

## Sweden - Migration Court of Appeal, 11 June 2012, UM 9681-10, MIG 2012:9

**Country of Decision:**

Sweden

**Country of Applicant:**

Senegal

**Date of Decision:**

11-06-2012

**Citation:**

UM 9681-10

**Additional Citation:**

MIG 2012:9

**Court Name:**

Migration Court of Appeal

**Keywords:**

Inadmissible application

Safe third country

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**Relevant Legislative Provisions:**European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Art 25](#) [2] > [Art 25.2 \(c\)](#) [2]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Art 25](#) [2]

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**Headnote:**

If there is a country that meets the criteria for being a 'safe third country', an asylum application may be rejected. If the application is not rejected, the examination must take place in accordance with the asylum-seeker's application, and the applicant may not be denied leave to remain with reference to a safe third country.

**Facts:**

A and her children B and C sought asylum in Sweden. A is a citizen of Senegal, whilst the children are citizens of both Senegal and Nigeria. A's spouse and the children's father is said to have disappeared. The family had been resident only in Senegal but had visited the spouse's parents in Nigeria. The grounds for asylum were cited in relation to both Senegal and Nigeria.

The Swedish Migration Board examined and rejected the applications on the grounds that A, B, and C certainly were refugees in relation to Senegal but that they had no need of protection in relation to Nigeria. A, B, and C were found to have a sufficient link to Nigeria for it to be viewed as reasonable and relevant for them to reside there.

A, B, and C appealed against the decision to the Migration Court. The Swedish Migration Board contested leave to appeal.

The Migration Court granted leave to appeal, granted A, B, and C permanent leave to remain and refugee status, and issued them with travel documents. In the view of the Court, once an examination has taken place in a case, an asylum application may not be rejected with reference to the fact that there is a safe third country. If it is found that there is a safe third country, the application must be considered inadmissible, in other words the Court must refuse to examine the case. The Migration Board did not reject but rather examined A, B, and C's applications for asylum and found A, B, and C to be refugees in relation to Senegal. There is no legal basis, therefore, for rejecting the applications for leave to remain for A with reference to the fact that Nigeria is a safe third country and to her connections there. Based on the principle of family unity and the fact that this case concerns children, B and C's applications must be assessed in the same way.

The Swedish Migration Board appealed against the Migration Court's judgment to the Migration Court of Appeal.

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### **Decision & Reasoning:**

The Migration Court of Appeal rejected the appeal and upheld the judgment by the Migration Court.

The provisions of Chapter 5(1) and Chapter 5(1)(b) of the Foreigners Act were reworded as of 1 January 2010 in connection with the transposition of the Qualification Directive and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the Asylum Procedures Directive). Under the previous wording of Chapter 5(1), first paragraph, of the Foreigners Act, an asylum application could be rejected with reference to the existence of a 'safe third country'. This term denotes a country where the Applicant either resided before coming to Sweden or had a special link to and was protected in, in the manner specifically indicated in the section in question. In such situations, leave to remain could be refused without a substantive examination in relation to the country in respect of which the Applicant had sought asylum.

The preparatory work on the legislation stated, amongst other things, that Chapter 5(1)(b) of the Foreigners Act was being introduced as Swedish regulations needed to be harmonised with the Asylum Procedures Directive. The background to this was that, amongst other factors, the Swedish provisions concerning when an asylum seeker could be refused leave to remain were not as detailed as those of the Directive which should apply for the purposes of assuring the protection the foreigner (prop. 2009/10:31, p. 216). It was also noted in this connection that the Asylum Procedures Directive, specifically Article 25(2)(c), provides for Member States to consider an asylum application inadmissible under this article where a non-Member State can be considered as a safe third country for the Applicant, pursuant to Article 27; the corresponding provisions under Swedish law meant that leave to remain could be refused instead. The provisions concerning a

safe third country, amongst other matters, needed to be framed such that an asylum application could be rejected if one of the situations listed applied.

It was chiefly for these reasons that the Foreigners Act was amended on 1 January 2010, with provisions added to Chapter 5(1)(b) concerning the option to reject an application for leave to remain where there is a country that fulfils the criteria set out in the first paragraph of point 3 of this section (hereinafter 'safe third country').

If there is a country that fulfils the criteria of a safe third country, the court may reject the asylum application without performing a substantive examination in relation to the country from which the Applicant has sought asylum. If this assessment does not result in a rejection of the asylum application, an examination must take place in accordance with the foreigner's application and in accordance with the rules applicable to such an examination.

Article 27(2)(b) of the Asylum Procedures Directive provides the option for Member States to establish at national level which countries are generally to be viewed as safe. Sweden has not opted, however, to implement this model (prop. 2009/10:31, p. 218). Instead, Chapter 5(1)(b)(3), first paragraph, of the Foreigners Act states clearly which criteria must be fulfilled in the individual case for it to be possible to reject an asylum application on the grounds that there is a safe third country.

As regards A, the Swedish Migration Board could have started by applying Chapter 5(1)(b)(3), first paragraph, of the Foreigners Act by assessing whether Nigeria could be considered a safe third country for A and might then have rejected the application as a result of that assessment. The Swedish Migration Board instead chose to examine A's asylum application in relation to Senegal and in this examination found that there were indeed grounds for asylum. As the Swedish Migration Board had indeed carried out a substantive examination of A's asylum application, and the way the legislation is currently framed provides no option to reject A's application with reference to the fact that she can reside in Nigeria once she has been found to have grounds for asylum in relation to Senegal, the Swedish Migration Board's appeal must therefore be rejected.

Subsequently, in relation to B and C, it is not contested in this case that they are A's minor children and that they are to be considered refugees under Chapter 4(1) of the Foreigners Act, in relation to Senegal. Given that B and C are A's minor children and that they are to be considered to be refugees, and applying the principles of family unity and the children's best interests, the Migration Court of Appeal rejected the Swedish Migration Board's appeal with regard to B and C also.

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**Outcome:**

The appeal was rejected and the Applicants were granted leave to remain as refugees.

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**Observations/Comments:**

On 4 November 2013, the Migration Court of Appeal, in UM 5045-12, made clear in a judgment that it is not possible to reject an asylum application with reference to the fact that the Applicant has been found eligible for subsidiary protection in another EU state. In this case, it is instead the provisions of the Dublin II Regulation that apply.

**Attachment(s):**

 [MIG 2012 9.pdf](#)[3]

**Other sources cited:**

Prop. 2009/10:31?transposition of the Qualification Directive and the Asylum Procedures Directive

**National / Other Legislative Provisions:**

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 4 Section 1](#) [4]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 4 Section 2](#) [5]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 5 Section 1](#) [6]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 5 Section 1\(b\)](#) [7]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 4 Section 2\(a\)](#) [8]

[Sweden -Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 5 Section 1](#) [9]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2025>

[3] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/MIG%202012%209.pdf>

[4] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1110>

[5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1111>

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7596>

[7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2032>

[8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1965>

[9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1112>