

Part 7
Special rights of residence

Section 37
Right of return

(1) A foreigner whose lawful habitual residence as a minor was in the federal territory is to be granted a temporary residence permit if

1. the foreigner lawfully resided in the federal territory for eight years prior to his or her departure and attended school in the federal territory for six years,
2. the foreigner's subsistence is ensured by his or her own economic activity or by a maintenance commitment into which a third party has entered for a period of five years and
3. the application for the temporary residence permit is filed after the foreigner has reached the age of 15 and before he or she has reached the age of 21, and within five years of departure from the federal territory.

(2) Derogation from the requirements stipulated in subsection (1) sentence 1 nos. 1 and 3 is possible to prevent particular hardship. The requirements stipulated in subsection (1) sentence 1 no. 1 may be waived if the foreigner has acquired a recognised school-leaving qualification in the federal territory.

(2a) Derogation from the requirements stipulated in subsection (1) sentence 1 nos. 1 to 3 is possible if the foreigner has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany, and he or she files the application for a temporary residence permit no more than three months after the coercive situation has ended and within five years of departure from the federal territory, and it appears, on the basis of the foreigner's education and way of life to date, that he or she will be able to become integrated into the way of life in the Federal Republic of Germany. As a general rule, if the foreigner fulfils the requirements of subsection (1) sentence 1 no. 1, the foreigner is to be granted a temporary residence permit if he or she has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany, and he or she files the application for a temporary residence permit no more than three months after the coercive situation has ended and within 10 years of departure from the federal territory. Subsection (2) remains unaffected.

(3) The temporary residence permit may be denied

1. if the foreigner was expelled or could have been expelled when he or she left the federal territory,
2. if there is a public interest in expelling the foreigner or
3. as long as the foreigner is a minor and his or her personal care in the federal territory is not assured.

(4) The fact that the foreigner's subsistence is no longer ensured on the basis of his or her own economic activity or that the maintenance commitment no longer applies because the five-year period has expired does not preclude extension of the temporary residence permit.

(5) A foreigner who receives a pension from an institution in the federal territory will generally be granted a temporary residence permit if the foreigner lawfully resided in the federal territory for at least eight years prior to his or her departure.

Section 38

Residence title for former Germans

(1) Former Germans

1. are to be granted a permanent settlement permit if they had been ordinarily resident as Germans in the federal territory for five years when losing their German nationality,
2. are to be granted a temporary residence permit if they had been ordinarily resident in the federal territory for at least one year when losing their German nationality.

The application for a residence title pursuant to sentence 1 must be filed within six months of becoming aware of the loss of German nationality. Section 81 (3) applies accordingly.

(2) Former Germans who are habitually resident abroad may be granted a temporary residence permit if they possess a sufficient command of the German language.

(3) In special cases, the residence title pursuant to subsection (1) or (2) may be granted in derogation from section 5.

(4) The pursuit of an economic activity is permitted within the period for filing an application specified in subsection (1) sentence 2 and, if an application is filed, until the foreigners authority decides on the application.

(5) Subsections (1) to (4) apply accordingly to foreigners who, for reasons beyond their control, have been treated as Germans by German bodies to date.

Section 38a

Residence permit for long-term residents in other member states of the European Union

(1) Foreigners who have the status of long-term residents in another member state of the European Union are granted a temporary residence permit if they wish to stay in the federal territory for more than 90 days. Section 8 (2) does not apply.

(2) Subsection (1) does not apply to foreigners who

1. are dispatched by a service provider in connection with the cross-border provision of services,
2. intend to provide any other form of cross-border services or
3. wish to work in the federal territory as seasonal workers or to take up employment as cross-border workers.

(3) The temporary residence permit entitles its holder to take up employment if the Federal Employment Agency has granted approval in accordance with section 39 (3); approval will be granted subject to a labour-market test. The temporary residence permit entitles its holder to take up self-employment, if the requirements referred to in section 21 are met. Where the residence title pursuant to subsection (1) is issued for study purposes or for other educational purposes, sections 16a and 16b apply accordingly. In the cases covered by section 16a, the residence title is issued without the approval of the Federal Employment Agency.

(4) A temporary residence permit issued pursuant to subsection (1) may be subject to an ancillary provision pursuant to section 34 of the Ordinance on the Employment of Foreigners for no longer than 12 months. If the temporary residence permit is issued pursuant to subsection (1), the period referred to in sentence 1 begins when the holder is permitted to take up employment for the first time. After this period has elapsed, the temporary residence permit entitles the holder to pursue an economic activity.