

Make future-oriented use of labour market potential of asylum seekers and tolerated residents

Updated position paper on labour market access for asylum seekers and tolerated residents

12 June 2015

Summary

In recent years the German Federal Government has set in train important reforms to immigration law for which employers have also strongly campaigned. These changes relate in part to labour migration, first and foremost for skilled workers who already have a concrete job offer in Germany. In addition, the Federal Government has made important adjustments with a view to facilitating access to the labour market also for asylum seekers and tolerated residents.

This is sensible and necessary. Because ever more people are seeking protection in Germany against political persecution, war or expulsion. Many of them stay in Germany for long periods or even for ever as recognised refugees, as asylum seekers or as tolerated residents. There is therefore a need to give them rapidly the possibility to earn their living and to integrate in society.

Not least with a view to the growing skills shortages that are already perceptible in many sectors and regions in the wake of demographic developments, it is important that all possibilities are identified and used to exploit all existing potential already present in Germany as fully as possible. This must also include a closer examination of the situation of asylum seekers and tolerated residents. Because people with good qualifications and professional experience in demand on the labour market are also to be

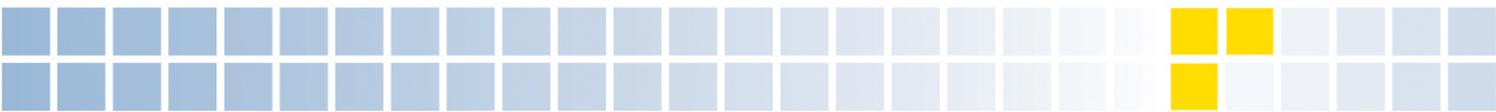
found among asylum seekers. Better use should be made of them in the local labour market. At the same time, it must be clear not only that this cannot be a substitute for sensible and targeted immigration of skilled workers but also that the right to asylum is and must remain independent of any qualifications seekers may have.

So that asylum seekers and tolerated residents can move successfully into the labour market, they must be supported and given targeted assistance, above all through corresponding measures for learning the language and integration. This is precisely where there are still considerable deficits which complicate access to training and employment. Furthermore, remaining legal obstacles regarding access to training and employment for asylum seekers and tolerated residents who are not the object of a work ban¹ and have often been in Germany for many years need to be further reduced.

Create effective labour market access

As a general rule, unrestricted labour market access should be allowed without a priority test to tolerated residents without a work ban on the grant of toleration and for asylum

¹ The immigration authority can impose a work ban on tolerated residents who provide false or insufficient information about their identity or nationality.



seekers six months after the permit for residence on German territory.

The ban on employment as temporary workers for third-country nationals and hence also for asylum seekers and tolerated residents in § 40 paragraph 1 point 2 of the German residence law (*AufenthG*) is counterproductive and should be scrapped. For asylum seekers and tolerated residents without a work ban, this provision constitutes an additional barrier to rapid labour market access.

Facilitate the transition into economic migration

Against the background of growing skills shortages, it is a good idea to facilitate the transition from asylum into economic migration if the conditions for a resident permit in the area of labour migration are met. Thus, those whose applications for asylum are rejected but who meet the statutory conditions for an EU Blue Card, for a residence permit as a skilled worker in a profession with shortages in accordance with the so-called positive list or for a job search visa, access to these possibilities should be opened.

Improve access to education and vocational training

In the first place, a humanitarian education residence status should be created for unaccompanied under-age refugees. Second, residence should be generally ensured for young asylum seekers and tolerated residents in training. Moreover, once training has been successfully completed, residence of these young people should be enabled for a further year so that those who have not been taken on directly by the business providing the training can look for a suitable job.

Open access to vocational training support instruments

At the same time, vocational training support instruments should be available also to

young asylum seekers with good prospects of permanent residence and to young tolerated residents. Hitherto tolerated residents have had access to vocational training aid or to assisted training only after four years of residence. In addition, they are broadly ineligible for assistance to flank training or to education measures in preparation for a profession. Access to these support instruments should be opened to young tolerated residents on the grant of toleration. Vocational training support instruments should also be available to asylum seekers with good prospects of permanent residence.

