



Flüchtlingsrat Berlin e.V.
Greifswalder Str. 4
10405 Berlin
Tel: (030) 22 47 63 11
Fax: (030) 22 47 63 12
buero@fluechtlingsrat-berlin.de
www.fluechtlingsrat-berlin.de

09.09.2022: Information on the Berlin regulations and the application procedure for third-country nationals who have fled Ukraine

Status: 9. September 2022.

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Contents

- Berlin Senate resolution of 16 August 2022 on the status of ‘war refugees’ for third-country nationals who have fled Ukraine
- Explanations by the Flüchtlingsrat Berlin (Berlin Refugee Council) on the four case groups
- First additional practical information from SenIAS (Berlin Senate Department for Integration, Employment and Social Affairs)
- Additional practical information from SenInn (Berlin Senate Department for the Interior) and LEA (Berlin Immigration Office)
- Notes by the Flüchtlingsrat Berlin (Berlin Refugee Council) on the application procedure in Berlin:
 - Registration and ‘allocation to Berlin’ (Berlinzuweisung) at the Ukraine Arrival Centre at former Tegel airport (UA TXL)
 - Template of the certificate of residence
 - Template of the self-registration form Ukraine Arrival Centre at former Tegel airport (UA TXL)
 - Online registration at the LEA (Landesamt für Einwanderung = Berlin Immigration Office)
- Further information for war refugees from Ukraine

Berlin Senate resolution of 16 August 2022 on the status of ‘war refugee’ for third-country nationals who fled Ukraine

According to the version of the German “**Ukraine-Aufenthaltsübergangsverordnung**” (Ukraine Transitional Residence Ordinance) valid beyond 31 August 2022, which applies equally to Ukrainian citizens and third-country nationals who fled Ukraine, the visa-free stay for war refugees from Ukraine (legal stay in Germany without a residence permit) will end **as of 1 September 2022** if they **first entered Germany over 90 days ago**.

Therefore, for all third-country nationals (not only students!) who had previously resided in Ukraine, there is a need for regulations on how to implement the requirements on war refugee status in Article 2 of the **EU Council**

Implementing Decision (EU) 2022/382 https://eur-lex.europa.eu/eli/dec_impl/2022/382/oj.

They should register in person at the **Ukraine Arrival Center at former BerlinTegel airport (UA TXL) before September 1st 2022**, as explained below, and then apply online to the **LEA** (Landesamt für Einwanderung = Ausländerbehörde = Berlin Immigration Office) to get an appointment for a residence permit. Otherwise, they will no longer be permitted to stay in Germany legally and will become illegal. With this status, it will no longer be possible to change to a different residence permit (e.g. for study or employment purposes) without a visa from the German embassy in their respective country of origin.

On **16 August 2022**, the **Berlin Senate** passed a resolution on the status of ‘war refugees’ for third-country nationals who have fled Ukraine:

- **Case group 1:** Students who are covered by the scope of application of the EU Council Implementing Decision (EU) 2022/382 of 04 March 2022 can obtain a residence permit pursuant to section 24 of the Residence Act (§ 24 AufenthG);
- **Case group 2:** In cases where the LEA involves the BAMF (Federal office for migration and refugees) in the review procedure of Section 24 Residence Act, the LEA issues a “Fiktionsbescheinigung” (fictional certificate) pursuant to Section 24 Residence Act for an initial period of twelve months;
- **Case group 3:** Students who meet all the requirements for being issued a residence title other than Section 24 of the Residence Act can obtain this residence title (§ 24) by applying for it, and hence do not require separate support regarding their legal residence;
- **Case group 4:** Students who do not fall under any of the afore mentioned case groups will receive a “Fiktionsbescheinigung” (fictional certificate) under section 24 of the Residence Act for a one-time period of six months if they can credibly show that they were studying in Ukraine when the war broke out (24 February 2022).

The four groups of cases are explained in more detail in the Senate resolution.

Here is the **full text of the Senate resolution**: www.fluechtlingsrat-berlin.de/senatsabschluss_drittstaater_ukraine_16aug2022

Information for those affected

*“Given the deadline of 31 August 2022 and the limited time remaining to submit applications, the **Governing Mayor** considers it necessary to actively communicate with the target group; she asks all members of the Senate to promote the agreed regulations in their respective areas of responsibility using all channels of communication.”*

In particular, this responsibility lies with the Berlin Commissioner for Integration (Integrationsbeauftragte Berlin), also concerning refugees who are/were not students.

