**Securing a livelihood** **is required for residence
permits and family reunification**

**Residence permits**

To reside in Germany legally, foreigners must qualify for what the German authorities call a residence title (***Aufenthaltstitel***), which can either be a temporary residence permit or a permanent settlement permit. In order to be issued either type of permit, foreigners must be able to secure their livelihoods in Germany; in other words, they must be able to guarantee that they can support themselves financially. This is the case if foreigners can pay for their living expenses, including obtaining sufficient **health insurance coverage,** without relying on public-sector funds, such the various social welfare benefits and special benefits to supplement income which are offered by the government (*SGB II* *Leistungen*, *Sozialgeld, Grundsicherung, Sozialhilfe*). However, the German Residence Act (*Aufenthaltsgesetz*) does allow exceptions to this requirement in special cases and a residence permit can be issued or extended despite a foreigner’s reliance on government assistance to pay for his or her living expenses.

A foreigner’s ability to financially support himself is the most important requirement for preventing public funds from being used. German legislators have specifically expressed their view that securing a livelihood must be seen as a prerequisite of fundamental governmental interest. Their position was originally set out in the Residence Act in1990 and it has generally been reinforced in the new rules in the Immigration Act, which relate to a foreigner’s right to reside in Germany. The new rules require foreigners not only to guarantee that they can pay for their living expenses in order to be granted a permanent residence permit, but as a general rule, they also require foreigners to guarantee that they can support themselves in order to be issued any type of residence permit.

**The ability to financially support oneself without relying on government assistance must not be only temporary in nature.** The financial means that a foreigner has available must be sustainable to some degree over the long-term. For this reason, a **positive prognosis** is required which states the foreigner will be able to continue to support himself or herself in the future without having to receive financial assistance from the state. Therefore, a decision regarding a foreigner’s future prospects must be made about whether or not public-sector budgets will only be used temporarily to pay for a foreigner’s living expenses. The assessment of a person’s future prospects for being able to support him/herself in the long term can also include taking his or her past history into account.

**Foreigners are considered to be unable to financially support themselves if they are entitled to claim any supplementary benefits in order to pay for their living expenses. These supplementary benefits are made available to them under Book II of the German Social Security Code (*Sozialgesetzbuch* (SGB-II)). It does not matter if the person actually makes use of his or her right to claim these benefits.** It is important to note, however, that this rule cannot be interpreted directly from the wording of the provision itself: the phrase ‘the foreigner must “be able to” support himself without using government funds’ seems to imply that only the social benefits that are actually received are detrimental to the government authorities’ decision to issue or extend a residency permit. Nevertheless, the rule is enforced as the spirit and purpose of the rule is to prevent additional financial burdens on public-sector budgets. Therefore as a general rule, simply having the possibility of qualifying for any welfare benefits is enough to prevent a person from being issued a residence permit. This suggests if it is likely that a foreigner will be entitled to public benefits, the foreigner’s means of support cannot be considered secured unless the entitlements are expressly regarded as non-detrimental for obtaining a residence permit. This assessment is made because it can be expected that the foreigner will use these benefits, or at least it cannot be ruled out.

Determining a person’s ability to financially support themselves requires a comparison of the need for financial support that a foreigner is expected to have with the actual funds that he or she has available. For this comparison, the income available will be determined and the financial needs of foreigners who are able to work will be assessed, as well as the financial needs of the persons who live with them in their household and who are considered in need of financial assistance. The person and household members in need of assistance are what the German government refers to as a ‘**benefit community’** (*Bedarfsgemeinschaft*).[[1]](#footnote-1) As a general rule, these assessments will be made according to the relevant provisions in Book II of the German Social Security Code (*SGB II*).

