

Intra-European legal migration

**An overview
of current
legal tools**



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What's it about?

This information brochure deals with the most accessible possibilities of intra-European legal migration to Germany for refugees. We show what difficulties exist in non-legal migration within Europe and what advantages legal migration offers. The focus is on legal migration for people with little knowledge of German and no work experience.

The necessary steps and legal bases are presented in detail and practice-oriented. The aim is to inform about realistic options of legal migration within Europe in such a way that these options can be taken up by more refugees.

TO WHOM IS THE BROCHURE ADAPTED?

This information brochure is primarily aimed towards supporters (social workers, friends, activists) of refugees in Europe, who would like to contribute to the legalization or permanent stabilization of the residence of the persons concerned. In addition, refugees themselves should be able to inform themselves about their rights and possibilities/alternatives with this brochure.

Initial situation

Legal migration within Europe



In this brochure, we use the term legal migration to refer to legal residence in Germany without an asylum procedure in Germany.

MANAGING MIGRATION VIA VISAS

Germany's laws stipulate that not everyone is allowed to enter and live in Germany without permission. Germany wants to choose who is allowed to enter. This is done by the German missions abroad (embassies and consulates) issuing visas. The foreign missions control and steer migration to Germany by issuing visas. Anyone who enters Germany without a visa and thus bypasses the control of the foreign mission cannot, in principle, live and work legally in Germany in the long term – this also applies to refugees who live in another European country.

Exception: Short-term stays of 90 days within 180 days are also possible without a visa, provided that a valid residence permit of a Schengen state is available. Work is not permitted during a visa-free short stay.

ADVANTAGES OF LEGAL MIGRATION WITH VISA PROCEDURE

Refugees living in another European country can obtain visas for Germany in their country of residence (e. g. Italy, Spain, etc.). Visas are always issued for a specific purpose (for example, 12-month voluntary service). Therefore, upon entry, refugees already know what they will be doing in Germany. During the legal stay in Germany, German language skills can be improved, and further contacts can be made in order to subsequently obtain a longer-term residence permit (for example, for training), if that is desired.

PROBLEMS OF MIGRATION WITHIN EUROPE WITHOUT VISAS

Refugees living in another European country have little chance of living and working legally in Germany if they enter without a visa. In these cases, an asylum procedure in Germany often does not lead to a permanent legal residence. Germany has several possibilities to reject such an asylum application:

“Not Germany, but the state where you were first in Europe is responsible for your asylum procedure. We will therefore deport you to this EU state.” (Dublin III Regulation).

“Your asylum case has already been rejected in another EU country. Germany accepts this decision. We therefore deport you to your home country.” (§ 71a Asylum Law).

“You have already gone through a successful asylum procedure in another EU country and can therefore receive a residence permit there. You therefore no longer need protection from Germany. We deport you to the other EU country.” (§ 29 Abs. 1 Nr. 2 Asylum Law).

A negative asylum procedure in Germany also blocks the possibility of changing to another residence permit or can even lead to an entry and residence ban for several years. In this way, a later return to Germany can also be excluded for a longer period of time.

**WITHOUT VISA
PROCEDURE AT
THE GERMAN
EMBASSY**

No residence permit in the country of residence (e.g. asylum seeker)

Residence permit as recognised refugee or beneficiary of subsidiary protection in the country of residence

No possibility of legal stay in the Federal Republic of Germany (neither short-term nor long-term)

**WITH VISA
PROCEDURE AT
THE GERMAN
EMBASSY**

National voluntary service:
§ 19c para. 1

Permanent residence permit in another EU Member State (not granted in the UK, Ireland and Denmark)

Residence permit for other reasons (family reunification, humanitarian, ...) in the country of residence

Temporary stay for 90 days within 180 days with a residence permit from Schengen countries

- Work not allowed
- Not counting as work: job-shadowing, volunteering (90 days within 12 months)

As a rule, the Foreigners' Office in Germany does not issue a residence permit for a further extended stay

Further extended stay: Residence permit according to § 38a to be applied for at the Foreigners' Office in Germany for the purpose of

- national voluntary service
- apprenticeship
- studies
- any work

National (§ 19c para. 1) or European (§ 19e) voluntary service

Visa according to § 38a can be obtained for

- National voluntary service
- Apprenticeship
- Studies
- Any work

Apprenticeship: § 16a

- in-company (state-recognised or comparably regulated + 2 years minimum duration)
- in-school (state-recognised qualification)

Work: only if requiring at least 2 years of training or study for the job and this qualification has been obtained:
§§ 18a, 18b

With which possibilities of legal migration can moveurope! help?



