



CBAR - BCHV

Family reunification with beneficiaries of international protection in Belgium



June 2014

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*Family reunification with beneficiaries
of international protection in Belgium*



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Legend to text boxes



Very important



Does not concern family reunification



Concept to be understood



Tips and tricks

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Introduction



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Are you a beneficiary of international protection in Belgium (**a recognized refugee or beneficiary of subsidiary protection**)? Some members of your family have the **right** to join you in Belgium. This procedure is called **family reunification**. It applies to some members of your family who stayed behind in your country of origin or who live in another country and who want to join you in Belgium.

The Belgian law determines which family member may benefit from family reunification. If your family members meet the conditions set by the law and can produce the necessary evidence, they can join you in Belgium “as of right”.

In practice, however, the process of family reunification may be complicated and may take a long time.



If you submit your application for family reunification **within the year** after your recognition of protection status and if the **relationship with your family member existed already before your arrival in Belgium**, the process will be easier: you will not have to provide evidence of sufficient, regular and stable means of subsistence, adequate accommodation and sickness insurance for your family (see *text box page 18*).

The main **legal basis** for the family reunification procedure of beneficiaries of international protection is Article 10 and Article 10*bis* of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreigners (further “the Law of 15 December 1980”).¹



Recognized refugees who became Belgian citizens

This brochure is addressed to recognized refugees or beneficiaries of subsidiary protection who did not obtain the Belgian nationality. If you became a Belgian national, your situation is different. Your application does not fall under Article 10, but under Article 40ter of the Law of 15 December 1980.

¹ Article 10 has been modified by the Law of 8 July 2011 (*Belgian Official Gazette*, 12 September 2011).

CHAPTER 1

Who can join you and under what conditions?



Four categories of persons may join you in Belgium:

1. your spouse or registered partner,
2. your child less than 18 years of age,
3. your adult child with a disability and
4. your parents if you are an unaccompanied minor benefiting from a protection status.



Registered partner

Your partner can only join you in Belgium via family reunification if your partnership is officially registered. The law distinguishes two types of registered partnerships: a partnership considered to be “equivalent to marriage” and a “legally registered partnership”.¹

It does not concern your de facto companion. In practice, few refugees have registered their partnership, since only a few countries allow this.

Your de facto companion will only be able to join you under specific circumstances with a temporary residence permit on the basis of Articles 9 and 13 of the Law of 15 December 1980 (humanitarian visa) or with a visa in view of a marriage or a legal cohabitation.

¹ If your partnership was registered in one of the following countries, this partnership is ‘equivalent to marriage’: Denmark, Germany, Finland, Iceland, Norway, Sweden and the United Kingdom (Art. 12 of the Royal Decree of 17 May 2007, *Belgian Official Gazette*, 31 May 2007).

Family members who do not fall within one of those categories but belong to your family and want to join you in Belgium, can possibly apply for a temporary residence permit based on the articles 9 and 13 of the Law of 15 December 1980 (humanitarian visa). This particular procedure will be developed on page 10.

1. Spouse or registered partner

MARRIAGE

If you are married or if your partnership is “equivalent to marriage”, your spouse/partner can join you in Belgium on the following conditions²:

- A.** Both of you must be over 21 years of age. If your union took place before your arrival in Belgium, this minimum age is reduced to 18 years.
- B.** Your spouse/partner must come and live under the same roof as you.



Polygamy

Polygamous marriage is not recognized in Belgium. If you have several wives, only one of them can join you.

This limitation does not apply, however, to the children from a polygamous marriage¹: those children can join you in Belgium as long as they meet the general conditions.

1 Constitutional Court, decision of 26 June 2008, No. 95/2008, www.const-court.be.

REGISTERED PARTNERSHIP

If you are not married, your registered partner can join you in Belgium on the following conditions³:

- A.** Your partnership must be legally registered. This means that you must provide the proof that you have made an official declaration of legal cohabitation at a Belgian municipal administration or at the competent foreign authority.
- B.** Both of you must be over 21 years of age. If you provide the proof that you have lived together for at least 1 year before your arrival in Belgium, this minimum age is reduced to 18 years.
- C.** Your relationship must be ‘stable and lasting’. This means that you must provide following evidence:

2 Art. 10 § 1, 4°, par. 1 of the Law of 15 December 1980.

3 Art. 10 § 1, 5° of the Law of 15 December 1980.

- You lived together legally and uninterruptedly in Belgium or abroad for at least 1 year before applying for family reunification.
Or :
- You have known each other for at least 2 years and you can provide the proof that:
 - You had regular contact by telephone, regular or electronic mail (e.g. email, photos, etc.);
 - and that you met at least 3 times during the 2 years preceding the application for family reunification and that these meetings lasted at least 45 days (plane tickets, etc.).Or :
- You have a common child.

D. Your partner must come and live under the same roof as you.

E. Both of you must be unmarried and not be in a lasting relationship with another person.

2. Minor children

Children born to you and your spouse/partner, as well as the children you or your spouse/partner may have had separately, may join you in Belgium on certain conditions.

