



## Obligations to cooperate when applying for residency permit, apart from asylum procedure. For those people having a tolerated stay.

After receiving a rejection to your application for asylum, it is still possible to apply for residency permit. For these applications the following paragraphs are to be considered: Paragraph 25a, 25b, 25. Article 5, 23a, 60c and 60d of the German Residence Act. What is an important and often difficult prerequisite for receiving a positive decision on your application for residency permit is to cooperate with the authorities in trying to obtain a passport and to verify your identity.

### Safe residency perspective versus the danger of being deported

For persons, who must leave the country, having a “tolerated stay” (“Duldung”), getting a passport often means being in danger of getting deported. As a rule, a passport is required for leaving the country. For some countries a travel document is enough. Deportation is not always possible for all countries. Individual situations vary with embassies and complex individual circumstances. The obligation to cooperate (“Mitwirkungspflicht”) with the German authorities is relevant for deportation but also for secure residency. Not cooperating in trying to get a passport or verify one’s identity can lead to sanctions that make one’s situation more difficult. When applying for residency it is important in a number of situations to discuss the dangers of deportation, as well as the chance for securing residency, with a trained counselor.

This information flyer does not replace the advice of a competent counselor or lawyer. It is important to seek their advice personally.

Please check this link for counselling centers in your area:

<https://integrationsbeauftragte.sachsen-anhalt.de/beratung-und-netzwerke/beratungsstellen/gesonderte-beratung-und-betreuung/>

You’ll find the Right of Residence Project of the Refugee Council of Saxony Anhalt here:

<https://www.fluechtlingsrat-lsa.de/ueber-uns/projekte/ror/>

This information should help you know what your rights and duties are.

The additional pages are meant to help you show the authorities that you are fulfilling your obligation to cooperate.

### You have „Duldung“?

#### You are not allowed to work?

#### Your identity is not verified? The authorities say: “You are not cooperating” ?

Then you must *cooperate* by showing the authorities you are doing your best to verify your identity and/or are trying to obtain a passport. You are obliged by law (§§ 3, 48 Abs. 3, 82 AufenthG; § 15 Abs. 2 Nr. 6 AsylG) to do this. You must do all that the Foreigners’ Authority (“Ausländerbehörde”) asks you to do, to the extent it is within reason. This is your *obligation to cooperate*. It is not enough if the Foreigners’ Authority tell you that you must bring them a passport or travel document. They must tell you how you can get these documents.



### What does it mean for your daily life and for applying for residence if you do not cooperate?

As a rule, cooperating with the authorities and a clarified identity are prerequisites when applying for the right of residence. Not fulfilling these conditions works against you when a decision is to be made.

Here you'll find the most common consequences of not cooperating in clearing one's identity:

- Denial of work permit (§ 60a Abs. 6 Satz 1 Nr. 2 AufenthG)  
Having a work permit is the basis for the educational or occupational short term residency permit ("Ausbildung- or Beschäftigungsduldung") and is relevant for an application according to § 25b AufenthG.
- "Tolerated stay for persons with unclarified identity" (according to § 60b AufenthG)  
The time spent in that "Tolerated stay for persons with unclarified identity" is not counted as time of residence, which is needed for the Rights of Residence according to §§ 25a, b AufenthG) or for the new educational or occupational short term residency according to §§ 60c, 60d AufenthG.
- Reduction of benefits and vouchers ("Gutscheine" according to § 1a AsylbLG)
- Residence restrictions ("Residenzpflicht" according to § 61 Abs. 1c) Satz 2 AufenthG)

### To what extent must you cooperate? What is considered within reason?

An exact definition of "within reason" is not given in the laws. Every case must be looked at individually to see to what extent the person involved can cooperate.

Examples of acts of cooperation that are not considered within reason:

- During an asylum process for persons with a "Gestattung" it is not within reason for a person to contact the authorities of their native country.
- Submission of political or religious declarations that are not in agreement with German law is not within reason.
- If going to the embassy or when applying for a passport means the authorities in the home country are informed about the whereabouts of relatives in the home country and this puts them in danger, this is not within reason. In this case you must explain this carefully to the German authorities, at best in writing.
- The embassy of the home country refuses to issue documents. Passports or travel documents can only be issued in the home county. The return to your home country is not within reason when:
  - 1) You are brought into danger by applying for documents in your home county.
  - 2) You are caring for your baby or small child in Germany

### How can you prove your cooperation in trying to clear your identity or obtain a passport?

It is important not only to fulfill your obligations but also to show the authorities that you are doing so. It is very important to document everything that is relevant, for example making notes of, printing out, or making screenshots of emails, Whatsapp or Facebook chats. Audio recordings are not especially recommended and then only when the speakers are identified.

Here are some ways to prove that you are cooperating.