Explanations of the Berlin Flüchtlingsrat (Berlin Refugee Council) regarding the four case groups

The regulations for **case groups 1 to 3 also applies to third-country nationals who have fled Ukraine and who were/are not students**. Students are only explicitly mentioned in these case groups because the Senate working group that drafted this resolution had been assigned the task to develop a regulation for students. Only case group 4

contains a special regulation for students that goes beyond case groups 1 to 3.

Case group 1 pertains:

Ukraine war refugees who are third-country nationals with **family members who are Ukrainian citizens**, including unmarried partners who live together (common marriage), even if the Ukrainian family member stayed behind in Ukraine;

Ukraine war refugees who are third-country nationals and hold a **permanent residence permit** from Ukraine;

Ukraine war refugees who are third-country nationals and recognised a **refugee status** from Ukraine;

Ukraine war refugees who are nationals of **Afghanistan, Syria, and Eritrea**.

Case group 2 pertains to Ukraine war refugees who are third-country nationals and declare that they **cannot return safely and permanently to their country of origin or region of origin**. The LEA gives them **two months to submit a written explanation** of their reasons. If necessary, the LEA then involves the Bundesamt für Migration und Flüchtlinge (BAMF) in the examination of this application and statement of reasons, pursuant to section 72 German Residence Act (§ 72 AufenthG), especially if the applicants belong to a vulnerable group in their country of origin (e.g. single women with young children, people with disabilities, LGBTIQ+), for medical reasons (sickness), or due to a lack of subsistence in their country or region of origin. These are humanitarian obstacles to deportation as defined by section 60 para. 5 or 7 German Residence Act (§ 60 Abs. 5 oder 7 AufenthG). It must also be taken into account whether the persons in question have meaningful links to Ukraine. If the LEA involves the BAMF, a Fiktionsbescheinigung (fictional certificate) pursuant to section 24 German Residence Act (§ 24 AufenthG) is issued for twelve months.

Problem: If, in addition to the above-mentioned humanitarian obstacles to deportation, the applicant presents **grounds for seeking asylum** as defined by § 13 German Asylum Act (§ 13 AsylG = political or religious persecution, threat of torture or inhuman or degrading punishment, or danger to life and limb due to an international or internal armed conflict, etc., see also §§ 3 and 4 AsylG), the LEA must refer the person in question to the BAMF to apply for asylum. Applicants must be informed of this in advance. It is however hardly possible to precisely distinguish between the grounds for seeking asylum under section 13 of the Asylum Act (§ 13 AsylG) and the obstacles to deportation under section 60 (5) or (7) of the Residence Act (§ 60 Abs 5 or 7 AufenthG). See also the letter from the BAMF dated 04.08.2022, https://fluechtlingsrat-berlin.de/BAMF_04Aug2022_Beteiligung_Ukraine_24AufenthG.

However, an asylum application would have numerous **negative consequences** such as being sent to another location in Germany, not being allowed to work or undergo vocational training for up to 9 months, having to live in group shelters for refugees for up to 24 months, obligation of residence in a certain local area, being entitled only to benefits in kind and pocket money according to the AsylbLG (Asylum Seekers' Benefits Law), not being allowed to seek a switch to another residence title in many cases even after the asylum procedure has been completed, etc.

Case group 3 pertains to Ukraine war refugees who are third-country nationals and can claim a residence title in Germany other than section 24 Residence Act (§ 24 AufenthG), e.g. for qualified **gainful employment** (academics or with completed vocational training recognised by Germany), for **vocational training**, for a voluntary social or ecological year or a federal voluntary service (FSJ, FÖJ, BFD), for a study preparation measure, a course of study or also a language course that does not serve the purpose of study (§ 16 f AufenthG). See also the overview of the Munich Refugee Council: <https://muenchner-fluechtlingsrat.de/information-for-third-country-nationals-who-have-fled-ukraine/#toggle-id-1>

Problem: All these titles – including studies or vocational training! – require that you can prove to get enough income to secure your **live expenses** including health insurance, without having a supplementary claim to unemployment benefit II (Arbeitslosengeld II).

