



Obligation to cooperate in the clarification of identity / procurement of a passport for people with *Duldung*

11/2019

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Das Thüringer Netzwerk BLEIB*dran* wird im Rahmen der ESF-Integrationsrichtlinie Bund im Handlungsschwerpunkt „Integration von Asylbewerber/-innen und Flüchtlingen (IvAF)“ durch das Bundesministerium für Arbeit und Soziales und den Europäischen Sozialfonds gefördert.

Foreword

This guideline is meant for people with *Duldung* (temporary withholding of deportation). You have a *Duldung*? The requirements of your obligation to cooperate (*Mitwirkungspflichten*) are explained. The guideline should help you to document your cooperation. It should help you to know your rights and duties - and to avoid sanctions.

This leaflet is no substitute for advice. Each case is different. It is very important that you seek advice from a specialized counseling center or a specialized lawyer. For instance contact your local IvAF-Project or your local Refugee council.

For example, the following questions are important:

- What do you have to do concretely?
- What consequences can this have?
- What can happen if you do not cooperate?

1 What are obligations to cooperate (Mitwirkungspflichten)?

You have a *Duldung*. You do not have a passport and/or your identity is not clarified? Then you must help to clarify your identity and/or to obtain a passport. You are legally obliged to do so (§§ 3, 48 Para. 3, 82 AufenthG; § 15 Para. 2 No. 6 AsylG).

In some cases, it is difficult or impossible to obtain a passport and/or proof of identity. A proof of identity is, for example, an ID card or a birth certificate. A school or university certificate from the country of origin or a baptismal certificate can give an indication of your identity.

You must try to do everything what the *Ausländerbehörde* (Foreigners' Department) requires - as long as it is reasonable. These are your *Mitwirkungspflichten*.

As a rule, a passport is a prerequisite for deportation or departure. For some countries, a passport replacement is sufficient. Some countries are excluded from deportations.

At the same time, a passport is usually a prerequisite for a residence permit - e.g., after completion of training (§ 18a AufenthG), with good integration (§§ 25a, b AufenthG), or via the hardship commission (Härtefallkommission) (§ 23a AufenthG).

2 What can happen if you do not cooperate?

You do not help to clarify your identity and/or get a passport? This can have consequences:

a) Work ban

The *Ausländerbehörde* can give you a work ban (§ 60a Abs. 6). This is only possible if there are no other reasons why you cannot be deported. Such reasons may be, for example: there are generally no deportations to your country; your country generally does not issue passports; your spouse or children have a residence permit.

b) Reduction of benefits

The social welfare office (*Sozialamt*) can reduce your benefits for six months (§ 1a AsylbLG). This means that you will receive less money. If you still do not fulfill your obligations to cooperate, this period can be extended. This is only possible if there are no other reasons why you cannot be deported.

c) Residence obligation

The *Ausländerbehörde* can impose a residence obligation (§ 61 Para. 1c No. 3 Sentence 2). This means that you may only leave your district or city with the permission of the *Ausländerbehörde*.

d) *Duldung* (temporary withholding of deportation) for persons with unclear identity

You have given false information about your identity? Or you do not help to obtain your passport? Then you can get a "*Duldung für Personen mit ungeklärter Identität*" (§ 60b AufenthG). This is a rather bad *Duldung*. Persons with this kind of *Duldung* are banned from working and are subject to the condition of fixed abode. The time in the "*Duldung für Personen mit ungeklärter Identität*" does not count as a period of residence for residence rights regulations (e.g., according to §§ 25a, b AufenthG or for the new vocational training *Duldung* (*Ausbildungsduldung*) or employment *Duldung* (*Beschäftigungsduldung*) according to §§ 60c, 60d AufenthG).

e) Detention for failing to cooperate

You did not go to the embassy for the appointment made for you? Or you did not go to an arranged appointment with the official doctor (*Amtsarzt*)? Then the *Ausländerbehörde* can order "detention for failing to cooperate" (*Mitwirkungshaft*) (§ 62 Abs. 6 AufenthG).

f) Further consequences

In some cases, you may receive a penalty (money or even imprisonment) (§§ 98 Paragraph 5, 95 Paragraph 1 No. 5 AufenthaltG). It may be that you will not be informed of the upcoming deportation (§ 60a Para. 5 S. 5 AufenthaltG). It is possible that you will be detained (§ 62 AufenthaltG; § 62b Abs. 1 Satz 1 AufenthaltG) prior to deportation.

3 What exactly do you have to do in order to cooperate?

The *Ausländerbehörde* has to tell you what exactly you have to do (§ 82 Abs. 3 AufenthaltG) so that you can fulfill your obligation to cooperate. Ask them for this in writing.

What the *Ausländerbehörde* requires must be **reasonable**.

Some examples of unreasonable acts of cooperation:

- It is not reasonable to make political or religious statements that are not compatible with German law.
- Visiting the embassy puts your relatives in great risk? You should explain this to the *Ausländerbehörde* - preferably in writing.

Have you already been to an embassy three times? It is not reasonable to send you there again and again, even though you have already been there several times.