From our experience, the following options are particularly suitable for people with refugee experience to live in Germany in the long term. The options presented here differ in their duration and in the legal requirements, so that it must be decided in each individual case which options are realistic and desired.

Short stay for job-shadowing (Hospitationspraktikum)

A so-called “Hospitationspraktikum” (“observation internship”) in Germany is particularly interesting for refugees, who have only limited knowledge of German and do not yet have a support network in Germany. This kind of internship is therefore a good first step to getting to know Germany.

CHARACTERISTICS OF A JOB-SHADOWING INTERNSHIP

- Duration: maximum 3 months
- Possible within a visa-free stay of 90 days within 180 days, provided that a valid residence permit of a Schengen state is available.
- No work permit required as job-shadowing is not considered work. “Job-shadowing” means that the trainee gets to know the operational process by looking “over the shoulder” of the employees. In principle, therefore, he/she may not perform any activities himself/herself.

These 3 months can therefore be used for orientation in the German context, to improve language skills, to network and thus also to find subsequent opportunities. (i. e. voluntary service). Thus, upon re-entry into the originally responsible country, the visa application can then be submitted and thus a longer stay in Germany can be planned.

Important: In certain cases, a job-shadowing internship can be financed through the ESC and then officially counts as voluntary service.

ADVANTAGES:

- No involvement of German authorities or foreign missions necessary, as no visa or work permit is required.

DISADVANTAGES:

- After completion of the internship, the student must leave Germany again.
- There is no industrial injuries insurance because formally it is not work/employment. There is no remuneration.

Voluntary service

National voluntary service (especially Federal Voluntary Service – BFD, Voluntary Social Year – FSJ)

In a voluntary service, a person works in a social/educational institution or in another institution (for example, a church institution). Voluntary service is not vocational training but can be used to learn the language and make contacts. Voluntary service is therefore particularly suitable for refugees whose German language skills are not yet good enough for training and/or who do not yet have the necessary network in Germany to find and complete training.

CHARACTERISTICS VOLUNTARY SERVICE

- Duration: 4–24 months (usually 12 months; a voluntary service of up to 3 months is legally treated like a work placement)
- Usually full-time job with regular vacation entitlement
- Various training seminars for the volunteers
- Social insurance is provided by the employer
- Pocket money is paid up to a maximum of € 423
- Accommodation can, but does not have to, be provided

SPECIAL FEATURES OF VISA ISSUANCE

- If you do not live in Germany legally, a visa for voluntary service is always re-

quired from the German mission abroad (embassy or consulate).

- A visa can be issued for a national voluntary service in accordance with § 19c para. 1 AufenthaltG, § 14 para. 1 no. 1 BeschV.
- In addition, if room, board, and pocket money (and work clothes) are available, the person's livelihood is considered secure.
- According to §14 BeschV no priority check is carried out
- Formal language skills are not required

Important: In the case of voluntary service, a visa is issued for the entire duration of the service.

Therefore, please note: Passport and residence permit (or proof of renewal application) in the country of residence must be valid upon entry into Germany for the duration of the voluntary service plus another 6 months!

Special case: Voluntary Service in the framework of the European Solidarity Corps (ESC)

The ESC offers fully funded voluntary services between 2 (in exceptional cases also shorter) and 12 months and can be offered by accredited institutions. The legal basis for the visa is § 19e AufenthaltG. Regarding the requirements and characteristics, similar conditions apply. However, by German law, the ESC is not accessible via the visa procedure for individuals who have been recognized as refugees in an EU state or have been granted subsidiary protection there. However, these refugees have the option of obtaining a visa under Section 19c (1) of the Residence Act for national

voluntary service. They can also complete an ESC voluntary service of up to three months in Germany, as in this case the voluntary service is possible without a visa and without permission from the Foreigners' Office.