Case group 4 offers a temporary solution for Ukraine war refugees who are third-country nationals who were students

in Ukraine and do not belong to any of the above-mentioned case groups and who can credibly show by providing students documents that they were **studying in Ukraine when the war broke out**. They will receive a 6-month “Fiktionsbescheinigung” (fictional certificate) with which they can receive benefits from the Jobcenter (or BAföG, if applicable) and which allows them to work on fulfilling the conditions for a residence permit to be issued. This doesn't have to be a residence permit to study, it can also be another residence permit (e.g. for qualified gainful employment or for vocational training), in which case, however, the livelihood must be secured independently by the applicant. Students are thus given an additional six months to prove that they meet the requirements of case group 3.

First additional practical information from SenIAS Berlin (Senatsverwaltung für Integration, Arbeit und Soziales)

An email from the **Senate Department for Integration (SenIAS)** informed us that a new accelerated procedure has been put in place until 31 August 2022 for third-country nationals who fled Ukraine and who **studied in Ukraine** before the war began. According to this information from SenIAS, until 31 August 2022, the LAF's Ukraine Arrival Center at former Tegel airport (UA TXL) will not proceed to an extensive examination of the application and corresponding documents but will **reduce it to a minimum**, so that for the **accelerated procedure** it will be sufficient to provide proof of having studied in Ukraine before the start of the war as a copy or as a digital version, not only as a hard-copy original. As part of the accelerated procedure and for this group of persons, the LAF will not carry out any further checks pertaining to residence law, only checking proof of identity; any further checks will be carried out by the LEA. The criteria for being allocated and distributed to Berlin that were announced on 05 April 2022 (i.e. proof of accommodation like a rental contract, proof of working in Berlin, or having certain relatives who live in Berlin, etc.) remain in place. The LAF will report persons from third countries who were already sent and allocated to other German federal states to the LEA, so these persons prospectively cannot apply successful.

Additional practical information from SenInn (Senatsverwaltung für Inneres) and LEA (Berlin Immigration Office)

We asked the Senatsverwaltung für Inneres to send us the regulations for the implementation of the Senate resolution. Finally the VAB Berlin on § 24 AufenthG were updated now for the implementation of the Senate resolution at 8.9.2022 (in the PDF under A.24 on page 268 ff):

www.berlin.de/einwanderung/service/downloads/artikel.875097.php

At the LEA pre-appointment, persons who indicate that they may fall under case group 2 or who wish to take advantage of the two-month consultation and reflection period will receive a German-language information sheet explaining the further procedure: https://fluechtlingsrat-berlin.de/hinweisblatt-lea_deutsch We have translated the information sheet into English: https://fluechtlingsrat-berlin.de/hinweisblatt_lea_eng_lekt/

Information from the Berlin Refugee Council on the application procedure in Berlin

Registration and allocation to Berlin at UA TXL (Ukraine arrival Center at former Tegel Airport)

To register and be allocated to Berlin, first of all, it is necessary to go to the LAF's (State Office for Refugee Affairs Berlin) Ukraine arrival Center located at the former Berlin Tegel airport (UA TXL for short):

<https://service.berlin.de/dienstleistung/330869/standort/330887/>

UA TXL is only accessible by **shuttle bus**, not on foot. A free shuttle for refugees to the UA TXL leaves every hour from **Berlin Main Station, Hauptbahnhof** (exit Washingtonplatz, Rahel Hirsch Straße, which is the street next to the river Spree). UA TXL can also be reached by first taking the **public bus 109** (it leaves the **U-Bahn and S-Bahn station Zoologischer Garten** and also makes a stop at the **U-Bahn station Jakob-Kaiser-Platz**) and exiting at the bus stop called General-Ganeval-Brücke (which is located right by the entrance to the airport). *Please notice that the public bus line 128 no longer goes to UA TXL!* From General-Ganeval-Brücke (by the entrance to the airport) take a shuttle bus to the registration tents on the airport tarmac.

To leave UA TXL, also use the shuttle buses. All shuttle busses drive back from UATXL to the city as well. Applicants who have been allocated to another federal state (not Berlin), e.g. due to not being able to provide confirmation from your host. It is illegitimate for UA TXL staff to force people to board a bus heading to another federal state!

It is not necessary to have an appointment to register at UA TXL. It is open even on Saturday and Sunday. You should arrive between 8 a.m. and 3 p.m. and present proof of identity and one of the following: proof of housing (be it a rental contract or a sublet contract), Bürgeramt registration (Anmeldung), or a confirmation from your host (Wohnungsgeberbescheinigung), which is usually the simplest solution.

