

**Specialist information from the GRC Tracing Service regarding family reunification of and for refugees (8 April 2022)**  
**Special aspects with family reunifications from Afghanistan**

1. Urgent legal protection - special appointments - acceleration of procedures: key messages from the case law of the Administrative Court of Berlin and the Higher Administrative Court of Berlin-Brandenburg since August 2021
  - a) Attendance at the German diplomatic mission abroad is generally required to clarify identity
  - b) No exception to the principle of attendance with general reference to a failure of organisation
  - c) No exemption due to special risks if all others are (comparatively) exposed to equivalent risks
  - d) Application for special appointments at the German diplomatic missions abroad - specification of a special risk
2. Reunification of other family members in accordance with § 36 (2) of the German Residence Act
3. Reunification with family members with a residence permit in accordance § 25 (3) of the German Residence Act
4. Acceptance from abroad in accordance with § 22 of the German Residence Act

Many of the GRC Tracing Service support centres in Germany provide qualified and supportive advice and guidance for the many people fleeing the armed conflict in Ukraine on a daily basis.

At the same time, the support centres are still confronted with unresolved challenges in connection with the movement of refugees from other countries where there are armed conflicts and political violence and the resulting questions of restoring family unity worldwide.

Mention should be made, for example, of the numerous difficulties encountered when Afghans are reunited with their family members living in Germany with international protection status, which are all the more urgent to overcome after the Taliban took power in Afghanistan on 15 August 2021:

Long waiting times of an average of two years or more for an initial appointment to apply for a visa for family reunification at the relevant German diplomatic missions in Pakistan or India, in some cases, a lack of opportunities to legally contact the relevant German diplomatic missions abroad, ambiguous responsibilities and procedures at German diplomatic missions abroad in neighbouring countries, ambiguities regarding possible and reasonable procurement of documents with the Taliban in power and much more.

Since the Taliban took power in August 2021, the Administrative Court in Berlin (hereinafter referred to as the AC Berlin) and, as a subsequent instance, the Higher Administrative Court in Berlin-Brandenburg (hereinafter referred to as the HAC BB) have been dealing with urgent legal issues in this context in several expedited proceedings. The legal language in which this is taking place is sometimes difficult to bare, given the desperate situation in which families from Afghanistan find themselves. However, knowledge of the key messages on the

individual issues, even if the decisions for the applicants were unsuccessful<sup>1</sup>, is essential for qualified and helpful advice for families.

The present GRC Tracing Service specialist information focuses on the urgent case law of the AC Berlin and the HAC BB, particularly regarding the family reunification of Afghan people with relatives with international protection status and the resulting advisory approaches for advisory practice.

#### To begin with:

- A possible waiver of the respective general granting prerequisites in the individual scenarios - e.g., of the requirement for a "secure livelihood as a rule" - is not the subject of this specialist information. Knowledge of this is assumed.<sup>2</sup>
- Knowledge of current human rights reports regarding the situation of particularly vulnerable people in Afghanistan is an advantage for guidance on the immigration scenarios for family members dealt with in this specialist information, see 1. d).
- References highlighted in blue each have a corresponding link attached to them.
- Case law that has not yet been published can be sent anonymously by the courts upon request.

#### **General practical advice:**

Even if, under the given legal options and taking into account the special aspects of the individual case, a prompt and successful family reunification procedure cannot be provided in a given situation, you can and should point out the following aspects to those seeking advice to prevent immeasurable despair:

- Point out that, on the basis of the coalition agreement of the new Federal Government, Federal and/or State acceptance schemes for people from Afghanistan will (are to) be set up, which will create new opportunities for family members who have stayed behind to enter the country. Keep an eye on developments in this regard.
- Provide tips regarding and the opportunity for those seeking advice to actively research currently existing offers of asylum and/or support for vulnerable family members and/or family members left behind and alone in Afghanistan and to pass this information onto the relatives, e.g. by contacting [ICRC](#), [UNHCR](#), [UNICEF](#) (children), [Medica Mondiale](#) (women)
- Emphasise the importance of keeping in regular touch with family members and avoiding loss of contact (see, for example, [Safety Tips For Families](#) from the International Committee of the Red Cross)

<sup>1</sup> The author is not aware of any urgent, legally binding decisions that have been granted. Decisions granted at first instance in summary proceedings initially after the Taliban seized power were overturned at second instance

<sup>2</sup> The requirement for a secure livelihood, which is usually necessary depending on the scenario, can be waived if there are special and unusual circumstances that are so significant that they eliminate the otherwise decisive weight of the legal regulation or the granting of the residence permit is possible for reasons of higher-ranking law such as Art. 6 of the German Constitution or in view of Article 8 ECHR, e.g. ([Federal Administrative Court ruling of 30.04.2009 \(1 C 3.08 marginal note 13\)](#)).

