



PICUM COUNTRY BRIEF

UNDOCUMENTED MIGRANTS AND THE EUROPE 2020 STRATEGY:

MAKING SOCIAL INCLUSION
A REALITY FOR ALL MIGRANTS IN
GERMANY

FEBRUARY 2016

● PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of more than 140 organisations and 100 individual advocates working with undocumented migrants in 33 countries, primarily in Europe as well as in other world regions, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

Based on the realities faced by undocumented migrants and migrant workers in precarious situations - those with short term residence permits in insecure employment situations - this position paper aims at informing the debates on poverty and social inclusion, education and on labour migration, particularly as it relates to Germany. This paper develops links with the three social targets of the Europe 2020 Strategy – poverty, employment, and education - offering insight to how the targets could positively impact undocumented migrants and how the inclusion of this group in the German context could help achieve the objectives of the Strategy.

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EXECUTIVE SUMMARY

The Europe 2020 Strategy and the relevant governmental plans linked to reaching the objectives of this strategy give some indication about the consideration migrants are given by national governments as economic actors and within the context of social inclusion and social services. With the backdrop of the manifest projections of a decreasing working age population, the need for migrants within the workforce is well articulated in the German case. The government makes increasing mention of the potential of migrant workers and the need to simplify procedures for the entry and stay of certain third country workers. The German government also puts emphasis on engaging the already present migrant population in the workforce in order to reach the employment target of the Europe 2020 Strategy by facilitating access to diverse educational opportunities and recognition of qualifications.

Nonetheless, the focus concerning labour market and labour migration policies is concentrated on qualified workers and the high wage sector. Shortages in other labour market sectors, in particular middle and low wage sectors, are overlooked. The lack of recognition of these sectors risks leading to an

increase in undeclared and exploitative work as migrant workers in these sectors have very limited access to residence and work permits and resort to working undocumented in the undeclared labour market.

Although Germany makes substantial efforts to welcome skilled migrant workers, significant barriers remain for third country workers in other sectors. Complicated bureaucratic procedures prevent employers from hiring in certain sectors as receiving residence and work permits is considerably harder when the migrant has no or few qualifications. In practice, this means a situation close to a recruitment stop for unqualified persons or persons with low qualifications.

Inclusion of all migrants irrespective of migration status is a crucial element in the fight against poverty. This includes allowing access to essential social services such as health care, education and services for the homeless. Much more needs to be done in Germany order to remove barriers for access to undocumented migrants and to make service provision more inclusive.

1. GERMANY AND THE EU 2020 STRATEGY

Country Specific Recommendations¹ (CSRs) and the National Reform Programmes (NRPs)² from 2011-2015

This country brief examines progress in the three of the five social targets of the Europe 2020 Strategy in Germany – poverty, employment, and education – offering insight to how the inclusion of undocumented migrants into social service provision and adequate labour migration policies could help achieve the objectives of the Strategy in these areas. Based on the realities faced by both undocumented migrants as well as migrant workers in precarious situations (those with short term residence permits in insecure employment situations) this brief aims at informing the debates on poverty and social inclusion, education and on labour migration in the German context.³

Europe is facing a demographic situation where according to Eurostat projections, the EU workforce will shrink by 50 million over next 50 years⁴. Even with the success of any planned activation policies, it will not be enough to mitigate this prognosis without labour migration policy reform.⁵

The EU's labour migration policies - with the exception of the recently adopted directive regulating seasonal work - have thus far mainly focused on highly skilled workers, leaving very few regular employment opportunities for low-wage workers from outside

the EU. At the same time, particular sectors of the economy in the EU rely on the presence of a migrant workforce that works undeclared in the informal economy due to limitations on work and residence permit opportunities which force these migrants to work in precarious conditions with an irregular status due to lack of alternatives.⁶

Forward looking plans for the integration of the existing migrant workforce and their families, both regular and irregular, as well as the readjustment of future labour migration and social inclusion policies becomes a crucial task on national level to ensure the viability of social security systems. PICUM has analysed the existing German National Reform Plans (NRPs) as well as the European Commission's recommendations to Germany (CSRs) in the past five years to determine if adequate attention has been given to the need for more inclusive social services and labour migration procedures.

How are migrants included in the German CSRs and NRPs?

In an analysis of the CSRs between 2011-2015 with a focus on labour market, education and social policies, the European Commission gives very little reference to migrants in its suggestions to Germany on how to improve its progress toward the Europe 2020 objectives. However, throughout the past years Germany has made increasing mention of

- 1 For more information and all Country Specific Recommendations, see European Commission, *European Semester 2015*, http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm.
- 2 For all National Reform Programmes 2015, see European Commission, *European Semester 2015*, http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm.
- 3 Please read more about the links with the Europe 2020 strategy and (labour) migration policies in PICUM, *Undocumented Migrants and the Europe 2020 Strategy: Making Social Inclusion a Reality for All Migrants in Europe*, 2015. http://picum.org/picum.org/uploads/publication/Undocumented%20Migrants%20and%20the%20EU2020%20Strategy_FINAL.pdf
- 4 Eurostat, *Main scenario - Population on 1st January by sex and single year age* (with working-age population defined as people aged between 20 to 64 years), June 2014. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=proj_13npms&lang=en.
- 5 PICUM, *Undocumented Migrants and the Europe 2020 Strategy: Making Social Inclusion a Reality for All Migrants in Europe*, 2015.
- 6 B. Anderson, *Migration, immigration controls and the fashioning of precarious workers* in *Work, Employment and Society*, Volume 24, Number 2, June 2010, p.306.

the situation of migrants in its NRPs. The increasing political focus on migration in the past years both on national as well as European level has given impetus to national governments to look beyond migration management policies and to also address issues linked to migration in their social and labour market policies.

