears responsibility for the foreigner concerned for a maximum of three years from the date the temporary residence permit was issued. The same applies accordingly to the subsistence payments stipulated in section 6 (1) sentence 1 no. 2 of Book Two of the Social Code.

## **Section 24**

### **Granting of residence for temporary protection**

- (1) A foreigner who is granted temporary protection on the basis of a decision by the Council of the European Union pursuant to Directive 2001/55/EC and who declares the willingness to be admitted into the federal territory is granted a temporary residence permit for the duration of the temporary protection as assessed in accordance with Articles 4 and 6 of said directive.
- (2) No temporary protection is granted if the conditions stipulated in section 3 (2) of the Asylum Act or section 60 (8) sentence 1 apply; the temporary residence permit is to be denied.
- (3) The foreigners referred to in subsection (1) are allocated to the various Länder. The Länder may agree quotas for admission to grant temporary protection and for allocation. Allocation to the various Länder is carried out by the Federal Office for Migration and Refugees. Unless another formula for allocation has been agreed among the Länder, the formula for the allocation of asylum applicants applies.
- (4) The supreme Land authority or the body appointed by it issues an allocation decision. The Land governments are authorised to regulate allocation within the Länder via statutory instruments, and may assign this authority to other bodies via statutory instruments; section 50 (4) of the Asylum Act applies accordingly. The allocation decision is not contestable. Any legal actions have no suspensive effect.
- (5) The foreigner has no entitlement to stay in a specific Land or a specific place. The foreigner must take up accommodation and habitual residence at the place to which he or she is allocated in accordance with subsections (3) and (4).
- (6) Self-employment may not be excluded. The residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (2).
- (7) The foreigner is provided with written notification of the rights and obligations pertaining to the temporary protection in a language which he or she is able to understand.

## **Section 25**

### **Residence on humanitarian grounds**

(1) A foreigner is granted a temporary residence permit if he or she is recognised as being entitled to asylum. This does not apply if the foreigner has been expelled on the ground of a particularly serious public interest in expulsion in accordance with section 54 (1). Residence is deemed to be permitted up to the time the temporary residence permit is issued.

(2) A foreigner is to be granted a temporary residence permit if the Federal Office for Migration and Refugees has granted him or her refugee status within the meaning of section 3 (1) of the Asylum Act or subsidiary protection status within the meaning of section 4 (1) of the Asylum Act. Subsection (1) sentences 2 to 3 applies accordingly.

(3) As a general rule, a foreigner is to be granted a temporary residence permit if a deportation ban applies pursuant to section 60 (5) or (7). The temporary residence permit is not granted if departure for subsequent admission to another state is possible and reasonable or the foreigner has repeatedly or grossly breached the obligation to cooperate. Further, it is not granted where there is serious reason to believe that the foreigner

1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes,
2. has committed a serious criminal offence,
3. is guilty of acts contrary to the objectives and principles of the United Nations, as enshrined in the Preamble and Articles 1 and 2 of the Charter of the United Nations, or
4. represents a threat to the general public or a threat to the security of the Federal Republic of Germany.

(4) A foreigner who is not enforceably required to leave the federal territory may be granted a temporary residence permit for a temporary stay if the foreigner's continued presence in the federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. In derogation from section 8 (1) and (2), a temporary residence permit may be extended if departure from the federal territory would constitute exceptional hardship for the foreigner due to special circumstances in the individual case concerned. The residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted

under section 4a (1).

(4a) As a general rule, a foreigner who has been the victim of a criminal offence under sections 232 to 233a of the Criminal Code (Strafgesetzbuch) is also to be granted a temporary residence permit for a temporary stay, even if the foreigner is enforceably required to leave the federal territory. The temporary residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers the foreigner's presence in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without the foreigner's information,
2. the foreigner has broken off contact to the persons accused of having committed the criminal offence and
3. the foreigner has declared the willingness to testify as a witness in the criminal proceedings relating to the offence.

After the criminal proceedings have ended, the temporary residence permit is to be extended as a rule if humanitarian or personal reasons or public interests require the foreigner's further presence in the federal territory. The residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (1).

(4b) A foreigner who has been the victim of a criminal offence pursuant to sections 10 (1) or 11 (1) no. 3 of the Act to Combat Clandestine Employment (Schwarzarbeitsbekämpfungsgesetz) or pursuant to section 15a of the Act on Temporary Employment Businesses (Arbeitnehmerüberlassungsgesetz) may also be granted a temporary residence permit for a temporary stay, even if the foreigner is enforceably required to leave the federal territory. The temporary residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers the temporary presence of the foreigner in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without the foreigner's information and
2. the foreigner has declared the willingness to testify as a witness in the criminal proceedings relating to the offence.

The temporary residence permit may be extended if the remuneration owed to the

foreigner by the employer has not yet been paid in full, and it would represent particular hardship for the foreigner to pursue his or her claim from abroad. The temporary residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (1).