**1. Urgent legal protection - special appointments - acceleration of procedures: key messages from the case law of the AC Berlin and the HAC BB since August 2021**

Urgent judicial proceedings (alternative terms: interim injunctive proceedings, provisional legal protection) take the so-called main decision (in this case, the granting of the visa), skipping the entire duration of the designated visa procedure - administrative procedure from the time of applying for an appointment for an interview with the responsible German diplomatic mission to the decision and any legal remedies in the event of the visa being rejected – in advance (anticipation of the main issue).

However, the fundamentally inadmissible anticipation of the main issue is necessary in exceptional cases to ensure effective legal protection if

- a) there is a high probability that the main proceedings will prevail (entitlement to an interim order) and
- b) without the urgent decision, the person seeking legal protection would suffer serious and unreasonable harm that could not otherwise be avoided, which the decision on the main issue would no longer be able to rectify (adjudicatory basis).

Both the entitlement to an interim order and the adjudicatory basis must be in place for an expedited procedure and must therefore be taken into account when compiling the essential circumstances of the individual case.

In the cases on which the urgent decisions of the Berlin Administrative Court and the Higher Administrative Court summarised below were based, the applicants had not yet been given an appointment with a German mission abroad or were unable to attend one due to developments in Afghanistan.

The following **key messages** can be taken from assessed decisions available<sup>3</sup>:

**a) Attendance at the German diplomatic mission abroad is generally required to clarify identity**

Irrespective of the fact that a visa application for family reunification can also be made informally, any decision on granting a visa requires that the applicant has previously visited the responsible German diplomatic mission or the office designated by them in order to provide the necessary information about their identity. This includes questions during the interview, the taking of biometric data, an inspection of the original documents and a possible assessment of the authenticity of the documents. Otherwise, identity cannot be considered clarified.

<sup>3</sup> AC Berlin, ruling of 10.09.2021 (VG 15 L 337/21 V) and HAC BB, ruling of 10.12.2021 (OVG 6 S 32/21), Woman with four underage children – moving to father and husband with refugee status; AC Berlin, ruling of 29.10.2021 (VG 36 L 320/ 21 V) and HAC BB, ruling of 10.12.2021 (6 S 47/21), Woman to join her husband with refugee status: exactly the same: AC Berlin, ruling of 11.01.2022 (VG 21 L 640/21 V); AC Berlin, ruling of 01.12.2021 (VG 32 L 198/21) and HAC BB, ruling of 03.02.2022 (OVG 6 S 56/21), Married couple with children to relatives; AC Berlin, ruling of 11.01.2022 (VG 21 L 640/21 V) Woman with new-born child to husband and father, waiting time for an appointment over 2 years.

A one-off visit when picking up the visa after the prior transmission of copies and scans of the necessary documents does not replace the visit when the application is submitted to clarify identity.

The verification of the authenticity of the documents from Afghanistan is only done in an "emergency procedure". A check in the "emergency procedure" also requires the submission of the identity papers themselves and not simply copies.

**b) No exception to the principle of attendance by reference to an organisational failure of the Federal Republic of Germany**

The legal requirement for a personal visit should not be waived as long as it is not shown that the Federal Republic of Germany failed to make and implement reasonable and plausible organisational decisions in order to, under the current circumstances - for which it is not responsible - make a timely decision to enable applicants to meet in person or to speed up the process in general.

The current waiting period of around two years and just over is (still) within the framework of the procedural separation time of members of the core family seeking reconciliation, which is to be reconciled with the constitutional protection of marriage and family under Article 6 of the German Constitution, if a situation-based capacity bottleneck of the diplomatic mission abroad is responsible for this and which is not based on a structural organisational shortcoming.

