

Sweden - Migration Court of Appeal, 15 June 2007, UM 837-06

Country of Decision:

Sweden

Country of Applicant:

Iraq

Date of Decision:

15-06-2007

Citation:

UM 837-06

Additional Citation:

MIG 2007:33 I

Court Name:

Migration Court of Appeal

Keywords:

Refugee Status
Subsidiary Protection
Benefit of doubt
Credibility assessment
Humanitarian considerations

Relevant Legislative Provisions:

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 4](#) [2]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 9](#) [3]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [4]

Headnote:

Honour-related violence should be examined in the context of grounds for protection and not humanitarian considerations. The Migration Court of Appeal also discussed the application of the benefit of the doubt.

Facts:

The applicant claimed as grounds for protection that he had had a relationship with a woman whose family did not accept him. His life was threatened by her relatives and they already killed his fiancé. He is also accused for kidnapping her when they escaped together. He also referred to the dangerous situation in Iraq in general. The Migration Board denied the application in January 2006, mainly due to lack of credibility. The Malmö Migration Court however on 3 October 2006 granted him a residence permit based on exceptionally distressing circumstances (Aliens Act Chapter 5 Section 6) with reference to the difficulties he would be subject to in case of return. The Migration Board appealed the decision to the Migration Court of Appeal.

Decision & Reasoning:

In its judgment, the Migration Court of Appeal stated that the main grounds for a right to residence (i.e. protection and family ties) should be tried thoroughly before the possibility of a residence permit based on exceptionally distressing circumstances is assessed. In this context, the Court emphasized that the Government had, in the *travaux préparatoires*, clearly stated that protection grounds must be kept apart from other grounds when assessing potential grounds for granting a residence permit. In the present case, the Court stated that risk of honour-killing should be seen as falling within the scope of potential protection grounds and not as exceptionally distressing circumstances.

The Migration Court of Appeal also discussed the application of the benefit of the doubt. It was emphasized that the principle only applies when evidence has been examined and the general credibility of the applicant has been established.

The Migration Court of Appeal established that the Migration Court had ? incorrectly - assessed the credibility of the applicant before examining the evidence. The Migration Court of Appeal emphasised that it is of utmost importance that the courts and authorities make a clear distinction between what is evidence and what is the applicant's statement. In the present case the Court did not find that the applicant had presented a credible account of events nor a need for protection and therefore he could have the benefit of the doubt. The applicant was thus considered not to have a legitimate claim for protection either as a refugee (Aliens Act Chapter 4, Section 1) or on subsidiary grounds (Chapter 4 Section 2). Neither did the Court find that the claims were such that a right to residence could be granted because of exceptionally distressing circumstances (Chapter 5 Section 6).

Outcome:

The appeal was granted, the former judgment revoked and asylum denied.

National / Other Legislative Provisions:

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 4 Section 1](#) [5]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 4 Section 2](#) [6]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 5 Section 6](#) [7]

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [2] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>
- [3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%209%20QD>
- [4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD>
- [5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1110>
- [6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1111>
- [7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1129>