Improve advice and intermediation for integration in the world of work

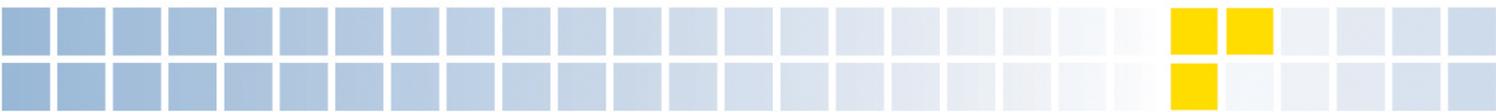
So that refugees can be integrated successfully in the labour market, flanking measures for early identification of their qualifications and experience are needed.

Develop language skills

Successful integration in the labour market and society presupposes acquisition of the requisite language skills. For this reason, elementary language learning offers should be opened to all asylum seekers and tolerated residents and work-related language learning offers should be further developed.

Accelerate asylum procedures

With a view to shortening the time asylum seekers and tolerated residents have to wait before finding work, all the conditions should be put in place to ensure that the period for processing asylum applications is reduced to three months as a general rule.



Detailed comments

Important progress has been made in the reform of immigration law – more is needed

The right reforms in immigration law in recent years have contributed to ever more immigrants coming to Germany from other countries. Thus, net immigration is at a very high level: according to Germany's Federal Statistical Office (*Statistisches Bundesamt*), the figure was around 430,000 persons in 2013 and as many as 500,000 in 2014 on the latest estimates². Given demographic trends, this is a happy development. It is particularly positive that more highly qualified people from abroad are also coming to Germany than in the past, in part thanks to correct facilitations for the immigration of skilled workers, e.g. through implementation of the EU Blue Card.

Nevertheless, the increase in immigration can be attributed in particular also to the current economic weakness of other EU countries. These "displacement effects" will decline markedly as soon as the economy picks up again in EU partner countries. According to findings from the German Institute for Labour Market and Employment Research (*Institut für Arbeitsmarkt- und Berufsforschung – IAB*), it is fairly improbable that the current level of immigration into Germany can be maintained in the longer term.

The competitiveness of German business depends decisively on well qualified workers. The shortage of skilled workers could be around 4 million by 2035. Even now, the skills gap is being clearly felt in some sectors and regions and demographic change can only exacerbate this trend. In the area of so-called STEM disciplines (Science,

Technology, Engineering, Mathematics), the shortage could be as many as 1.4 million qualified workers by 2020. There can be no doubt that there are also already skills shortages in the care sector. An additional need for up to 175,000 care workers is expected by 2030.

To counter this effectively, efforts must be intensified to develop and use all domestic potential to the greatest extent possible. At the same time, the conditions for immigration of qualified workers must be further improved. Regarding the use of potential already in the country, one essential aspect is identifying and developing the potential of people who have not come to Germany as labour migrants but in the framework of humanitarian immigration in flight from war and expulsion. This is all the more necessary in light of the markedly higher number of asylum applicants. Germany's Federal Office for Migration and Refugees (*BAMF*) now expects around 400,000 new asylum applications in 2015³.

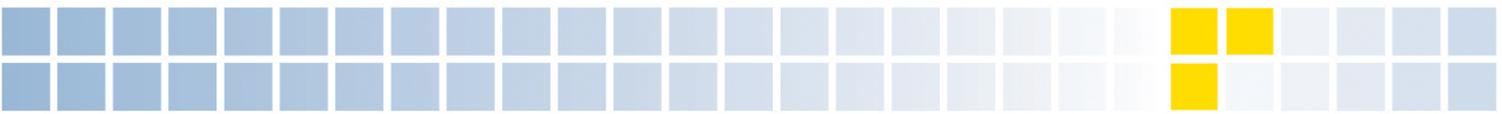
Clearly, important channels of humanitarian immigration must not be abused to circumvent regular possibilities for labour migration. Nevertheless, it must be recognised that many people have a justified right to asylum or to remain in Germany semi-permanently following rejection of the asylum application and need to be integrated as well as possible.