CHILDREN BORN TO THE COUPLE

They must meet the following conditions:

- A.** be under 18 years of age;
- B.** be unmarried;
- C.** come and live with you under the same roof.

CHILDREN OF ONLY ONE OF THE SPOUSES/PARTNERS

SOLE CUSTODY – If you or your spouse/partner has sole custody and responsibility of the children, the children must:

- A.** be under 18 years of age;
- B.** be unmarried;
- C.** come and live with you under the same roof;
- D.** provide a copy of the judgment granting you sole custody.

JOINT CUSTODY – If custody of the children is shared with the other parent, the children must:

- A.** be under 18 years of age;
- B.** be unmarried;
- C.** come and live with you under the same roof;
- D.** provide the consent of the other parent that the children can join you in Belgium.

If the embassy or the Immigration Office has doubts about the children's age, they may ask for a bone test to be done in order to determine their age⁴.

3. Adult children with a disability

If you or your spouse/partner has an adult child with a disability (together or separately), he or she may join you in Belgium on the following conditions⁵:

- A.** provide a document certifying the child's state of health. This certificate must be issued by a physician accredited by the competent Belgian diplomatic or consular post. For the purposes of family reunification, an adult child is considered disabled if he/she is "unable to provide for his/her own needs as a result of the disability"⁶;
- B.** be unmarried;
- C.** come and live with you under the same roof.

⁴ The bone test is not strictly regulated or monitored. The results of the bone test are left to the interpretation of the physician abroad who has been asked to perform the test.

⁵ Art. 10 § 1, 6° of the Law of 15 December 1980.

⁶ Art. 10 § 1, 6° of the Law 15 December 1980.



Other adult children (≥ 18 years)

Only your adult children with a disability are eligible for family reunification. Your other adult children cannot join you in Belgium via a family reunification procedure. In certain specific circumstances, they may be able to join you based on a temporary residence permit (Articles 9 and 13 of the Law of 15 December 1980 - humanitarian visa). (see text box page 10)

4. Father and mother: only in the case of unaccompanied minors

If you are an unaccompanied minor with refugee- or subsidiary protection status, your parents can join you in Belgium via family reunification.⁷

Your **brothers and sisters** are unable to join you on the basis of Article 10 of the Law of 15 December 1980. They can only apply for a humanitarian visa (Articles 9 and 13 of the Law of 15 December 1980). (see text box page 10)



The principle of the best interests of the child

The principle of the best interests of the child is enshrined in the Belgian Constitution (Art. 22bis) as well as in the International Convention on the Rights of the Child (Article 3). This means that the best interests of the child shall be a primary consideration in any decision concerning children.

This principle also applies to family reunification procedures¹. Thus, for example, if it seems that it is in the best interests of the child to be joined in Belgium by persons other than the ones authorized by the law, these persons may exceptionally be allowed to come to Belgium on the basis of a temporary residence permit (Articles 9 and 13 of the Law of 15 December 1980 - humanitarian visa). This exception may apply, for instance, to the child's brothers and sisters, legal guardian or other members of his/her family.

¹ Art. 12bis § 7 of the Law of 15 December 1980.

⁷ On condition that the unaccompanied minor is under 18 years of age when the application for family reunification is made, entered the Kingdom of Belgium without being accompanied by an adult foreigner responsible for him/her by law and has not subsequently been taken into the care of such a person or has been left alone after having entered the Kingdom (Art. 10 § 1, 7° of the Law of 15 December 1980).

5. Other family members?

Other members of your family (adult children, grandchildren, nephews, nieces, factual partners etc.) cannot join you in Belgium by means of family reunification. In certain circumstances, they can ask for a permit to reside in Belgium on humanitarian grounds (Articles 9 and 13 of the Law of 15 December 1980).



Humanitarian visa

Unlike family reunification, a humanitarian visa is not a right. It is a **favor** granted by the Belgian authorities to a family member that wants to join you in Belgium but does not fall within the definition of 'family' given by Article 10 of the Law of 15 December 1980.

The Law of 15 December 1980 and particularly the articles 9 and 13 do **not provide requirements** that have to be met in order to obtain a humanitarian visa. The decision is left to the discretionary power of the Immigration Office. The Immigration Office will examine on an individual basis whether the circumstances, who are adequately proven, justify an authorization to reside in Belgium for your family member or not.

The Immigration Office has to take a decision in accordance with the **fundamental rights** such as the right to respect for private and family life (Article 8 of the European Convention on Human Rights) and the prohibition of inhuman or degrading treatment (Article 3 of the European Convention of Human Rights) and in accordance with the principle of the best interests of the child.

What documents?

In addition to the authentic documents also to be submitted at the Belgian diplomatic post for an application for family reunification (see *page 13*), you will have to provide evidence of all the elements that could justify the granting of a humanitarian visa.