However, there are no structural organisational shortcomings concerning handling visa applications for family reunification. The Federal Republic of Germany has done everything in its power to prevent bottlenecks. This included, in particular, the expansion and increase in premises and staff capacity at the responsible German missions abroad (Islamabad/Pakistan and New Delhi/India).<sup>4</sup>

The Federal Republic of Germany cannot be blamed for the lack of opportunities to enter the countries concerned for the purpose of an interview. It rightly points out that it is beyond its power whom the Indian (or Pakistani, expl. note) Government will let into the country and on what terms.

Special appointments for an interview in the context of family reunification would promptly be made if there were special circumstances that indicate an emergency or a particularly dangerous situation and required an immediate objective examination of the visa application. By explaining the specific risk situation, it is, therefore, possible to work towards the allocation of a timely special appointment at the German diplomatic mission.

**c) No exemption due to special risks if all others are (comparatively) exposed to equivalent risks**

<sup>4</sup> With regard to a possible organisational acceleration of the procedure - as already undertaken in some other European countries – not taken into account was the creation of alternatives to personal visits, such as remote interviews (online), greater flexibility concerning the necessary handover of original documents and the sending of original documents via the authorities or in electronic form, collecting biometric data by using the technical possibilities and services, e.g. of the UNHCR if their branches are easier for the applicant to attend, accelerating the application process through closer cooperation with diplomatic missions in other (European) countries and use of their services (as is already the case in Luxembourg, Estonia, Finland and Spain).

However, evidence of a dangerous situation in general in Afghanistan is not enough. In the proceedings to be decided, there is a lack of presentation of circumstances that prove a special emergency of the applicant that differs from the general situation of the Afghan population.

A hazardous situation, in general, could not lead to the assumption of an emergency in an individual case, which would require preference being given to the applicant by assigning him or her an early appointment. This is because other people living in Afghanistan who have applied for a visa for family reunification in Germany are also exposed to this hazardous situation.

In this respect, it should not be overlooked that preferential treatment of applicants within the appointment allocation system would be at the expense of those applicants who had submitted a visa application earlier, given the limited capacities of the foreign missions in question.

The difficult situation in Afghanistan, especially for women (and girls) after the Taliban took power, is taken into account. However, this difficult situation also applies to other women (wives) (and their children) who want to join them.

Regardless of this, the assertion that the applicant, as a woman with four children, is exposed to an individual significantly increased risk is not credible in view of the fact that they are in the care of their father or grandfather in his house. An individual danger is required that sets the applicant apart in a substantial way from the general risk situation described.

Concrete evidence is required if reference is made to possible family detention by the Taliban due to the activities of the person in question with refugee status in Germany. All the more so, the further back in time the relevant activities, which the Taliban became aware of, are.

#### **d) Application for special appointments at the German diplomatic missions abroad - specification of a special risk**

Basically, the processing of the registration for appointments is based on the date of receipt. Due to a large number of identical or similar cases, prioritisation, according to the Federal Foreign Office, can only take place in special cases. These include, for example:

- Coming of age and the resulting impending loss of entitlement to subsequent immigration (in the relevant scenarios)
- Child endangerment
- Belonging to a "particularly endangered group of people" and the resulting individual predicament

Indications of a special and individualised risk required by the case law that goes beyond the general risk situation for certain groups of people can be found, for example, in the Federal Republic of Germany's list of Afghan men and women who are particularly at risk at the beginning of the evacuation measures. Among these, the Federal Republic of Germany counted "those who are particularly at risk, for example from civil society, the media, culture and science." (see [FAQ Afghanistan by the Foreign Office](#)).

Due to the ongoing developments in Afghanistan, depending on the level of knowledge, groups of people who are particularly at risk will also be continuously updated, for which it

may be helpful to examine corresponding reports from human rights organisations (see, for example, relevant reports on Ecoi: <https://www.ecoi.net/de/laender/afghanistan/> ).

The Federal Office for Migration and Refugees also dedicates its [Country Report No. 48](#) to the situation of women in Afghanistan from 1996 to 2022 (as of 01/22).

