



APPELLANT

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

RESPONDENT
Swedish Migration Agency

DECISION APPEALED
Swedish Migration Agency's decision of 3 September 2018, reg. no , Annex 1

MATTER
Residence permit etc.

RULING OF THE MIGRATION COURT

The Migration Court rejects the appeal.

The Migration Court orders that [REDACTED] shall be paid SEK 61 836 for her costs; SEK 46 023 of this amount is for work, SEK 3 446 is for outlays and SEK 12 367 is for value added tax.

CLAIMS ETC.

is presenting a claim that the Migration Court vary the Swedish Migration Agency's decision and grant him a residence permit and a work permit along with a declaration of refugee status and a travel document. He maintains what he said during the examination at the Migration Agency with the following additions.

The Migration Agency's decision is wrong. He feels a well-founded fear of persecution on returning to Belarus as a result of his political beliefs. The documentary evidence he submitted to support his political activities and his need for protection should be assigned high probative value. The film clips in which expresses his critical opinions about the regime have come to the knowledge of the authorities in his country of origin. His account has been extensive and full of details. He opposes the Migration Agency's assessment that he has been vague in his description of his political activities. The treatment he was subjected to amounts to persecution. The biggest human rights organisation in Belarus has made the assessment that his case involves persecution by the authorities.

's wife is still being subjected to harassment. She has been arrested, assaulted and humiliated in remand prison. The social services have also tried to take the custody of their children away from her. 's oral account is supported by the extensive documentary evidence presented in the case, and he should therefore be awarded international protection. is citing the same evidence as during the examination at the Migration Agency, and has supplemented it in the following way during the examination at the Migration Court. To support his membership of the party called the OGP he is citing a membership certificate. He is also citing certificates from New Platform and Vesna. In addition, he is citing an application for permission to hold an open-air meeting and the refusal of his application. He is also citing decisions that did not permit his wife to access witness examinations, a document from the Belarusian Ministry of Internal Affairs to his wife and a report for prosecution drawn up by his wife. He is also citing a letter about him being beaten by the police in 2001. is also citing a decision not to bring a prosecution and a certificate from

Östgruppen (Swedish Initiative for Democracy and Human Rights). Digital evidence is cited in the form of video sequences and audio recordings. Transcripts from ok.ru, a social forum, and from Facebook are also cited. All this evidence is cited to support [redacted]'s need for protection. He is also citing country of origin information in the form of Lifos reports, lifos nos 41668, 42959 and 36954.

The *Migration Agency* considers that the appeal should be rejected and states the following. The type of documentary evidence submitted in the case is generally assigned low probative value. It is known that respect for human rights and freedoms is limited in Belarus; that the rule of law is circumscribed; and that the President has a very strong standing. However the party called the OGP of which [redacted] is a member is a permitted opposition party represented in the Belarusian parliament. The organisation called Vesna is also permitted even though they were hit by a crackdown by the authorities in 2017. In the view of the Agency, membership of OPG or Vesna is not sufficient by itself to ground a right to protection. There is no reason to question [redacted]'s membership of the OGP. It can be noted in a review of the documents in the case that his criticism of the Belarusian authorities and individuals in the authorities has been the subject of various investigations and examinations. The fact that his reports had no success cannot form the basis for the statement that he has been or is being subjected to political persecution.

On two separate occasions the Migration Court has rejected claims by [redacted] for an oral hearing. The Court maintains that assessment.

REASONS FOR THE RULING OF THE MIGRATION COURT

Introduction

In this case both 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 TAIA, are applicable.

Identity and habitual residence

Here the Migration Court makes the same assessment as made by the Swedish Migration Agency in the decision appealed. This means that [redacted] has plausibly demonstrated his identity and that his need for protection has to be assessed in light of the circumstances in Belarus.

Need for protection

The general situation in Belarus does not give the right to a residence permit. The Court notes, on the basis of the country of origin information supplied in the case by the parties that rights and freedoms are indeed restricted in Belarus and that certain persons who are open about their opposition may risk treatment constituting grounds for protection. However, the Court notes that the OGP party of which [redacted] is a member is a permitted opposition party and that they have one seat in the Belarusian Parliament. So, on its own, membership of the OGP is not sufficient for there to be considered to be a need for protection. That requires [redacted] to plausibly demonstrate that, on account of a specific threat aimed at him personally, he risks persecution or treatment constituting grounds for protection if he returns to Belarus.