Only for third-country nationals who have **studied** in Ukraine, a **special regulation** applies until **31.8.2022**. They can register online at LEA (see below) without registering in UA TXL if they indicate in the LEA online form that they already had a Berlin assignment and enter the option number BE1234567. However, they will have to register then in UA TXL before their personal LEA appointment.

Reasons for an Allocation to Berlin (Berlinzuweisung): Confirmation from the host (Wohngeberbescheinigung) and other options

Template for the confirmation from the host (Wohngeberbescheinigung):
www.berlin.de/formularverzeichnis/?formular=/labo/zuwanderung/assets/bestatigung_uber_dauerhafte_gewahrung_einer_unterkunft_fur_ukrainische_gefluchtete.pdf

(If necessary, copy the URL and paste it into the browser)

Please note: LAF and LEA checks the host's personal data against the registry of Berlin residents. In UA TXL you should bring a copy of the "Personalausweis" (with address!) or the "Anmeldung" of the landlord.

Instead of proof of a **flat** (tenancy agreement, subtenancy agreement, or "Wohngeberbescheinigung"), you will also be allocated to Berlin if you can prove that **you have a job** (at least approx. 15 hours/week, at least 810 euros net), a **vocational training**, a place at university or a preparatory course of **study** in Berlin.

You will also be allocated to Berlin if you can prove that you have certain **relatives** already living **in Berlin**: spouse or partner (also same-sex), grandparents, parents, siblings, children or grandchildren (also adults!). A Berlin allocation is also made in case of **pregnancy or birth** ("Mutterschutzfrist" = maternity leave period 6 weeks before and 8 weeks after birth). Berlin allocation also takes place in case of inability to travel for **medical reasons**, for **trans persons** and, under certain circumstances, for LGBTIQ persons.

Template self-enrolment form UA TXL

At UA TXL, applicants are asked to fill in a self-enrollment form (**Selbsterfassungsbogen**) in which they have to state their **reasons for being allocated to Berlin**. The form can be downloaded here:

www.fluechtlingsrat-berlin.de/fragebogen_registrierung_laf

(feel free to print it out and fill it in before going to UA TXL)

Students should also bring proof of having studied in Ukraine.

The LAF will also check whether you have already been **allocated to or registered in another federal state**. If this is the case, it is not possible to be allocated to and registered in Berlin allocation and for the Berlin student regulation (see above case group 4) to be applied. For students, Hamburg and Bremen are supposed to have similar regulations as Berlin. The above-mentioned regulations for case groups 1 to 3 apply analogously in all federal states of Germany.

Online registration at the Berlin Immigration Office LEA

The Berlin Immigration Office called LEA (Landesamt für Einwanderung), is not represented in the Ukraine Arrival Center at Tegel (UA TXL). Therefore, after being granted an allocation to Berlin from the UA TXL, you must fill in the LEA's online registration form to get an **appointment for the residence permit pursuant to § 24 AufenthG**.

<https://service.berlin.de/dienstleistung/330875>

When UA TXL allocates people to Berlin, they also give them a **code** that is required to register with the LEA. To register with the LEA the applicant must have an **email address**, as the LEA sends the information about the appointment for a personal interview by email.

It is important to print out the completed registration form after having filled it and/or save it as a PDF file! Please note that the LEA does not send an immediate confirmation email stating that the registration was submitted.

The confirmation of registration at the LEA is not yet considered a formal Fiktionsbescheinigung (fictional certificate) according to Section 81 Residence Act (§ 81 AufenthG).

Important: At UA TXL, the LAF only carries out the initial registration and decides whether the applicant will be allocated to Berlin; the LAF and the police check fingerprints and sometimes the passports. It is solely the LEA that decides whether the applicant will be granted the right of residence. Hence, it is only after the appointment at the LEA that the "Fiktionsbescheinigung" (fictional certificate) pursuant to Section 81 Residence Act (§ 81 AufenthG) can be issued

More information for war refugees from Ukraine

More information for war refugees from Ukraine, also for third-country nationals, including information on **social benefits**, can be found here:

in German: www.fluechtlingsrat-berlin.de/news_termine/ukraine

in English: www.fluechtlingsrat-berlin.de/news_termine/ukraine_english

If you have any comments, experiences, suggestions, or criticism, please write

buero@fluechtlingsrat-berlin.de