



KULTUSMINISTER KONFERENZ

Unverbindliche Übersetzung / Non-binding Translation¹

**Access and Admission to Institutions of Higher Education for Applicants
who are Unable to Provide Evidence of a Higher Education Entrance
Qualification Obtained in their Home Country on Account of their Flight**

(Resolution of the Standing Conference of the Ministers of Education and Cultural Affairs
dated 3 December 2015)

¹ German original text: „Hochschulzugang und Hochschulzulassung für Studienbewerberinnen bzw. Studienbewerber, die fluchtbedingt den Nachweis der im Heimatland erworbenen Hochschulzugangsberechtigung nicht erbringen können“, Beschluss der Kultusministerkonferenz vom 03. Dezember 2015.

1. Procedure for missing or incomplete documentation

Applicants who are unable to provide original or a certified copy of their higher education entrance qualification for either graduate or undergraduate studies obtained in their home country on account of their flight will be allowed to provide documentation in a three-tier procedure depending on their refugee and legal residence status. This consists of:

- the determination of the personal premises on the basis of the refugee and legal residence categories according to Appendix 1 of this resolution
- a plausibility check of the educational biography with regard to the acquisition of a higher education entrance qualification in the home country, and
- proof of the alleged higher education entrance qualification through an examination and/or assessment procedure based on quality². The procedure to be applied will be decided internally by the Länder³.

The institutions of higher education can allow applicants within the meaning of para. 1 to provide indirect documentation of a higher education entrance qualification obtained in their home country. To this end, at least one different original document and/or a certified copy is to be presented following the determination of the personal premises (para. 1, indent 1) within the scope of the plausibility check (para. 1, indent 2) in place of the original documents and/or certified copies of the original documents that indirectly proves the alleged higher education entrance qualification. If a higher education entrance qualification can be concluded with sufficient indirect evidence on the basis of a plausibility check, no examination and/or assessment procedure will be necessary.

If an average grade is required for admission to restricted programmes, and if this is to be determined within the scope of the described verification procedure, examination and assessment procedures will be applied in accordance with Appendix 2.

If access to an institution of higher education has already been granted in accordance with the three-tier verification procedure or on the basis of the plausibility check with sufficient indirect evidence, and if the student has proven his/her actual ability to study through two semesters of successful study, the higher education entrance qualification will be recognized by all Länder for the purpose of further studies in the same or in a related or kindred subject.

² The Länder agree to offer at least one examination or assessment procedure. The Länder can agree on a common procedure.

³ This resolution does not exclude any former procedure practised in the Länder.

2. Procedure for restrictions on the participation in higher education admissions procedures for undergraduate programmes in the home country

In case of applicants who can prove that they were or still are prevented from taking part in a higher education admissions procedure⁴ according to the *Bewertungsvorschläge* [assessment recommendations] on account of their flight or for political reasons, admission to a preparatory college and the assessment procedure is possible on the basis of the secondary school leaving certificate provided the grade indicates an adequate qualification to commence studies in the home country. In these cases, the applicant should initially sit a specific entrance examination, an extended language test or complete a trial semester at the preparatory college.

3. The summary of the "Access and Admission to Institutions of Higher Education for Refugees" Report (acknowledged by the Standing Conference of the Ministers of Education and Cultural Affairs on 12 November 2015) enclosed with this resolution as Appendix 3 serves to explain this resolution.

⁴ This includes any preparatory courses that are required.

Persons with the following residency status are covered by the scope of section 1 of the resolution of the Standing Conference of the Ministers of Education and Cultural Affairs dated 3 December 2015:

No.	Description	Regulation
1	Residence permit on humanitarian grounds - person entitled to asylum	§ 25, para. 1, German Residence Act
2	Residence permit on humanitarian grounds - refugee pursuant to the Geneva Convention on Refugees	§ 25, para. 2 alternative 1, German Residence Act
3	Residence permit on humanitarian grounds - subsidiary protection	§ 25, para. 2 alternative 2, German Residence Act
4	Residence permit on humanitarian grounds - national protection against deportation	§ 25, para. 3, German Residence Act
5	Reception for reasons of international law or on pressing humanitarian grounds	§ 22, sentences 1 and 2, German Residence Act
6	Residence permit for foreign nationals from certain states or certain groups of foreign nationals defined otherwise for reasons of international law or on humanitarian grounds, or to safeguard political interests of the Federal Republic of Germany	§ 23, para. 1 and 2, German Residence Act
7	Granting of temporary protection in the event of a mass influx of displaced persons in the European Union (Directive 2001/55/EC)	§ 24, German Residence Act
8	Temporary residence permit for asylum-seekers (this does not apply for persons from a safe state of origin pursuant to article 16a, para. 3 of the German Basic Law in conjunction with Appendix II of § 29a of the German Asylum Act)	§ 55 German Asylum Act
9	Temporary stay of deportation (<u>tolerance</u>) if the deportation is not to take place for reasons of international law or on humanitarian grounds, or to safeguard political interests of the Federal Republic of Germany, or if the deportation is impossible in fact or in law (this does not apply for persons from a safe state of origin pursuant to article 16a, para. 3 of the German Basic Law in conjunction with Appendix II of § 29a of the German Asylum Act)	§ 60a, German Residence Act

The Länder can include further groups of persons and/or persons with a residency status other than those listed here to enable the compensation of disadvantages due to flight and/or disadvantages for other political reasons with regard to the proof of the higher education entrance qualification.

However, persons with the following residency status are not covered by the scope of section 1 of the resolution of the Standing Conference of the Ministers of Education and Cultural Affairs from 3 December 2015:

No.	Description	Regulation
10	Residence permit for temporary residence for persons subject to removal orders that cannot be enforced on pressing humanitarian or political grounds	§ 25, para. 4, sentence 1, German Residence Act
11	Extension of a residence permit for persons subject to removal orders that cannot be enforced on the grounds of exceptional hardship	§ 25, para. 4, sentence 2, German Residence Act
12	Granting of residency despite a removal order that can be enforced in cases of hardship	§ 23a, para. 1, German Residence Act
13	Temporary residence permit for victims of criminal offences of human trafficking (§§ 232, 233 or 233a StGB) or as witnesses in criminal proceedings in accordance with the German Act to Combat Clandestine Employment	§ 25, para. 4a and 4b, German Residence Act
14	Residence permit in the event that a departure is impossible at no fault of the person	§ 25, para. 5, German Residence Act
15	Fictional residency with corresponding attestation if an extension is applied for in due time	§ 81, para. 4 and 5, German Residence Act

Examination and Assessment Procedure to Establish an Average Grade within the Scope of the Verification Procedure

Existing examinations and procedures granting access to institutions of higher education, or those still under development

The following serve as examples

- Initiation of the assessment test at the preparatory college; possibly as an external examination
- Aptitude examination for access to higher education for persons holding a vocational qualification
- Aptitude tests
- Placement examinations

Academic aptitude tests

- general academic aptitude tests
- suitable subject-specific academic aptitude tests
- test for foreign students (TestAS).

Summary of the Report

"Access and Admission to Institutions of Higher Education for Refugees"

Report of the Committee for Schools and the Committee for Higher Education

(acknowledged by the Standing Conference of the Ministers of Education and Cultural Affairs on 12 November 2015)

The Länder acknowledge that difficulties may be experienced through no personal fault in providing evidence, right through to a complete lack of documentation, for access or admission to higher education as a result of flight or as a consequence of political discrimination. In this kind of exceptional situation, a facilitation of the process of documentation is advisable to ensure equal opportunities. These facilitation measures are thus compensation for disadvantages due to flight and political discrimination.

The Länder declare themselves in favour of a three-tier procedure comprising

- the determination of the personal premises,
- a plausibility check of the educational biography with regard to the acquisition of a higher education entrance qualification in the home country, and
- a suitable procedure to validate the academic aptitude as proof of an existing higher education entrance qualification.

This three-tier procedure in principle ensures that the institutions of higher education correctly exercise their discretionary judgement when taking and assessing documentation pursuant to § 24 ff. VwVfG [German Administrative Procedure Act].

The Länder agree to allow the following facilitation measures.

1. Personal premises

1.1 Determination of the personal premises according to the residency status

The determination of the personal premises according to residency status follows the system in the table in 1.1.1 and the explanations in 1.1.2.

Note: The categories listed here can easily be verified on the basis of the legal residence documents.