2011: Focus on integration into the labour market and vocational training for migrants

In the 2011 NRP, Germany focused on the integration of people with an immigrant background into the labour market, mentioning measures to help individuals gain vocational qualifications and reduce discrimination. All such measures are limited to recognised refugees and immigrants with residence rights and the objective is to strengthen local labour markets and the migrant economy, which recognises both the need for migrant workers in the German labour market as well as the potential of migrants in strengthening economic processes.⁷

In education policy, Germany reported that it was significantly stepping up measures to expand and develop child care infrastructure in Germany. With specific focus on the importance of early childhood education in day care centres and primary schools, the government supports early language programmes to enhance the language proficiency of children with an immigrant background to also ensure their equal participation in the working environment later in life.⁸ This demonstrates a conscious effort to engage the immigrant population into the future workforce in Germany and reinforces the importance of early engagement to ensure best outcomes. The government specifically puts emphasis on individual outreach support measures within this initiative, geared towards young people from disadvantaged backgrounds and young migrants who are not served, or no longer served, by the existing range of services and educators (school/vocational school etc.).⁹

The 2011 CSRs that the European Commission made for Germany do not have any specific focus on the immigrant population, however they do include a comment relating to lower wage jobs, which is usually overlooked as the main focus in national reports and Commission recommendations lies on high skilled and high wage work. The Commission states that “increasing the number of persons with vocational training qualifications could enhance the labour market prospects of low-skilled workers”.¹⁰

2012: Simplification of procedures for high skilled workers

In 2012, Germany announced in its National Reform Programme that the Federal Government would make it significantly easier and less bureaucratic for foreign workers to migrate from third countries. For example, the salary threshold above which highly skilled foreign workers are permitted to settle in Germany without delay has been lowered considerably.¹¹ This is a welcome step in opening the national labour market for more regular channels in middle wage sectors, however the exclusive focus is still on qualified and skilled workers.

The German government has named the increase of migration of skilled workers and extending the average working life as top priorities for activities relating to the Europe 2020 employment target objectives.¹² Migrants in general are considered a vulnerable group in the labour market by the German government yet there are no concrete measures suggested to address the low wage labour market segment. The focus is still heavily on skilled labour and the EU Blue Card regulation. The NRP states that measures are set up on national level to provide support in securing the supply of skilled labour. Individual Länder (regions) have also developed their own strategies for securing the supply of skilled labour or are in the process of doing so.

7 European Commission, *National Reform Programme 2011*, April 2011, p. 25. http://www.ec.europa.eu/europe2020/pdf/nrp/nrp_germany_en.pdf.

8 Ibid., p. 28.

9 Ibid., p. 50.

10 European Commission, *Council Recommendation of 12 July 2011 on the National Reform Programme 2011 of Germany and delivering a Council opinion on the updated Stability Programme of Germany, 2011-2014*, July 2011, p. 10. http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/20_scps/2011/04_council/de_2011-07-12_council_recommendation_en.pdf.

11 Federal Ministry of Economics and Technology (BMWi), *National Reform Programme 2012*, March 2012, p. 29. http://www.ec.europa.eu/europe2020/pdf/nd/nrp2012_germany_en.pdf.

12 Ibid., p. 30.

By amending immigration law, the Federal Government reports on the commitment to make Germany a significantly more attractive destination for highly skilled workers.¹³ Bureaucratic obstacles are being dismantled, while rights of residence for skilled workers are being more clearly determined in line with transparent, systematic and unambiguous criteria. The Federal Government is taking advantage of the flexibility afforded by the EU Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment to create attractive conditions for the EU Blue Card system.¹⁴

In relation to the education target, the German government's 2012 NRP still focuses on working with parents with a view to strengthening parenting skills and parental responsibility – especially in families with a migrant background – as a key factor in the success of early childhood education and upbringing. The specified measures do not mention residence status and it remains unclear if these could be extended to undocumented migrants or those with “tolerated status”.¹⁵

The corresponding recommendations from the European Commission in 2012 still include nothing specific on migration and are mainly focused on creating equal access to the labour market for migrants with residence status and creating more childcare facilities to ensure labour market participation of women.

2013: Germany reflects on the need for a smart immigration policy to counter demographic challenges

In 2013, the German government made some broader reflections on the demographic challenges of the decreasing working age population, which could potentially also lead to some more openness to more regular channels for labour migration across skill and wage levels. However, there are no new measures introduced in the National Reform Programme to this

end. The government does make reference to a smart immigration policy as a prerequisite for ensuring the supply of skilled labour in Germany.¹⁶ It is regrettable that no mention is made of the labour resources already existing in the country, constrained to the undeclared market nor of the labour market needs in the low wage sector.

The European Commission made a recommendation to Germany in 2013 in relation to the protectionist approach in its services sector, which makes it very difficult to access certain jobs and labour market sectors. The Commission states that the situation in the services sectors has not changed significantly since 2012 and there are still restrictions on entering and exercising certain professions. According to the Commission, Germany should do more to open up the services sectors by removing unjustified restrictions and barriers to entry. In many craft sectors, including in the construction sector, there is still a requirement to hold a master craftsman's certificate and many professional services are also subject to other restrictions and requirements.¹⁷ Lowering entry restrictions could also potentially mean more possibilities to move from undeclared work to declared work and more possibilities for third country migrant workers to enter into these professions.

2014: Germany attributes rise in employment rate partly to increased migration

In 2014, Germany reported progress on increasing the employment rate and links this to the rise in immigration. Germany reports that “people previously unavailable to the labour market will increasingly take up work. Older people and women in particular will participate more and more in working life. Further to this, increased immigration will make an important contribution to the rise in employment.”¹⁸ The government also states that the integration of migrants is a central element of the labour market policy and that greater advantage should also be taken of the opportunities to attract skilled workers

13 Federal Ministry of Economics and Technology (BMWi), National Reform Programme 2012, March 2012, p.38. http://www.ec.europa.eu/europe2020/pdf/nd/nrp2012_germany_en.pdf.

14 Ibid, p. 38.

15 An explanation of the “Duldung” status can be found here: Refugee Council Leverkusen [Flüchtlingsrat Leverkusen], *Duldung*, http://www.fluechtlingsrat-leverkusen.de/eng/3.4.5_duldungen.htm.

