

## Case concerning impediments to enforcement

### Person concerned

, date of birth , national of Belarus

Address:

### Decision

The Swedish Migration Agency decides:

- not to grant a residence permit pursuant to Chapter 12, Section 18 of the Aliens Act (2005:716);
- not to suspend (stay) enforcement of your expulsion order.

### Appeal

This decision cannot be appealed.

Martina Juric  
Decision-making Officer

### Copy to:

Reception Unit

**Background and circumstances cited**

The Migration Agency has rejected your application for a residence permit and decided to expel you from Sweden to Belarus. The decision became final and non-appealable on 5 June 2020. A document has also been received from the Office of the High Commissioner, United Nations Human Rights. The Migration Agency has interpreted it as a notice of an impediment to enforcement and has set up a case according to this. The following is stated in the document.

You are a blogger from Dubrovno, Belarus. You have been a member of the United Civil Party (OGP) and then of the opposition party Narodnaya Hramada since 2015. For over 20 years you have raised concerns over corruption at the regional level in Belarus. In 2017 you launched your blog "Everything about Dubrovno", where you have published on corruption. You were accused of expressing your views, critical of the Government. You suffered physical violence, threats to your life, criminal prosecution and administrative sanction. Pressure from local authorities led to the closedown of your business. You were threatened by unknown persons affiliated with law enforcement that you would be sentenced to imprisonment and would not leave the area alive. Since your arrival in Sweden, you have continued your activities and published criticism of the authorities in Belarus. As a consequence, you have continued receiving threats. In summer 2019 a warrant for your arrest was issued. You applied for asylum in Sweden and both the Migration Agency and the Migration Court rejected your application. The Migration Court of Appeal referred the case back to the Migration Court. The Court did not have the documents you had submitted in support of your statements translated since they considered that the documents were of low probative value and that they could not support the arguments you had already put forward. The Migration Court rejected your case again, and its judgment was affirmed by the Migration Court of Appeal when it did not grant leave to appeal. You therefore risk expulsion to Belarus. Without prejudice to the accuracy of the above-mentioned allegations, the Office of the High Commissioner, United Nations Human Rights, wishes to express concern at the decision to expel you to Belarus. This is because there is a possible pattern of violations of your human rights, including threats to your life, the risk of a violation of your right to a fair trial and the risk of inhuman or degrading treatment in detention.

The Office of the High Commissioner, United Nations Human Rights, notes that your persecution in Belarus has allegedly been provoked by the exercise of your right to freedom of opinion and expression. In this regard, the Council wishes to remind the Swedish authorities of Sweden's obligations under the International Covenant on Civil and Political rights, ratified by Sweden on 6 December 1971. The Council wishes to refer in particular to Articles 6, 7, 10, 14 and 19, as well as to Article 3 of the European Convention on Human Rights. Based on these legal standards and the seriousness of the threats you risk upon your return, the Council notes with concern the decision of the Migration Court to refuse the admission of evidence. The Council would also like to refer to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants issued on 26 May 2020, which recommends States to consider the temporary suspension of deportations or enforced returns during the

pandemic. All communication with the Council will be made public within 60 days. The Council may also publicly express its concerns in the near future since it believes that the wider public has the right to be informed about the above-mentioned allegations.

Finally, the Council would like the enforcement of the expulsion order to be suspended until these circumstances have been examined.

### **Reasons for the decision**

The Migration Agency can neither re-examine a decision issued by a higher instance nor examine the correctness of assessments made by a higher instance. Since there is a decision to expel you that has become final and non-appealable, what you now put forward can only be examined under the provisions of the Aliens Act (2005:716) on impediments to enforcement of refusal-of-entry and expulsion orders.

In making this assessment, the Migration Agency only considers new circumstances that have emerged in the case. This means that there is no question of a re-examination of circumstances that you have previously cited in the case.

In assessing whether there is an impediment to enforcement of a removal order, the Swedish Migration Agency has very limited scope for taking account of factors such as frustrated hopes, anxiety about returning to the country of origin and social or financial problems. It must be a question of wholly exceptional situations. This is stated in the legislative history of Chapter 12, Section 18 of the Aliens Act (Govt. Bill 2004/05:170 pages 226 and 299).

The Swedish Migration Agency may also order a stay of enforcement.

### **Chapter 12 Section 18 of the Aliens Act**

If, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, new circumstances come to light that mean that:

1. there is an impediment to enforcement under Section 1, 2 or 3;
  2. there is reason to assume that the intended country of return will not be willing to accept the alien; or
  3. there are medical impediments or some other special cause why the order should not be enforced,
- the Swedish Migration Agency may grant a permanent residence permit if the impediment is of a lasting nature.

If there is only a temporary impediment to enforcement, the Agency may grant a temporary residence permit.

Children may be granted permanent or temporary residence permits under the first paragraph, point 3 even if the circumstances that come to light do not have the same seriousness and weight as is required for a permit to be granted to adults.

When assessing under the first paragraph, point 3 whether there is another special

cause why an order should not be enforced, particular consideration shall be given to the consequences for a child of being separated from its parent, if it is clear that a residence permit would have been granted on the grounds of strong ties under Chapter 5, Section 3, first paragraph, points 1–4 or Chapter 5, Section 3a, first paragraph, points 1-4, or second paragraph, if the examination had been made before entry into Sweden.

The Swedish Migration Agency may also order a stay of enforcement.

Section 15 of the Act Temporarily Restricting the Possibility to Obtain Residence Permits in Sweden (2016:752) states that a residence permit granted under the first paragraph shall be temporary in the period 20 July 2016 to 19 July 2021.

### **Migration Agency's assessment**

#### **Regarding Chapter 12, Section 18 of the Aliens Act**

One requirement for an examination under Chapter 12, Section 18 of the Aliens Act is that the circumstances that emerge or are cited are new

in the sense that they have not previously been examined in the case. A circumstance is not to be considered new if it is a supplement to or modification of the circumstances originally cited (see Govt Bill 2004/05:170 p. 227 ff.).

Even though the Migration Court considered that the documents you had submitted in support of the circumstances you had put forward were of a simple nature and therefore easy to manipulate, the Court has nevertheless appraised and assessed the documents. The Court found that some of the documents submitted contradict what you have stated yourself that they provide support for. The Court also noted that newspaper articles, certificates and audio and visual recordings submitted build to a great extent on information that you yourself have given. So the substance of the documents submitted has been examined by the Court.

The Migration Court considered, in an overall assessment, that you had not plausibly demonstrated that you have had political activities that have meant that Belarusian authorities have had or have an interest in you. Nor had you plausibly demonstrated that the events that you have given an account of – and that the Migration Court has, in fact, not questioned – can be considered to be linked both to one another and to your political activities. Nor had you plausibly demonstrated that the events form part of systematic persecution of you on the part of Belarusian authorities. What you have previously been subjected to is not sufficient to constitute treatment constituting grounds for protection either.

So what is now being put forward regarding your political activities and the evidence submitted has already been examined through the final and non-appealable expulsion order. Therefore what has emerged in the letter from the Office of the High Commissioner, United Nations Human Rights, does not constitute new circumstances.

It has also been stated that the Migration Agency has to take account of how COVID-19

impacts on the human rights of migrants. But no statement has been made of what this impact means or how this has an impact on you in the present case. Therefore no new circumstances have emerged that constitute impediments to enforcement under Chapter 12, Section 1–3 of the Aliens Act.

There is no reason to assume that Belarus will not be willing to accept you. Nor has any information emerged to the effect that there are medical impediments or some other special reason not to enforce your expulsion order.

Therefore no new circumstances have emerged that constitute impediments to enforcement under Chapter 12, Section 18 of the Aliens Act. The Migration Agency therefore decides not to grant you a residence permit.

The measures to enforce the order that is final and non-appealable shall therefore continue.

**Regarding stay of enforcement**

The Migration Agency finds that no reasons have emerged that mean that the enforcement of your expulsion order has to be stayed.