In practice, for instance, it is important to prove that your family member is **dependent** on you and that you will be able to **maintain** your family member.

Furthermore, it is important to prove that **no other family member** can look after the family member concerned.

Finally, to support the humanitarian arguments, it is useful to provide a report of **an international organization** (such as UNHCR or ICRC) in order to prove the living conditions and future perspectives of your family member in the country of residence or to assess the best interests of the child.

What time frame?

The Law does not oblige the Immigration Office to take a decision within a certain time frame. On 1 June 2014, the average waiting period before obtaining a decision on an application for a humanitarian visa is 7 months².

In practice, a humanitarian visa is only granted in exceptional cases. It is recommended to contact your lawyer or social worker for advice concerning the chances of obtaining a humanitarian visa and for support of an eventual application.

¹ It is important to prove the emotional and psychological dependence, as well as the financial dependence. In practice, the Immigration Office finds this element very important. Consequently, it is useful to provide evidence of money transfers to the family member, of the fact that your family member does not have proper means of subsistence and of your own means of subsistence in Belgium.

² according to the website of the Immigration Office (www.dofi.fgov.be).

CHAPTER 2

Where apply and what documents to provide?



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As a general rule, family members who wish to join you in Belgium should submit their application at the Belgian embassy or consulate in their country of residence. If they are already in Belgium, they may only exceptionally submit their application at the municipal authorities of their place of residence (see *text box page 15*).



Embassies and consulates

The Belgian embassies and consulates are diplomatic posts. They are responsible for receiving visa applications for family reunification. The list of Belgian diplomatic posts abroad is available on the website of the Federal Public Service Foreign Affairs: www.diplomatie.belgium.be.

The documents to attach to the file

Your family members must submit an application for a **visa D** for family reunification at the Belgian embassy or consulate in the country where they reside. Except in exceptional cases, they must present themselves in person and orally explain the reason and context of their application.

If there is no Belgian embassy or consulate in the country where they reside, they must contact the competent Belgian post for the country in question⁸.

In certain cases, the visa application will be treated by an external service provider.

The application will then be transferred to the Immigration Office in Belgium.

Every family member has to provide the following documents to the embassy:

A. A valid **travel document** (national passport or equivalent).

If a person is unable to obtain a passport (for instance when he or she is not in his/ her country of origin), the Belgian authorities may exceptionally, in certain cases, issue a “laissez-passer”. A “laissez-passer” is a temporary travel document which allows your family member to travel to Belgium. Purely material aspects (the cost of the document, distance to be travelled in order to obtain it etc.) are not considered to be factors rendering it impossible to obtain a passport.

Family members who are recognized as refugees by UNHCR can obtain a ‘blue passport’, which can also be used as a travel document.

⁸ To find out which Belgian post is competent, please consult the website www.diplomatie.belgium.be.

B. The **visa application form** (duly completed and signed) and recent identity photos.

The visa application form, as well as the standard forms for medical and health insurance certificates, can be downloaded in French, Dutch and English from the website of the Immigration Office (www.dofi.fgov.be). They are also available at the embassy.

The cost of an application for a visa for family reunification is equivalent, in local currency, to 180 € per person (rate on 1 June 2014).

C. A copy of their **birth certificate**.

It often happens that refugees are unable to provide a birth certificate or that the one provided is not recognized by the Belgian authorities. In that case, the Immigration Office will usually ask for a DNA test to be carried out. (*see page 25*)

D. For your spouse: a copy of the marriage certificate.

E. For your registered partner: a copy of the certificate of registered partnership and as many pieces of evidence as possible attesting that the relationship is a lasting one (photos, emails, travel tickets, etc.).

F. For minor children:

1. In the event of sole custody : a copy of the judgment granting sole custody.

2. In the event of joint custody: the consent of the person who is exercising custody abroad for the departure of the child and his/her settlement in Belgium.

3. If the child is only of the spouse/partner: a copy of the parents' marriage certificate or divorce certificate (or death certificate of the other parent) or the registered partnership contract.

4. If according to national legislation he/she is of marriageable age: proof that the child is unmarried.

G. For adult children with a disability: a medical certificate issued by a physician designated by the Belgian embassy or the consulate.

H. A copy of your **residence permit** in Belgium and a copy of the **decision granting you the refugee status or subsidiary protection status**.

I. A **medical certificate** no more than 6 months old, obtained from a physician designated by the Belgian embassy or consulate. This certificate must indicate that the person does not suffer from a disease which might endanger public health in Belgium.

J. An **extract from the criminal record** or an equivalent document, when you are older than 18 years old.

The above-mentioned documents are the basic documents to be submitted in any case. The Belgian authorities may request additional documents. The originals of civil status certificates will, in principle, be returned to your family members at the end of the application process, together with their passports (with or without the visa). Only a copy of the documents is kept in the archives of the diplomatic post.