Furthermore, no visa for an ESC can be issued to refugees whose deportation has been suspended in another EU state (§ 19f no. 3 AufenthaltG).

Training

An apprenticeship lasts 2 to 3 years and is completed with the qualification to a profession. Once the training is completed, it is quite likely in most industries that the person will find a job. However, in most cases language skills are required by the training company beforehand (usually B1), and the person already needs certain basic language skills also in order to follow the school lessons and pass the written exams. Therefore, the training is particularly suitable for people who already have basic language skills and already know what profession they would like to pursue later.

CHARACTERISTICS

(1) INDUSTRIAL TRAINING

- Duration: varies between 2 and 3.5 years.
- Generally full-time position with regular vacation entitlement.
- The training comprises theoretical and practical parts, according to which there are phases in which work is done in the company and phases in which vocational school is attended.
- Most apprenticeships (but not all, such as kindergarten teacher) are paid. The amount of the salary varies from company to company.
- Social security is provided by the em-

ployer.

- Accommodation is not provided in most cases.
- This paragraph applies not only to the classic 3-year apprenticeship (“qualified training”), but also for shorter state-recognized or comparably regulated training courses, lasting at least 2 years (e. g. training as a nursing assistant).

(2) SCHOOL-BASED VOCATIONAL TRAINING

- School-based vocational training must lead to a state-recognized vocational qualification.
- School-based vocational training is generally not remunerated, so securing a livelihood is often difficult.

OTHER REQUIREMENTS FOR ANY TRAINING

- The livelihood must be secured. The exact amount depends on the circumstances of the individual case. As a rule, however, at least € 807 net per month is necessary.
- Living expenses can be proven by a training contract, a contract for a mini-job, a blocked account, a declaration of commitment and/or by written confirmation that parts of the living expenses will be covered elsewhere.
- In the case of a blocked account, only the missing amount must be paid in. If this is the case, however, it must be present there/regularly paid in for the entire duration of the training (see practical example II).
- In the case of in-company training, a priority check is carried out by the Head of the Federal Employment Agency (Bundesagentur für Arbeit) in accordance with Section 39 of the Residence Act. In

the past, the BfA was usually very generous in the case of apprenticeships.

- Sufficient language skills (B1) must be proven unless the language skills have already been tested by the educational institution, or a preparatory language course is to be completed before the training.

Important:

If you do not live in Germany legally, a visa for training is always required from the German mission abroad (embassy or consulate).

A visa for in-company or school training can be issued according to § 16a para. 1 and para. 2 AufenthG. However, if you have a visa for voluntary service, for example, you can apply for a residence permit for training directly at the Foreigners' Office in Germany after successfully completing the voluntary service. This means that you do not have to leave Germany again. The training can follow directly after the voluntary service.

Special case: permanent residents

Those who receive a permanent EU residence permit after 5 years in another EU country (e. g. in Italy or Spain) have special rights for migration within Europe.

ADVANTAGES:

- Application to the Foreigners' Office in Germany for a residence permit according to § 38a Residence Act possible
- Residence permit for unqualified work possible (e. g. waitress, kitchen help, cleaner, etc.)

DISADVANTAGES:

- EU Permanent Residence Permit in a EU Member State must be available
- Livelihood must be secured in Germany in the long term
- Priority check of the Federal Employment Agency

Important: Those who do not have at least 2 years of vocational training or do not want to do it in Germany can only come to Germany to work if they have a EU Permanent Residence Permit.

Example: Ms. P. is 34 years old and fled from Nigeria to Greece, where she received a residence permit as a person eligible for subsidiary protection. She has been working as a waitress in a restaurant for 4 years. She is considering moving to Germany. Through a friend, she could get a full-time job as a waitress in a restaurant in Munich. Ms. P. can stay in Germany for 90 days within 180 days. She is not allowed to work during this period. However, she is allowed to do an internship.

