

APPELLANT

, date of birth

Representative and public counsel: Johanna Wennberg, Member of the
Swedish Bar Association

RESPONDENT

Swedish Migration Agency

RULING APPEALED

Judgment of the Administrative Court of Appeal in Gothenburg,
Migration Court of 2 October 2019 in case no UM 12097-18
(Swedish Migration Agency's case no)

MATTER

Residence permit etc.

RULING OF THE MIGRATION COURT OF APPEAL

1. The Migration Court of Appeal issues leave to appeal.
2. The Migration Court of Appeal sets aside the judgment of the
Migration Court, except for the part relating to payment to the
public counsel, and refers the case back to the Migration Court for
new processing.
3. The Migration Court of Appeal orders that Johanna Wennberg
shall be paid SEK 4 313 for costs as public counsel, of which
SEK 3 450 is for work and SEK 863 is for value added tax.

CLAIMS ETC.

is presenting claims that he be granted a residence and work permit, a declaration of refugee status and a travel document. In the second place, he is presenting a claim that the case be referred back to the Migration Court. The information he is putting forward to support his appeal includes the following.

The Migration Court did not give him an opportunity to elaborate on his account at an oral hearing. In its decision the Migration Agency questioned his credibility and stated that he had given vague, meagre and unforthcoming descriptions of various sequences of events and his political activity. The credibility of the account given is of immediate importance for the question of a residence permit, and initially the Court made the assessment that there was a need to examine him at an oral hearing. Then the Court decided to cancel the hearing. At that hearing he would have been able to present his account and the circumstances that would have put the evidence in its correct context.

REASONS FOR RULING

The Migration Court of Appeal makes the assessment that there are reasons to issue leave to appeal and to consider the case for an immediate ruling.

Chapter 16, Section 5, first and second paragraphs of the Aliens Act (2005:716) provide that a written procedure is followed at the migration courts and that an oral hearing may be included in its handling regarding a particular question, when it can be assumed to be advantageous for the investigation or to promote a rapid resolution of the court case. In addition, the third paragraph provides that an oral hearing shall be held in a migration court if an alien who is conducting an action in the case so requests, as long as the hearing is not unnecessary and there are no special grounds not to hold it.

Regarding the need for an oral hearing, the Migration Court of Appeal pronounced in MIG 2009:30 and MIG 2017:9 that this is particularly salient in cases concerning refusal of entry for or expulsion of an alien who is citing a need for protection when an assessment of the credibility of the account given is of immediate importance for the question of a residence permit. In cases of that kind, the scope for not holding an oral hearing when one has been requested by the alien is likely to be very limited. If, on the other hand, it is the case that the content of the information cited makes it clear that the information does not reflect the real situation, an oral hearing does not need to be held even though the alien has requested it.

The Migration Court of Appeal makes the following assessment.

In his case at the Migration Agency and the Migration Court,

has cited a large quantity of newspaper articles, documents, video clips, audio recordings, etc. The Migration Court has made the assessment that the evidence cited does not provide support for his allegation of a need for protection and that it “cannot outweigh the conclusions called for by the actual circumstances set out in

’s oral account”. After the Court had cancelled the oral hearing that had been summoned to attend, the Court has twice rejected his new claims for an oral hearing.

Credence in ’s account has been of decisive importance for the outcome of the case, especially after the Migration Court had made the assessment that the other evidence is not sufficient.

In the light of the extensive evidence and the other information that has emerged in the case, an oral hearing at the Migration Court

cannot be considered to have been unnecessary. Nor can the case be considered to be of such a simple nature that it can be decided by a single judge.

There are therefore deficiencies in the Migration Court's handling of the case that mean that the judgment being appealed shall be set aside, except for the part relating to payment to the public counsel, and that the case shall be referred back to the Migration Court to be considered again.

This order may not be appealed (Chapter 16, Section 9, third paragraph of the Aliens Act).

Catharina Lindqvist
Judge of Appeal
Presiding Judge

Björn Berselius
Judge of Appeal
Reporting Judge

Haike Degenkolbe
Judge of Appeal