(5) A foreigner who is enforceably required to leave the federal territory may be granted a temporary residence permit if departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. As a general rule, the temporary residence permit is to be granted if deportation has been suspended for 18 months. A temporary residence permit may only be granted if the foreigner is prevented from leaving the federal territory through no fault of his or her own. Fault on the part of the foreigner applies in particular if he or she furnishes false information, deceives the authorities with regard to his or her identity or nationality or fails to meet reasonable demands to eliminate the obstacles to departure.

### **Section 25a**

#### **Granting residence in the case of well-integrated juveniles and young adults**

(1) As a general rule, a juvenile aged 14 to 18 or a young adult aged 18 - 21 whose deportation has been suspended is to be granted a temporary residence permit if

1. the foreigner has resided in the federal territory for four years without interruption either by virtue of holding a temporary residence or permanent settlement permit, by virtue of his or her deportation having been suspended or by holding permission to remain pending the asylum decision,
2. the foreigner has successfully attended school in the federal territory for, as a rule, four years or has acquired a recognised vocational or school-leaving qualification,
3. the application for the temporary residence permit is filed before the foreigner reaches the age of 21,
4. it appears, on the basis of the foreigner's education and way of life to date, that the foreigner will be able to integrate into the way of life in the Federal Republic of Germany and
5. there is no concrete evidence to suggest that the foreigner is not committed to the free democratic basic order of the Federal Republic of Germany.

For as long as the foreigner attends school, vocational training or higher education, claiming public benefits for the purpose of ensuring his or her subsistence does not

preclude the granting of the temporary residence permit. A temporary residence permit is to be denied if deportation has been suspended on the basis of false information furnished by the foreigner or on the grounds of deception by the foreigner as to his or her identity or nationality.

(2) The parents or parent having the right of care and custody of a foreign minor who holds a temporary residence permit in accordance with subsection (1) may be granted a temporary residence permit if

1. deportation has not been prevented or delayed on the grounds of false information or deceit with regard to identity or nationality or due to a failure to meet reasonable demands to eliminate obstacles to departure and
2. subsistence is ensured independently by means of an economic activity.

The minor children of a foreigner who holds a temporary residence permit pursuant to sentence 1 may be granted temporary residence permits if they live with the foreigner as a family unit. As a general rule, a spouse or civil partner who is living with the beneficiary referred to in subsection (1) as a family unit is to be granted a temporary residence permit if the conditions of sentence 1 are met. Section 31 applies accordingly. As a general rule, a minor, unmarried child who is living with the beneficiary referred to in subsection (1) as a family unit is to be granted a temporary residence permit.

(3) No temporary residence permit pursuant to subsection (2) may be granted if the foreigner has been convicted of an offence intentionally committed in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, pursuant to this Act or the Asylum Act, can only be committed by foreigners, are ignored as a general principle.

(4) The temporary residence permit may be granted in derogation from section 10 (3) sentence 2.

## **Section 25b**

### **Granting residence in the case of permanent integration**

(1) In derogation from section 5 (1) no. 1 and (2), a foreigner whose deportation has been suspended is as a rule to be granted a temporary residence permit if the foreigner has become permanently integrated into the way of life in the Federal Republic of Germany. As a rule, this is subject to the condition that the foreigner

1. has resided in the federal territory for at least eight years or, if the foreigner is living with a minor, unmarried child as a family unit, for at least six years without

interruption because his or her deportation having been suspended, on the basis of permission to remain pending the asylum decision or by holding a temporary residence or permanent settlement permit,

2. is committed to the free democratic basic order of the Federal Republic of Germany and possesses a basic knowledge of the legal and social system and the way of life which prevails in the federal territory,

3. ensures his or her subsistence primarily by pursuing an economic activity or it is to be expected, when considering the foreigner's previous educational, training, income and family situation, that the foreigner will be able to ensure his or her subsistence within the meaning of section 2 (3); receiving housing benefits is not detrimental thereto,

4. possesses an elementary oral command of the German language equivalent to Level A2 of the Common European Framework of Reference for Languages and

5. can furnish proof that his or her school-age children are actually attending school.

Temporarily receiving social benefits is not generally detrimental to securing subsistence in the case of

1. students attending a state or state-recognised higher education institution and apprentices undergoing training in a recognised trade or in a government-sponsored pre-vocational training measure,

2. families with minor children who temporarily rely on supplementary social benefits,

3. single parents of minor children who, pursuant to section 10 (1) no. 3 of Book Two of the Social Code, cannot reasonably be expected to take up employment or

4. foreigners caring for close relatives in need of long-term care.

(2) A temporary residence permit pursuant to subsection (1) is to be denied where

1. the foreigner prevents or delays the termination of his or her residence by intentionally providing false information, by deceit regarding his or her identity or nationality, or non-compliance with reasonable requirements to cooperate in eliminating any obstacles to the departure or

2. there is a public interest in expelling the foreigner within the meaning of section 54 (1) or (2) nos.1 and 2.

(3) The conditions of subsection (1) sentence 2, nos. 3 and 4 are waived if the



foreigner is unable to fulfil them due to a physical or mental illness or disability or old age.

