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Notification of impediment 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 re-examine the question of a residence permit pursuant to Chapter 12, Section 19 of the Aliens Act.

Appeal

The only part of the decision that is appealable is the examination under Chapter 12, Section 19 of the Aliens Act. Appeal instructions are given on the final page of this decision.

Anja Hartelius
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.

You now state that there is an impediment to enforcement of the decision and cite the following main circumstances. There is an increased risk that you will be subjected to torture and persecution if you return to Belarus. This constitutes a new circumstance. The political situation in the country has changed drastically in recent weeks. The country's foremost human rights organisation, Vjasna, and Swedish media are reporting on increased repression against dissidents, freelancers and bloggers.

The Swedish Migration Agency has not previously considered the question of a re-examination.

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.

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 3 a, 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.

Chapter 12, Section 19 of the Aliens Act

If a decision to grant a residence permit cannot be issued under Section 18, the Swedish Migration Agency shall re-examine the question of a residence permit if, in a case concerning enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, the alien cites new circumstances that:

1. can be assumed to constitute a lasting impediment to enforcement referred to in Section 1, 2 or 3; and
2. could not previously have been cited by the alien, or the alien shows a valid excuse for not previously having cited these circumstances.

If the requirements set out in the first paragraph are not fulfilled, the Swedish Migration Agency shall decide not to grant a re-examination.

The first paragraph is not applicable if the alien applies for a residence permit as a refugee under Chapter 4, Section 1 or as a person otherwise in need of protection under Chapter 4, Section 2 or 2 a and no such application has previously been examined during the alien's stay in Sweden through a decision that has become final and non-appealable. In such a case, the Swedish Migration Agency shall examine the application and order a stay of enforcement in the enforcement case.

Section 16 of the Act on Temporary Restrictions of the Possibility to Obtain Residence Permits in Sweden (2016:752) provides that the first paragraph does not apply in the period 20 July 2016 to 19 July 2021 if the alien only cites circumstances that can form a basis for a need for protection under Chapter 4, Section 2 a.

Chapter 12, Section 19 a of the Aliens Act

If, in a case concerning enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, the alien cites new circumstances referred to in Section 19, first paragraph, the refusal-of-entry or expulsion order must not be enforced before the Swedish Migration Agency has determined whether a re-examination shall take place.

If the Swedish Migration Agency grants a re-examination, the refusal-of-entry or expulsion order must not be enforced before the question of a residence permit has been determined through a decision that has become final and non-appealable. If the Swedish Migration Agency does not grant a re-examination and the decision applies to an unaccompanied minor, the

refusal-of-entry or expulsion order must not be enforced earlier than one week from the date when the minor was informed of the decision.

If the alien appeals a decision not to grant a re-examination and the question of a re-examination has not been determined previously, the migration court that shall examine the appeal shall examine whether to order a stay of enforcement. The refusal-of-entry or expulsion order must not be enforced before this examination has been carried out.

Swedish Migration Agency's assessment

Chapter 12, Section 18–19 of the Aliens Act

The general security situation in Belarus has not changed since your expulsion order became final and non-appealable in a way that means there is an impediment to enforcement under Chapter 12, Sections 1–3 of the Aliens Act.

As regards the information that the situation of political dissidents has deteriorated to such an extent that you should be considered in need of protection, the Agency finds the following. In the context of your final and non-appealable expulsion order you stated that you risk treatment constituting grounds for protection on account of your political activities. The Migration Agency and the Migration Court have made the assessment that you have not plausibly demonstrated – either through the evidence you have submitted or through your oral account – that you had a role in the OGP or for some other reason had political activities in Belarus that mean that you were or would be of interest to Belarusian authorities in a way that means that you risk being subjected to persecution or treatment constituting grounds for protection if you return to Belarus. Your political activity and the information that you are in need of protection have already been examined and

are not a new circumstance. You have not presented any new information in this part of your case that is a reason for making a new assessment.

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.

No new circumstances have therefore emerged that can be assumed to constitute a lasting impediment to enforcement referred to in Chapter 12, Sections 1–3 of the Aliens Act. There is therefore no basis for re-examining the question of a residence permit pursuant to Chapter 12, Section 19 of the Aliens Act.

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