16 Federal Ministry of Economics and Technology (BMWi), *National Reform Programme 2013*, March 2013, p.19. http://www.ec.europa.eu/europe2020/pdf/nd/nrp2013_germany_en.pdf.

17 European Commission, *Council Recommendation of 9 July 2013 on the National Reform Programme 2013 of Germany and delivering a Council opinion on the Stability Programme of Germany, 2012-2017*, July 2013, p. 35. http://ec.europa.eu/europe2020/pdf/csr2013/germany/csr2013_council_germany_en.pdf.

18 Federal Ministry for Economic Affairs and Energy, *National Reform Programme 2014*, April 2014, p. 26. http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_germany_en.pdf.

from the global labour market to come and work in Germany. However as before, there are no concrete measures beyond the Federal Government's Skilled Workers Strategy, which aims to secure a sufficient number of skilled workers in the labour market.

2015: Promotion of a welcoming culture for migrant workers crucial as additional demand for labour relies on positive net migration

In 2015, the National Reform Programme saw a dramatic increase in mentions of migrants and migration. It states that growth has been driven by increases in incomes and the continued growth in employment. The government adds that the additional demand for labour is served almost exclusively by the integration of individuals in the hidden reserve and the continuing high level of immigration as the positive net migration of 420,000 persons is expected for 2015. Again the report refers to continued demographic pressure, which needs a strong response in terms of labour market participation. Germany also states that it expects a gradual decline in net migration, contrasting the projections of the European Commission, which expect a sharp decrease in migration from 2017.¹⁹

The government also highlights its commitment to promoting a culture of welcome in the country for migrant workers. The Federal Government has continued to develop the Skilled Labour Initiative – an awareness-raising and mobilisation campaign within the Skilled Workers Strategy – and has set new priorities through measures such as advisory services in the form of internet sites or a hotline for skilled foreign professionals, students and trainees who have relocated or are interested in relocating to Germany.²⁰ They also highlight that the Professional Qualification Recognition Act that recognises professional credentials acquired abroad is increasingly making its mark - roughly 75% of applications for qualification recognition approved in 2013 have a high recognition rate. It also highlights that as children of foreign parents who were born and raised in Germany are no longer obliged to choose a citizenship, which also helps promote a culture of welcome where individuals are encouraged to stay.²¹

As a new tool, Germany mentions the new EU Fund for European Aid to the Most Deprived (FEAD), which is being rolled out in Germany in 2015. The FEAD acts as a kind of bridge as it promotes the social inclusion of persons not reached by the advisory and support services of the regular system of assistance. This includes EU migrants and their children, as well as homeless persons and people at risk of being homeless. While the aim is to bring adult EU migrants, homeless people and people at risk of being homeless into the regular system of assistance – e.g. targeted advice – the migrants' children are to be offered better access to early childhood education and social inclusion, such as child day care facilities.²² It remains unclear if this fund could be extended to undocumented migrants as a low threshold assistance fund that applies to all persons without restrictions.

Conclusion

An increasing focus on the potential contributions of migrants can be noted in the analysis of the German NRPs. Increased immigration of skilled workers and labour market integration of regular migrants are named as top priorities for the coming years. Germany has also taken welcome steps in this direction by introducing some important measures in relation to recognition of qualifications and attracting foreign workers by lowering the required wage threshold.

However, all proposed measures are only limited to the high and middle wage occupations and the lower wage sector is entirely overlooked regardless of the fact that most precarious migrant work takes place within this sector and labour market needs there are inadequately mapped. Despite reflections on the demographic challenges of the decreasing working age population and crediting the supply for an increasing labour demand on an increasing net migration rate, Germany has not addressed its labour migration system in its entirety, opting to focus only on skilled workers. However, the overall positive note on the government's commitment to promoting a culture of welcome in the country for migrant workers, provides a good basis for a more inclusive and holistic approach to labour migration management.

19 Federal Ministry for Economic Affairs and Energy, *National Reform Programme 2015*, May 2015, p. 12. http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_germany_en.pdf.

20 Ibid., p. 29.

21 Ibid., p. 29.

22 Ibid., p. 33.

2. EMPLOYMENT AND LABOUR MIGRATION POLICIES IN GERMANY

Similarly to many other Western European countries, Germany's labour migration policy dates back to the 1950s when Germany began to request migrant workers to come to Germany from Southern Europe and countries along the Mediterranean Sea in order to satisfy its growing need for workers in low-wage sectors in times of economic boom.²³ However, the need for workers from foreign countries did not intensify until the establishment of the Inner German border in 1961 which led to a shortage of labour in the Federal Republic of Germany.²⁴ Agreements were made first with Italy, then both Spain and Greece in 1960, Turkey in 1961, followed by Morocco in 1963, Portugal in 1964, Tunisia in 1965 and Yugoslavia in 1968. Nevertheless, the ongoing migration stopped in 1973 as a result of the oil crises. Throughout the following decade net migration declined further until it eventually reached a negative value in the beginning of the 1980s. In the 1990s net migration reached a new peak as a result of the fall of the Iron Curtain and poor living conditions in former Yugoslavia and the predominantly Kurdish populated part of Turkey.²⁵

Legislative acts to regulate labour migration

The first act regulating the stay of foreigners was the 1965 Foreigners' Act.²⁶ This act regulated residence permits²⁷ for migrant workers, which were connected to the purpose of stay and predetermined an end of a migrant's stay in Germany at which he or she was obliged to leave the country.²⁸ This act was replaced by a newer version in 1990 and completely replaced in 2005 with the introduction of the Immigration Act²⁹ on 1 January 2005, which contains the specific regulations for entry into Germany and the relevant procedures.³⁰ The Immigration Act is also referred to as the Residence Act³¹ as it joins the previous double approval process regarding work and residence so that migrant workers can apply for both together at the immigration office³². This linkage means that even though there are different types of residence permits, if a migrant is in the country for work purposes, their residence status depends on an employment offer and is conditional on retaining that specific occupation.