1.1.1 Residency Status Table

No.	Description	Regulation
1	Residence permit on humanitarian grounds - person entitled to asylum	§ 25, para. 1, German Residence Act
2	Residence permit on humanitarian grounds - refugee pursuant to the Geneva Convention on Refugees	§ 25, para. 2 alternative 1, German Residence Act
3	Residence permit on humanitarian grounds - subsidiary protection	§ 25, para. 2 alternative 2, German Residence Act
4	Residence permit on humanitarian grounds - national protection against deportation	§ 25, para. 3, German Residence Act
5	Acceptance on international or pressing humanitarian grounds	§ 22, sentences 1 and 2, German Residence Act

No.	Description	Regulation
6	Residence permit for foreign nationals from certain states or certain groups of foreign nationals defined otherwise for reasons of international law or on humanitarian grounds, or to safeguard political interests of the Federal Republic of Germany	§ 23, para. 1 and 2, German Residence Act
7	Granting of temporary protection in the event of a mass influx of displaced persons in the European Union (Directive 2001/55/EC)	§ 24, German Residence Act
8	<i>Residence permit for temporary residence for persons subject to removal orders that cannot be enforced on pressing humanitarian or political grounds</i>	§ 25, para. 4, sentence 1, German Residence Act
9	<i>Extension of a residence permit for persons subject to removal orders that cannot be enforced on the grounds of exceptional hardship</i>	§ 25, para. 4, sentence 2, German Residence Act
10	Temporary residence permit for asylum-seekers	§ 55 German Asylum Act
11	Temporary stay of deportation (<u>tolerance</u>) if the deportation is not to take place for reasons of international law or on humanitarian grounds, or to safeguard political interests of the Federal Republic of Germany, or if the deportation is impossible in fact or in law	§ 60a, German Residence Act
12	<i>Granting of residency despite a removal order that can be enforced in cases of hardship</i>	§ 23a, para. 1, German Residence Act
13	<i>Temporary residence permit for victims of criminal offences of human trafficking (§§ 232, 233 or 233a StGB) or as witnesses in criminal proceedings in accordance with the German Act to Combat Clandestine Employment</i>	§ 25, para. 4a and 4b, German Residence Act
14	<i>Residence permit in the event that a departure is impossible at no fault of the person</i>	§ 25, para. 5, German Residence Act
15	<i>Probationary residency with corresponding attestation if an extension is applied for in due time</i>	§ 81, para. 4 and 5, German Residence Act

1.1.2 Explanations

Re: numbers 1 to 7 in the table:

Persons with a residency status corresponding to numbers 1 to 7 are the primary group concerned . It can be assumed that the reasons why no documents are available to prove an existing higher education entrance qualification originate from the flight.

Re: number 10 in the table:

Persons with a residency status corresponding to number 10 (temporary residence permit) are to be included within the scope of the compensatory measures unless they are persons from a safe state of origin pursuant to article 16a, para. 3., sentence 1 of the German Basic Law in conjunction with Appendix II of § 29a of the German Asylum Act.

Re: number 11 in the table:

Persons with a residency status corresponding to number 11 (tolerance) are to be included within the scope of the compensatory measures unless they are persons from a safe state of origin pursuant to article 16a, para. 3., sentence 1 of the German Basic Law in conjunction with Appendix II of § 29a of the German Asylum Act. In addition, persons from this group must conclusively explain why no documents are available to prove an existing higher education entrance qualification and that this is a result of their circumstances as a refugee, similar to those in categories 1 to 7.

Re: numbers 8, 9 and 12 to 15 in the table:

Persons with a residency status corresponding to numbers 8, 9, 13 and 15 are not covered by the scope of this resolution. These are usually temporary residence permits. In the case of numbers 12 and 14, it cannot be assumed that the reasons why no documents are available to prove an existing higher education entrance qualification originate from the flight. [possible inclusion in accordance with number 1.3]

1.2 Persons who are unable to complete a preparatory study programme in accordance with the *Bewertungsvorschläge* [assessment recommendations] of the Central Office for Foreign Educational Systems for political reasons, or who were or still are prevented from taking part in a higher education admissions procedure in their home country for political reasons, are still included within the scope.

1.3 The Länder can include further groups of persons and/or persons with a different residency status.

2. Plausibility check of the educational biography

The educational biography must conclusively demonstrate the existence of a higher education entrance qualification obtained in the home country (plausibility check). The Länder and/or the institutions of higher education are responsible for the concrete organisation of the plausibility check.