4 Financing of *Mitwirkung*

You get money from the social welfare office (*Sozialamt*)? Then you can get money from the social welfare office for your *Mitwirkung* (e.g., travel to the embassy, lawyer of confidence, costs for the passport) (§ 6 Abs. 1 AsylbLG). Please submit an application for this to the *Sozialamt* in advance.

5 Proof of *Mitwirkung*

You need to prove your cooperation. This is your duty. The table in the appendix is intended to help you with this. You can use it to show the *Ausländerbehörde* what you have done. Document each step as precisely as possible. In addition, you must collect all evidence. You should attach all evidence to the table, for example:

- Copy of passport applications
- Letters/information leaflets of the Embassy
- Letters to family/friends in country of origin
- Letters to attorneys in country of origin
- Documents about mailings/faxes
- Tickets for travel to embassy/consulate
- Photos

Do you have any witnesses? Write their names and dates of birth in the table. It may also be helpful to take photos of yourself. For example, at the embassy/consulate. It is advantageous to document the date. For example, take a daily newspaper with you on the photo.

You have no proof of a conversation? Immediately after the conversation, record it from memory (*Gesprächsprotokoll*). The template “record of conversation” (*Gesprächsprotokoll*) can help. As proof of your cooperation, you can submit the table together with all the evidence collected to the *Ausländerbehörde*. **Be sure to make a copy beforehand.**

References

Weiser, Barbara/Röder, Michael (2018): *Passbeschaffung und Mitwirkungspflichten von Personen mit einer Duldung, bei Asylsuchenden und bei Schutzberechtigten – ein Leitfaden für die Beratung*. Caritasverband für die Diözese Osnabrück e.V., online: <https://www.nds-fluerat.org/wp-content/uploads/2018/11/%E2%80%9EBeratungsleitfaden-zu-Passbeschaffung-und-Mitwirkungspflicht-bei-Personen-mit-einer-Duldung-bei-Asylsuchenden-und-Schutzberechtigten%E2%80%9C.pdf>.

Appendices

On the following pages you will find a fictitious example of how the table can be completed to document your cooperation. You will also find a fictitious example of the record of conversation. These examples can show you what the table or the record of conversation might look like. Then you will find blank forms for the table and the minutes. You can copy them and then fill them in yourself.

IMPRESSUM

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Appendix 1: Table *Mitwirkung* (cooperation) – Example

Date	What did I do?	With whom did I speak? (Name/Number)	How did we communicate?	Is there a result / deadline / agreement / refusal?	Are there anywitnesses?	What proof is there?
24.07.2019	I called my sister to ask her to send me my birth certificate.	Mariam Müller, born 1.5.1990, Tel. 0123456789	Tel.	She says she's trying to get the birth certificate. I'm supposed to get back to her in 2 weeks.	Yes, my roommate Andrea Schulze, born 20.05.1985, Erfurt	
30.07.2019	I called the embassy of country XY.	Embassy employee, Mr. A. Ahmadi, Tel. 030 12345678	Tel.	On the 25 th of August 2019 I have an appointment at the embassy.	My friend, Bela Bali, born. 20.09.1980	- record of conversation - Screenshot phone
31.07.2019	Submission of application to the Sozialamt for payment of travel costs to the embassy.	Employee of Sozialamt Frau Friedrich	Personally at Sozialamt	In progress	Mrs. Friedrich	- copy of application for payment of travel costs
07.08.19	I called my sister to ask about my birth certificate.	Mariam Müller, born. 1.5.1990, Tel. 0123456789	email	Birth certificate cannot be issued.		- printout email
25.08.2019	I travelled to the embassy of country XY to Berlin to ask for my passport.	Embassy employee, Mr. A. Ahmadi, Tel. 030 12345678	personally	I can't get a passport because I don't have a birth certificate.	My friend, Bela Bali, born. 20.09.1980	- Train tickets to go to the embassy - Confirmation of the embassy about the visit + non-issuance of the passport - Photo in front of the embassy

Appendix 1: Table *Mitwirkung (cooperation)* – Blank form as copy template (for filling out yourself)

Date	What did I do?	With whom did I speak? (Name/Number)	How did we communicate?	Is there a result / deadline / agreement / refusal?	Are there any witnesses?	What proof is there?

Appendix 2: Record of conversation (Gesprächsprotokoll) – Example

Date / Time: 07/30/2019, 10.15 a.m.

Spoken with: Mr. Ahmadi / Embassy XY

() on the phone (phone number: 030 12345678)

(x) personally

() other (e.g. Skype:)

Witnesses: Mr. Bela Bali, born 09/20/1980

Content of conversation:

I called the embassy. I spoke to Mr. Ahmadi on the phone. I told him that I needed a passport. He asked me why I needed the passport. I explained to him that I could not get a work permit from the Ausländerbehörde without a passport. He said that I had to come by personally. He gave me an appointment for 08/25/2019.

Appendix 2: Record of conversation (Gesprächsprotokoll) – Blank form (for filling out yourself)

Date / Time:

Spoken with:

on the phone (phone number:.....)

personally

other (e.g. Skype:))

Witnesses:

Content of conversation:

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