23 Federal Ministry of the Interior, *Arbeitsmigration*, 2015. http://www.bmi.bund.de/DE/Themen/Migration-Integration/Zuwanderung/Arbeitsmigration/arbeitsmigration_node.html.

24 Ibid.

25 Federal Agency for Civic Education, *Geschichte der Zuwanderung nach Deutschland nach 1950*, June 2012. <http://www.bpb.de/politik/grundfragen/deutsche-verhaeltnisse-eine-sozialkunde/138012/geschichte-der-zuwanderung-nach-deutschland-nach-1950?p=all>.

26 Ausländergesetz

27 Aufenthaltsgenehmigungen

28 Since the new immigration act of 2005 "residence approvals" are referred to as "residence titles".

29 Zuwanderungsgesetz

30 German Foreign Office, *Zuwanderungsgesetz [Immigration Act]*, 2015. http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Zuwanderungsrecht_node.html#doc370708bodyText3.

31 Aufenthaltsgesetz

32 Bundesministerium des Inneren, *Häufig gestellte Fragen zum Thema: Ausländerrecht*, 2015. <http://www.bmi.bund.de/SharedDocs/FAQs/DE/Themen/Migration/Auslaenderrecht/01.html>.

German labour migration system

The German labour migration system is in principle demand-driven, meaning that the number of migrant workers should be aligned to the needs of the labour market as well as the management of demographics by the German government³³. According to the Residence Act, the admission of foreign employees shall be geared to the requirements of the German economy, giving due consideration to the situation on the labour market and the need to combat unemployment effectively. International treaties shall remain unaffected.³⁴

In the current migration debate, German politicians have continuously highlighted the need for migrant workers in the upcoming years to compensate for the labour shortage as a result of the demographic change. Researchers on migration estimate that around 200,000 newcomers that plan to settle long-term are needed per year in order to sustain the amount of potential workers needed in the future.³⁵ According to the Employment Agency, workers are especially needed in areas such as logistics and the metal industry, followed by engineering (such as mechatronics – interdisciplinary professions connecting mechanics, electronics, and IT) and energy and electrical technology as well as the health care sector.³⁶

The care sector is an example of how skill shortages including the low wage sector are closely tied to the demographics of an ageing society. The Federal Department for Health states that at the current rate, the number of people needing care will increase to 4,7 million by 2060 as opposed to 2,6 million in 2013. According to estimates of the German Institute

for Economic Research, the staff requirements in the care sector could reach up to 1,5 million full time staff (673.000)³⁷

A list with all jobs that have been defined as in shortage and are therefore open for the employment of third country nationals, has been made publicly available by the Employment Agency and is regularly updated.³⁸ Qualifications that allow to work in these jobs facilitate the approval of residence status considerably. However, all jobs in the list require a certain level of qualification, and occupations with no qualifications are not included. The Employment Agency decides in these cases on the right to residence on a case by case basis.

Looking at the distribution of migrants across economic sectors shows that migrants are especially working in the hospitality industry and in the primary sector including agriculture and forestry as well as manufacturing industries.³⁹ The period from 2000 to 2009 has shown a strong shift towards the service sector accompanied by a decline of migrants working in manufacturing industries.⁴⁰

Work permit procedures for third country nationals and obstacles to access the labour market

The Immigration Act that entered into force on 1 January 2005 (also referred to as the Residence Act) regulates the conditions for entry of third country nationals in Germany.⁴¹ Third country nationals need a visa to enter, work or study in Germany. Exemptions are made for certain third country nationals who do

33 Federal Ministry of the Interior, *Arbeitsmigration*, 2015. http://www.bmi.bund.de/DE/Themen/Migration-Integration/Zuwanderung/Arbeitsmigration/arbeitsmigration_node.html.

34 Residence Act [Aufenthaltsgesetz], *Section 18 "Employment"*, February 2008. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

35 Die Zeit, *Die guten, bösen Einwanderer*, June 2013. <http://www.zeit.de/wirtschaft/2013-06/einwanderung-migration-mythen-fakten/seite-2>

36 Zeit Online, *Mehr als 2,7 Millionen Arbeitslose im Juli*, July 2015. <http://www.zeit.de/wirtschaft/2015-07/arbeitslosenzahlen-juli-2015>.

37 Bundesministerium für Gesundheit, *Pflegefachkräftemangel*, February 2016. <http://www.bmg.bund.de/themen/pflege/pflegekraefte/pflegefachkraeftemangel.html>

38 Federal Labour Office, *Whitelist*, September 2015. The Whitelist can be accessed via <https://www.arbeitsagentur.de/web/content/EN/WorkingandJobSeeking/WorkinginGermany/Detail/index.htm?dfContentId=L6019022DSTBAI779132>.

39 Katharina Seebaß & Manuel Siegert, Federal Office for Migration and Refugees, *Migranten am Arbeitsmarkt in Deutschland*, January 2011, p. 6. http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/WorkingPapers/wp36-migranten-am-arbeitsmarkt-in-deutschland.pdf?__blob=publicationFile.

40 Ibid., p. 5-7.

41 Federal Foreign Office of Germany, *Immigration Act*, July 2012. http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Zuwanderungsrecht_node.html.

not need a visa to enter and stay for maximum of three months in Germany.⁴² However, if these nationals plan to stay longer than three months or want to work, they have to apply for a residence permit.⁴³

A major obstacle to access the labour market is the work permit requirement (Arbeitserlaubnispflicht). Work permits are usually part of residence permits. This means that a person that enters or stays irregularly in Germany cannot take on declared work.⁴⁴

It is expected that migrants enter with a visa specific for the purpose of their stay and therefore workers should apply for work from abroad. A person who wishes to reside in Germany in order to work, study, etc. has to enter Germany with the appropriate visa⁴⁵ and it is very difficult to change from one type of authorisation to another. For example, a person holding a tourist visa may not be able to change this type of short-term visa into another visa at all (e.g. student visa). In the same way, the person applying for any status is advised to have the correct status for whatever purpose of activity he or she wants to follow in Germany – already when entering the country.