In addition to these documents, your family members have to provide the evidence of sufficient housing, health insurance and sufficient, stable and regular means of subsistence when this is legally required. (see text box page 18)



Exceptionally the application may be submitted at the municipal authorities in Belgium

Your family member who is already in Belgium, can apply for family reunification at the municipal authorities of his/her place of residence only in the following cases¹:

- your family member has been authorized to reside in Belgium for more than 3 months already
- your family member has been authorized to reside in Belgium for less than 3 months and:
 - comes from a country whose citizens are exempted from the requirement to obtain a visa; or
 - has a residence permit from a EU-country allowing him/her to circulate within the European Union; or
 - is a minor child; or
 - is the mother or father of an unaccompanied minor benefiting from the refugee status or subsidiary protection; or
 - has a valid visa in view of a marriage or a legal cohabitation and the marriage or legal cohabitation is concluded before the date on which the validity of the visa expires.

(...)

¹ Art. 12bis § 1 of the Law of 15 December 1980.

(...)

If your family member does not find himself/herself in one of the above-mentioned situations, he/she can only apply for family reunification at the municipal authorities if there are 'exceptional circumstances' which prevent him/her from returning to his/her country of origin to apply for a visa.² In practice, 'exceptional circumstances' are only accepted exceptionally.

² If your family member has been granted a visa C for another reason (for instance family or friends visit, tourism), an application for family reunification cannot be submitted at the municipal authorities, unless there are 'exceptional circumstances' preventing a return to the country of origin.

Legalization and translation of documents

All foreign authentic documents that you submit with your application for family reunification (authentic certificates or legal decisions) must be **legalized** by the foreign authorities who issued the documents, as well as by the Belgian authorities (embassy or consulate). The legalization must take place before the recognition of the documents, in accordance with Article 30 of the Code of Private International Law (except in the case of the application of the simplified procedure of the 'apostil'). The cost of legalization varies from country to country and is on your charge.

The purpose of legalization is to authenticate the signature and the status of the person who has issued the document. It does not guarantee the authenticity of the content of the document. The content of the document will only be validated by the recognition of the document.

You have to submit at the embassy or consulate both the original documents and the copies. The originals will be returned to you.

In addition, foreign authentic documents in a language other than German, English, French or Dutch must be **translated** by a sworn translator. The translation must be enclosed to the file. The cost of translation also varies from country to country and is on your charge.



Refusal to legalize foreign authentic documents

The embassy or consulate may refuse to legalize if¹:

- the signature on the foreign document is not that of the competent official;
- the signatory is not competent;
- the stamp or seal is false, falsified or not in common use;
- the document has been drawn up in a foreign language not understood by the diplomatic staff in question.

If the Belgian authorities refuse to legalize the document, the applicant must be informed in writing and the decision to refuse the legalization must contain the following items:

- a formal and sufficient justification (this means the legal and factual circumstances justifying the refusal);
- the possibilities to appeal against the refusal.

If a Belgian authority refuses to recognize the validity of a foreign authentic document or if two Belgian authorities have divergent opinions on this matter, an appeal may be lodged before the competent court of first instance².

¹ Art. 2.1 and 2.2 of the Circular of the Federal Public Service Foreign Affairs of 14 December 2006 containing instructions on legalization, *Belgian Official Gazette*, 11 January 2007.

² Art. 23 and 27 of the Code of Private International Law.

Adequate housing, health insurance and sufficient, stable and regular means of subsistence



Exemption from providing evidence of adequate housing, health insurance and sufficient, stable and regular means of subsistence

If your family members submit their application for family reunification **within the year** following the recognition of your protection status and if your **family tie existed before your arrival** in Belgium, you do not need to provide evidence of adequate housing, health insurance for you and your family members, nor should you prove that you have sufficient, stable and regular means of subsistence.¹

The Belgian law thus allows for a more favourable treatment of applications by beneficiaries of international protection. However, if you delay in submitting your application, you will need to submit these proofs.

It is thus important for you to start up the family reunification process as soon as possible once you have received the protection status, to guarantee that the application will be submitted within the year.

This exemption does not apply to an **adult child with a disability** who wishes to join a parent in Belgium (in this case, these three proofs must always be provided)².

For **unaccompanied** minors with an international protection status who wish to be joined by their parents in Belgium however, the proof of adequate housing, health insurance and sufficient, stable and regular means of subsistence are never required³. It is irrelevant whether or not the application is submitted within the year following the decision recognizing the refugee status of the minor.

1 Art. 10 § 2, par. 5 of the Law of 15 December 1980.

2 Art. 10 § 2, par. 4 of the Law of 15 December 1980.

3 Constitutional Court, decision No. 95/2008 of 26 June 2008. www.const-court.be.

ADEQUATE HOUSING

Unless you are exempted from this condition (*see text box page 18*), you must provide evidence that you have ‘adequate housing’ to accommodate your family members who wish to join you in Belgium⁹.

The housing must be adequate and meet the requirements of safety, sanity and habitability for real estate that is rented as a principal residence.

