



**APPELLANT**

, date of birth 14 October 1978

Representative and public counsel: [REDACTED] Member of the Swedish Bar Association

**RESPONDENT**

Swedish Migration Agency

**DECISION APPEALED**

Swedish Migration Agency's decision of 3 September 2018, reg. no [REDACTED], *see annex 1*

**MATTER**

Residence permit etc. under the Aliens Act (2005:716), abbreviated as AIA, and the Act on Temporary Restrictions of the Opportunity to Obtain Residence Permits in Sweden (2016:752), abbreviated as TAlA

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**RULING OF THE MIGRATION COURT**

The Migration Court rejects the appeal.

The Migration Court orders that [REDACTED] shall be paid SEK 32 619 for her costs; SEK 23 306 of this amount is for work, SEK 1 285 is for loss of time, SEK 1 504 is for outlays and SEK 6 524 is for value added tax.

The Migration Court orders pursuant to Chapter 43, Section 5 of the Public Access to Information and Secrecy Act that secrecy under Chapter 37, Section 1 of that Act shall apply to information put forward at the Court's hearing in private that has not been included in this judgment.

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08.00–16.00

## **BACKGROUND**

has applied for asylum in Sweden. The main reason he has stated for his need for protection is that he risks being subjected to persecution and treatment constituting grounds for protection by the Belarusian authorities on account of his political activities. On 3 September 2018 the Swedish Migration Agency decided to reject his application for a residence permit, a status declaration and a travel document and to expel him to Belarus (see annex 1). The Migration Agency considered that he had not plausibly demonstrated that there was a current and specific threat to him from the Belarusian authorities. appealed the Migration Agency's decision. The Migration Court rejected his appeal on 2 October 2019. appealed the Migration Court's decision and the Migration Court of Appeal decided to set aside the judgment of the Migration Court and refer the case back to the Migration Court to be considered again.

## **CLAIMS ETC.**

is presenting the claims that he be granted a residence permit and work permit, a status declaration and a travel document. He is maintaining what he has stated previously and adds the following main points. The Migration Agency has made an incorrect assessment of his grounds for protection. The extensive documentary evidence that he has presented to support his political activities and his need for protection arising from them should, cumulatively, be assigned high probative value. His oral account concerning his political activities and the threats to him has been rich in detail. He has consistently given coherent information in these areas throughout the proceedings. What he has been subjected to in his country of origin amounts to/reaches the standard for/ persecution both in the meaning of the Aliens Act and in the view of the biggest human rights organisation in Belarus. He has continued his political activities even after leaving his country of origin. His activities on social media and on the internet have also come to the knowledge of Belarusian authorities. His wife – who is also a figure among opposition in

Belarus – has been arrested, assaulted and humiliated on account of his continued activities. His revelations have now led to him also being excluded from the United Civil Party (OGP) and he has instead become a member of another political party, Narodnaja Gramada [*Belarusian Social Democratic Party*]. Moreover, his account of what he has been subjected to is in line with the country of origin information that is available about how the regime in Belarus and Belarusian authorities treat members of the opposition. If he returns to Belarus, he risks being subjected to persecution on account of his political beliefs. He also risks being subjected to torture or other treatment constituting grounds for protection as set out in Chapter 4, Section 2 of the Aliens Act.

The *Migration Agency* considers that the appeal should be rejected. The documentary evidence submitted should be assigned low probative value. The Migration Agency does not question his membership of the OGP. However, membership of the OGP or dealings with Vesna are not sufficient to constitute a need for protection. The OGP is a permitted party that is represented in parliament. Nor is what [redacted] has stated that he was previously subjected to in Belarus sufficient to constitute a need for protection. His account concerning his activities and political work is vague. The information about his expulsion from the party is also vague. He has also provided contradictory information regarding his passport and the search under a search warrant that he says was carried out, as well as about the reason why he left the country. He has not plausibly demonstrated that he has conducted activities that would make anyone take an interest in him if he returned to Belarus now. Moreover, the activities that he says that he had in Belarus are at a low level and are from several years ago. Nor has he plausibly demonstrated that the activities that he has had in Sweden have come to the knowledge of the Belarusian authorities or that these authorities have shown an interest in these activities in the way he states.