3. Facilitation measures

The following list of possibilities to determine the academic aptitude or academic performances should not be regarded as final. To that effect, no instrument implemented heretofore by an institution of higher education will be excluded.

In view of the current situation and in the spirit of the Lisbon Recognition Convention, it is necessary that each Land provides opportunities for cases in which a higher education entrance qualification that has already been achieved but cannot be proven in the required form for reasons related to flight. Thus, each Land should pledge to establish minimum standards for the potential cases.

3.1 Recognition of indirect credentials

If the documents required to prove a higher education entrance qualification cannot be submitted in original or as a copy, at least one other document can be presented in place of the original documents or certified copies that indirectly proves the alleged higher education entrance qualification. Examples of such documents are a student ID card, examination certificates or course record books. The indirect credentials must be submitted as an original document or a certified copy.

3.2 Examination and assessment procedure

3.2.1 The following list of possibilities to determine the academic aptitude or academic performance should not be regarded as final. This resolution should not exclude any instruments applied for this purpose at an institution of higher education heretofore.

3.2.2 The Länder agree to offer at least one examination or assessment procedure for the group of persons named under section 1.

3.2.3 The following possibilities are named here by way of example:

3.2.3.1 Assessment tests

- (1) Entrance examinations at preparatory colleges,
- (2) Existing examinations and procedures granting access to institutions of higher education, or those still under development. The following serve as examples
 - Initiation of the assessment test at the preparatory college; possibly as an external examination,
 - Aptitude examination for access to higher education for persons holding a vocational qualification,
 - Aptitude tests,
 - Placement examinations,

(3) Academic aptitude tests,

- general academic aptitude tests
- suitable subject-specific academic aptitude tests
- test for foreign students (TestAS).

3.2.3.2 Assessment interviews

Assessment interviews by an expert scientist or an expert committee; this procedure is particularly suitable for applicants who have already achieved transferable academic performances in their home country.

3.2.3.3 Propaedeutic preparatory studies to determine the academic aptitude

3.2.3.4 Trial study courses in non-restricted programmes 3.2.3.5 Artistic examinations at art colleges

3.2.3.6 Case-by-case decisions

3.2.3.7 The Länder and institutions of higher education can develop further procedures.

3.2.4 Procedural information

The named possibilities can be employed within the scope of compensatory measures for disadvantages due to flight for access to both undergraduate programmes as well as masters programmes.

Every suggestion is to be considered in connection with the plausibility check of the educational biography. Only then is recourse to existing access procedures, most of which are intended for a different group of applicants with a specific educational background, justified. This is an expression of equal opportunities.

The appropriate procedure can be chosen according to various aspects: number of cases, subject-specific features, the necessity of an overall grade record, the severity of the lack of documentation. Furthermore, the cost of the procedure, the applicant competition, recourse to existing procedures, the possibility of joint testing with other institutions of higher education as well as potential bilateral recognition may be relevant. With this in mind, some of the verification procedures listed here may be suitable for certain cases but not for others.

Examination and assessment procedures can also be structured so that they supply an average grade for admission procedures in restricted- programmes.

Depending on the goal of the relevant procedure, a differentiation can be made through a restriction to certain programmes. The scope of the verification procedure can result in entitlements at different levels, for example access to a preparatory college, an assessment examination, subject-specific access or general access to an institution of higher education. If an examination or assessment procedure that is intended for direct access to an institution of higher education is not passed, access may be granted to a preparatory college depending on the result of the plausibility check.

The translation of the examination or assessment procedure into various languages has the effect of advantaging the confirmation of the access to higher education before the necessary German language skills are obtained. A translation is particularly suitable for joint testing procedures with a large number of participants.

The Länder can adopt several of the procedures described here and also go beyond these procedures. The possibility of changing the place of study between different Länder is guaranteed by means of a recognition rule (see section 4 below).

The Länder and/or institutions of higher education can also perform joint procedures and bilaterally recognize the examinations.