The legal changes made in the last year to facilitate labour market access for asylum seekers and tolerated residents are important steps along the road to better integration of these people in society. Above all, markedly better integration prospects for asylum seekers and tolerated residents have been created through the shortening to three months of the waiting period prior to taking a job and the relaxation of the priority test. Nevertheless, these prospects must be further improved.

Establish more rapid and more effective labour market access

² Germany's Federal Statistical Office, Bevölkerung und Erwerbstätigkeit, Wanderungen, Fachserie 1 Reihe 1.2, 2015.
German Institute for Labour Market and Employment Research (IAB), Arbeitsmarkt 2014/2015 – Robust, aber risikobehaftet,
German Institute for Labour Market and Employment Research (IAB) short report 18/2014, 2014.

³ Projection by Germany's Federal Office for Migration and Refugees (BAMF) (18 February 2015).



Since November 2014, the general rule is that asylum seekers and tolerated residents who spend three months on German territory have had access to the labour market with the consent of Germany's Federal Employment Agency (*Bundesagentur für Arbeit / BA*). However, there is an exclusion for tolerated residents who have provided false or insufficient information about their identity or nationality and on whom the immigration authority can therefore impose a work ban.

It is welcome that labour market access has been additionally facilitated by the fact that BA's consent for asylum seekers and tolerated residents to take employment is now given without a priority test if they have been on German territory uninterruptedly for fifteen months. The priority test has been dropped after just three months of residence or toleration if an EU Blue Card can be granted to graduates in bottleneck professions, following acceptance in a training profession on the positive list or for participation in measures for recognition of vocational qualifications.

Thanks to these correct legal changes to facilitate labour market access for asylum seekers and tolerated residents, employment chances have been improved especially for highly qualified persons. More rapid labour market access will effectively enable them to stand on their own feet without having to be dependent on social benefits for a long time.

However, so that the framework conditions for asylum seekers and tolerated residents without a work ban below the academic level to take employment can be improved even more effectively, access to the labour market without a priority test should be allowed not only after fifteen months but earlier. Because, in practice, the priority test constitutes an unnecessary hurdle to effective labour market access. Moreover, it runs the risk of a considerable bureaucratic effort, entailing wasted time and further costs.

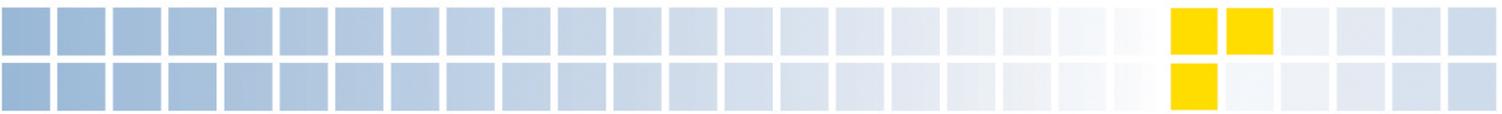
In the case of asylum seekers, it is still unclear whether there will be residence rights once the procedure is concluded. In

addition, it is important to prevent early unfiltered access to the labour market also being given to persons who have a very small probability of a positive asylum decision in order not to create unnecessary incentives to circumvent immigration law. It is therefore acceptable to maintain the priority test for the first six months after residence is granted. However, after the sixth month of residence, taking a job should be allowed without a priority test. Especially in the case of applicants for whom recognition of protected status is *a priori* highly improbable, the asylum procedure should have been concluded by then so that hardly any asylum applicants with little likelihood of staying would be able to take advantage of the labour market access facilitated in this way.