The Migration Court held an oral hearing in the case on 19 March 2020.

## REASONS FOR THE RULING OF THE MIGRATION COURT

### Identity and habitual residence

In its decision the Migration Agency has made the assessment that [redacted] has plausibly demonstrated his identity and that his grounds for protection should be examined in relation to Belarus. The Migration Court sees no reason to make a different assessment here. [redacted]'s grounds for protection should therefore be examined in relation to the current situation in Belarus.

### **should not be granted a residence permit or status on account of grounds for protection**

The Migration Court does not consider that [redacted] has plausibly demonstrated that he risks treatment constituting grounds for protection if he returns to his country of origin. This means that he is not a refugee or a person eligible for subsidiary protection under Chapter 4, Sections 1 and 2 of the Aliens Act and cannot be granted a residence permit under Chapter 5, Section 1 of the Aliens Act, a status declaration under Chapter 4, Sections 3–3 a of the Aliens Act or a travel document under Chapter 4, Section 4 of the Aliens Act. The reasons for this are the following.

In the light of the country of origin information provided in the case about the general situation in Belarus – and especially regarding persons who express opposition to the regime in that country – the Migration Court makes the following assessment.

Human rights and freedoms are restricted in Belarus, and it does also happen that people belonging to the opposition who are openly critical of the regime may be subjected to treatment constituting grounds for protection. When it comes to the OGP, this party is a permitted opposition party that is represented in parliament. So, being or having been a member of the OGP is not sufficient to constitute a need for protection by itself.

The Migration Court does not question that [redacted] was subjected to assault in 2001; that his business went bankrupt; that he was arrested and held for seven hours, meaning that he was unable to take part in a demonstration; that cars were parked outside his house; and that he was refused permission to hold an open-air meeting. However, the Migration Court concludes that these events, by themselves, are not sufficient to constitute grounds for protection. The question in the case is therefore whether the political activities he has presented have meant that there is an interest in him on the part of the Belarusian authorities that means that he risks being subjected to persecution or treatment constituting grounds for protection if he returns to his country of origin. An assessment must therefore be made of the political activity he has presented.

As regards the evidence submitted, the Migration Court makes the following assessment. A large part of the documentary material submitted consists of photocopies of documents. Irrespective of this, the documents submitted are of a simple nature and therefore easy to manipulate. Some of the documents also contradict what [redacted] has himself said that they are intended to support. For instance, documents issued to Natalya Aleksandrovna show that she made a report to the police and had her matter considered by the authorities. Documents submitted to show that his business was placed in compulsory liquidation on account of his political involvement show instead that what was involved was a dispute about the condition of the premises and financial compensation. The documentary evidence he has submitted actually indicates rather that he was able to draw up a police report at the authorities and that he was given a legal/judicial examination. In addition, newspaper articles, certificates and audio and visual recordings submitted build to a great extent on information given by [redacted] himself. It is not possible, on the basis of the audio recordings submitted to link them to the information given by him about who is speaking on the recordings. The same applies to the printouts from social forums submitted. Especially as he has himself said that it was unknown persons who threatened him on social media. So the statement that they were representatives of authorities

is based on his own speculations. The Migration Court also questions whether representatives of authorities would use social media, such as Facebook, to communicate their intentions regarding their interest in him. Summing up, the Migration Court considers that the items of evidence submitted in the case cannot, either separately or taken together, plausibly demonstrate that [redacted] has had political activities that have made Belarusian authorities have such an interest in him that there is a specific and personal threat to him from Belarusian authorities. So, an assessment must also be made of the oral account given by [redacted].

