

Information for interpreters and other local staff (Ortskräfte) who worked or still work for the German military in Afghanistan

Interpreters and other Afghan staff working for the German military or Non-Governmental Organizations are being threatened or fear that their safety will be endangered as German Troops are leaving Afghanistan. German newspapers have extensively covered such cases. The persons concerned demand protection by the German government and to offer options for relocation to Germany. The German government has a fiduciary duty (Fürsorgepflicht) towards its current and former employees. A resettlement program is necessary. Germany wouldn't be the first country to support its endangered local staff in this way while retrieving its troops.

It is shameful that Germany does not follow the example of other countries. Instead people who have taken considerable risk because of their service to German entities are being left unprotected.

The German Minister of Defense declared that he is against bringing Afghan staff of German military and NGOs to Germany. If there were clear indications that Afghan staff was endangered because of their cooperation with the German military, then Germany "would know what has to be done". Nothing has happened so far.

Interpreters who are in danger were not informed whom to turn to for protection. The German Ministry of Interior informed us that it would try to help local staff in Afghanistan to find "alternative employment" after the end of their contracts. According to the Ministry, whether the withdrawal of German troops led to a risk for local staff, because they used to work for the German army, would be established on an individual basis. Necessary measures would also be decided from case to case. The authorities for whom the respective local employee worked and the respective ministry would be responsible for this.

Also in this respect almost nothing has happened. We consider the inaction, the diverging answers and the factual refusal to set up a reception program unacceptable and irresponsible.

- **Therefore we support cases of local staff (Ortskräfte) who are being threatened personally.**
- **With the help of lawyers in Germany, we want to support you in making your protection claim heard.**
- **If you contact us at ortskraft@proasyl.de, we will put you in contact with a lawyer.**
- **If you want to engage the services the proposed lawyer, you will have to contact them. The lawyer will send you a form to give them power of attorney. The signed form should be returned attached to an E-Mail.**

Please send any request to this Email-address: ortskraft@proasyl.de

- **The client-lawyer relationship is between you and the lawyer. Should you lack the necessary means, we will support your case upon review with funds from our legal aid fund so that you will not have to bear any costs.**
- **You will have to coordinate with the lawyer and keep him informed about any new developments by E-Mail.**
- **Communication with the lawyer will be in German or English.**

Please be aware that a lawsuit will require time and effort. Quick success is not to be expected. It is in the hand of the German government to introduce a simplified procedure or to set up a reception program. Until then we would like to offer you this information regarding the legal situation and the course of action.

Immigration for humanitarian reasons

1. You cannot apply for asylum or for refugee status according to the Geneva Convention in Germany from abroad.

2. The German Minister for Interior could order to allow for the reception of local staff as members of “certain groups of foreigners” because of special political interests. For this he would need to coordinate with the Interior Ministers of the German “Bundesländer” (States). In the moment such an order seems unlikely.

3. However, it can be an option to apply for an admission to enter Germany under international law or for urgent humanitarian reasons which are governed by §22 of German residence law (AufenthG). A decision concerning the admission to Germany will be based on discretion decision or on a legal claim. For the second case it is a requirement that the German Minister of Interior declares that relocation serves the political interest of Germany.

Who is PRO ASYL?

PRO ASYL is a German human rights organization that – together with partner organizations – is also active outside Germany.

We especially advocate for the rights of refugees, for fair asylum procedures, for the participation of Germany in international resettlement programs. We inform the German public about the situation of refugees. We also have a budget for legal aid in individual cases.

If you want to learn more about us, please visit our website www.proasyl.de.

a) Procedures in cases where § 22 AufenthG applies

You have to apply for a Visa at the German Embassy in Kabul. The Embassy will forward your application to the Aliens Department responsible for the future place of residence you stated in your application. If you have relatives or friends in Germany you could state their address in your application. Only with the consent of the Aliens Department, will a Visa be granted. There is no legal claim to a Visa. The authorities will decide on discretion. This means that they will weigh all arguments for and against granting a visa.

b) What needs to be stated in the Visa application?

Only in rare, exceptional cases will an application under § 22 AufenthG be approved. According to an administrative regulation - which clarifies the usage of the law – the requirement for relocation for humanitarian reasons is “that the foreigner finds him/herself in

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a special emergency situation. Because of the exceptional character of this provision a further requirement is that the protection seeker is in an extraordinary situation, which makes an intervention absolutely mandatory and justifies receiving him/her– as in opposition to other foreigners in a comparable situation. ... “.

The grounds for your Visa application thus have to be concrete. You have to describe your special emergency situation. In our view, all local staff who can point to a concrete threat is in an extraordinary situation, which makes intervention absolutely mandatory. This has to apply where ever effective protection in Afghanistan isn't available.

c) Which formalities apply in the Visa procedure?

For applicants who want to immigrate to Germany for humanitarian reasons, the general references of the German Embassy concerning the formalities of the Visa procedure apply. They are to be duly noted and followed.

<http://www.kabul.diplo.de/Vertretung/kabul/en/07/ Visa Service Hauptbereich.html>

d) General requirements for granting a Visa

The general requirements for the granting of a Visa apply (§ 5 Abs.1 AufenthG). This mainly means:

- Your identity needs to have been verified. You must possess a valid passport.
- There may be no immigration ban ordered against you.
- Your livelihood needs to be assured, which includes having medical insurance. Livelihood could be assured by the guarantee of another person in Germany (for example a relative of yours) to cover for your subsistence. Livelihood can also be assured if a company bindingly declares to employ you upon immigration to Germany. In exceptional cases the requirement of assured livelihood can be omitted (§ 5 Abs.3 Satz 2 AufenthG).

■ We assume that it cannot be asked of endangered local staff to prove that they will be able to assure livelihood on their own already during application. Whether this argument will be accepted during the Visa procedure remains to be seen.

e) Immigration of family members?

Where the reception of spouses and underage children is concerned, you will have to file individual applications for each family member. If you sign up online for an interview with the German Embassy, you need to bear in mind to book an individual personal interview for each family member. Your spouse and underage children can justify their applications with the argument of family unity.

Again: please keep your lawyer updated about the proceedings, such as the booking of an interview, when interviews at the Embassy in Kabul will take place, the answers you have received, and so on.

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A Visa application cannot replace a political solution

As you can see there are considerable obstacles within the Visa procedure. We assume that the German public can help promoting the German government's willingness to come to a solution including relocation.

Please consider whether you would authorize your lawyer in Germany to publicly present your case. This can be done in an anonymous way, without mentioning your name. Of course you can also pose further conditions for a public presentation.

The German government will not be able to permanently refuse taking a decision. Since 2009, the US government helps Afghan citizens who worked for them in Afghanistan with a Visa program based on the Afghan Allies Protection Act. The Canadian government has issued a reception program for hundreds of Afghans. In Australia a comparable program is currently being discussed in Parliament. Also during the withdrawal of troops from Iraq there have been comparable regulations for reception. Apart from the USA and Canada, Great Britain also participated offering one hundred reception places. Denmark is said to have received around eighty former employees. In many of these countries, local employees making their situation public have made the difference.

Of course we hope for a peaceful future in Afghanistan and that everybody will have a chance to make their contribution without being threatened.

Please note:

- In principle this information also applies to Afghan citizens who used to or still work for German NGOs in Afghanistan. However, we assume that in such cases the NGOs concerned will advocate for the protection of endangered employees.
- Please pass this information on to persons who might be in a similar situation.

Imprint

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