Adequate housing can be proven by submitting a **registered rental contract** or the **proof of property** of the house. However, when the house is condemned or if the rental contract explicitly provides that the house cannot accommodate the number of persons that want to join you in Belgium, these documents will not be accepted as a proof of adequate housing.

HEALTH INSURANCE

Unless you are exempted from this condition (*see text box page 18*), you must provide evidence that you have a health insurance covering all medical risks in Belgium for yourself and family members who wish to join you¹⁰. This proof must be enclosed in your file in the following manner:

- either an **attestation from the mutual benefit association** to which you are affiliated, confirming the possibility of affiliating your family members once they arrive in Belgium;
- or proof that you have taken out **private health insurance** covering the risks in Belgium for yourself and your family (minimum length: 3 months – minimum coverage: 30.000 €). You do not have to pay for the latter private insurance policy before receiving the decision granting the visa.

⁹ Art. 10 § 2, par. 2 of the Law of 15 December 1980.

¹⁰ Art. 10 § 2, par. 2 of the Law of 15 December 1980.

SUFFICIENT, STABLE AND REGULAR MEANS OF SUBSISTENCE

Unless you are exempted from this condition (*see text box page 18*), you must provide evidence that you have sufficient, stable and regular means of subsistence to maintain yourself and your family members and to avoid them becoming a burden on the public authorities.¹¹

The means of subsistence must be at least equal to **120% of the living wage**¹². On 1 June 2014, this is 1307,78 Euros.

Income from complementary schemes (living wage, supplementary family allowances), financial social aid, family allowances, interim allowances and transition allowances are not taken into consideration. Unemployment benefits will only be taken into account if you can prove that you are actively looking for work¹³.

When you do not meet this income requirement, the Immigration Office cannot automatically refuse your application. The Immigration Office will assess on an individual basis and according to the needs of your family which amount of means of subsistence are necessary to avoid that your family becomes a burden on the public authorities. Therefore, it is important to give all useful information and documents concerning your financial situation and the needs of your family to the Immigration Office¹⁴.

In addition to the general exemption (*see text box page 18*), the requirement of sufficient, stable and regular means of subsistence does not apply when the application for family reunification only concerns minor children of a beneficiary of international protection or of his/her spouse¹⁵.

11 Art. 10 § 2, par. 3 of the Law of 15 December 1980.

12 Art. 10 § 5, par. 1 of the Law of 15 December 1980.

13 Art. 10 § 5, par. 2 of the Law of 15 December 1980.

14 Art. 12bis § 2, par. 4 of the Law of 15 December 1980.

15 Art. 10 § 2, par. 3 of the Law of 15 December 1980.

CHAPTER 3

How can you prove family ties?



Establishing family or marriage ties is a core question within the family reunification process for recognized refugees. The law provides various types of proof in the form of a so-called “cascading system”¹⁶. The family ties may be proven either by means of official documents, by “other valid proof” or by an interview or a supplementary analysis (i.e. a DNA test).

¹⁶ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, *Belgian Official Gazette*, 2 July 2009.

Official documents

In order to prove the relationship with your family members, a number of documents must be enclosed with your application. These documents may be **foreign court decisions** (e.g. a judgment of divorce or adoption) or **foreign certificates** (e.g. birth, marriage certificates). These may be supplementary judgments (that is, ones that replace official certificates that were lost or never existed).¹⁷

Once the visa application file has been completed, these documents will be examined by the Belgian authorities in order to be recognized. Such recognition of foreign court decisions or certificates in Belgium may, in practice, present a number of difficulties.¹⁸ However, if the validity of these documents is recognized, the documents are considered to be sufficient to establish the relationship in question.

It is often difficult for beneficiaries of international protection to produce official documents though. In some cases the latter never existed or have been lost. Moreover, when the documents are provided, the Belgian authorities may sometimes express doubts about their validity.



The impossibility of producing official documents¹

If you consider that it is impossible to produce official documents proving the relationship with your family members, you will have to prove this impossibility by any legal means. The mere failure to obtain official documents is not enough. The law provides that this impossibility must be “real and objective”, that is, independent of your will. This is the case, notably:

- if Belgium does not recognize the country in question as being a State;
- if the domestic situation of the country in question is (was) such that it is impossible to obtain official documents, either because they were destroyed and there are no means of replacing them, or because the competent national authorities are dysfunctional or no longer exist;
- if obtaining official documents requires a return to the State in question, or contact with the authorities of that State, which is difficult to reconcile with the personal situation of the foreigner.

¹⁷ Art. 12bis § 5 of the Law of 15 December 1980 and the Circular of 17 June 2009.

¹⁸ Art. 27 of the Code of Private International Law provides that “a foreign official certificate is recognized in Belgium by any authority without the need for any procedure if its validity is established in accordance with the applicable law under the terms of the present law, taking account in particular of Articles 18 and 21. The certificate must meet the conditions necessary for it to be deemed authentic under the law of the State where it was issued.” Where the authority refuses to recognize the validity of the certificate, an appeal may be lodged at the competent court of first instance.