**A ‘benefit community’ (*Bedarfsgemeinschaft*) includes the following individuals:**

* The person in need of assistance who is able to work.
* The spouse (husband or wife), registered civil partner, or a person who lives together with the person in need of assistance in such a way that it can be reasonably assumed that there is mutual willingness to be responsible for each other and stand by one another.
* The person’s own children and the children of his or her partner who live in the household, as long as they are under 25 years old and unmarried, and they do not have enough income or property to support themselves.
* The parents or parent who live(s) in the household of an unmarried child who is able to work and is under 25 years old, and the partner of one of these parents who lives in the household.

A mutual willingness to be responsible for each other and stand by one another is assumed, for example, when the partners have lived together for more than a year or they live together with their child; when they take care of the children or relatives living in the household; or when they are authorised to have the income or property of their partner at their disposal.

Government authorities make a distinction between what they call a ‘benefit community’ (*Bedarfsgemeinschaft*) and a ‘household community’ (*Haushaltsgemeinschaft*). The ‘household community’ includes everyone who lives together in one household. This is also the case in a ‘benefit community’, however, ‘household community’ has a broader definition than the term ‘benefit community’, which only includes certain members of the household who qualify as being in need of financial support.

**Some social benefits can be received without having a negative impact on a foreigner’s entitlement to a residence permit. These include child benefits (*Kindergeld*), child benefit supplement (*Kinderzuschlag*), the special child-rearing allowances for parents on maternity or paternity leave (*Erziehungsgeld* or *Elterngeld*), and financial aid for students or young adults in vocational training (*BAföG*). Public-sector funds that depend on payments of contributions having been made or that have been granted in order to enable a person to reside in Germany are allowed to be used as a person’s means of support. This includes benefits from health insurance or the pension insurance fund as well as the unemployment benefit known as *Arbeitslosengeld I*, which is issued by the public unemployment insurance fund.**

**Family reunification**

There are **special rules** for the reunification of family members based on **European Union (EU)** law. Under EU law, it is possible for claimed benefits to be considered non-detrimental in exceptional cases. One such case concerns the exempt amount for taxes that the person is entitled to deduct for being employed. When calculating a foreigner’s income for determining if he or she can support himself, this exempt amount cannot be deducted from his or her income as it would come at the expense of the foreigner’s family member who wants to reunite with their family member in Germany. The reason that the exempt amount cannot be taken into account for the assessment is that it is granted to people primarily for reasons related to the employment market and employment policies in Germany. It is intended to be an incentive for people to seek employment and remain employed. It is not supposed to be used to offset a lack of enough regular and fixed income as defined in case law.

**If a foreigner cannot financially support him/herself, a residence title can be issued in exceptional cases if living together in an intact family can only be realised in Germany**. If it is not possible or reasonable for a member of the nuclear family, which is made up of parents and their minor children, to reside in a foreign country in order to continue living together as a family, added weight is given to the interest of the family in keeping their family together in Germany. The relationship between parents and under-age children is protected under Article 8 of the European Convention on Human Rights (ECHR). According to the established case law of the European Court of Human Rights, the Convention does not, however, guarantee a foreigner a right to enter a specific country and to reside there.

1. Translator’s note to client: I am using the official translation of the German legal term *Bedarfsgemeinschaft* for the purpose of legal consistency, although ‘benefit community’ is calque and does not convey the denotative meaning or connotations in English. To compensate for this loss in meaning, I have added a gloss when it appears later in the text in the second to last paragraph in this section. The official translation ‘benefit community’ is a literal translation that does not convey its denotative meaning or connotations in English. The German term *Bedarfsgemeinschaft* is officialese and a neologism, which comes from the restricted context of administrative law. The German term is clearly defined by the Bundesministerium für Arbeit und Soziales (Federal Ministry of Labour and Social Affairs) on its webpage titled ‘*Bedarfsgemeinschaft und Haushaltsgemeinschaft’;* itdefines the term as a selected group of household members who meet certain requirements to qualify for these benefits. The Bundesagentur für Arbeit (Federal Government Employment Office) underscores this definition in the English version of its information sheet on Unemployment Benefit II. [↑](#footnote-ref-1)