In the case of tolerated residents, a test and an expert decision have already been taken by an authority in the asylum procedure with the result that, even if no residence permit has been granted, deportation is still not possible for *de jure* and *de facto* reasons and these persons will remain in Germany for the time being. Analyses by *BAMF* show that more than 113,000 tolerated residents were living in Germany at the end of 2014, of whom no fewer than 31,000 for more than six years⁴. Labour market access without a priority test are therefore sensible and justified for these people from the grant of toleration.

The current ban on employment as a temporary worker for third-country nationals and hence also for asylum seekers and tolerated residents in § 40 paragraph 1 point 2 *AufenthG* is counterproductive and should be scrapped. For asylum seekers and tolerated residents without a work ban, this provision constitutes an additional barrier to rapid labour market access. In cases where formal qualifications are absent or have not yet been recognised, temporary work in particular can also be a way to convince with practical and personal skills and thus to create an entry into employment.

⁴ Bundestag circular / German Federal Government's response to Small Request from MPs Ulla Jelpke, Sevim Dağdelen, Katrin Kunert, further MPs and DIE LINKE group (BT-Drs. 18/3987 vom 10. Februar 2015, S. 26 ff.)



The ban on employment as temporary workers for third-country nationals is an outdated relic from the age of guest worker recruitment. It was especially intended to enable the priority test for a particular job. However, the priority test has very largely fallen by the wayside in the meantime. It is therefore difficult today to understand why third-country nationals should not be able to accept job offers from temporary work agencies. The same rights and rules self-evidently apply as for all other temporary workers, which means that an employment ban is unjustified.

Facilitate the transition into economic migration when legal conditions obtain

Many asylum seekers are unaware of the extensive immigration possibilities for qualified workers, some of which have only recently been put in place. Thus, an asylum application is sometimes made even though other immigration options could also be applicable and in some cases would even promise greater success. Hitherto German immigration law does not *de facto* offer possibilities to move out of asylum migration into another immigration status.

To this is added that, according to *BAMF's* analyses, in recent years more and more people have apparently been applying for asylum who are actually economic migrants and are unable to demonstrate recognised grounds for refugee status or humanitarian immigration. It is broadly right that deportation must be effected if no right to asylum is demonstrated and there are no other humanitarian reasons against deportation. That such reasons often apply is confirmed by the high number of tolerated residents.

Nevertheless, it is also right that there are likely to be many persons with good preconditions for successful integration in the German labour market precisely among economic migrants. Seeking a job after a negative asylum procedure is not currently possible without prior deportation and application for a visa from abroad. However, in practice this is scarcely feasible for this

target group, not least because of the associated costs.

So that the potential of qualified persons from this group for the German labour market can be retained, rejected applicants should generally be enabled to move from asylum migration into economic migration.

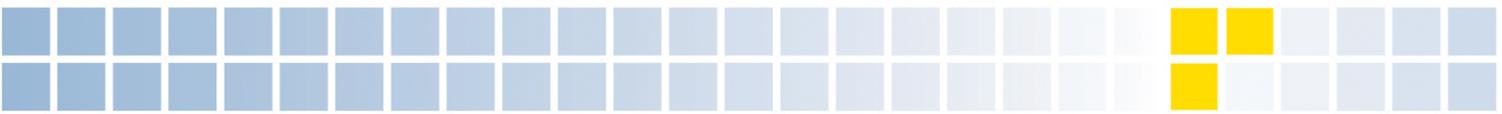
For these persons, in particular access to an EU Blue Card (§ 19a *AufenthG*) and to a residence permit as a skilled worker in a shortage profession on the so-called positive list or a job search visa should be opened up. To this end, the provision of § 18c paragraph 3 *AufenthG* (job search visa) should be incorporated in § 10 paragraph 3 *AufenthG* (residence permit in connection with an asylum application). Since in these cases a specific job is available or it has to be demonstrated that the persons in question are financially self-supporting during the job search period, this will not pose any incalculable risks for the social system.