This impossibility is assessed on a case-by-case basis by the Immigration Office, based on evidence that is “sufficiently serious, objective and consistent”. These items of evidence should in theory be provided by you, but certain items may already be in the possession of the Immigration Office. For example, items:

- relating to another application for residence by the foreigner;
- taken from internal reports from foreign missions;
- obtained from (inter)national institutions or organizations that have knowledge of the general situation of the State in question (e.g. diplomatic or consular posts, the Commissioner General for Refugees and Stateless Persons, the United Nations High Commissioner for Refugees, recognized NGOs within the European Union or the UN, etc.).

¹ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, *Belgian Official Gazette*, 2 July 2009.

Other types of proof

As a general rule official documents must be provided, but other subsidiary types of proof exist. The law provides that if official documents cannot be produced, the Belgian authorities shall first take into account “**other valid proof**” in order to establish family ties.¹⁹ These items of evidence need to be provided only when official documents are impossible to obtain and are subject to the discretionary assessment of the Immigration Office. To be considered valuable, “other valid proof” of family ties must constitute a “bundle of indications that are sufficiently serious and consistent” which makes it possible to demonstrate the existence of the claimed relationship.²⁰

If such evidence cannot be provided, the Belgian authorities may conduct **interviews** or any other **inquiry** deemed necessary to verify the validity of the facts or documents in question.²¹ The interview is particularly intended to establish the existence of a marriage bond (or partnership) while the supplementary analysis, in this case the DNA test, is intended to prove the existence of the bond of blood relationship.

¹⁹ Art. 12bis § 5 of the Law of 15 December 1980.

²⁰ ‘Other valid proof’ cited by the Circular include, by way of example, the following: «other proof of filiation»: Certificate, document or attestation of birth; Marriage certificate drawn up by the competent Belgian authorities for the civil registry mentioning the bond of filiation; Notarized document authenticated by the competent authority; Affidavit; National identity card mentioning the bond of filiation; Marriage contract mentioning the bond of filiation; Extracts from register of births; Supplementary judgment. «Other proofs of the marriage or partnership»: Certificate of traditional marriage, when a certificate of civil marriage cannot be submitted; Notarized document authenticated by the competent authority, religious attestation; National identity card mentioning the marriage or partnership; Extract from marriage certificate or extract from certificate of partnership; Supplementary judgments (Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, *Belgian Official Gazette*, 2 July 2009).

²¹ Art. 12bis § 6, par. 2 of the Law of 15 December 1980.

In practice, the Belgian authorities propose to conduct a **DNA test** as soon as the foreign birth certificates are rejected. However, the law provides that DNA tests should be administered only as a last resort after other types of evidence have been sought.



Adoption

The question of adoption is particularly sensitive when it comes to family reunification of beneficiaries of international protection. This is because numerous families of refugees include adopted children.

If the adoption of these children has been established by a foreign certificate or judgment of adoption, these documents will have to be submitted to the competent Belgian authorities for recognition.¹ Afterwards, the procedure will vary depending on whether or not the country in question has signed the Hague Convention on adoption.² The procedure is generally unsecure and time consuming.

Often, however, orphan children are cared for by families in emergency situations without these *de facto* adoptions being officially recorded. When these children are invited to join their family in Belgium, there are numerous obstacles to be surmounted relating to the absence of official documents. Such procedures are long and difficult. If the orphan child is a family member, adoption will still be possible in certain cases. If this is not the case, in certain circumstances an application for a humanitarian visa can be submitted. (*see text box page 10*)

Further information can be found on the websites just.fgov.be, www.kindengezin.be and www.adoptions.be.

¹ In Belgium, it is the central federal authority (FPS Justice) that is entitled to recognize and register foreign court decisions in the matter of adoption.

² The Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption, *Belgian Official Gazette*, 6 June 2005.

DNA-tests

In the absence of valid evidence, the Immigration Office may suggest that you and your family members undergo a **DNA test** to determine your relationship.

DNA tests make it possible, by taking a few drops of blood, to obtain the genetic imprint of a person and to determine to whom they are biologically related. The results are nearly 100% certain. However, performing a DNA test is not an innocent act. A family's equilibrium may be upset by the results, especially if these reveal biological truths of which the persons concerned were previously unaware. Furthermore, this procedure is a costly one. (200 Euros per person being tested)

DNA tests cannot be performed without the **written consent** of the (adult) persons concerned.

In Belgium the blood tests are taken at the Erasmus Hospital in Brussels. Abroad, the blood tests for family members are organized by the Belgian diplomatic or consular representation.

Although judicial appeal can be lodged against the decisions of authorities to refuse to recognize the validity of foreign documents submitted, DNA tests are often a quick way to achieve family reunification. In practice, when there is doubt as to the documents submitted, the Belgian authorities will not agree to issue a visa except on condition of a DNA test. If the result is positive, the visa is automatically granted.