(4) As a general rule, a spouse, civil partner and minor, unmarried children living with the beneficiary referred to in subsection (1) as a family unit are to be granted a temporary residence permit under the conditions set out in subsection (1) sentence 2 nos. 2 to 5. Subsections (2), (3) and 5 apply. Section 31 applies accordingly.

(5) In derogation from section 26 (1) sentence 1, the temporary residence permit is to be granted and extended for no more than two years. It may be granted in derogation from section 10 (3) sentence 2. Section 25a remains unaffected.

(6) As a general rule, a foreigner, his or her spouse or civil partner and minor, unmarried children living with the foreigner as a family unit who have held a card documenting suspended deportation under section 60d for 30 months, are to be granted a temporary residence permit in accordance with subsection (1) in derogation from the time limit referred to in subsection (1) sentence 2 no. 1, if the requirements of section 60d are met and the foreigner has an elementary oral command of the German language; if the foreigner had the possibility to attend an integration course, the temporary residence permit is granted on the further condition that the foreigner, the spouse or civil partner also have an elementary written command of the German language.

## **Section 26**

### **Duration of residence**

(1) The temporary residence permit in accordance with this Part may be issued and extended in each instance for a maximum of three years, but for no longer than six months in cases covered by section 25 (4), sentence 1 and (5) if the foreigner has not been legally resident in the federal territory for at least 18 months. The temporary residence permit is issued for three years to persons granted asylum status and foreigners granted refugee status within the meaning of section 3 (1) of the Asylum Act. The temporary residence permit is issued for one year to persons granted subsidiary protection status within the meaning of section 4 (1) of the Asylum Act; it may be extended for an additional two years. Foreigners who meet the requirements in section 25 (3) are issued with a temporary residence permit for at least one year. Temporary residence permits pursuant to section 25 (4a) sentence 1 and (4b) are issued and extended for one year in each instance, temporary residence permits pursuant to section 25 (4a) sentence 3 for two years in each instance; a longer period of validity is permissible in substantiated individual cases.

(2) The temporary residence permit may not be extended if the obstacle to departure or the other grounds precluding a termination of residence have ceased to apply.

(3) A foreigner who has a temporary residence permit in accordance with section 25 (1) or (2) sentence 1 first alternative is to be granted a permanent settlement permit if

1. the foreigner has possessed a temporary residence permit for five years; in derogation from section 55 (3) of the Asylum Act, the period of residence during the asylum procedure which preceded the issuance of the temporary residence permit is counted towards the period in which the foreigner is required to possess a temporary residence permit in order to be issued with a permanent settlement permit,

2. the Federal Office for Migration and Refugees has not provided the notification in accordance with section 73 (2a) of the Asylum Act that the requirements for revocation or withdrawal are met; if the temporary residence permit was granted after a decision by the Federal Office which became incontestable in 2015, 2016 or 2016, the Federal Office must have provided the notification that the requirements for revocation or withdrawal are not met,

3. the foreigner's subsistence is for the most part ensured,

4. the foreigner has an elementary command of the German language and

5. the conditions of section 9 (2) sentence 1 nos. 4 to 6, 8 and 9 are met.

Section 9 (2) sentences 2 to 6, section 9 (3) sentence 1 and section 9 (4) apply accordingly; the condition set out in sentence 1 no. 3 is also waived if the foreigner has reached the statutory retirement age under section 35 sentence 2 or section 235 (2) of Book Six of the Social Code. In derogation from sentences 1 and 2, a foreigner who holds a temporary residence permit in accordance with section 25 (1) or (2) sentence 1 first alternative is to be granted a permanent settlement permit if

1. the foreigner has possessed the temporary residence permit for three years; in derogation from section 55 (3) of the Asylum Act, the period of residence during the asylum procedure which preceded the issuance of the temporary residence permit is counted towards the period in which the foreigner is required to possess a temporary residence permit in order to be issued with a permanent settlement permit,

2. the Federal Office for Migration and Refugees has not provided the notification in

accordance with section 73 (2a) of the Asylum Act that the requirements for revocation or withdrawal are met; if the temporary residence permit was granted after a decision by the Federal Office which became incontestable in 2015, 2016 or 2016, the Federal Office must have provided the notification that the requirements for revocation or withdrawal are not met,

3. the foreigner has an advanced command of the German language,

4. the foreigner's subsistence is for the most part ensured and

5. the conditions of section 9 (2) sentence 1 nos. 4 to 6, 8 and 9 are met.

Section 9 (3) sentence 1 and section 9 (4) apply accordingly in the cases referred to in sentence 3. Section 35 may be applied accordingly to children who entered Germany before reaching the age of 18. Sentences 1 to 5 also apply to foreigners who possess a temporary residence permit issued pursuant to section 23 (4), unless the conditions for its withdrawal are met.

(4) In all other cases, a foreigner who possesses a temporary residence permit in accordance with this Part may be granted a permanent settlement permit if the conditions stipulated in section 9 (2) sentence 1 are met. Section 9 (2) sentences 2 to 6 applies accordingly. In derogation from section 55 (3) of the Asylum Act, the duration of residence during the asylum procedure before the temporary residence permit was granted counts towards this qualifying period. Section 35 may be applied accordingly to children who entered Germany before reaching the age of 18.