Ensure vocational training for young asylum seekers and tolerated residents

For young people in particular, the asylum procedure should not mean putting their life on hold and access to education and training must be improved. Among the people who flee to Germany in the face of war and expulsion, there are many young people who are prepared and often particularly motivated to obtain an educational qualification and to continue with training. At the same time, companies in Germany are increasingly experiencing difficulties in filling training places: in 2014 37,101 unfilled vocational training places were notified to *BA*⁵.

However, experience from businesses and from model projects carried out by *BA* such as “early Intervention” or experience with vocational training of young tolerated residents shows that the earliest possible integration in the labour market is hampered by hurdles linked to residence law. These should be dismantled so that a secure

⁵ *BA* statistics, Arbeitsmarkt in Zahlen, Monatliche Zeitreihen - Ausbildungsstellenmarkt, 2014.



residence status for the duration of a vocational training course or a vocational further training measure is enabled for young asylum seekers with good permanent residence prospects as well as tolerated residents.

Only in this way can it be ensured that young asylum seekers and tolerated residents who have started a vocational training course in Germany can complete it irrespective of the outcome of their asylum procedure and irrespective of the existence of a residence permit that specifies otherwise. This is both in the interest of trainees and is necessary for the planning certainty of the business providing the training.

To implement these proposals, it must be ensured that tolerated residents are given a secure residence status throughout their training period. In addition, tolerated residents in vocational training must be able to terminate that vocational training even if the obstacle to their deportation is removed. Since asylum seekers have also been granted facilitated access to the labour market and to vocational training through the most recent legal changes, corresponding provisions are also necessary for these young people to secure residence during vocational training if they have found a training place and have started their training even if their asylum application has been rejected in the meantime.

At the same time, an amendment or a clarification should be made with regard to the work ban for tolerated residents in the case of inadequate cooperation in establishing identity or nationality to the effect that the behaviour of their parents should not lead to such a ban for their children. Sensible and possible is an addition to the German residence law in section 3 of chapter 2 and a clarification in § 33 of the employment decree.

In its position on the draft law on reformulation of the right of residence and termination of residence, Germany's upper chamber (*Bundesrat*) has already and rightly taken up the proposal to secure residence for young tolerated residents during vocational training.

Following successful completion of in-company training or further vocational training and retention in the business, the residence of these young people should generally be secured for two years of practice in the profession. Those who cannot be retained directly by the business providing training should be able to stay for at least one additional year in order to be able to search for a job during this period.

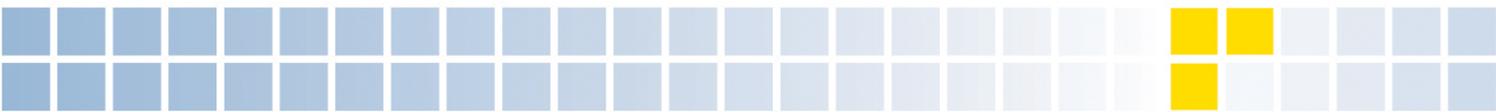
Create full training residence for unaccompanied under-age refugees

According to assessments by *BAMF*, around 4,000 unaccompanied under-age refugees arrive in Germany each year. The share receiving protection has also increased steadily so that it was 56.6% in 2013⁶. These young people are in particular need of protection and require rapid and secure access to education and training. However, as a rule the route into dual training has not been open in practice or had been bound up with considerable difficulties due to restrictions in residence law. To change this situation, unaccompanied under-age refugees should have the possibility to move out of the asylum procedure into a newly created special humanitarian training residence status. This can be achieved through the introduction of a separate legal basis in the residence law (e.g. a new § 17b). At the same time, this would also create legal certainty for those federal states which have already created initiatives to open up education and training possibilities for unaccompanied under-age refugees (e.g. Bremen).