In the current report on the situation in Afghanistan (as of 01|2022), Amnesty International also refers to the particularly endangered groups of human rights defenders, activists, journalists, health care workers and employees of humanitarian organisations, as well as lawyers, judges and public prosecutors ([Amnesty International Report 2021/22; On the global human rights situation; Afghanistan 2021](#)).

#### **Practical guidance:**

If in the lead-up to guidance regarding family reunification, you get the impression that those reuniting could be people who are classified as particularly at risk at the time of the guidance, you can support those seeking advice beyond general advice on family reunification as follows:

- Before a consultation, try to look at the current reports on particularly vulnerable people in Afghanistan.
- Together with the person seeking advice, gather as many details as possible of a particular risk to the family members who are immigrating that goes beyond a general risk, whereby you can take the following aspects into account:
  - To which group of particularly vulnerable people does the family member belong?
  - In which concrete activities and actions has the family member been involved in this context?
  - In which period and until when was the family member correspondingly active?
  - What is the current situation of the family member (place of hiding, protection, livelihood)?
  - Are there other family members who may be able to provide protection and, if not, what happened to them?
  - Which region of Afghanistan does the family member come from, and where is he or she located now?
  - Do you have any knowledge of how the Taliban deal with people of the same or similar background? Are the people seeking guidance aware of specific cases - e.g. from their own family or the neighbourhood? Are there any documents, press releases or other reports about this?
- Try to back up as much information as possible in this situation with documentary evidence.
- You can point out to those seeking guidance that they can use the information listed above as an example to try to apply for a special appointment for an interview at the German diplomatic mission, or you can apply for a special appointment for your client yourself.
- If, in view of the urgency of the risk, you consider it necessary to also submit an urgent application to the court, please draw the applicant's attention to advice from and/or involvement of a qualified lawyer.

- Make sure that there are no contradictions with the previous details of the person in question in the administrative processes (e.g., asylum procedures). For this reason, examine the minutes of the hearing and the asylum decision.
- In case of doubt, it can also be helpful to inspect the relevant files at the immigration authorities.

## 2. Reunification of other family members in accordance with § 36 (2) of the German Residence Act

Ever since the Taliban took power in Afghanistan, many requests for guidance concern the reunification of female family members who have remained in Afghanistan: mothers of adult reference persons, sisters, nieces or other female family members who legally belong to the group of "other family members" within the meaning of § 36 (2) of the German Residence Act.

"Other family members" can be granted a residence permit for family reunification if it is necessary to "avoid exceptional hardship" and all other requirements (usually also securing a living) are met. The term "extraordinary hardship" is a vague legal term and fully verifiable in the event of legal action. It must be a hardship that goes beyond the general hardship that every family experiences from not being able to live together. The reunification of other family members is, if anything, the exception due to the difficult conditions.

The family member living in Germany or the family member who wants to join them must be so dependent on the close support provided by the other person that without this support, they would inevitably experience glaring restrictions in their life that would amount to a violation of fundamental rights or human rights. In addition, the required close support may only be provided within Germany.

The vague legal term "to avoid exceptional hardship" has been defined by case law in such a way that:

- the family member in need of protection or support cannot lead an independent life on their own but
- is urgently dependent on the provision of essential close family support and
- this help can only reasonably be provided in Germany.

This often applies to situations in which older family members who are in need of care, who are seriously physically or mentally ill or handicapped, are dependent on the close support of the other family members. It is also necessary that the close support and feeling of community can only be provided in the Federal Republic of Germany. However, the desire, which varies in intensity in different cultures, to receive, for example, care services primarily from close family members with whom there is a special relationship of trust, should be taken into account.<sup>5</sup>

"Extraordinary hardship" within the meaning of this standard presupposes that

---

<sup>5</sup> HAC BB, ruling of 27.02.2014 – OVG 2 B 12.12

the hardship exists with regard to the need to establish or maintain family companionship. In principle, there is no room for consideration of aspects that are not family-related and relate exclusively to the general political or economic situation in the country of origin or residence within the context of the element of "extraordinary hardship".<sup>6</sup> The "extraordinary hardship" must be family-related, taking into account all the circumstances of the individual case.

In the case of a couple with children from Afghanistan requesting reunification with their relatives living in Germany, the HAC BB pointed out that the mere reference to the humanitarian crisis in Afghanistan was not sufficient to justify exceptional family-related hardship. Families in Afghanistan can support each other, even if some of them are women in an extremely patriarchal social structure. The underage children among them are in the care of capable adults. The applicants' reference to the humanitarian crisis in Afghanistan, therefore, does not lead to the assumption of exceptional hardship if the visa is refused because, according to their own statements, they have the means and the opportunity to flee abroad, such as to Islamabad, and in this way escape from the dangers they describe.<sup>7</sup>

In individual cases, however, situations can arise in which a humanitarian, political or human rights crisis situation in a country have consequences for the family members who are to join them and the necessary provision of family-related support. In this regard, the previous actual bond and feeling of community that has grown over a longer period of time must be taken into account, and the family community must be the appropriate and necessary means to avoid "extraordinary hardship".<sup>8</sup>

"Extraordinary hardship" was therefore assumed, for example, in the restoration of long-interrupted family life between a foster daughter (minor) and her foster mother with international protection status in Germany.

The support of the foster mother is needed, among other things, because the foster daughter would be exposed to the concrete risk of circumcision if she returned to Somalia - regardless of the humanitarian conditions and conflicts that generally exist there - so that she, as a family member in need of protection, could not lead an independent life and the granting of family support is urgently required, especially from her foster mother living in Germany. This applies all the more as first-instance asylum case law in relation to Somalia partly assumes refugee-related gender-specific persecution.<sup>9</sup>

When attempting to transfer this case law to Afghanistan, the following circumstances will therefore have to be worked out in concrete terms:

- the concrete danger for the female family member, for example, after the Taliban takeover,
- the fact that the local family unit offering protection and support from this danger does not exist (or no longer exists) and therefore
- the affected person will not be able (no longer be able) to lead an independent life and
- the necessary help can only reasonably be provided in Germany.

---

<sup>6</sup> HAC BB, decision of 25.01.2022 - OVG 3 S 87/21 (Somalia/ Kenya)

<sup>7</sup> HAC BB, decision of 03.02.2022 - OVG 6 S 56/21 (Afghanistan)

<sup>8</sup> [General administrative regulation on the German Residence Act](#), 36.2.1.2 and 36.2.2.0

<sup>9</sup> HAC BB, decision of 21.10.2021, OVG 3 S 43/21; previously: VG 38 L 131/21 V Berlin (foster child, family association, protection from circumcision, Somalia)

A plausible example would be a young woman who has just come of age and who has previously been protected in her region of origin as an unmarried woman in her family community against violations by the Taliban, such as forced marriage and subsequent rape. If this young woman is now left without family links that offer trust and protection due to cases of deaths in the family unit and the flight of all other family members to Germany, this would mean, especially in the absence of other effective protection and survival mechanisms, that the necessary family support could only be provided by the family members in Germany.<sup>10</sup>

#### **Practical guidance:**

Justifying subsequent immigration of "other family members" within the meaning of Section 36 (2) of the German Residence Act is difficult and requires the collection of essential detailed information. The timely involvement of the competent immigration office, which must approve the subsequent immigration, is an advantage. On the other hand, the fact that this scenario of subsequent immigration must be an "extraordinary hardship situation" already implies that waiting for a decision for several years contradicts the existence of hardship asserted. Therefore, do not be afraid to inform those seeking guidance in good time about qualified legal representation.

- Together with the person seeking guidance, gather as many details as possible to justify the existence of "extraordinary hardship", whereby you can consider the following aspects (examples):
  - Description of specific and detailed circumstances that can justify the existence of exceptional hardship - as set out above.
  - Description of the circumstances that caused the current "extraordinary hardship": how was the situation before, and how is it now?
  - Concrete explanation of the need for protection by the family and the fact that an independent life (with dignity) is not possible without family support. A statement that the necessary support can traditionally and in specific individual cases only be provided in the family unit due to the corresponding relationships of trust.
  - Description of the evolved and (previously) experienced family protection, life support and community support for those seeking guidance and their immigrating family members, only with which can the "extraordinary hardship" be avoided.
  - Statement that the necessary help can only reasonably be provided in Germany: are there other family members who can offer protection, and if not, what happened to them?
  - Description of the lack of other support and assistance options (e.g., lack of shelters, etc.)
- Try to back up as much information as possible in this situation with documentary evidence.
- Make sure that there are no contradictions with the previous details of the person in question in the administrative processes (e.g., asylum procedures). For this reason, examine the minutes of the hearing and the asylum decision.