Changing between types of permission to stay whilst already in the country is possible in few cases. For instance, students who have obtained an academic degree, can get an 18-month visa for the purpose of finding employment and if they find employment, get a residence status.

The type of residence permit issued by the immigration authorities for work purposes depends on the qualification and the kind of job that the applicant is planning to take up.⁴⁶ There are many

different kinds of residence permits linked to different conditions and different validity periods dependent on the purpose and qualification of the applicant ranging from employees and self-employed persons to job-seekers with different education levels.⁴⁷

A **third country national** may be granted a residence title for employment when they have “firm offer of employment” and fulfil other requirements such as a valid passport, proof of means of subsistence during residence and absence of grounds for deportation.

The Federal Employment Agency approves a residence permit linked to employment⁴⁸ only if:

- The employment of the foreigner has no negative effects on the employment market (more specifically the employment structure, the region as well as the industry);
- No Germans or EU-nationals that have priority access to the German labour market are available;
- Employing a third country national is justifiable according to labour market and integration policy;
- The applicant is employed on the same terms as any other German or EU citizen;
- The potential employer of the third country national has provided all relevant information on pay, working hours and other terms and conditions of employment.⁴⁹

An approval determines the duration (maximum three years) as well as the type of job and sets restrictions in terms of employment with a specific employer and/or regions.⁵⁰ Residence permits linked to employment may be refused if these conditions are not fulfilled or

42 These are from Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the United, States of America (section 41 subs.1 Residence Regulations). For more information on the specific country nationals that do or do not need a visa, see here: http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/StaatenlisteVisumpflicht_node.html.

43 Federal Office for Migration and Refugees, *Studying and Working in Germany*, January 2015, p. 7. http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/bildung-und-beruf-in-deutschland.pdf?__blob=publicationFile#page=32.

44 Friedrich Ebert Stiftung, *Illegale Ausländerbeschäftigung*, May 2000. <http://www.fes.de/fulltext/asfo/00763003.htm#E10E1>.

45 Residence Act [Aufenthaltsgesetz], § 5 (2), February 2008. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

46 Federal Office for Migrants and Refugees, *Already in Germany*, May 2013, <http://www.bamf.de/EN/Migration/Arbeiten/BuergerDrittstaat/aufenthalt-deutschland.html?nn=3838630>.

47 Federal Office for Migration and Refugees, *Studying and Working in Germany*, January 2015, p. 7. http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/bildung-und-beruf-in-deutschland.pdf?__blob=publicationFile#page=32.

48 Ibid; p. 14 and Residence Act [Aufenthaltsgesetz], *Section 18 Employment*, February 2008, p. 24. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

49 Residence Act [Aufenthaltsgesetz], *Section 39 Approval of employment for a foreigner*, February 2008, p. 28+39. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html; § 39 *Zustimmung zur Ausländerbeschäftigung, German version*, http://www.gesetze-im-internet.de/aufenthg_2004/_39.html.

50 Employment Act [Verordnung über die Beschäftigung von Ausländerinnen und Ausländern], June 2013, German version. http://www.gesetze-im-internet.de/beschv_2013/BJNR149910013.html.

revoked if the third country national is employed on terms that are less favourable than for Germans or EU nationals in comparable positions.⁵¹

Asylum seekers and people that are suspended from deportation (*Duldung*) are not allowed to work within the first three months of their stay in Germany. Between the fourth and 15th month following their application for asylum, asylum seekers are allowed to work but can only take on a job if no other German national or foreigner with a work permit is considered equally qualified and the employment is not considered to have a negative effect on the labour market (*Vorrangprüfung*). After 15 months until four years of their stay, asylum seekers can obtain a work permit for a specific job which is examined in the individual case. From four years onwards, asylum seekers have unrestricted access to the labour market.⁵² They will however be restricted by the duration of their respective migration status.

Obstacles to employing migrant workers and exclusion from labour market

Employers willing to employ a migrant can check the possibility of authorised employment of a potential migrant worker in an official “migration check”.⁵³ The employer who wants to employ a migrant is obliged to inform the Federal Agency for Employment on remuneration, working hours and additional working conditions.⁵⁴ In general, the Federal Agency of Employment has the burden of proof whether the prioritization of Germans and EU nationals applies to the specific job. The conditions on which approval is given for employment of a third-country national

are laid out in the employment regulations and are primarily dependant on the level of qualification of the foreigner.

Residence permits for work which does not require qualified professional training can only be issued in cases when this is defined in an intergovernmental agreement or when any legislative decree such as the Employment Regulations approves a residence authorisation for the specific job. The Federal Agency of Employment can approve residence permits for employment which does not require qualified professional training in various work fields on an individual basis⁵⁵:

Other key obstacles for migrants to access the labour market are insufficient language skills and limited possibilities to get recognition for foreign professional degrees and trainings.

Undocumented migrant workers and migrants with a precarious status (“Duldung”)

Undocumented migrants are excluded from the formal labour market due to their lack of status. In 2014, there were an estimated minimum of 180,000 and a maximum of 520,000 undocumented migrants living in Germany, many of whom were workers engaged in the informal labour market.⁵⁶

Regulated in the Employers’ Sanctions Directive⁵⁷, employers of irregularly-staying third-country nationals face sanctions and measures that need to be applied by the respective EU state such as Germany⁵⁸. Employers are required to check the

51 Residence Act [Aufenthaltsgesetz], Section 40 Grounds for refusal, Section 41 Revocation of approval, February 2008, p. 40. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

52 See also: Pro Asyl, 2014. http://www.proasyl.de/de/themen/asylrecht/detail/news/fluechtlinge_auf_dem_arbeitsmarkt_zwischen_teilhabe_und_ausschluss/.

53 Federal Labour Office, *Migration-Check*, January 2013. <https://www.arbeitsagentur.de/web/content/DE/Unternehmen/Arbeitskraeftebedarf/Internationales/MigrationCheck/Detail/index.htm?dfContentId=L6019022DSTBAI522597>.