As regards [redacted]'s political activities, he has stated during the oral hearing at the Migration Court that he has been politically active since he was a child. He says that he has stood up to the authorities when he has seen examples of injustices, for example at discos and the like. He also states that he joined the OGP in 2015 and held elected office in it, which meant that he took part in meetings, organised demonstrations, recruited members and gathered signatures supporting OGP candidates ahead of elections. The Migration Court considers that he has given information lacking in detail about his political activities. When asked how he recruited new members, he said that he had recruited two people. When asked further questions about this, he has said that he recruited them through conversations and dialogue and by presenting arguments and convincing them, and that he told them that it would be great if they joined the party and showed their support for the party by doing so. However, he has not been able to elaborate on this. Considering that he had been a member of the party for several years – and especially in view of his statements that he had a prominent role in the party and engaged in extensive political activity – the information he has given in these respects must be considered general and lacking in detail. He has also stated that he was expelled from the OGP and that the reason for this was that the party had been put under pressure

by the KGB. During the oral hearing, he instead said that the reason why he was expelled from the OGP was that he had accused people in the OGP of dealings with the KGB and that he had distanced himself from the party. After that he has said that he received an offer of membership from Narodnaja Gramada and that he is now a member of that party. When asked about the reason why he joined the latter party, he said during the oral hearing that the leader of that party is a well-known person and that the party is doing more in concrete terms to deprive Lukashenko of power – for instance by recommending mass protests – unlike the activities that he feels the OGP engages in. He has not been more specific about what the party he now sympathises with stands for, what role he has in the party or his activities there.

Against this background, the Migration Court considers that he has not plausibly demonstrated – either through the evidence he has submitted or through his oral account – that he had a role in the OGP or for some other reason had political activities in Belarus that mean that he was or would be of interest to Belarusian authorities in a way that means that he risks being subjected to persecution or treatment constituting grounds for protection if he returns to Belarus.

The Migration Court also considers that [redacted] has not plausibly demonstrated that the events he has given an account of – and that the Migration Court has, in fact, not questioned – are linked to the authorities' harassment of and interest in him on account of the political activities he has put forward. As regards the assault that he says he was subjected to, there is no information about the cause of the assault or the specific circumstances surrounding it, apart from the information given by him that it was supposed to be linked to his political activities. As regards the information that his business was forced into bankruptcy, the documentation submitted shows that what this involved was the condition of the premises where its

activities were being conducted and financial compensation. This is an indication that the background here had nothing to do with his political activities. As regards the arrest when he was held for seven hours, it is also seen that he was suspected of an offence and was prevented from participating in a demonstration that did not have a permit. The fact that authorities want to interview persons who are suspected of offences is not, by itself, grounds for international protection. The fact that he was then released also indicates in this case, too, that the arrest had nothing to do with his political activities. As regards his being refused permission to hold an open-air meeting, it is seen that the reason was that health care staff could not be provided in connection with the meeting. This is also an indication that it was not linked to his political activities. The basis for the allegation that his home was under surveillance was his observation that cars were parked outside his house. The statement that this means that he was under surveillance by Belarusian authorities builds on his own assumptions and speculations.

He has also stated that his home has been subjected to a search under a search warrant. The Migration Court notes that this is based on second-hand information since he was not present himself when this is supposed to have occurred. The Migration Court also considers that he has given contradictory information in this part of the case concerning what the authorities took from his home. During the oral hearing he said that the persons who performed the search of his home had taken property including his computer and his passport. During his application conversation when he applied for asylum in Sweden, he instead stated that his passport was at home, that his wife planned to come to Sweden and that she could then bring it with her.

As regards the activities that he states he has conducted on the internet and via social media since leaving Belarus, he has said that he brought up issues that were very big, that he gets his policies through in that way and that he highlights issues that are being followed in reality. The Migration Court considers that he has given vague information about his political activities on the internet and social media. Nor has he – despite questions concerning this

subject during the oral hearing – been able to describe in a self-experienced way his thinking about his activities since leaving Belarus, in relation to the risks that his actions in this area entail for his wife and their children. Nor does his information about the spread of this material bring the Migration Court to consider that he has plausibly demonstrated that it has come to the knowledge of the authorities or that the authorities have shown any interest in him on account of this. He has said that he gets many "likes" and that the material gets many views. However, the number of views, as such, cannot be considered to be sufficient to show that the material has been spread so widely that the Belarusian authorities are aware of it. For example, the number of views does not show how many people have seen the material. He has said that he has been threatened by unknown people on account of the material he has posted. The information he has given that those who threatened him are supposed to have been representatives of Belarusian authorities is based on his own assumptions and speculations. So, for this reason, too, he has not plausibly demonstrated that Belarusian authorities are interested in him on account of his political activities. It also appears to be unlikely that authority representatives would use social media to reveal their intentions to him.