In summary, however, the Migration Court makes the assessment that no specific circumstances have emerged that provide sufficient cause to

assume that [redacted] risks persecution or treatment constituting grounds for protection if he returns. In the Court's assessment, what he may have been subjected to in 2001 and 2008 as well as in 2012 has no link to his political activity and membership of the OGP, which began in 2015. So, for all of the preceding period there is no link to the grounds for protection stated by [redacted]. His arrest on 12 March 2017, which only lasted for around 7 hours and, as far as has emerged, only related to a suspicion of defamation, is actually more of an indication that the authorities do not have a special interest in him. According to the Court, neither this intervention nor what he has said happened on 25 March of the same year amounts to persecution or treatment constituting grounds for protection. Over and above [redacted]'s speculations and assumption, no specific circumstances have emerged that link these events to his political activity. The Court also considers that the other contacts [redacted] has had with the authorities in his country of origin point to him not being of interest to him. The information that his company was placed in compulsory liquidation on account of his political involvement is not supported by the documentary evidence submitted; instead this evidence shows that what was involved was a dispute about the condition of the premises and monetary compensation. In addition, the Court finds that the documentary evidence indicates that he was able to draw up a police report at domestic authorities and that he had a legal examination.

As regards the other evidence cited by [redacted], the assessment of the Court is, first, that large parts of it cannot be assessed as providing support for his claim that he has a need for protection and, second, that it can only be assigned very minor probative value. All the newspaper articles, YouTube clips, certificates and audio recordings build far too much on subjective information mainly based on [redacted]'s oral account; nor can it be deduced from the audio files that the speaker is a representative of authorities. The Migration Court makes the same assessment regarding the printouts from various social forums. The usernames cannot be traced to physical individuals, so the probative value of the information in support of

being sought by the authorities is assessed as low. Moreover, has himself said that he does not know which person or persons threatened him via social media. He bases his claim that they are persons from authorities solely on his own assumptions and speculations for which there are not sufficient grounds.

The Migration Court also makes the assessment that the documents he has submitted from Belarusian authorities can only be assigned very low probative value. The documents are of a simple nature, and quite a number of them have only been submitted as copies, so it is not possible to confirm that they are genuine. Nor do subsequently submitted documents issued to a person called [REDACTED] provide support for the information that [REDACTED] has an urgent need for protection. It emerges, in all essential respects, that she was able to make a report to the police and have the matter examined by the authorities. In an overall assessment, the Migration Court considers that the documentary and other evidence cannot outweigh the conclusions called for by the actual circumstances set out in [REDACTED]'s oral account. The Court also notes that, in addition to what is stated above, [REDACTED] remained in his country of origin for around one and a half months after his arrest on 12 March 2017. According to information given by him, he was in contact with authorities to apply for a permit for a demonstration only a few days after he was arrested and interviewed. Moreover, as far as has emerged he continued to live in his home and to move freely during this period. He bases the information that he was under surveillance solely on the fact that cars were parked outside his home. The occasions on which he claims to have been visited by two men cannot be linked to the authorities.

The claim that his home was searched under a search warrant is based on second-hand information. In addition, the Court notes that his wife and children are still living in their country of origin. According to [REDACTED], his wife is supposed to have been arrested in 2018 and subjected to treatment constituting grounds for protection on account of her

own activities. The Migration Court notes that all that has emerged in this part of the case is that his wife was released by the authorities and has since continued to live in her country of origin. In his final submission,

has said that his wife was also called to an interview on 25 September 2019. This information, which is based on second-hand information, contains no sequence of events giving cause to believe that the authorities have the intention of subjecting to treatment constituting grounds for protection. It does not appear either reasonable or likely that, on the basis of what has emerged mainly in posts on Facebook, the authorities showed continued interest in in summer 2019, partly considering that he remained in the country after being interviewed on 12 March 2017. Moreover, this appears to be a less probable way for the authorities to communicate their intentions. The documentary evidence in this part of the case, which has been presented above, is assessed as being of low probative value. The Migration Court also makes the assessment that the sole fact that a person has been the subject of a usual criminal investigation does not result in a need for protection.

Based on what has emerged about 's criticism of the President of Belarus, he has criticised him openly on one occasion in a YouTube clip. It has not emerged that his criticism was of a more extensive nature or that it had been spread so much that risked treatment constituting grounds for protection solely for that reason.

In an overall assessment, the Migration Court considers that has not plausibly demonstrated that Belarusian authorities have a particular interest in him on account of his political activities. Nor has sufficient information emerged for the events recounted by to be considered to be linked and to be part of persecution of him. The Court does not consider that what he has alleged he has been subjected to constitutes grounds for protection either. Consequently, what he has stated does not give sufficient cause to assume that, in a forward-looking assessment, he risks

persecution or other treatment constituting grounds for protection from the Belarusian authorities. therefore does not meet the requirements to be granted a residence permit in Sweden as a person in need of protection. This means there are no reasons for a decision on a status declaration and travel document either.

Exceptionally distressing circumstances

No circumstances have emerged with respect to 's state of health or adaptation to Sweden or the situation in his country of origin that is of such a nature that he can be granted a residence permit in Sweden pursuant to Chapter 5, Section 6 of the Aliens Act. His appeal shall therefore be rejected.

HOW TO APPEAL, see annex 2 (FR-04).


Judge

The reporting clerk in the case has been reporting lawyer 
