

Sweden - Migration Court of Appeal, 2 January 2015, UM 1836-14, MIG 2015:1

Country of Decision:

Sweden

Country of Applicant:

Syria

Date of Decision:

02-01-2015

Citation:

Decision of 02.01.2015 ? UM 1836-14

Additional Citation:

MIG 2015:1

Court Name:

Migration Court of Appeal

Keywords:

Exclusion from protection

Inhuman or degrading treatment or punishment

Refugee Status

Revocation of protection status

Serious harm

Relevant Legislative Provisions:European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1]

Headnote:

An Applicant who has been convicted of a serious crime is excluded from the right to claim protection. A life sentence with an undeterminable term does not constitute a temporary obstruction to deportation and therefore an Applicant cannot claim obstruction as grounds for leave to remain. Further, a family connection which has been examined by a criminal court as part of a final judgment cannot be re-examined as part of an asylum application.

Facts:

On 7 December 2001, the applicant (the **Applicant**) applied for asylum in Sweden for the first time.

On 15 October 2003, the Swedish Migration Agency (the **Migration Agency**) rejected the Applicant's application for leave to remain in Sweden. In March 2005, the Applicant was sentenced to life imprisonment in Sweden for murder among other crimes. The Migration Agency also ordered the Applicant's deportation from Sweden and prohibited him from returning to the country.

In May 2005, the Gothenburg Court of Appeal (Sw. *Göta Hovrätt*) rejected the Applicant's appeal of his criminal conviction. Later that year, the Aliens Appeals Board rejected the Applicant's appeal of the Migration Board's deportation decision.

In February 2012, the Applicant re-applied for leave to remain in Sweden on the basis of the need for protection based on the current situation in Syria and a family connection to Sweden through his children.

The Migration Agency submitted the application to the Gothenburg Migration Court (the **Migration Court**) with a statement that the Applicant was in need of protection in relation to Syria.

The Migration Court remanded the application to the Migration Agency, reasoning that the question of whether the Applicant was excluded from protection in accordance with Ch. 4 cl. 2 c of the Swedish Aliens Act (2005:716) (the **Aliens Act**) was a question for the Migration Board.

The Migration Agency then re-submitted the application to the Migration Court stating that although the Applicant was excluded from protection due to the crimes he had committed, he could not return to Syria without risking serious harm, such as physical abuse, torture, or other dehumanizing and humiliating treatment and punishment and therefore the Applicant should be granted temporary leave to remain. Further, the Applicant lacked valid passport documents at the time, leading the Migration Agency to advise the Migration Court to issue a foreign passport (Sw. *Främlingspass*).

The Migration Court examined the application based on Ch. 12 cl. 16b of the Aliens Act and rejected the Applicant's application reasoning that:

- (i) it had not been shown that the Applicant's return to Syria would entail persecution and harassment to the extent that he was to be treated as a refugee.
- (ii) the severe crime committed by the Applicant excluded him from invoking the need for protection.
- (iii) temporary leave to remain cannot be granted to a person lacking a valid passport and the future possibility of receiving a foreign passport was not sufficient.
- (iv) there was no other extraordinary reason to grant leave to remain.

The Applicant's case was therefore submitted to the Migration Agency for deportation and deportation was resolved by the Migration Agency in March 2014.

The Applicant appealed to the Migration Court of Appeal (the **Court of Appeal**), claiming primarily that his right to permanent leave to remain and a work permit should be granted or alternatively that the application should be resubmitted to the Migration Court because:

(i) given the situation in Syria, a leave to remain would constitute an obstruction of his deportation entitling him to leave to remain.

(ii) the Applicant had a family connection to Sweden through his children.

(iii) the Migration Court had not ordered the Migration Board to issue a foreign passport and therefore had not fulfilled its investigatory obligation as stipulated in the cl. 8 of the Administrative Court Procedure Act.

Decision & Reasoning:

The Court of Appeal first examined the order in which the claims should be addressed.

The Court of Appeal stated that, while the wording of the Ch. 12, cl. 16 b of the Aliens Act favours addressing the issue of obstruction of deportation first, examining the Applicant's application for leave to remain by considering his need for protection first is more in accordance with the standard asylum process in which the determination regarding obstruction of deportation is only examined after a determination regarding leave to remain has been made. The Court of Appeal further noted that an applicant does not require leave from the court to appeal a decision on the grounds of need for protection under Ch. 12, cl 16 b, paragraph 3 of the Aliens Act. Therefore, an applicant has the right to have his leave to remain tried in two instances (i.e. should the Migration Court reject the applicant's application, the applicant has an unconditional right to have his application reviewed by the Court of Appeal). The Court of Appeal noted that this contrasted with the general requirement under Ch. 12, cl 16 b, paragraphs 1 and 2 of the Aliens Act, that the Court of Appeal must grant leave for an applicant to appeal.