He has also stated that his wife has been subjected to harassment on account of his activities. The Migration Court notes that this is based on second-hand information. Irrespective of this point, he has not provided sufficient information about what he has stated that his wife was subjected to for it to be possible to assess whether this has a link to his political activities. Moreover, the Migration Court considers that the assessment of his political activities outside his country of origin and their importance for whether Belarusian authorities are interested in him on account of them, is influenced by the assessment made of the political activities in Belarus he has put forward and the interest of the authorities in them. Since, in the view of the Migration Court, he has not been judged to have plausibly demonstrated that he had political activities– when he was in

Belarus – that meant that Belarusian authorities were interested in him, this is also an indication that there would not be such an interest now if he returned to his country or origin.

In addition, the Migration Court notes that the interest that said that the Belarusian authorities had in him was supposed, according to the information given by him, to have continued for a very long time. Nor does it appear that this interest on the part of the authorities intensified after he was subjected to assault in 2001. Nor has anything else emerged than that during this period he was able to continue living in his home and that he was available to the authorities since they were aware of where he was. Despite this, the authorities have not realised the threats that considers there have been to him. Moreover, during this period he was also able to have both a driving licence and a passport issued by Belarusian authorities. This must be considered to indicate that there was not an interest of that kind on the part of Belarusian authorities. In addition, he states himself that it was only in 2017, after his wife had contacted him to say they their home had been searched under a search warrant, that he decided to leave the country. However, even after this he stayed in his country of origin for a further 1.5 months. During that period he was also in contact with authorities to apply for a permit for an open-air meeting. Moreover, nothing has emerged to show that he was unable to continue living in his home or to move about freely. These are further factors that indicate that he did not experience the alleged threat to him as urgent.

In an overall assessment, the Migration Court considers that has not plausibly demonstrated that he has had political activities that have meant that Belarusian authorities have had or have an interest in him. Nor has he plausibly demonstrated that the events that he has 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 his political activities. Nor can he be considered to have plausibly demonstrated that the events form part of

systematic persecution of him on the part of Belarusian authorities. Nor is what he has previously been subjected to sufficient to constitute treatment constituting grounds for protection. Against this background, the Migration Court considers that he has not plausibly demonstrated that, on returning to his country of origin, he will feel a well-founded fear of persecution on account of a political belief or an ascribed political belief under Chapter 4, Section 1 of the Aliens Act. Nor does the Migration Court consider that, on returning, he risks being subjected to other treatment constituting grounds for protection under Chapter 4, Section 2 of the Aliens Act.

**shall not be granted a residence permit on grounds of exceptionally distressing circumstances.**

The Migration Court makes the assessment that no reason has emerged to grant a residence permit on account of exceptionally distressing circumstances pursuant to Chapter 5, Section 6 of the Aliens Act and Section 11 of the Act on Temporary Restrictions of the Possibility to Obtain Residence Permits in Sweden. This reasons for this are the following.

has not presented any medical certificates in support of him having any problems with his health. In addition, he has been in Sweden for a relatively short period of time and his ethnic, cultural and linguistic background is in Belarus. In an overall assessment that takes account of his state of health, his adaptation to Sweden and the situation in his country of origin, the circumstances do not mean that he can be granted a residence permit on account of exceptionally distressing circumstances. Nor is expelling him contrary to a Swedish commitment under a convention.

#### **Payment to public counsel**

A public counsel is entitled to reasonable payment for the work, loss of time and outlays that their appointment has required. The payment for work shall be determined on the basis of the work reasonably required with regard to the nature and