54 Residence Act [Aufenthaltsgesetz], § 39 (2), February 2008, p. 40. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

55 Seasonal employment; show assistants (e.g. for carnivals); au-pair placements; domestic workers; culture and entertainment industry; traineeships of limited periods if they are a requirement for the recognition of foreign degrees and professional trainings. IHK Berlin, *Erteilung einer Arbeitserlaubnis*, July 2015. https://www.ihk-berlin.de/recht_und_steuern/downloads/Merkblatt_Erteilung_einer_Arbeitserlaubnis/2253438.

56 Dita Vogel, *Update report Germany: Estimated number of irregular foreign residents in Germany (2014)*, Database on Irregular Migration, July 2015, Update report, p.2. http://irregular-migration.net/fileadmin/irregular-migration/dateien/4_Background_Information/4.5.Update_Reports/Vogel_2015_Update_report_Germany_2014_fin-.pdf. See also <http://irregular-migration.net/>.

57 European Parliament and European Council, *Directive 2009/52/ec of the European parliament and of the council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*, June 2009. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0052>.

58 Ibid.

residence status of the third country national they are about to employ and to notify the responsible immigration agency if they are staying without a residence permit.

- If the person is stateless or her/his home country denies access to the country of origin
- If the person is the parent or legal guardian of a child with legal status in Germany

There is currently no regularisation mechanism in place that would respond to the situation of undocumented migrants who have either been denied asylum or have no residence authorisation for other reasons.⁵⁹ The debate about regularisation has been ongoing for several years but has never been regarded as a potential policy solution by decision makers. However, the realisation that more regular channels for migration are needed in order to reduce irregular migration is slowly becoming part of the policy discussions on EU and national level. In November 2015, the German government together with other EU states agreed on an action plan at the Valetta Summit on Migration that aims to fight irregular migration with the means of promoting more regular channels.⁶⁰

These migrants are given a suspension of deportation status, which is not a residence authorisation but serves as a confirmation that the person is registered by the Immigration Authority and is temporarily freed from the obligation to leave the country⁶². As for any third-country national, if a person has “Duldung” status and wants to engage in employment, the Federal Agency of Employment has to give formal approval and employment is only considered after the prioritisation of nationals or other (EU) migrants and the applicant has been legally staying in Germany for at least one year. Approval is not needed when the person with “Duldung” status wants to complete a state-proven apprenticeship or equal professional education, or when the person has lived with “Duldung” in Germany uninterrupted for a total of minimum four years⁶³. Approval for employment is denied if the person that has a “Duldung” status has entered the country to apply for asylum and has received benefits according to the Asylum Seekers Benefit Act, in case the person has been prohibited from being deported for reasons that the state deems them responsible for, and in case they come from country listed as “safe” and has been denied asylum for an application that was made after 31 August 2015⁶⁴.

The Residence Act stipulates that for the following cases, the deportation of migrants without residence status is temporarily prohibited and can be postponed⁶¹:

- International law obligations or other humanitarian reasons foresee that deportation has to be suspended for a maximum of 3 months
- If deportation is not possible for practical or legal reasons
- If deportation has failed, because the migrant is sick and unable to travel, the migrant’s passport is persistently missing and/or attempt to deport the migrants have failed previously, the transport ways for deportation are disrupted, then deportation is suspended for at least one week
- If any other documents (visas etc.) are temporary not available

Changing the “Duldung” status to any type of residence permit is only possible when urgent humanitarian reasons, personal reasons or public interests require the stay of the person whose deportation is suspended⁶⁵. This can be the case of unaccompanied children and families with young children with a “Duldung” status, who may obtain a residence status after four years, and six years, respectively. Regularisation is also possible for people

59 Deutschlandfunk, *Ausgeschlossen von Arbeit, Bildung und Gesundheit*, 19 March 2015. http://www.deutschlandfunk.de/irregulaere-migration-ausgeschlossen-von-arbeit-bildung-und.1148.de.html?dram:article_id=314729.

60 Federal government Germany, *Aktionsplan gegen Illegale Migration*, 12 November 2015. <https://www.bundesregierung.de/Content/DE/Reiseberichte/2015-11-09-eu-afrikagipfel.html>.

61 Residence Act [Aufenthaltsgesetz], § 60, February 2008. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

62 Residence Act [Aufenthaltsgesetz], § 60a (3) and (4), February 2008. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

63 German Federal Ministry of the Interior, *Häufig gestellte Fragen zum Thema: Ausländerrecht*, 2015. <http://www.bmi.bund.de/SharedDocs/FAQs/DE/Themen/Migration/Auslaenderrecht/18.html>.

64 Residence Act [Aufenthaltsgesetz], § 60a, February 2008. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

65 Residence Act [Aufenthaltsgesetz], § 25 (4), February 2008. http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html.

under 21 that have lived at least six years in Germany as well as have attended school for at least six years and are given a positive integration prognosis by the state. Other preconditions include that the respective person was either born in Germany or has arrived in Germany before the age of 14. In such cases, parents and siblings have an opportunity to receive residence status as well⁶⁶. These are the only regularisation possibilities for persons with “Duldung” and no recognised qualifications. Other possibilities apply solely to persons with “Duldung” that are considered as specialist or at least professionals and/or have studied in Germany or received a domestic diploma⁶⁷.

Conclusion

There are more opportunities in place to work in Germany as a high-skilled third country national (e.g. as a researcher, as a self-employed person, or when previously studied in Germany) than for low-skilled workers. In recent years, Germany has made specific efforts to welcome highly skilled foreign workers in certain sectors, yet receiving residence and work permits is considerably harder when the migrant has no or few qualifications.

Recently, this has meant a near stop of recruitment of migrants with no or low professional qualifications⁶⁸. However, the new EU Directive on Seasonal Work⁶⁹ will enable migrant workers to stay for seasonal work up to six months a year.

Contrary to the expressed need for migrant workers in the upcoming years to compensate for the labour shortage as a result of upcoming demographic change, few measures have been introduced to simplify work and residence permit procedures for migrant workers in middle or lower wage sectors. The conditions and procedures required to employ a third country national remain very cumbersome for employers. As a result, it is still extremely difficult to receive a residence status to perform a job that does not require formal qualifications and that is not in the list of jobs where the Employment Office may give individual approvals on a case by case basis.