To start up the procedure for DNA-testing, members of the family in question sign a consent form (Annex 2bis) at the embassy. This form will be forwarded to the Immigration Office, who will then contact you to also sign a consent form (Annex 3).

The Immigration Office will invite you to an information session on the procedure. You will first need to pay for the test to the hospital (200 € per person being tested) and forward a copy of the proof of payment to the Immigration Office. The latter will then contact the embassy or consulate so that the blood tests of your family members can be done. The blood samples will be sent to Belgium by diplomatic pouch (free of charge). You will then be contacted by the Erasmus Hospital for the blood test.

The total costs of the tests will be charged to you, whether the results of the test are positive or negative.

The results of the test will be available 4 to 6 weeks after the test, where both parents are being tested. Where only one of the parents is being tested, this takes up to 6 to 8 weeks. The result is sent directly to the Immigration Office, who will inform you. The test data cannot be used for any purpose other than the family reunification process. They will be stored at the laboratory in case the evidence is contested.

CHAPTER 4

Processing the complete file: deadlines and procedure



Once all the documents required have been submitted and have been legalized and translated, the file will be deemed to be complete. In this case, your family members will receive a **proof of submission** of your application (Annex 15*quinquies*) from the embassy or consulate. The file will be forwarded to the Immigration Office for examination.

The file number appears on the proof of submission. This number makes it possible to follow up on the status of the visa application via the website of the Immigration Office (www.dofi.fgov.be).

The date mentioned on the proof of submission determines **a period of 6 months** within which the Belgian authorities must take a decision on the visa application. For reasons of complexity of the case, this period can be extended twice by 3 months by a reasoned decision of the Immigration Office. If no decision has been taken within this – possibly extended – period, the visa will be granted automatically.²²



Cost of the family reunification procedure

The family reunification process is an expensive one. In addition to the fixed costs set by the Belgian authorities, there are the fees imposed by local authorities which can vary greatly.

A visa application for Belgium costs 180 €/person and the legalization of a document by the Belgian authorities costs 15 € (fixed cost, regardless of the country where the application is submitted, rates on 1 June 2014). However, the cost of passports, translation and legalization of documents, physician's honoraria (for the medical certificate and for the DNA tests) vary greatly from country to country.

²² Art. 12bis par. 3, 5 and 6 of the Law of 15 December 1980.

CHAPTER 5

Decision



It is the Immigration Office that decides whether the conditions for the issuing of a visa are met. If the decision is positive, the members of your family will receive a **visa type D mentioning “family reunification”**. In principle, the decision of the Immigration Office is sent the same day as the decision is taken. It may take a few days, however, for the decision to arrive at the Belgian diplomatic post abroad. As soon as the diplomatic post receives the decision, they will contact your family to deliver the visa.

The visa D entitles the holder to a long stay in Belgium (more than 3 months). With this visa, you can travel to Belgium via other Schengen countries or stay in another Schengen country for a maximum total duration of 3 months within a period of 6 months. The visa will have a maximum validity of one year.



Period for examination of visa applications (1 June 2014)¹

- family reunification visa: 6 months obligatory (eventually extended twice by 3 months) from the date indicated on the proof of submission
- humanitarian visa: 7 months on average

The examination period for humanitarian visa applications should not be interpreted strictly. He is simply indicative and may vary depending on the complexity of the file.

¹ See the site of the Immigration Office: www.dofi.fgov.be.



Rejection of the visa application

The Immigration Office will refuse to grant a visa if it considers that the applicant does not fulfil the conditions for family reunification. This may be the case, for example, if it considers that there has been fraud, a lack of effective marital or family life, if there is danger to public order, public health or national security in Belgium or if the requirement of sufficient, stable and regular means of subsistence applies but is not met.¹

The decision to reject the application must be justified and notified to the persons concerned.

If the Immigration Office refuses to grant the visa, an appeal may be lodged at the Council for Alien Law Litigation within 30 days of the notification of the decision. In some cases, a supplementary request for suspension can be lodged under extremely urgent procedure at the Council for Alien Law Litigation.

If the reasons for the rejection are related to the question of recognition of foreign official certificates, an appeal may be lodged at the court of first instance, by virtue of the rules of private international law.

If the visa application is rejected, a new visa application may also be submitted when new items of evidence can be added to the file.

¹ Art. 11 § 1 of the Law of 15 December 1980.

CHAPTER 6

Status of family members in Belgium and renewal of stay



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Members of your family who have been authorized to join you must present themselves **within 8 working days** of their arrival in Belgium to the **municipal administration** of the place of your residence.²³ The municipal administration will enter their names in the Aliens' Register and issue a card A (electronic card that is the equivalent to the certificate of registration in the Aliens' Register – limited duration) **valid for one year and renewable**.

²³ Circular of 21 June 2007 on amendments to the rules regarding residence by foreigners after the entry into force of the Law of 15 September 2006, *Belgian Official Gazette*, 4 July 2007.