Support training of asylum seekers with good permanent residence prospects and young tolerated residents

Targeted support may be necessary for young asylum seekers and tolerated residents who have found a training place in

⁶ Unaccompanied under-age refugees in Germany, Focus Study by the German national contact point for the European Migration Network (EMN), *BAMF* 2014.



Germany in order to lead the training to a successful conclusion.

Broadly speaking, assistance to flank training and education measures in preparation for a profession are not available to tolerated residents (§§ 52 paragraph 3, 78 paragraph 3 in conjunction with § 59 German Social Security Code *SGB III*). Financial support for vocational training is only available to tolerated residents after four years of residence (§ 59 paragraph 2 *SGB III*). While it is the case that financial support for vocational training after just fifteen months of residence has already been decided, this will only enter into force from August 2016. In the area of assisted training, the fifth law amending *SGB IV* in force since 1 May in principle enables financial support for young tolerated residents. Nevertheless, the problem here, too, is that – as with financial support for vocational training – this support is only possible after four years of residence and the possibility of financial support after fifteen months of residence only enters into force from August 2016.

As a result, numerous under-age and young adult tolerated residents are excluded for much too long from *BA* financial support in the areas of assisted training and vocational training assistance and completely from education measures in preparation for a profession and assistance to flank training. Such unequal treatment cannot be justified. Rather, these instruments (vocational training assistance, education measures in preparation for a profession and assisted training) should be available without differentiation to tolerated foreigners of both sexes who are concretely planning or involved in training from the grant of tolerance.

For young asylum seekers with good permanent residence prospects also, all relevant training support offers should be available. In this regard, it must be the case that young asylum seekers who have found a training place can be generally assumed have good permanent residence prospects – at least for the duration of the training – and that they are eligible for support. For young asylum seekers who have not yet found a training place, the facilitated support

possibility should be introduced from training year 2015/2016 and not only from August 2016.

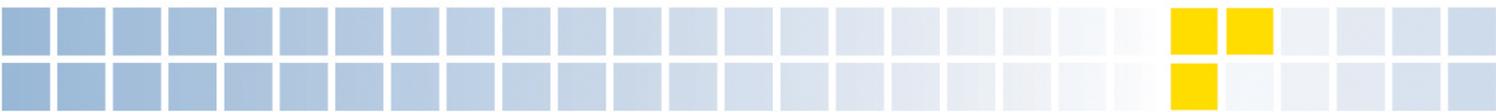
Furthermore, these financial support instruments should also be available to other EU nationals without a waiting period, since unequal treatment of EU citizens is not justified.

Improve advice and intermediation for integration in the world of work

So that refugees can be integrated successfully in the labour market, flanking measures for early identification of their qualifications and experience are needed. Thus, it is necessary to gather more information already in the asylum procedure about school education and dual training and any vocational qualifications. This is necessary to identify labour market potential at an early stage and to be able to offer customised intermediation services.

To this end, *BA* jointly with *BAMF* is rolling out an “early intervention” model project with the aim of identifying qualified asylum applicants of both sexes with good permanent residence prospects early in the asylum procedure and involving them in *BA*'s intermediation work at an early stage. The project was implemented in 2014 in six employment agencies and was expanded to a total of nine locations thanks to the diligence of *BA*'s Governing Board.

In the framework of the project, the intermediation process is flanked by specialised intermediation officers from identification of potential through to labour market integration. These measures already introduced by *BA* are therefore welcome. It must now be seen the knowledge collected in this way can be used more widely and what complementary measures are effective and necessary for asylum seekers and tolerated residents over and above the standard advice and intermediation service offer. Above all, as set out in *SGB II*, the necessary structures must be available also in the job centres, which generally assume responsibility following the recognition of



refugee status, and transfers can be made smoothly on the change of legal status.

