

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Migrationsöverdomstolen (The Migration Court of Appeal)	
Date of the decision:	21 /06 / 2017
Case number: ²	UM7734-16
Parties to the case: A (classified information) ./ The Swedish Migration Agency	
Decision available on the internet? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes, please provide the link: A detailed summary is provided here: http://www.kammarrattenistockholm.domstol.se/Domstolar/kammarrattenistockholm/Domar/UM%207734-16.pdf (If no, please attach the decision as a Word or PDF file): Attached.	
Language(s) in which the decision is written: Swedish	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Country(y)(ies) of origin of the applicant(s): Eritrea	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Sweden	
Any third country of relevance to the case: ³ Ethiopia	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: Article 1 A (2)
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision.	Relevant articles of the EU instruments referred to in the decision:
DIRECTIVE 2011/95/EU OF THE	Article 2 D, Article 4 and Article 10.2

<p>EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)</p>	
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Topics / Key terms: (see attached ‘Topics’ annex):

Refugee Status Determination

Eritrea

National Service

Military Service objector

Draft evader

Political Opinion

Attributed Political Opinion

Key facts (max. 200 words)

The Swedish Migration Court of Appeal (MCA) upheld a decision by the Swedish Migration Court on 21 June 2017 to grant an Eritrean asylum-seeker refugee status on the basis that he had left Eritrea illegally and evaded national military service. He had initially been granted subsidiary protection by the Swedish Migration Agency (SMA). The MCA found on the basis of relevant COI that the applicant was at risk of being perceived as a political opponent and/or enemy by the Government regime and thus had a well-founded fear of persecution. The Court also referred to the *travaux préparatoires* to the Aliens Act, which states that persons risking severe punishment for leaving their country illegally shall be granted refugee status, as the action to leave must be seen as an expression of a political opinion. The MCA found that the applicant risked such punishment upon return to Eritrea. He was therefore granted refugee status in accordance with Chapter 4, Section 1 of the Aliens Act (“Utlänningslagen”).

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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The present case concerns the interpretation of relevant provisions of the Swedish Aliens Act, namely Chapter 4, Section 1 and 2 of the Act, which is based on the 1951 Convention and the Qualification Directive (recast).

Interpretation of political opinion in Swedish law

The definition of a refugee in the Aliens Act corresponds with Article 1 A (2) of the Convention and article 2 (d) of the Directive. The current refugee definition in the Aliens Act was revised in the 1980s to align the definition with Article 1 A (2). As part of the revision process, the Swedish *travaux préparatoires* addresses the differences in interpretation of *political opinion* in the Aliens Act and the 1951 Convention. In the Aliens Act, the definition is broader and also includes persecution “based on the political situation” in the country of origin. This includes situations when a person leaves his/her country illegally or fails to return within a stipulated period and as a result risks severe punishment. Such a person may have a well-founded fear of persecution on political grounds. The *travaux préparatoires* continues to state that the decision to leave illegally must be seen as an expression of a political opinion, referring to the fundamental rights enshrined in the UN Declaration of Human Rights (Art 13) and the Convention on Civil and Political Rights (Art 12). The alignment with the Convention definition shall not alter the possibility for a refugee to obtain international protection under such circumstances.

Article 10.2 in the Directive states that when it comes to the assessment of whether or not an asylum seeker has a well-founded fear of persecution, it is irrelevant if the person actually possesses the characteristics (e.g. political opinion) as ground for persecution, or if it is imputed by the persecutor.

It is not disputed that “A” left Eritrea without an exit visa after he was called to participate in the National Service. This implies that he left the country illegally and avoided the mandatory national service. Since he had not started his military service it must be assumed that he will be called back to participate in the military basic education program upon return. The ill-treatment that he risks upon return, either by being imprisoned or forced to participate in the military service, is to be viewed as a severe violation of one or several human rights. Therefore, the treatment that “A” risks upon return is grounds for being afforded international protection. The next step is to determine the nexus between this treatment with one of the protection grounds as stated in the Aliens Act.

“A” has not claimed that he is politically active (in Eritrea or in Sweden), or that he holds a particular political opinion. He has not claimed that he left Eritrea or evaded military service for political or ideological reasons. However, every act that may be viewed as an act against the regime is to be taken into account when determining if “A” is a refugee. The question is therefore if, based on his actions, he will be attributed a political opinion. This can only be determined by evaluating the country of origin information.

Analysis of relevant COI

Available COI is conflicting and must be assessed with caution. The national service in Eritrea is a political project, where the overall purpose is not only to defend the country but also to promote and build a national ideology. Its purpose therefore differs from many other countries. The MCA agrees with the SMA that the information does not give a definite picture of how the regime will view a person like

“A” if he would return to Eritrea. A majority of the sources, however, indicate that the regime would view him as a member of the opposition, with the reservation that these accounts were made several years ago. Additionally, the *travaux preparatoires* to the Aliens Act states that a person who risks a severe punishment because he or she left their country illegally shall be considered to be a refugee, since the acts must be viewed as an expression for a political opinion.

Conclusion

In summary, the MCA finds that existing country of origin information indicates that people who leave Eritrea illegally and avoid participation in the National Service are at risk of persecution based on their political opinion as stated in the Aliens Act, Chapter 4, para 1. Since “A” has proved that he left Eritrea illegally and avoided the National Service, he has also proved that he would have a well-founded fear of being persecuted upon return. He should therefore be granted refugee status.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

UN 198-94 (the definition of refugee)

MIG 2007:9 (requirements of evidence)

MIG 2012:18 (the burden of proof is divided)

JK ./ Sweden, 23 August 2016, case number 59166/12

MST and Others, 7 October 2016, Upper Tribunal (Immigration and Asylum Chamber) (regarding the situation for people who return to Eritrea after leaving the country illegally).

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

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