#### Written contact with the embassy:

- Requests for an appointment
- Request for information about obtaining a passport. With proof of identity if possible.
- Request for list of trusted lawyers.
  - Copies of correspondence and answers by the embassy should be shown to the authorities (or send correspondence as registered mail)

#### Personal contact with the embassy:

- Verification by the embassy that the interview took place.
- When this is not possible, a photo or selfie taken at the embassy.
- Have someone go with you to the embassy. This person can act as a witness and testify in writing that you have gone to the embassy.
- Right down the name of the embassy employee and/or witness and give this to the authorities.
- Write a short text about the interview at the embassy.
- Take flyers from the embassy with you.
- Keep your train and bus tickets from the trip to the embassy.
  - Give copies of tickets, photos and all papers to the foreigners authority.

#### If the embassy says that a passport is not possible:

- Get the list of available attorneys. Write the attorneys a letter and send it as a scan via email asking if the attorney can help you get a passport and how much their help would cost. You also need their answer with the cost estimate.
- Afterwards apply at the Social Welfare Office (“Sozialamt”) for them to take over the costs according to § 6 Abs. 1 AsylbLG. Check out the *Point Financing of Cooperation!*
  - Give the authorities a copy of your request and /or answer of the attorney
  - Give the authorities a copy of your request and/or answer by the Social Welfare Office

#### Contact with family or friends in your home country:

In the case that family or friends in your home country cannot help you obtain a passport, explain to the authorities why not.

-> Have copies of correspondence (letters, whatsapp, email, etc.). Phone calls are not enough.

#### Proof – Affidavit

You can give the authorities an affidavit when you have no other evidence to prove your cooperation. With an affidavit you are assuring the authorities that you are telling the truth. Because a false affidavit is punishable by law (according to § 156 StBG) this means of assuring the authorities that you are telling the truth has great evidential value.

#### Here are some examples of proof of identity:

- Photos of documents
- Birth certificate
- Marriage certificate, family book, registration slips, driver’s license
- School diplomas (school, university, job training)
- Expired passports, ID, or copies of applications for passports



### Financing of the cooperation. Are you receiving money from the Social Welfare Office?

If you are, then you can get money from the Social Welfare Office to cover the costs of transportation to the embassy, for the attorneys or passport, for example. For this you must make an application (according to § 6 Abs. 1 AsylbLG) at the Social Welfare Office. You need to go to the Social Welfare Office with the formula “Aufforderung zur Mitwirkung Passbeschaffung” from the foreigners authority and also with the cost estimate from the lawyer.

In the application you explain that you cannot cover the costs yourself.

### What can you do when you have done everything possible and the authorities still do not grant residency permit or continue to prohibit you from working?

If the authorities continue to sanction you or do not accept your application it is possible that you must file a complaint. **Before** you file a complaint, you can send the foreigners authority a letter titled “Threaten of a Complaint” with a deadline for the authority's decision.

*Example as explanation. You'll find a German version for the authorities in Appendix 3*

*Subject: Written justified administrative act*

*Dear Sir or Madam,*

*In accordance with § 39 Abs. 1 VwVfG, I demand a sufficiently justified written answer to my application that was given to you on ..... in the case of a complete or partial rejection in accordance to § 37 Abs. 2 Satz 2 VwVfG. This is to be delivered within a period of 2 weeks or at the latest by...*

If the situation is especially pressing and urgent (e.g. a limited time to participate in a training program) an emergency legal protection (“Eilrechtsschutz”) must be handed in with the complaint.

### What can you do when the authorities do not respond or do not make a decision?

If the authorities have not responded or answered in over three months, you must possibly file a complaint.

**Before** filing the complaint you should send the foreigners authority a letter stating the intent to file a complaint on the grounds of failure to act by the authorities including a date by which they must respond.

*Example as explanation. You'll find the German version in Appendix 4*

*Subject: Threaten to file a complaint for failure to act*

*Dear Sir or Madam,*

*I am waiting for the answer from you with the decision regarding my application dated ...in accordance to § ... I request the prompt decision or explanation with sufficient reasons according to § 75 VwGO by the latest..date within 14 days sent to the above address.*

*According to paragraph 75 VwGo, the responsible authorities have three months to make their decision. If there has been no decision made by (date) I will engage the services of an attorney to file a complaint for failure to act on the side of the authorities.*

The threat to file a complaint, and filing a complaint (with emergency legal protection) should be carefully considered. They only make sense when the authorities are signaling that they will not issue a positive decision even though all means of cooperation have been fulfilled, or when the authorities do not react. It is best to speak with your counselor or a lawyer about your case. If you do not have a lawyer, you can go to the legal application office at court (“Rechtsantragsstelle des Gerichts”) to file a complaint.