<sup>10</sup> The author is not aware of any case law on such cases in Afghanistan since the Taliban took power. However, the case law cited in footnote 9 can be used for cases of subsequent immigration from Afghanistan.

- In case of doubt, it can also be helpful to inspect the relevant files at the immigration authorities.

### 3. Reunification with family members with a residence permit in accordance § 25 (3) of the German Residence Act

In the past, people from Afghanistan did not receive an international protection status in the Federal Republic of Germany but instead received recognition of a national ban on deportation and thus a residence permit in accordance with § 25 (3) of the German Residence Act.<sup>11</sup>

The family reunification of the nuclear family's spouses and underage unmarried children to their relatives with a residence permit in accordance with § 25 (3) of the German Residence Act is subject - in addition to the general granting requirements such as a secure livelihood as a rule - the special feature that it may only be allowed under international law or for humanitarian reasons or to protect the political interests of the Federal Republic of Germany (§ 29 (3) of the German Residence Act).

- The immigration of parents to underage children with a residence permit pursuant to § 25 (3) of the German Residence Act is not regulated either in § 29 (3) or in § 36 (1) of the Act and is therefore based on § 36 (2) of the Act (see above no. 2).

According to the justification of Act, not only the family ties alone but all circumstances that justify humanitarian urgency should be decisive for the decision regarding family reunification in these cases ([BT DrS 15/420 of 07. 02. 2003, draft legislation of the Federal Government on the Immigration Act, p. 81.](#)).

A humanitarian reason exists in particular if the family unit can only be established in the federal territory for the foreseeable future. This should be assumed in particular for people who have a residence permit in accordance with § 25 (3) of the German Residence Act. Here, the subsequent immigration of spouses or underage children should only be denied if one of the family members has a permanent right of residence in a third country, and the family community could also be experienced there. ([General administrative regulation on the German Residence Act of 26.10.2009, 29.3.1.1](#))

According to this, a humanitarian reason is to be assumed in particular if it is impossible or unreasonable to establish the family unit abroad. ([Draft legislation of the Federal Government to implement Directive 2011/95/EU, p. 24.](#))

Indications of the existence of the prerequisites for the family reunification of spouses and underage unmarried children pursuant to § 29 (3) of the German Residence Act to reference persons with a residence permit pursuant to § 25 (3) of the German Residence Act:

- Existing risk to life, limb, freedom, health etc.
- The family was torn apart while fleeing the country.

<sup>11</sup> Possible asylum succession procedures after the Taliban took power in Afghanistan are not considered here since family reunification before any positive, legally binding conclusion of these procedures is still based on § 29 (3) of the German Residence Act.

- For the foreseeable future, the family community can only be established in Germany, as otherwise, a long-lasting separation would be caused.
- Humanitarian reasons in this sense represent a "lesser consideration" in relation to the requirement of "urgent humanitarian reasons" for acceptance from abroad in accordance with § 22 (1) of the German Residence Act (see no. 4 below).

**Practical guidance:**

In practice, the above specifications are regularly applied very restrictively. In such cases of family reunification, you can always refer to the sources listed above in addition to explaining the individual requirements for reunification.

- Support those seeking advice in describing and explaining in as much detail as possible the concrete situation of those seeking reunification: is there any risk to life, limb, freedom, health, etc. and what exactly is the nature of this risk?
- Together with the person seeking guidance, explain the circumstances that led to the separation of the family.
- Explain together with the person seeking guidance that the family community can only be established in the Federal Republic of Germany. This includes the information that it will not be possible for the reference person to return to Afghanistan for the foreseeable future, particularly after the Taliban seized power or the establishment of family life in a third country.
- Make sure that there are no contradictions with the previous details of the reference person in the administrative processes (e.g., asylum procedures). For this reason, examine the minutes of the hearing and the asylum decision.
- In case of doubt, it can also be helpful to inspect the relevant files at the immigration authorities.

**4. Acceptance from abroad in accordance with § 22 of the German Residence Act**

Acceptance from abroad in accordance with § 22 of the German Residence Act does not represent a form of family reunification and is exceptional. In practice, acceptance is granted in extremely rare cases. It remains to be seen whether less restrictive handling will take place in the future.

However, in cases of family reunification, in the event of an intended rejection of the visa for the purpose of family reunification due to a lack of fulfilment of legal prerequisites, the existence of reasons for acceptance in accordance with § 22 (1) of the German Residence Act will also be checked if corresponding information on the special features of the individual case is available in the application for family reunification.

A distinction must be made between accepting people

- for international law or urgent humanitarian reasons in accordance with § 22 (1) of the German Residence Act

or

- to protect the political interests of the Federal Republic of Germany in accordance with § 22 (2) of the German Residence Act if the Federal Ministry of the Interior and for Community (BMI) or a body designated by the BMI has expressly declared the acceptance of the person concerned.

### § 22 (1) of the German Residence Act

Acceptance for urgent humanitarian reasons presupposes that the person concerned is in an emergency situation which, as a matter of humanity, justifies and requires acceptance in contrast to other people in a comparable situation.<sup>12</sup>

The decisive criterion, which is applied here, consists in "standing out from the crowd" compared with those in need of protection who are also affected and in a comparable situation (see also above No. 1. c)).

Aspects that may support acceptance for urgent humanitarian reasons are:

- the existence of a significant and unavoidable individual danger to life and limb of the person seeking protection, child welfare interests, etc.

and

- a close connection to Germany (e.g., previous stays, special contacts with people/organisations who would possibly cover costs for residence/transport, family members in Germany etc.)

Acceptance for reasons under international law in accordance with § 22 (1) of the German Residence Act can be considered if the granting of a residence permit under the German Residence Act or other special legislation is not possible and there is an acceptance obligation under international law or international treaty law.

Case law, for example, established necessary exceptions to prerequisites for acceptance from abroad in accordance with § 22 (1) of the German Residence Act with respect to the 2½-year complete suspension of family reunification for persons entitled to subsidiary protection from 16 March 2018, which was otherwise constitutionally dubious. In this way, the Federal Republic of Germany can comply with the requirement to weigh up Art. 6 of the German Constitution and Art. 8 of the ECHR and, among other things, the obligation to assess the best interests of the child as laid down in the UN Convention on the Rights of the Child.<sup>13</sup>

The substantive requirements of the urgent reasons under humanitarian or international law in accordance with § 22 (1) of the German Residence Act are usually much more difficult to prove than the requirements for family reunification set out in points 1 to 3 above.

#### Practical guidance:

- Be aware that a careful and detailed description of the reasons for family reunification in the scenarios listed above in Nos. 1 to 3 - preferred dates and acceleration of the procedure due to special risks (No.1), exceptional hardship in

<sup>12</sup> [General administrative regulation on the German Residence Act](#), 22.1.1.2

<sup>13</sup> Federal Constitutional Court, decision of 11.10.2017 (2 BvR 1758/17); AC Berlin, ruling of 7 November 2017 (VG 36 K 92.17 V)

accordance with § 36 II of the German Residence Act (No. 2), humanitarian or international law reasons in accordance with § 29 (3) in conjunction with § 25 (3) of the German Residence Act (No. 3) – are usually in themselves possible reasons for acceptance in accordance with § 22 (1) of the German Residence Act.

- Therefore, support those seeking guidance in their detailed description and documentation of significant and unavoidable individual risks to life and limb of those seeking protection - you will find reference points in the practical information for Nos. 1, 2 and 3.
- An application procedure, which is based solely on acceptance from abroad in accordance with § 22 (1) of the German Residence Act, is - in contrast to the application for a visa for the purpose of family reunification - not initiated at the responsible German diplomatic mission, but directly at the Federal Foreign Office, where a preliminary check is carried out first.<sup>14</sup>

## § 22 (2) of the German Residence Act

Local staff from Afghanistan have been admitted into Germany since 2013 under § 22 (2) of the German Residence Act. After the Taliban took power in Afghanistan, the Federal Ministry of the Interior again declared that local staff and other particularly endangered people from Afghanistan who had received a notice of acceptance by a deadline would be accepted in accordance with § 22 (2) of the German Residence Act. In addition, to what extent the further acceptance of particularly endangered people, who had not yet received a notice by the deadline, is currently not transparent and cannot be reliably assessed. Information can be found, for example, in the [FAQ by the Foreign Office](#).