Upon her return to Greece, Ms. P. has the following options for a visa:

- A visa for a European voluntary service is excluded, as this is only granted until the age of 30. In addition, Ms. P. is legally excluded from an ESC voluntary service in Germany as a beneficiary of subsidiary protection (§19f Abs. 1, Nr.1 AufenthG).
- A visa for national voluntary service is possible, as it can be done at any age.
- A visa for training is also possible for Ms. P. For this, however, she would need a training position and at least B1-level German skills.
- A visa for work as a waitress is not possible because Ms. P. has not complet-

ed any training as a waitress and this profession does not usually require any training. It is a so-called unqualified work. In principle, one cannot obtain a visa for unqualified work.

Ms. P. should consider staying in Greece for one more year and apply for a EU Permanent Residence Permit after 5 years of work there. With this, Ms. P. can apply for a residence permit in Germany according to § 38a Residence Act. § Section 38a of the Residence Act can also be issued to people who want to do unqualified work in Germany.

Ms. P. must present the following documents in order to obtain the residence permit according to § 38a of the Residence Act from the Foreigners' Office in Munich:

- Registration in Munich (the Foreigners' Office ("Ausländerbehörde") at the place of residence is always responsible).
- Application for a residence permit during the period of legal visa-free stay of 90 out of 180 days.
- EU Permanent Residence Permit from Greece
- Valid travel document (usually passport)
- Proof of sufficient income for 90 days.
- Proof of health insurance for Germany (statutory health insurance from Greece is sufficient – European Health Insurance Card – EHIC).
- Proof of sufficient living space (e. g. a subtenant contract of a friend)
- Proof of long-term livelihood security (job offer with details on remuneration, working hours, vacation); alternatively: declaration of commitment or blocked account (for students).

The residence permit set out in § 38a can also be granted if you want to study or do an apprenticeship in Germany. In this case, the university admission or the offer of a training contract must be presented when applying for the residence permit.

Practical tip: It is also possible to apply for a visa according to § 38a Residence Act. This allows you to continue living in your familiar surroundings abroad while the visa is being processed and only move to Germany once the visa has been granted.

If, on the other hand, you apply for a residence permit at the foreigners' authority in Germany and it is rejected after several weeks of processing, you will have to leave Germany again. Therefore, you should not give up your home and job abroad before the residence permit set out in § 38a AufenthG has been issued.

The visa procedure

What is the visa procedure?

What are the requirements?



In order to obtain a visa for voluntary service or training, one must reside outside of Germany. The visa process begins with an application to the German mission in the country where you are currently residing. For a visa application, it is usually necessary to book an appointment via the website of the German mission abroad. When applying in person, all documents related to the voluntary service or training must be submitted. A list of documents can be found on the websites of the German missions abroad. Usually, a short interview is conducted at the time of application to test language skills, motivation, and readiness to return. Readiness to return is an important aspect for the German missions abroad in the case of rather short stays such as voluntary services. This involves checking whether the applicant can be expected to leave the country again after his or her planned stay.

The fees for the visa application are € 75. The embassy checks the application and, if necessary, involves the Federal Employment Agency (Bundesagentur für Arbeit) for the purpose of a priority check or checks with the Foreigners' Office (Ausländerbehörde) for a possible previous stay in Germany. After the application has been processed, the visa will be issued in the optimal case, thus making entry possible.

What documents must be presented at the embassy?

- National passport/refugee travel document valid for at least 6 months upon entry, not older than 10 years.
- Residence permit of the actually responsible Member State.
- Important: Proof of application for extension is also sufficient!
- Proof of livelihood security, depending on the purpose of stay!
- Employment or training contract, depending on the purpose of stay!
- Proof of language skills, if applicable.
- Proof of qualifications/degrees, if applicable.

Special feature for people who are already in Germany

If you live in Germany and are to be deported because you do not have a right of residence (e. g. after a rejected asylum application), you should discuss a voluntary departure with the Foreigners' Office. If you have a right of residence in another EU Member State, you should avoid being deported there. A later return to Germany may then be impossible for a period of 6–30 months due to a so-called entry and residence ban. If you already have a training position, you can also try to obtain advance approval from the Foreigners' Office for a visa to be applied for from abroad.

