

Sweden - Migration Court of Appeal, 5 March 2018, UM2630-17

Country of Decision:

Sweden

Country of Applicant:

Eritrea

Date of Decision:

05-03-2018

Citation:

UM2630-17

Court Name:

Migration Court of Appeal

Keywords:

Dependant (Dependent person)

Family member

Family reunification

Relevant Documentation

Standard of proof

Relevant Legislative Provisions:

European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [1] > [Article 11](#) [2]

Headnote:

The Appellant and the appellant's children were applying for leave to remain in Sweden due to affiliation with their husband and father respectively who had been granted a permanent right of residency in Sweden as a refugee - despite them not being able to prove their identities. Due to the appellant's lack of relevant documentation for her and the children, the court had to consider the circumstances in which a person can be granted alleviation of evidentiary burden in terms of proving their identity.

The Migration Court of Appeal granted the appeal and held that the appellant and the children would be granted an alleviation of evidentiary burden. It further referred the case back to the

Swedish Migration Agency who would have to complete a DNA-test aimed at establishing the kinship of the family and subsequently try the case again.

Facts:

The Appellant and her four children, all Eritrean citizens who at the time of the application resided and were registered as refugees in Ethiopia, applied for a right of residence in Sweden in 2015. Their application was based on their affiliation to their husband and father respectively (also an Eritrean citizen) who had been granted a permanent right of residency in Sweden as a refugee.

In order to be granted a right of residency based on affiliation an applicant must, among other things, be able to prove their identity. However the appellant did not have the necessary documentation for herself nor the children.

The appellant argued that she and the children should be granted an alleviation of evidentiary burden in terms of their identification given the risks involved in obtaining an Eritrean passport for any person who has left the country illegally. The relevant issues and risks related to the family obtaining Eritrean passports that was brought to the attention of the court included:

- i) Since there was no Eritrean Consulate/Embassy in Ethiopia the family would have to embark on a long and dangerous journey to the Sudanese capital of Khartoum in order to get the passport issued.
- ii) the appellant and the children would have to have paid a 2% tax to the Eritrean state before receiving their passports, money which would be used for political purposes.
- iii) The family would have to sign a 'letter of regret' where they accept punishment for not having completed their military service.
- iv) the family would have to make the Eritrean state aware of their illegal exit which would put their relatives still living in the country at risk of victimisation.

Decision & Reasoning:

The Migration Court of Appeal reaffirmed the following:

In order for an alien to be granted a right of residency due to affiliation, the alien in question must as a general rule be able to prove their identity. However, in some cases where the applicant originates from a state with no - or poorly functioning - government structures it can be enough for the alien to make his or her identity 'credible'. This alleviation of evidentiary burden presupposes the existence of a DNA-test that supports

- i) the applicants parenthood to the children he or she has with the affiliated person
- ii) that the affiliated person is the other parent of the children

In addition to the above it has to be established that the two parents have lived in a joint household before the person of affiliation came to Sweden. Furthermore the interest of the person of affiliation to be reunited with his or her family must be weighed against society's interest to prove the applicant's identity (which includes issues of security and need to control immigration) ? this is a test of proportionality.

The court held that it was indisputable that the appellant was married to the affiliated person, that they had lived in a joint household before coming to Sweden and that they were the parents of the four children.

The court further held that it would be disproportionate for the court to require the appellant and the children to obtain Eritrean passports from an Eritrean Consulate/Embassy abroad given the

risks this would pose to the applicant, the children and their relatives in Eritrea. As a result, the court held that the appellant and the children would enjoy an alleviation of evidentiary burden in regards of their identities and that it would fall upon the Swedish Migration Agency to complete a DNA analysis on the family's kinship.

Outcome:

Appeal Granted. The Migration Court of Appeal revoked the decision of the Migration Court in full except for their decision regarding the secrecy of the applicant's, children's and person of affiliation's identity. Furthermore the court referred the case back to the Migration Agency for a new trial of the right of residency.

Attachment(s):



[UM 2630-17 FR evidence requirements.pdf](#)[3]

Other sources cited:

- Lifos,? Temarapport Eritrea ? Familjemedlemmars kontakt med eritreanska beskickningar i utlandet?, 16th of may 2017, p. 10 and 16
- UNSC Prop. 2005/06:72 p. 68
- Letter on the 3d of April 2014 from the Commission to the European Council with guidelines of the implementation of directive 2003/86/EG, (COM [2014] 210 final)

National / Other Legislative Provisions:

[Sweden - 5 kap. 3 § fo?rsta sty?cket 1 och 2 a samt 8 § utla?nningslagen \(2005:716\)](#) [4]

Links:

- [1] <https://www.asylumlawdatabase.eu/node/1305>
- [2] https://www.asylumlawdatabase.eu/node/1305#toc_108
- [3] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UM%202630-17%20FR%20evidence%20requirements.pdf>
- [4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sweden-5-kap-3-%C2%A7-fo%CC%88rsta-sty%CC%81cket-1-och-2-samt-8-%C2%A7-utla%CC%88nningslagen>