The corresponding case law is referred to here for information only since it does not deal with the topic of family reunification of and to refugees.

### Examples from case law

#### ***Local staff and family including adult sons<sup>15</sup>***

On 25 August 2021, the AC Berlin obliged the Federal Republic of Germany for the first time to issue visas to the local staff member applying and the family, including adult sons, in urgent proceedings regarding the acceptance commitments of the BMI. The Chamber is convinced that the discretion afforded by § 22 of the German Residence Act has been reduced to zero in favour of the applicant by the self-binding nature of administration pursuant to Article 3(1) of the German Constitution.

This decision was overturned by the HAC at next instance following the appeal by the Federal Republic of Germany and thus did not become legally binding.

The process was partially over. With regard to the acceptance of the adult sons of the local staff member, the HAC BB stated the following: The notice of acceptance of the BMI extends not only to the local staff member but also to the so-called nuclear family, which is the spouse and their own underage, unmarried children.

<sup>14</sup> Preliminary check by Department 508-9 of the Federal Foreign Office

<sup>15</sup> AC Berlin, decision of 25.08.2021 (VG 10 L 285/21 V) and HAC BB, decision of 03.11.2021 (OVG 6 S 28/21)

A general unconditional extension of the application of the local staff member procedure to adult children was not made by a corresponding decision by the Federal Ministry of the Interior. A reference to statements in the media is not sufficient. In individual cases, adult, unmarried children still living in the parents' household, who would otherwise stay behind in Afghanistan alone and without local support and whose wellbeing depends on the local staff member, could only be included in the favourable practice of the OKV if they provided the relevant information.

***Applicant from the Afghan army, working for the local radio station or the US Embassy in Kabul with relatives in Germany<sup>16</sup>***

The authority of the Federal Republic of Germany contained in § 22 (2) of the German Residence Act to issue a declaration of acceptance is based exclusively on safeguarding political interests.

In principle, this autonomous decision by the Federal Ministry of the Interior or the office designated by the Federal Ministry of the Interior cannot be called into question. § 22 (2) of the German Residence Act does not primarily serve the interests of those affected but serves to preserve the Federal Republic's freedom of action in foreign policy. Accordingly, the Federal Ministry has a wide range of discretion when examining the element of "political interests". An emphasis in the sense of human rights could also be in the political interest of the Federal Republic. However, the humanitarian urgency of an individual case does not automatically result in political interest in acceptance.

***Confirmation of acceptance for those who are particularly at risk - time when the requirements are met - no basis of trust<sup>17</sup>***

Public statements by the Federal Republic of Germany are irrelevant to the question of whether those affected can refer to a declaration of acceptance from the Federal Ministry of the Interior in accordance with § 22 (2) of the German Residence Act for people who are particularly at risk in Afghanistan. Rather, it should be based on the relevant acceptance practice in the Federal Republic of Germany at the time of the (last) court decision.

It is also irrelevant how many particularly endangered persons the Federal Republic of Germany has actually issued entry or transit visas to since it is free at any time to end the corresponding acceptance of further affected persons for the future. There is nothing to the contrary to be taken from the undetailed statement that the evacuation program for particularly vulnerable people from Afghanistan is still being continued.

In this respect, an appeal to the creation of a basis of trust and an arbitrary decision is ruled out. A violation of the principle of equal treatment is also ruled out. It was not specifically stated that people with the same risk characteristics as the applicants were still being accepted at the time of the court decision and that the applicants had been arbitrarily excluded from this acceptance practice.

---

<sup>16</sup> AC Berlin, decision of 01.12.2021 (VG 32 L 198/21) and HAC BB, decision of 03.02.2022 (OVG 6 S 56/21)

<sup>17</sup> AC Berlin, decision of 29.09.2021 (VG 26 L 223/21 V) and HAC BB, decision of 22.11.21 (OVG 6 S 34/21 / OVG 6 M 75/21)