**Your Right of Residence Team wish you all the best!**

Updated July 2020

Quelle: [Mitwirkungspflichten bei der Identitätsklärung / Passbeschaffung für Menschen mit Duldung](#) (Thüringer IvAF Netzwerk „BLEIBdran. Berufliche Perspektiven für Flüchtlinge in Thüringen“, Institut für Berufsbildung und Sozialmanagement gGmbH / August 2019)

## Appendix

### 1a) Tabelle zur Dokumentation der Mitwirkung – Beispiel

Datum	Was habe ich gemacht?	Mit wem habe ich wie gesprochen?  <ul style="list-style-type: none"> <li>• Name/Kontakt</li> <li>• Beispiele: Persönlich, Email,...</li> </ul>	Gibt es ein*e Ergebnis/ Vereinbarung/ Frist/ Ablehnung?	Gibt es ein* Begleitperson/ Zeug*in ?  Name/ Kontakt/Anschrift	Nachweise
26. Juni 2020	Meiner Schwester eine WhatsApp gesendet und gefragt, ob sie meine Geburtsurkunde besorgen kann	Miriam Makeba  Tel: +0012.123456789	Sie schreibt, sie versucht es und ich soll mich in 2 Wochen wieder melden	/	Whats App Chat
30. Juni	Abgabe Antrag beim Sozialamt wegen Übernahme der Kosten der Fahrt zur Botschaft	Sachbearbeiterin Frau Noak  persönlich bei Sozialamt	In Bearbeitung	Mitbewohner*in Frida Kahlo  Muster Straße Nr. 10 39104 Magdeburg	Kopie vom Antrag
12. Juli 2020	Fahrt zur Botschaft nach Berlin	Botschaftsmitarbeiter Herr Baldwin  persönlich in Botschaft	Ich bekomme keinen Pass, weil ich keine Geburtsurkunde dabei habe.	Mitbewohner*in Frida Kahlo  Muster Straße Nr. 10 39104 Magdeburg	Fahrkarte/Tickets  Bestätigung der Botschaft: kein Pass. Was ist für mich zu tun?  Foto in der Botschaft (mit Zeitung und Datum)



## Appendix

### 2a) Gesprächsprotokoll zur Dokumentation der Mitwirkung – Beispiel

**Datum, Uhrzeit:** 2. Juni 2020, 14 Uhr

**gesprachen mit:** Botschaftsmitarbeiter Herr Baldwin

**telefonisch (ggf. Telefonnummer:** 030. 123456789 )

**persönlich**

**andere (z.B. Skype, WhatsApp:** )

**Begleitperson/ Zeug\*in:** Mitbewohner\*in Frida Kahlo  
Muster Straße Nr. 10  
39104 Magdeburg

hat mit zugehört.

#### **Inhalt des Gespräches:**

Ich habe bei der Botschaft angerufen. Am Telefon habe ich mit Herrn Baldwin gesprochen. Ich habe ihm gesagt, dass ich einen Pass benötige. Er hat mich gefragt, wofür ich den Pass brauche. Ich habe ihm erklärt, dass ich ohne Pass keine Arbeitserlaubnis von der Ausländerbehörde bekomme. Er hat gesagt, dass ich persönlich vorbeikommen muss. Er hat mir einen Termin für den 12. Juli 2020 gegeben.

## **Appendix**

### **2b) Gesprächsprotokoll zur Dokumentation der Mitwirkung – zum Ausfüllen**

**Datum, Uhrzeit:**

**gesprachen mit:**

**telefonisch (ggf. Telefonnummer: \_\_\_\_\_ )**

**persönlich**

**andere (z.B. Skype, WhatsApp: \_\_\_\_\_ )**

**Begleitperson/ Zeug\*in:**

**Inhalt des Gespräches:**

### Appendix 3

An:

Datum:

*Betreff: Schriftlicher begründeter Verwaltungsakt*

*Sehr geehrte Damen und Herren,  
für den von mir am ..... gestellten Antrag verlange ich im Falle seiner vollständigen und teilweisen Ablehnung entsprechend § 37 Abs. 2 Satz 2 VwVfG einen schriftlichen Bescheid, der gemäß § 39 Abs. 1 VwVfG ausreichend begründet ist. Mit einer Frist von 2 Wochen oder bis spätestens zum.....*

Unterschrift:

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### Appendix 4

An:

Datum:

*Betreff: Androhung einer Klage wegen Untätigkeit*

*Sehr geehrte Damen und Herren,  
für den von mir am ..... gestellten Antrag nach § .....warte ich auf den Bescheid mit der Entscheidung zum Antrag. Ich erbitte eine umgehende Entscheidung über meinen Antrag oder eine Darlegung von zureichenden Gründen iSd. § 75 VwGO, spätestens bis zum ...**Datum in 14 Tagen..** an die oben stehende Wohnanschrift.  
Im Sinne des § 75 VwGO hat die Behörde 3 Monate Zeit für ihre Entscheidung. Sollte bis zum **Datum** dahin keine Auskunft erfolgen, erwäge ich das Einschalten eines Anwalts zum Zweck einer Untätigkeitsklage gegen Ihre Behörde.*

Unterschrift: