

Corona-Asylum and Residence Law: Recommendations of BMI (the Federal Ministry of the Interior of Germany), Schengen-Visa

1. Additional BMI Recommendations of 09 April 2020 on Residence in Germany analyzed by Claudius Voigt, GGUA Münster
 - **An application for an extension of an existing residence permit** can also be sent informally from abroad via email to the ABH (Foreigners Authority). If the application is made before the permit expires, the law has the fictional effect on the grounds of § 81 Abs. 4 AufenthG (Residence Act). The fictional certificate must then be sent to the German embassy on site or, in exceptional cases, to another postal address. The BMI points out that in cases where the permit had already expired, the ABH can still order continuation of § 81 Abs. 4 Satz 4 AufenthG.
 - If a **passport expires**, extension notes or stamps or statements regarding the overall extension of all expired passports can be accepted by the foreign embassy. In exceptional cases, the ABH can refrain from § 5 Abs. 1 Nr. 4 AufenthG (passport requirement as a prerequisite rule for issuing) once "consular support" from the foreign representation is indeed not possible.
 - In case of **Students** should temporarily be refrained from prerequisite rule of providing proof of subsistence for the extension of the residence permission, if this had been secured in the past and due to the pandemic no work can now be carried out or parents abroad are facing income shortcoming. The BMI points out that additional employment (beyond the permitted 120 days) can currently be exercised and challenges the immigration authorities to issue employment permits (usually with the consent of the BA - Federal Employment Agency). Delays in studying should not be negatively considered when extending the study residence permit, if those are consequences of corona-related restrictions in teaching.
 - People with a residence **permit for vocational training or schooling** should be given the opportunity to take a later examination, even if the examination date is postponed to a date after the permit has expired. The same should apply to the Ausbildungsduldung (Tolerance for Training) - in the event that an extension of the training period has not been requested and approved.
 - Temporary interruptions or delays in qualifications should not have any negative effect for people with a residence permit for **qualification measures** (§16d AufenthG, formerly §17a). During the qualification work can still be carried out.
 - In the **accelerated specialist procedure**, the prior approval of the ABHs should generally be given for a period of six months instead of the initial three.

- The BMI refers to the ABH's discretionary powers (with reference to No. 7.2.21 of the AVwV on the AufenthG) on the question of subsequent time limits for residence permits if the purpose of the residence no longer applies (e.g. the job). The ABH must carry out a "proper assessment of discretion" and consider whether a new job is in prospect or whether a person is entitled to e.g. AlgI (Benefit for unemployed I). The BMI highlights that the employment relationship continues even in the case of receiving short-time work benefits and, that the KUG (Kurzarbeiter*innengeld) and the AlgI are harmless in terms of subsistence.
- According to the BMI's new regulation (see below), despite an **expired Schengen Visa**, the legal further residence still remains.

These recommendations will then be obligatory, once the Ministry of Interior of a respective Federal State in Germany will declare them to be binding regulations (such as in Niedersachsen). What is more, each State has a potential to adopt just a single recommendation and to deviate on specific Topics through the more suitable Regulations.

On April 9, the "Ordinance for the Temporary Exemption of Expiring Schengen Visa Holders from the Requirement of a Residence Permit Due to the COVID 19 Pandemic (Schengen Visa COVID 19 Pandemic Regulation - SchengenVisaCOVID-19-V)" came into force. According to this, persons are exempt from the requirement of a residence permit until June 30, 2020 after the expiry of the validity of the Schengen visa if the persons were in Germany on March 17, 2020 with a valid Schengen visa or between March 18 and the Arrived on April 8th with a Schengen visa.

The State of Berlin The has published three important general directives, where certain resolving conditions in the residence permit have been declared temporarily not applicable:

- On March 24, 2020, a decision was issued that residence permits would not expire contrary to a resolving condition if, in addition to short-time work benefits, the benefits in accordance with SGB II, XII or AsylbLG. were obtained.
- On March 25, 2020, it was also decreed that permits would not expire even if SGB II / XII or AsylbLG benefits were received from March 18 to June 17, 2020 due to the corona pandemic, whereby in the same time no Short-time worker benefits were received. Even if an au pair relationship is terminated between March 18 and June 17, the permit will not expire.
- On April 6, 2020, it was decided that the permit would not temporarily expire, despite any other subsidiary provisions, implying that an apprenticeship was ended with no fault of a person, or an employment relationship was terminated by the employer. Even permits with the extension excluded by ancillary provision do not therefore temporarily lapse. In the explanatory memorandum to this ruling, it is implied that interruptions in employment which are not the fault of the employee and his own livelihood between 18

March and 17 June 2020 are regarded as "short-term" in employment tolerations and therefore do not lead to termination.

The regulations of these three Berlin general decrees only apply to the area of the immigration office in Berlin. Nevertheless, these are very important and should be used as examples for other federal states - especially since the BMI does not comment on the expiry due to dissolving conditions.

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