Create adequate service offers for language acquisition

Better integration of asylum seekers and tolerated residents in the labour market and society generally presupposes an adequate service offer for the acquisition of elementary and job-related language skills. However, there are considerable gaps in the support framework since asylum seekers and tolerated residents are excluded from integration and job-related language courses. Access to integration courses should be open to asylum seekers and tolerated residents and support for job-related language acquisition should be developed to reflect needs. In concrete terms, this relates to asylum seekers and tolerated residents over 18 years of age, because the federal states are responsible for the language education of young refugees under that age. In the framework of compulsory schooling, it is within their competence to ensure that adequate language acquisition resources are available to schools and vocational colleges.

Stronger support for general and job-related language acquisition is absolutely necessary for access to society and employment. Studies show that participation in the world of work increases by 15% for a person with good German language skills as compared with a person with poor or no German language skills. Qualification-relevant employment also increases by 20% and pay by 22%⁷.

A corresponding addition to § 44 *AufenthG* should be made in order to open access to elementary language acquisition support. In addition, given growing immigration numbers, the service offer for job-related language acquisition should be made permanent and also generally opened up to asylum seekers and tolerated residents. It is true that *BAMF's* intensively used programme for job-related language acquisition (known as the *ESF-BAMF*

programme) has been temporarily renewed in 2015, it makes no provision for general access to job-related German language courses for asylum seekers and tolerated residents and has hitherto been underfunded to provide adequate real support, also in the medium term.

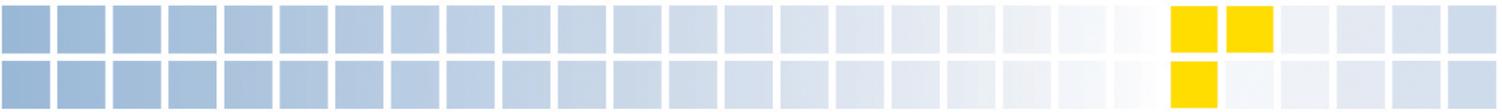
To establish a real welcoming culture and in light of the fundamental importance of mastering the language for integration in work and society, it is important that sufficient resources are assigned to the service offer and that these resources are available over the long term and not only temporarily. The financial expenditures necessary for this task in the general interest are a sensible and well spent investment, without which there is a risk of much higher costs further down the line as and when these people fail to integrate in the labour market. In this area, saving at any cost is likely to be very expensive. Because absent the necessary language skills, neither targeted support, advice and intermediation in employment agencies and job centres nor integration in training and employment in companies can be successful.

Accelerate asylum procedures – improve transparency

Not least the increased number of asylum applications – 202,834 asylum applications were submitted in Germany in 2014 alone – has contributed to the fact that processing often takes much too long. According to *BAMF* reporting in December 2014, processing an asylum application was still taking 5.7 months on average despite clear progress. Processing of asylum applications by people from countries with a very high protection quota and where almost all asylum applications have been approved in the past sometimes takes even markedly longer (e.g. Eritrea).

In the coalition agreement the government parties reached agreement on a shortening of the processing period for asylum procedures and to this end also on adequate staffing levels at *BAMF*. Thus, the procedure should not take longer than three months. This is welcome and should be rapidly

⁷ IAB short report 21/2014.



implemented in practice, because a shorter procedure is in the interest of both those seeking protection and of an effective right of asylum.

Furthermore, long processing periods are counterproductive, not least in light of the correct reduction of the waiting period for access to the labour market. A rapid clarification of residence status is important for all stakeholders – the individuals themselves but also companies which want to integrate asylum seekers in training and employment as well as employment agencies and job centres.

Possibilities for optimising the procedure must therefore be used and the conditions improved so that asylum applications can as a rule also be decided within three months.

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BDA is the leading social policy organisation of the entire German private sector. It represents the interests of small, medium-sized and large companies from all sectors on all issues relating to social and pay policy, labour law, labour market policy and education. BDA works at national, European and international level for the interests of 1 million businesses, which together employ 20 million workers and which are linked to BDA through voluntary membership. These employer federations are in turn organised in the 52 national sector organisations and 14 regional associations which are BDA's direct members.