EXPLANATION

If someone wants to return to Germany with the help of a visa for voluntary service or training, the Foreigners' Office in Germany is always involved in the visa procedure. Pre-approval by the Foreigners' Office can thus speed up the visa procedure.

FURTHER INFORMATION:

To enable legal migration to Germany, it is of great advantage to know the legal situation. Only then can a person be supported meaningfully on this path. For example, there are many ways to prove that one's livelihood is secured without having a large sum of money already in advance. How this works and what is meant by "livelihood security" is explained below.

WHAT MEANS “LIVELIHOOD SECURITY”?

According to § 5, securing the livelihood with own resources is one of the conditions for issuing a visa. The person must prove that they (and their family) can support themselves independently and will not be dependent on state support. As a rule, the calculation of the respective subsistence to be proven is based on the Sozialgesetzbuch (SGB) II standard. However, there are exceptions (see also: Voluntary service and training).

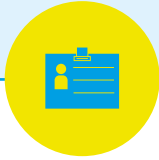
Depending on the purpose of residence, livelihood security can be proven through various “instruments”:

- Employment contract – training contract
- Written confirmation that parts of the living expenses will be covered otherwise (free accommodation, meals at work, etc.)
- Declaration of commitment
- Blocked account, for training and studies; more information on the blocked account at: kurzelinks.de/haoa

DECLARATION OF COMMITMENT TO LIVELIHOOD SECURITY

A guarantor agrees to be responsible for the person’s livelihood during his/her stay and to pay for any costs that may arise (possibly also deportation costs). The declaration of commitment is valid for a period of 5 years and remains active, for example, in the case of an asylum application. It is a very large legal obligation that can come with enormous costs. More information at: kurzelinks.de/qz60

What documents must be presented to the embassy?



National passport/ travel document for refugees

valid for at least 6 months upon entry, not older than 10 years



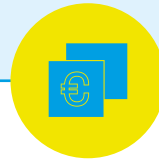
Residence permit of the competent Member State

Important: Proof of application for extension is also sufficient!
Valid for at least 6 months, not older than 10 years



Employment or training contract

depending on the purpose of stay!

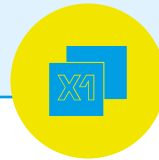


Proof of livelihood security

depending on the purpose of stay!
See p. 14



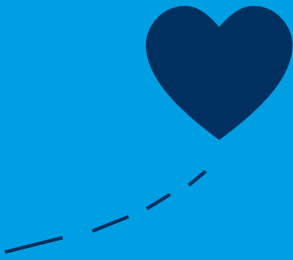
Proof of qualifications/ degrees, if applicable



Proof of language skills, if applicable

For Supporters

How can I support refugees on the path to legal migration?



HOW CAN SUPPORTERS (E. G. SOCIAL WORKERS, FRIENDS, ACTIVISTS) CONCRETELY ACCOMPANY A REFUGEE ON THE PATH TO LEGAL MIGRATION?

The “support needs” vary of course from person to person, but help is usually needed in two areas in particular: in finding a voluntary service/training position and/or in proving livelihood security. How meaningful support can look like in these two points is explained in this chapter.

SEARCH FOR VOLUNTARY SERVICE/ APPRENTICESHIP

As a refugee, it is often difficult to find a voluntary service or a training program. If this also involves the legal migration procedure via the visa process, it is often too complicated for many voluntary service and training providers, and they refuse to give their consent. It is therefore extremely important to be able to explain the mechanism of legal migration in simple terms and, above all, to show that the visa procedure does not mean any additional work for the voluntary service and training provider.