For migrants who have become undocumented, there are no policies to regularise their status through work. Undocumented migrants can only be regularised through marriage, in the case of severe illness, or if they become a parent of a German child.

66 Ibid., § 25a. German Federal Ministry of the Interior, *Häufig gestellte Fragen zum Thema: Ausländerrecht*, 2015. <http://www.bmi.bund.de/SharedDocs/FAQs/DE/Themen/Migration/Auslaenderrecht/18.html>.

67 German Federal Ministry of the Interior, *Häufig gestellte Fragen zum Thema: Ausländerrecht*, 2015. <http://www.bmi.bund.de/SharedDocs/FAQs/DE/Themen/Migration/Auslaenderrecht/18.html>.

68 MiGAZIN, *Der Status Quo in Sachen Einwanderung*, 6 August 2015. <http://www.migazin.de/2015/08/06/der-status-quo-sachen-einwanderung/>.

69 European Parliament and European Council, *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers*, March 2014. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0036>.

3. ACCESS TO HEALTH CARE, HOMELESS SERVICES AND EDUCATION FOR UNDOCUMENTED MIGRANTS

Irregular migrants and poverty

To prevent irregular migration, many EU member states have resorted to limiting the main elements of social inclusion, namely health, shelter, education and a fair income, for its most vulnerable group of migrants, which effectively pushes them into poverty. The legislative and practical barriers facing undocumented migrants in accessing these rights have the clear intent of driving them into a situation of destitution so intolerable, that it should compel their departure from Europe and deter other migrants from coming.⁷⁰

Not only are these policies grossly ineffective in their aim to curb irregular migration, but restricting access to minimum social rights can increase the marginalisation and stigmatisation of migrants in the eyes of the general population, with a potential to increase racism in the society.⁷¹ Restricting access to social services for undocumented migrants can in turn undermine policy objectives in the areas of social cohesion, labour market, public health, and education strategies, and risk downgrading Europe's labour conditions. Furthermore, such restrictive policies

also disproportionately impact upon individuals in an irregular migration situation with vulnerabilities due to age, gender and serious medical conditions, including women, children and those with urgent health needs.⁷²

In particular, restrictions based on migration status in the areas of health care services, emergency accommodation and homeless services as well as education may have disastrous impacts on individuals and society as a whole.

Access to health care services for undocumented migrants in Germany

In Germany, according to the Asylum Seekers Assistance Law⁷³, undocumented migrants should have the same access to health services as asylum seekers - in cases of acute illness and pain, and maternity care. However, Paragraph 87 of the Residence Act requires social welfare offices to report undocumented migrants to the immigration authorities in all but emergency care situations⁷⁴.

70 See Dutch example in R. Cholewinski, *Study on obstacles to effective access of irregular migrants to minimum social rights*, Council of Europe, 2005, p.18. <http://mighealth.net/eu/images/e/ec/Chol.pdf>, p.22.

71 R. Cholewinski, *op. cit.*, Council of Europe, 2005, p.18.

72 PICUM, *Undocumented Migrants and the Europe 2020 Strategy: Making Social Inclusion a Reality for all Migrants in Europe*, November 2015.

73 Asylberwerberleistungsgesetz [AsylbLG], § 1 (1) No. 5 in connection with § 4, June 1993. <http://www.gesetze-im-internet.de/asylblg/index.html#BJNR107410993BJNE000403116>. See also Internationale Gesellschaft für Menschenrechte (IGFM), *Illegal in Deutschland - Hilfestellungen und Antworten*, <http://www.igfm.de/menschenrechte/hilfe-fuer-den-notfall/illegal-in-deutschland/>.

74 PICUM Policy Brief, *Access to Health Care for Undocumented Migrants in Europe: The Key Role of Local and Regional Authorities*, October 2014, p. 3. http://picum.org/picum.org/uploads/publication/PolicyBrief_Local%20and%20Regional%20Authorities_AccessHealthCare_UndocumentedMigrants_Oct.2014.pdf. Residence Act [Aufenthaltsgesetz], § 87, February 2008. http://www.gesetze-im-internet.de/aufenthg_2004/_87.html.

In cases of care provided by emergency hospital departments, the health care provider has to apply for reimbursement from the social welfare office (Sozialämter) after treatment. This extends medical confidentiality to the welfare office.⁷⁵

Any care that is not provided by emergency hospital departments, must be first approved by the social welfare office (Sozialämter). In such cases, the welfare office has a duty to share undocumented patients' data with the relevant authorities, thus rendering undocumented migrants' entitlements to access non-emergency health care services meaningless.

These contradictory laws mean that undocumented migrants, including children, are only able to access emergency treatment free of charge from public health facilities and would be at risk of denunciation and deportation if they were to try to access any other health services. Therefore, in effect, the legal framework only entitles undocumented migrants to emergency care, and there are at times difficulties in accessing even this care.⁷⁶

In practice, many health care providers treat undocumented migrants independently, through voluntary initiatives such as the Medinetze and Medibüros⁷⁷ and Malteser Migranten Medizin⁷⁸, through organisations such as Doctors of the World,⁷⁹ at times in cooperation with city and regional governments, to ensure that necessary health care is available on the local level. An example of a partnership between civil society and local government is the clinic run by the Department of Health of the City of Frankfurt (Gesundheitsamt der Stadt Frankfurt) and the organisation Maisha⁸⁰ which specifically provides medical consultations and treatment for undocumented migrants. Several other major city administrations have implemented similar drop-in centres that have 'Humanitarian Consultation

Hours' (Humanitäre Sprechstunde) providing medical consultations and basic treatment for undocumented migrants⁸¹.