Therefore, the Court of Appeal found that there were considerable reasons for first examining the Applicant's refugee status. The Court of Appeal further found that only in the event that the Applicant's refugee status is denied, should the application be examined under the grounds of obstruction.

Leave to remain based on Ch. 4 Cl. 1 - 2a

The Applicant did not claim individual grounds for the need for protection but only referred to the general situation in Syria. According to the Court of Appeal, this was not sufficient for the Applicant to be considered a refugee in accordance with Ch. 4 Cl. 1-2a of the Aliens Act.

According to the Court of Appeal's general statement, an applicant from Syria is generally deemed to have need for protection in accordance with Ch. 4 Cl. 2 of the Aliens Act. However, a person who has been convicted of a serious crime is excluded from the right to claim protection under that provision. Given that the Applicant has been convicted of murder, he could not be granted leave to remain based on Ch. 4 Cl. 2.

Leave to remain based on Ch. 12 Cl. 16 b item 1 ? 4

The Court of Appeal then examined whether the Applicant could be granted leave to remain based on the grounds in Ch. 12 Cl. 16 b of the Aliens Act. The Court of Appeal further stated that, according to Ch. 12 cl. 16 b of the Aliens Act, a person subject to deportation can be granted leave to remain in the event there is a political, practical or medical obstruction to the deportation. The Court of Appeal stated that an applicant can only claim obstruction in accordance with Ch. 12 cl. 16 b if the deportation is ongoing, i.e. the deportation decision is de facto being executed. The Court of Appeal further noted that in a previous case, (MIG 2009:15), it had concluded that an applicant may still claim obstruction despite a temporary interruption of a deportation. However,

the Court of Appeal noted that, according to Ch. 12 Cl. 9 of the Aliens Act, a deportation decision cannot be executed until the applicant has served his sentence. As the Applicant was serving life imprisonment, the deportation could not be carried out.

As the Applicant was sentenced to life imprisonment, the Court of Appeal stated that he could only apply for a time determination of the sentence once he had served 10 years. However, it was not clear whether the timing of the sentence would be determined nor, if determined, how long the sentence would be. Therefore, the Court of Appeal reasoned that the obstruction of the deportation of the Applicant could not be considered temporary within the meaning of Ch. 12 Cl. 9. The Applicant therefore could not be granted leave to remain based on the ground of obstruction set out in Ch. 12 Cl. 16 b, items 1- 3.

The Court of Appeal finally determined whether the Applicant's claimed connection to his family in Sweden constituted an extraordinary reason sufficient to grant leave to remain under Ch. 12 Cl. 16 b, item 4.

Based on the legislative history of the Aliens Act, the Court of Appeal stated that Ch. 12 Cl. 16 b should be applied restrictively but one of the grounds that may constitute an extraordinary reason to grant leave to remain is a strong family connection. However, the Court of Appeal held that a family connection which has been examined by a criminal court cannot be re-examined. Since the Applicant's family connection had already been examined within the scope of the murder case, the Court of Appeal concluded that the Applicant should not be granted leave to remain.

Outcome:

The Applicant's appeal was dismissed and the rejection of the application for leave to remain was upheld.

Observations/Comments:

This case summary was written by Linklaters LLP.

The summary was proof-read by Language Connect.

Attachment(s):

[Migration Court of Appeal 1836_14.pdf](#)[2]

Other sources cited:**National / Other Legislative Provisions:**

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 1 Section 9](#) [3]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Ch. 4 Cl. 1](#) [4]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Ch. 4 Cl. 6](#) [5]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Ch. 5 Cl. 1](#) [6]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Ch. 5 Cl. 20](#) [7]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Ch. 8 Cl. 7](#) [8]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Ch. 12 Cl. 9](#) [9]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Ch. 12 Cl. 16](#) [10]

[Commission Regulation \(EC\) No 1560/2003](#) [11]

[Sweden - Cl. 3 of the Life Imprisonment Conversion Act \(2006:45\)](#) [12]

[Sweden - Cl. 8 the Administration Procedures Act \(1971:291\)](#) [13]

Links:

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

[2]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Migration%20Court%20of%20Appeal%2018>

[3] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1940>

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-utl%C3%A4nningslagen-aliens-act-2005716-ch-4-cl-1>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-utl%C3%A4nningslagen-aliens-act-2005716-ch-4-cl-6>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-utl%C3%A4nningslagen-aliens-act-2005716-ch-5-cl-1>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-utl%C3%A4nningslagen-aliens-act-2005716-ch-5-cl-20>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-utl%C3%A4nningslagen-aliens-act-2005716-ch-8-cl-7>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-utl%C3%A4nningslagen-aliens-act-2005716-ch-12-cl-9>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-utl%C3%A4nningslagen-aliens-act-2005716-ch-12-cl-16>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1217>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-cl-3-life-imprisonment-conversion-act-200645>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-cl-8-administration-procedures-act-1971291>