3.3 Waiver of certain documentation

If a higher education entrance qualification could not be obtained in the home country for political reasons (section 1.2), the following facilitation measures can be applied:

- If certain preparatory study programmes that have to be documented in accordance with the *Bewertungsvorschläge* [assessment recommendations] could not be completed for political reasons, no further documents need to be submitted except school reports that unequivocally indicate the acquisition of the higher education entrance qualification.
- If participation in a higher education admissions procedure needed in accordance with the assessment procedure was not possible for political reasons, access to the preparatory college and the assessment examination is open provided the report grade indicates an adequate qualification to commence studies in the home country; the applicant should initially take a subject-specific entrance examination, an extended language test or complete a trial semester.

3.4. Common procedure

The Länder can also develop common procedures in addition to the verification procedures for specific institutions of higher education or applicants.

The test for foreign students (TestAS) may be applied as an established procedure. This test comprises general and subject-specific elements and is therefore suitable for every study programme.

4. Nationwide recognition

If a person who has been granted access to higher education through facilitation measures in accordance with this resolution has proven his/her academic aptitude through two semesters of successful study, the higher education entrance qualification will be recognized by all Länder for the purpose of further studies in the same or in a related or kindred subject.

5. Admission to institutions of higher education

Participation in an admission procedure for restricted- programmes is possible in principle if the higher education entrance qualification has been proven by means of a verification procedure following the facilitation measures. The regulations on allocating places at institutions of higher education in the Länder include the resolution of the Standing Conference from 15 March 1991 as amended on 12 September 2013 "Agreement on the Assessment of the Overall Grade of Foreign Higher Education Entrance Qualifications" dated 15 March 1991 as amended on 12 September 2013 to determine an overall grade for restricted programmes with foreign previous educational credentials. This agreement also covers cases where a higher education entrance qualification is only verified indirectly and documented without a record of grades. In this case the applicant would be included in the awards procedure and the calculation of the overall grade would be determined with the lowest pass grade. If an average grade is required, it may be possible to obtain it in the verification procedure. It is advisable to only use procedures from the catalogue 3.2.3.1 (2) and (3) in the case of an average grade that has to be determined in a verification procedure.

All Länder provide for a special quota for foreign applicants who are not treated as equal to German applicants. This quota is between 5 and 10 percent depending on the Land and study programme.

It is advisable to monitor and discuss the situation in the relevant Länder committees as necessary. The focus should also be on whether sub-quotas have to be created for "refugees" or whether other measures should be taken into account in both the interests of integration as well as international exchange.

At present, it can be assumed that there are sufficient places available at institutions of higher education to satisfy the interests of both international exchange as well as

integration. On the one hand, this assumption is currently based on the fact that numerous study programmes are non-restricted and enrolment is not tied to specific quotas. On the other hand, places are available in all restricted-programmes for prospective students from third countries. Just like German applicants and those placed on a par with German applicants, a certain flexibility and thus a switch to other study programmes or other places of study can be expected (Federal Constitutional Court 43, 291 (317)).

According to existing regulations in the Länder, particular circumstances that speak in favour of an admission to a quota can be taken into account when assigning places at institutions of higher education in a special quota for persons from third countries. Particular circumstances are given in the case of

- applicants with grants from a German institution offering scholarships for the gifted and talented.
- a place has been reserved in a preparatory college or similar institution for applicants on account of special regulations for the assignment of a place in the study programme named in the application for admission.
- applicants who enjoy the right of asylum in the Federal Republic of Germany and/or have their habitual place of residence within Germany and are recognized as refugees in accordance with the agreement of 28.7.1951 (Geneva Convention on Refugees) .

In current practice, granting a right of asylum only comes into question in rare cases since the premises for asylum pursuant to article 16a of German Basic Law are not usually given in the present crisis. On the other hand, international protection (protection for refugees or subsidiary protection) is granted in most cases. The relevant catalogue of Land regulations is not final ("in particular"), so that according to the regulations of the Länder, recognition as a refugee in accordance with § 25, para. 2, sentence 1 1st alt. German Residence Act or a subsidiary protection in accordance with § 25, para. 2, sentence 1, 2nd alt. German Residence Act may be considered as a special circumstance. The legal consequences of the residency status are by and large similar.

It is suggested that the regulations in the Länder be adapted to common practice (clarification function and signal effect of the law), for example with the following wording:

"Such a circumstance is given in particular if the applicant x. has his or her habitual place of residence in Germany and enjoys a right of asylum, refugee or subsidiary protection in the Federal Republic of Germany."