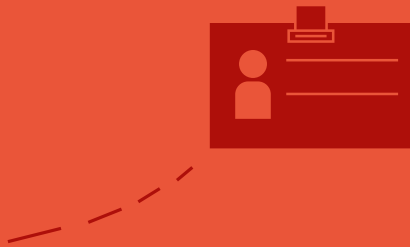
For many, it is also important to know that there are other people in the background who are available as contact persons and who clearly signal that they will also accompany the refugee on his or her way. The most promising way is often through personal contacts because a certain relationship of trust already exists here, and the counterpart is often more willing to get involved in the project. But of course, “cold calling”, i. e. writing a completely regular letter of application, is also an option. It is always better to address the visa process, and related steps, only after a first meeting has already taken place.

SUPPORT IN PROVING LIVELIHOOD SECURITY

The role of the supporters in proving livelihood security can be even more central since the training salary will not cover the complete subsistence. Accordingly, the missing remaining amount must still be proven. Perhaps there is someone in the group of supporters who can offer a room and confirm this in writing, so that this item no longer has to be proven as a monetary value. Or the missing amount can be raised through a blocked account into which different people pay a donation amount. Crowdfunding or fundraising events are also a good option here.

As an association, we only recommend the declaration of commitment if there is a strong relationship of trust. If this is the case, however, and a supporter meets the requirements (and above all earns enough), the declaration of commitment is certainly the least costly option.

Practical examples



A. from Mali has an Italian residence permit for humanitarian reasons (motivi umanitari) and his Malian national passport. Since he has been without a permanent job in Italy for many months now, he sees no prospects there and would like to migrate to Germany. As a first step, he does a three-month internship in a social institution and gets to know the German work routine. He does not need a visa for this stay, as his Italian residence permit allows him to move within the Schengen area without a visa for 90 days in 180 days. After the three months, the person in charge of the facility is so satisfied with A.'s work that they offer him to do a one-year voluntary service with them. To do this, A. must first leave Germany again and then apply for a visa at the German embassy in Rome.

Since there are special regulations for voluntary service, no priority check is carried out and the contract for voluntary service and accommodation is sufficient to prove livelihood security. A. re-enters Germany with his visa. Since in the case of voluntary service the visa is issued for the duration of the voluntary service, he does not have to go to the Foreigners' Office to convert the visa into a residence permit.

02

Practical example II: Legal migration in Dublin procedure

B. from Syria was an asylum seeker in Spain and traveled to Germany before a decision was made on his asylum application. This asylum application was rejected by Germany due to Spain's responsibility (so-called Dublin procedure). However, B. learned the German language very well during the months in Germany and was offered an apprenticeship as a mechatronics engineer. The Foreigners' Office rejects his application to remain in Germany for the purpose of training and threatens him with deportation to Spain.

B. should now discuss with the Foreigners' Office that he wants to leave voluntarily and apply for a visa to return from Spain. With his training contract, he contacts the Federal Employment Agency to have them carry out the priority check and takes the positive result to the Foreigners' Office, which gives him written approval in advance. Before officially leaving Germany, he makes arrangements with the Foreigners' Office to leave voluntarily. A ban on entry and residence does not arise as a result of the voluntary departure. Back in Spain, he submits his application for a visa for educational purposes.

He proves his livelihood security as follows:

- Net training salary: € 350
- Written confirmation of accommodation for the duration of the training in the amount of € 250
- Blocked account with an amount of € 1728 (Explanation: there is still € 144 missing per month to prove his livelihood. In principle, the livelihood must be proven for the entire duration of the training. However, since the blocked account can only be closed for the duration of one year, $12 \times € 144 = € 1728$ is sufficient here).

The embassy gives a positive response to his application, so that he can soon enter the country with his visa. In Germany, about 6 weeks before the visa expires, he goes to the local immigration office, which converts the visa into a residence permit for training purposes.



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Who is allowed to move freely across borders in Europe?
Who is immobilized? For whom are the borders in the Schengen area valid and for whom are they invisible? moveurope! is a project by migration_miteinander e. V.

Our goals are to make the living situations of refugees in Europe visible and to actively campaign for the freedom of movement of refugees within the European Union. We have worked out an alternative way to make legal (onward) migration possible for refugees with a residence permit from another EU state via the visa procedure for educational purposes.

If you also want to stand up for the freedom of movement of all people, feel free to contact us – our association is looking forward to it.