

Newsletter, 08.06.2020

Last Minute - Clarification of Identity
Requirements for „Ausbildungsduldung“ and „Beschäftigungsduldung“

During the Corona crisis some people probably are not aware of the fact, that the new regulations for „Ausbildungsduldung“ and „Beschäftigungsduldung“ imply deadlines for the clarification of identity. Many refugees possibly do not know anything about this information.

„Ausbildungsduldung“ will not be granted, if the identity is not clarified.

If the applicant entered Germany before (and including) Dec. 31, 2016, his identity should be clarified at the time of the application.

If the applicant entered Germany between Jan. 1, 2017 and Dec. 31, 2019, his identity has to be clarified by June 30, 2020.

If the applicant entered Germany after Dec. 31, 2019, his identity has to be clarified within 6 month after entry.

For a case decision based on administrative discretion it is sufficient if the applicant applied the required and reasonable measures for clarification of his identity at a later point of time.

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The „Beschäftigungsduldung“ generally should be granted, if the identity is clarified.

If the applicant entered Germany until Dec. 31, 2016 and if he has an employment agreement, it is sufficient if his identity is clarified.

If the applicant entered Germany between January 1, 2017 and August 1, 2018, his identity has to be clarified by June 30, 2020.

(If the entry occurred after August 1, 2018, a „Beschäftigungsduldung“ according to the law, cannot be granted, since the law should only be applied to older cases. I do not know if this key date regulation will be discarded at a later point of time, there is no discussion about it right now.)

The deadlines are considered as met, when the applicant **and** his spouse applied all the required and reasonable measures for the identity clarification even if the identity could only be clarified after the deadline, without them being responsible for it.

If the required measures where applied after the deadline a discretionary decision can be given consideration.

This means: Anybody who entered within the mentioned time frames and who did not apply any (noticeable) measures to clarify his identity by June 30, 2020, will not obtain a „Ausbildungsduldung“ nor „Beschäftigungsduldung“. The grant, if measures were applied and identity was clarified at a later point of time, is up to the discretion of the aliens department („Ausländerbehörde“).

The „clarification of the identity“ does not necessarily mean „showing your passport“. Apparently most refugees who work in Bavaria had to show at least a birth certificate. Anybody who is employed or is a trainee or intends to do so, now has time until June 30, 2020 to provide or at least apply measures to obtain a birth certificate or other proof of identity (such as a drivers license with photograph, ID etc).

If it is sensible, harmful or irrelevant to apply for a passport, everybody should discuss with their lawyers.

Since many refugees claim they did not have any documents and they could not obtain them, they should be informed about the consequences.

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In which way these documents can be obtained depends on the country of origin. We cannot give details for every country of origin. In our experience birth certificates can be obtained in most countries. This is also the experience of the aliens departments („Ausländerbehörden“).

We advise our clients to try the following (plus accurately document every other attempt to obtain documents for the aliens department):

- - Contact family members, friends and acquaintances in the country of origin with the plea if they could obtain a birth certificate.
- - Do research on Facebook and other social media within the relevant groups. How did others from the same country of origin obtain their documents? (Often there are references and contacts to commercial providers that can help as well as the costs of these services and trustworthiness.)
- - Send e-mails to all trustworthy lawyers mentioned on the website of the German embassy in the country of origin. (Volunteers and professionals could be a support.) Send a reminder e-mail after 2 weeks, etc. We recommend to document in a list all phone calls with names, numbers, date, time, contents and results. Also all e-mails and answers should be printed out and archived. To the aliens department it is in general not sufficient just to mention the measures one has applied if no proof of this can be shown. Anyone who claims he does need to bother since he would not receive

anything, might risk all chances to obtain an „Ausbildungsduldung“ or „Beschäftigungsduldung“.

Many refugees are afraid to gather and present documents because they fear deportation. If this fear is reasonable must be clarified in an individual consultation. But anybody who is not using his chance to obtain an „Ausbildungsduldung“ or „Beschäftigungsduldung“ will be more easily deported (after asylum was not granted).

All this has to be taken seriously and time is running out.

Übersetzung via Ria Huriaj Limam

Ohne Gewähr

<http://berlin-hilft.com/2020/06/15/frist-zur-identitaetsklaerung-bis-30-06-2020-fuer-ausbildungs-und-beschaefigungsduldung/>