

Act concerning the Entry and Residence of Aliens in the Territory of the Federal Republic

(Aliens Act)

Date of Entry Into Force: 1 January 1991

Note: This is an unofficial translation. This act has been amended by the Act of 26 June 1992, Act of 28 October 1994 (BGBl. I p. 3186) and Act of 24 February 1997 (BGBl. I p. 310). These amendments are not included here as no English translation is available to date.

(...)

Chapter 2 - ISSUE AND EXTENSION OF THE RESIDENCE PERMIT

Sec.6 - Who may claim a residence permit

(1) Aliens must be issued on request with a residence permit if they have a right to claim one. A residence permit may only be refused where such a right is precluded on the basis of section 10, para. 2, or where expressly determined by law.

Sec.7 - Issue of residence permits in other cases

(1) Where there is no entitlement to the issue of a residence permit, aliens wishing to enter or remain in Federal territory may, on request, be issued with a residence permit.

(2) A residence permit will normally be refused where

1. there are grounds for deportation,

2. the alien cannot provide for his own maintenance, including adequate sickness insurance, from his own earnings, property or other independent means, or from maintenance payments by family members or third parties, stipends, retraining or education grants, unemployment pay or other public resources based on contributions, or

3. the presence of the alien otherwise harms or endangers the interests of the Federal Republic of Germany.

(...)

Sec.8 - Special grounds for refusal

(1) The residence permit will be refused, even if the conditions for claiming one under this Act are fulfilled, if

1. the alien has entered the country without the requisite visa,

2. he has entered with a visa which, on the basis of the information supplied in the visa application, has been issued without the necessary consent of the Aliens Authority,

3. he does not possess the necessary passport,

4. the identity or nationality of the alien has not been established, and he has no right of return to another State.

(2) An alien who has been deported or expelled may not re-enter and reside in Federal territory; he will not be issued with a residence permit, even if the conditions for claiming one under this Act are fulfilled. On application, a time limit will normally be attached to these consequences, to run from the time of departure.

Sec.9 - Exceptions and exemptions from the grounds of refusal

(1) The residence permit may be issued notwithstanding the provisions of

1. section 8, para. 1, no. 1, if it is clear that the conditions for claiming the residence permit under this Act are fulfilled, and if the alien's obligation to hold a visa is due solely to the purpose or duration of his intended stay.

2. section 8, para. 1, no. 2, if it is clear that the conditions for claiming a residence permit under this Act are fulfilled.

3. section 8, para. 1, nos. 3 and 4 in certain cases specifically provided for, especially where the conditions for claiming the residence permit under this Act are fulfilled, and where the alien is lawfully resident in Federal territory and cannot reasonably obtain a passport or an entitlement to return to another State.

(...)

(3) An alien who has been deported or expelled may, in exceptional cases, be permitted to enter Federal territory for a short period before the expiry of the time limit pursuant to section 8, para. 2, second sentence, if there are pressing reasons for his presence or if the refusal of such permission would cause undue hardship.

(4) The Federal Minister of the Interior will determine, when necessary in order to comply with obligations under international law, to provide by way of statutory instrument with the consent of the Bundesrat that the temporary residence of aliens will be facilitated by providing that they may enter and remain in the country for a period not exceeding three months, notwithstanding the provisions of section 7, para. 2 and section 8, para. 2.

(...)

Sec.28 - Residence voucher

(1) A residence permit is issued in the form of a residence voucher if an alien is allowed to remain only for a specific purpose which, of its nature, requires only a temporary stay. Section 10 is unaffected.

(2) The residence voucher will be limited in time, in accordance with the purpose of the stay. It will be issued for not longer than two years, and may be extended for not more than two years at a time if the purpose of the stay has not yet been achieved and can still be achieved within a reasonable time.

(3) Before an alien leaves the country, the residence voucher cannot normally be renewed or extended for a different purpose. A residence licence cannot be issued until one year has elapsed since the departure of the alien; this will not apply in the case of a statutory entitlement or where the public interest requires otherwise. The above provisions do not apply to aliens whose stay in Federal territory has not yet exceeded one year.

Sec.30 - Residence authorization

(1) A residence permit is issued in the form of a residence authorization if an alien is to be allowed, on international legal grounds or for pressing humanitarian reasons, or to protect the political interests of the Federal Republic of Germany, to enter and remain in Federal territory, and where no residence licence can be issued or is to be refused in accordance with one of the grounds for refusal specified in section 7, para. 2.

(2) An alien who is residing lawfully in Federal territory, may be issued a residence authorization on urgent humanitarian grounds, if

1. the issuance or extension of another residence permit is barred;

2. the departure from Federal territory would imply extraordinary hardship for the alien giving due consideration to the specific circumstances of the individual case;

(3) An alien who has received a final order to leave the country may be issued with a residence authorization, notwithstanding the provisions of section 8, para. 1, if the conditions prescribed in section 55, para. 2, for the grant of a temporary consent are met, where for reasons beyond his control he cannot leave voluntarily and cannot be deported.

(4) In other instances an alien who has been under a final order to leave for at least two years, and who holds a temporary consent may, notwithstanding the provisions of section 8, paras. 1 and 2, be issued with a residence authorization, unless the alien refuses to comply with reasonable requests for the removal of the bar to deportation.

(5) An alien in whose case the Federal Office for the Recognition of Foreign Refugees has finally confirmed that the conditions prescribed in section 51, para. 1, are fulfilled, will be issued with a residence authorization if his deportation is impossible on legal or factual grounds. In other instances an alien whose request for asylum has been finally rejected, or who has withdrawn his request for asylum, may only be granted a residence authorization in accordance with paragraphs 3 and 4.

(...)

Chapter 4 - TERMINATION OF RESIDENCE

Sec.42 - Enforced departure

(1) An alien will be obliged to depart if he does not possess the necessary residence permit, or no longer possesses one.

(2) The obligation to depart becomes enforceable if the alien

1. has entered without permission,

(...)

3. has not yet applied for the initial issue of the required residence permit, and the statutory period for applying has elapsed.

In other instances the obligation to depart will become enforceable only when the refusal of the residence permit, or any other administrative decision whereby the alien is obliged to depart in accordance with paragraph 1, becomes enforceable.

(3) When the obligation to leave becomes enforceable, the alien must leave Federal territory without delay or, if a time limit for departure has been set, before the expiry of the time limit. The time limit for departure ends no later than six months after the obligation to depart has become final and unappealable. Extensions may be granted in cases of special hardship.

(4) The alien will only satisfy his obligation to leave by entering another Member State of the European Community if he is permitted to enter and reside in that State.

(5) An alien who is under an obligation to leave and who wishes to change his dwelling or leave the district of the Aliens Authority for more than three days must give prior notice to the Aliens Authority.

(6) The passport, or passport replacement, of an alien who is under an obligation to leave will be taken into safekeeping until he leaves.

Sec.45 - Deportation

(1) An alien may be deported if his presence adversely affects public security and public order, or other key interests of the Federal Republic of Germany.

(2) In any decision regarding deportation, account must be taken of

1. the length of lawful residence and the need to protect personal, financial and other ties of the alien in Federal territory,

3. the grounds for granting a temporary consent referred to in section 55, para. 2.

Sec.46 - Specific grounds for deportation

A person may be deported under section 45, para. 1, if, in particular, he

1. endangers the basic democratic freedoms or the security of the Federal Republic of Germany, or participates in acts of violence in pursuit of political aims, or publicly espouses or threatens the use of force,

2. has committed more than one breach of law of a serious nature or has infringed judicial or official decisions or orders, or has committed a criminal act outside Federal territory which is regarded within the Federal territory as an intentional criminal act ,

2. offends against any law or official enactment concerning prostitution,

(...)

3. endangers public health through his conduct, or is homeless in the long term

(...)

Sec.48 - Special protection against deportation

(1) An alien who

1. possesses a residence permit
2. possesses a residence licence without limit of time, and was born in Federal territory or entered it as a minor,
3. possesses a residence licence without limit of time and lives in a marital relationship with an alien in the categories specified in nos. 1 and 2,
4. shares a family home with a German family member,
5. has a recognized right of asylum, enjoys the legal status of a foreign refugee in Federal territory or holds a travel document issued by an official agency in the Federal Republic of Germany in accordance with the Agreement on the Legal Status of Refugees, of 28 July 1951 (BGBl. 1953 II, p. 559),

may only be deported for grave reasons of public security and public order.

(...)

(3) An alien who has made a request for asylum which is admissible may only be deported on condition that the asylum procedure has been finally concluded without his being granted the right of asylum. This provision will be waived if

1. circumstances exist which justify deportation under paragraph 1, or
2. the request for asylum has been dismissed as manifestly groundless under section 11 of the Asylum Procedure Act.

Sec.51 - Prohibition against expelling victims of political persecution

(1) An alien may not be expelled to a State in which his life or freedom is threatened by reason of his race, religion, nationality, membership of a particular social group, or his political convictions.

(2) The conditions laid down in paragraph 1 will be deemed to exist in the case of

1. persons with the right of asylum

(...)

Sec.52 - Expulsion in cases of possible political persecution

Section 51 will apply, mutatis mutandis, to aliens who have made an admissible request for asylum, as long as the request has not been finally rejected or dismissed as groundless, or has not been withdrawn.

Sec.53 - Grounds for refusing to expel

(1) An alien may not be expelled to a State in which there is actual danger of his being subjected to torture.

(...)

(3) Where another State has made a formal request for extradition, or for arrest in connection with notification of a request for extradition, the alien may not be expelled to that State until a decision has been made on the extradition.

(4) An alien may not be expelled if the expulsion is inadmissible under the Convention on the Protection of Human Rights and Fundamental Freedoms, of 4 November 1950 (BGBl. 1952 II, p. 686).

(5) A general risk that an alien may be threatened with criminal prosecution and punishment in another State and, unless otherwise determined by paragraphs 1 to 4, a specific risk of a statutory penalty pursuant to the laws of another State, will not constitute a bar to expulsion.

(6) The expulsion of an alien to another State may be waived if there is considerable actual risk to the person, the life or the freedom of the alien in that State. Risks in that State to which the population or population group to which the alien belongs are in general exposed, will be taken into account when decisions are made under section 54.

Sec.55 - Grounds for remaining temporarily

(1) The expulsion of an alien may be temporarily stayed only in accordance with paragraphs 2 to 4 (temporary consent).

(2) An alien will be granted temporary consent to remain as long as his expulsion is impossible on legal or factual grounds, or has to be stayed pursuant to section 53, para. 6, or section 54.

(3) An alien may be granted a temporary consent to remain as long as he is not under a final obligation to leave, or if there are pressing humanitarian or personal reasons, or important public interests, requiring his continued temporary presence in Federal territory.

(...)

Sec.56 - Consent to remain temporarily

(1) The obligation to leave of an alien allowed to remain temporarily is unaffected.

(2) The consent is subject to a time limit, which may not exceed one year. On expiry of the time limit, the consent may be renewed in accordance with section 55.

(3) The consent is territorially restricted to the area of the Land concerned. Further terms and conditions may be ordered. In particular, the alien may be forbidden to take up paid employment, or restricted as to the type of employment he may take up.

(4) The consent expires when the alien leaves the country.

(5) The consent will be revoked if the objections to expulsion cease to exist.

(6) The alien will be expelled immediately on expiry of the consent, without a further warning or a new time limit, unless the consent is renewed. If the alien has been granted a consent of more than one year, three months notice of expulsion must be given, unless the other State is no longer willing to admit the alien.

Sec.57 - Detention of expellees

(1) An alien will, on the order of a court, be taken into custody prior to deportation if no immediate decision can be made on deportation, and expulsion would be rendered unduly difficult or impossible unless he is taken into custody (preparatory detention). The duration of preparatory detention may not exceed six weeks. In the event of deportation, no further court order is required for the detention to continue until the end of the period ordered.

(2) An alien who is under an obligation to leave will, to ensure expulsion takes place, be taken into custody under a court order (preventive detention) if there are grounds for suspecting that he will evade expulsion. Preventive detention is not permissible if it is known that, for reasons outside the alien's control, expulsion cannot be carried out within the next three months.

(3) Preventive detention may be ordered for up to six months. In cases in which the alien poses obstacles to his expulsion, it may be extended to a maximum of twelve months. Any periods of preparatory detention are to be included in the total duration of the preventive detention.

Chapter 5 - CROSSING THE FRONTIER

Sec.61 - Enforced removal

(1) An alien who has entered without permission will be forcibly removed within six months of crossing the frontier. If another State is obliged, on the basis of an inter-State agreement, to take back the alien, forcible removal will be admissible as long as this obligation exists.

(2) An alien under an obligation to leave who is forcibly removed by another State will, without delay, be expelled to a State which he is permitted to enter, unless the obligation to leave has yet to become enforceable.

(3) Section 51, paras. 1, 2 and 4, section 52, section 53, paras. 1 to 4, and section 57 and section 60, para. 4, will apply mutatis mutandis.

Sec.67 - Decisions on residence

(1) Decisions on the residence of aliens are made on the basis of facts and circumstances accessible in Federal territory. The Aliens Authority decides, on the basis of facts available to it which are accessible in Federal territory, whether the obstacles to deportation referred to in section 53 exist and, where individual cases call for it, on the basis of the facts available to Federal authorities outside Federal territory.

(2) If proceedings are instituted for a suspected criminal act or contravention against an alien who has applied for the issue or extension of a residence permit, the decision on the residence permit will be deferred until the conclusion of the proceedings, and if judgment is handed down against the alien, until the judgment becomes final, unless a decision can be made on the residence permit without having regard to the outcome of the proceedings.

Sec.70 - Co-operation by the alien

(1) It is the responsibility of the alien to indicate his requirements without delay and also to indicate any circumstances in his favour, insofar as they are not apparent or already known, furnishing such information as can be verified, and to adduce the necessary evidence concerning his personal circumstances, together with any certificates and permits required and any other necessary documentation available to him. The Aliens Authority may set him an appropriate time limit for the purpose. Any circumstances and evidence which is adduced after the expiry of the time limit may be disregarded. The alien must be made aware of his obligations as defined above. If a time limit is set, he must be alerted to the consequences of failing to meet it.

(2) Paragraph 1 shall apply, mutatis mutandis, in any court proceedings.

(...)

(4) Where necessary for the preparation and execution of measures under this Act and under provisions of the law on aliens in other statutes, the alien may be ordered to appear in person.

Sec.71 - Restrictions of the right of appeal

(1) The refusal of a visa and a passport substitute at the frontier cannot be contested. The alien concerned will be referred to the possibility of making an application to the appropriate foreign mission.

(2) The only ground for appealing, prior to the alien's departure, against the refusal of a residence permit pursuant to sections 8 and 13, para. 2, first sentence, is that the stated reason for refusal does not exist. In the cases referred to in section 8, para. 1, nos. 1 and 2, and section 13, para. 2, first sentence, it is assumed that the alien was bound to hold a visa from the moment of entering the country, and that consent had to be obtained before the visa could be issued.

(3) No appeal can be made against the refusal to grant consent to remain temporarily.

Sec.72 - Effects of appeals and counter-claims

(1) Appeals and counter-claims against the rejection of an application for the issue or extension of a residence permit have no suspensive effect.

(2) Appeals and counter-claims, notwithstanding their suspensive effects, shall not affect the legal force of a deportation order or of any other administrative decision which terminates a lawful period of residence. The lawfulness of the residence is not interrupted if the administrative decision is rescinded by a decision of a public authority or a final decision by a court.

(...)

Chapter 9 - TRANSITIONAL AND FINAL PROVISIONS

Sec.103 - restrictions of fundamental rights

(1) The fundamental rights of inviolability of the person (article 2, para. 2, first sentence of the Basic Law) and of personal freedom (article 2, para. 2, second sentence of the Basic Law) will be restricted in accordance with this Act.

(2) Procedure in the event of deprivation of liberty will be conducted in accordance with the Act on Court Procedure concerning Deprivation of Liberty, in the revised version published in the Federal Gazette, Part II, classification no. 316-1, as amended by section 185 of the Act of 16 March 1976 (BGBl. I p. 581).

(...)