Health care professionals and migrants' rights supporters have also been advocating for the introduction of anonymous health care certificates for undocumented migrants to avoid data sharing. Pilot projects have started in different regions at city and federal states levels.⁸²

While recognising these promising practices throughout Germany, the legal and practical environment is problematic. The current situation means there is legal inconsistency, unregulated provision of public health services, strain on health professionals (in terms of professional ethics, stress, time and resource limitations), and serious challenges to individual and public health.

Access to homeless shelters and services for undocumented migrants in Germany

Undocumented migrants constantly fear detection and deportation and subsequently, refrain from approaching official shelters in Germany. However, some local church parishes provide temporary shelter to undocumented migrants. In addition to shelter, the parishes provide undocumented migrants with legal support and accompaniment. Generally, these services are known and recognised by the authorities and tolerated by the state. The societal position of the church has played an important role in allowing for such services to exist but the situation is changing as the increasing challenges require a more transnational response to homelessness and irregularity.⁸³

75 See also: Federal German Medical Association (2013) *Patientinnen und Patienten ohne legalen Aufenthaltsstatus in Krankenhaus und Praxis* (Patients without legal residence status in the hospital and the doctor's office), published jointly with Medibüro Berlin and Malteser Migranten Medizin, November 2013, available at: <http://www.bundesaerztekammer.de/page.asp?his=0.6.37.8822>.

76 PICUM Policy Brief, *Access to Health Care for Undocumented Migrants in Europe: The Key Role of Local and Regional Authorities*, October 2014, p. 4. http://picum.org/picum.org/uploads/publication/PolicyBrief_Local%20and%20Regional%20Authorities_AccessHealthCare_UndocumentedMigrants_Oct.2014.pdf.

77 See: <http://medibueros.m-bient.com/>;

78 See: <http://www.malteser-migranten-medizin.de/startseite.html>

79 See: <http://www.aerztewelt.org/index.php?id=23&type=0>

80 See: <http://www.maisha.org/projekte.html>

81 Ibid., p. 9.

82 Refugee Council Lower Saxony, Dr. Gisela Penteker: Anonymer Krankenschein, anonyme Abrechnung und anonymisierte Chipkarte

83 PICUM, *Housing and Homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter*, November 2015, p. 16. http://picum.org/picum.org/uploads/publication/Annual%20Conference%202013%20report%20HOUSING_EN_FINAL.pdf.

Currently, an estimated 335,000 people are homeless in Germany⁸⁴, many of which are without any shelter at all. This constitutes a potential violation of individual rights such as the right to life, the right to health and to physical safety and the right to human dignity - rights which apply to all people irrespective of their migration status or nationality⁸⁵. While it remains the obligation of the German state to protect people against threats to their life and wellbeing⁸⁶, an increasing number of refugees and migrants in recent years have been affected by homelessness and in a particularly vulnerable situation.

Reasons for the rise in the homeless population constitute the lack of affordable apartments and the decision to decentralize the federal housing policy in 2006. The federal government no longer performs its duties to ensure housing for all and local governments are overburdened with new challenges to provide additional housing that meet basic standards⁸⁷. Issues like these affect undocumented migrants specifically, because of the fear to approach public authorities.

Access to education for undocumented children in Germany

All children have a right to school education, regardless of residence status in Germany. Since 2011, it has been legally clarified that undocumented children can be enrolled in schools, by explicitly exempting schools from the obligation on public bodies to report people without a valid residence permit to immigration authorities. However, in practice, many schools still reject undocumented children or even report them and their families. A study based on interviews with 100 primary schools, showed that in 62 percent of the schools surveyed, enrolment of an undocumented child would not be possible.⁸⁸ Among these, a few respondents stated that they would transmit data to the police or immigrant authorities. In the remaining 38 percent of schools surveyed, enrolment possibilities for undocumented children were either clearly confirmed, or it was indicated that it could be possible. Many respondents showed a lack of knowledge about the existence of the law exempting schools

from reporting undocumented children; while others referred to barriers resulting from administrative procedures and documentation requirements.

Among others, the study recommends to amend all federal states' education laws (Landesschulgesetz) to make the right to access education for all regardless of residence status explicit and to prohibit the sharing of undocumented children and families' data to immigration authorities.⁸⁹

Conclusion

Access to basic social services remains very restricted for undocumented migrants in Germany. Although progress has been made by certain local and regional authorities to step up their efforts to provide health care service to undocumented migrants, these are still limited to certain cities and regions.

The discriminatory laws that foresee the obligation of social welfare officials to report undocumented migrants should they try to access medical services beyond those considered as emergency care means that a large part of crucial services remain inaccessible for undocumented migrants. These legal inconsistencies and the unregulated provision of public health services put a strain on health professionals and pose serious challenges to individual and public health.

The increased number of homeless people in Germany and the growing share of (undocumented) migrants amongst them have left local authorities unable to ensure the basic human rights of all persons. As the federal state has decentralised housing policy, a lot of the strain of providing services has fallen on civil society.

Research conducted in Germany concerning access to education for undocumented children gives very alarming results. The majority of primary schools would deny access to undocumented children despite relevant legal entitlements and some would even contact police should such request be made. This is a very unsettling result and requires urgent addressing by all relevant stakeholders.

84 Bundesarbeitsgemeinschaft Wohnungslosenhilfe e. V., Pressemitteilung zur Bundestagung der BAW G, 9 November 2015.

85 Ibid.

86 Bundesarbeitsgemeinschaft Wohnungslosenhilfe e.V., *Grundsätze der Polizei und ordnungsrechtlichen Unterbringung*, page 14.

87 Bundesarbeitsgemeinschaft Wohnungslosenhilfe e.V., *Pressemitteilung zur Bundestagung der BAW G*, 9 November 2015.

88 Barbara J. Funck, Yasemin Karakaşoğlu, Dita Vogel, Es darf nicht an Papieren scheitern, October 2015. http://www.fb12.uni-bremen.de/fileadmin/Arbeitsgebiete/interkult/Projekte_laufend/Funck_Karakasoglu_Vogel_2015_Nicht_an_Papieren_scheitern_Schule_Aufenthaltsstatus_web.pdf

89 Ibid.



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