Before enrolment in the Register, the municipal administration will check up the effective residence. Your family members will be given an ‘Annex 15’ while awaiting their card A.

For 3 years (and for **5 years** for those family members that have been granted a residence permit on basis of article 9 and 13 of the Law of 15 December 1980, a so called ‘humanitarian visa’), their **card A** will be **renewed** by the municipal administration for a period of one year provided the conditions for family reunification are still satisfied.

Your family members will have to apply for renewal to the municipal administration of your place of residence between 45 and 30 days before the expiry of their card A. The municipality will inform the Immigration Office, who will control whether the requirements for family reunification are still met. The municipality will also verify whether your family members are still living with you under the same roof. If you move, you must inform the municipal authorities.



Father and mother of unaccompanied minors

If you are the father or mother of an unaccompanied minor with a protection status, the requirement of sufficient, stable and regular means of subsistence won't be applicable at the moment of the renewal of your residence permit, except when you apply for a residence permit of unlimited duration (a B-card).¹

1 Constitutional Court, decision of 26 September 2013, No. 121/2013, B-28/6.

At the end of this 3-year period (or 5-year for those that received a residence permit following a humanitarian visa), your family members will receive a card B (electronic card that is equivalent to the certificate of registration in the Aliens' Register – unlimited duration).

Please note that family members of beneficiaries of subsidiary protection will never acquire a residence permit of unlimited duration before the beneficiary itself acquires a residence permit of unlimited duration.

Please note that the members of your family who join you will not (automatically) receive the refugee- or subsidiary protection status in Belgium, unless an application for asylum is made in their name. In the latter case, the application will be examined in the light of the contents of your own request for asylum.



Withdrawal or refusal of renewal of the residence permit

During the first 3 years of their stay in Belgium (or 5 years for those that received a residence permit following a humanitarian visa), your family members will have to prove that the requirements for family reunification are still met. If the Immigration Office considers that your family members do not longer fulfil the conditions, it may decide to terminate the residence of your family members and withdraw the residence permit. This may happen, for instance, if your family members¹:

- do not longer meet one of the conditions set for the granting of the visa;
- do not longer effectively live a married or family life;
- in case of a registered partnership, married or entered into a lasting relationship with another person;
- used false or misleading information (or falsified documents) during the family reunification process, or committed fraud or concluded the marriage, partnership or adoption solely for the purpose of enabling entry or residence in Belgium.

The Belgian authorities can always decide to carry out checks in view of extending or renewing the residence permit, notably if there were presuppositions based on fraud or in order to verify whether you continue to meet the conditions for family reunification.

Thus, for example, the Immigration Office can withdraw the residence permit of your family members if they are not living together with you anymore or if you cannot prove that you have sufficient, stable and regular means of subsistence.

Please note that you are also exempted from the requirements of adequate housing, health insurance and sufficient, stable and regular means of subsistence at the moment of renewal of your family members' residence card if the application for family reunification has been submitted within the year after the recognition of your protection status and if the relationship with your family members existed already before your arrival in Belgium.

If the requirement of means of subsistence applies at renewal, the Immigration Office has to take into consideration the contributions of the family members to the household income.²

Moreover, the law provides that the Immigration Office has to take account of the nature and solidity of the family relationship, the duration of the residence in Belgium and the existence of family, cultural and social ties with the country of origin when withdrawing or refusing to renew a residence permit of your family member.³

They must also take into account the situation of victims of domestic

violence who have left their homes and are in need of protection.⁴

Where the Immigration Office puts an end to your family member's residence and issues an order to leave the country, your family member will receive an "Annex 14^{ter}" and the card A shall be withdrawn. When this decision is not accompanied by an order to leave the country, your family member will receive an "Annex 37". An appeal against this decision may be lodged at the Council for Alien Law Litigation within 30 days of the notification. In this case, your family member will receive an "Annex 35" awaiting the decision on the appeal.

1 Art. 11 § 2 of the Law of 15 December 1980.

2 Art. 16, 1 a of the Directive 2003/86/EC of the Council of 22 September 2003 on the right to family reunification, *O.J.*, 3 October 2003, L.251/12.

3 Art. 11 § 2, par. 4 of the Law of 15 December 1980.

4 Art. 11 § 2, par. 5 of the Law of 15 December 1980.

CHAPTER 7

Travel arrangements



Once the Aliens' Office has decided to grant your family members visas, their travel arrangements to Belgium will have to be made. The cost of airline tickets is often high. In addition to these, there are various other financial costs involved in the family reunification process.

Some organizations can assist your family in organizing their journey. The delegations of the IOM (International Organization for Migration) provide logistical assistance to your family members, in particular to unaccompanied minors.²⁴

²⁴ Further information can be found on the website of IOM: <http://avrr.belgium.iom.int/en/other-projects/family-reunification.html>.

Furthermore, some organizations offer loans at low interest to finance the airline tickets of family members for the purpose of family reunification. CREDAL can offer loans to refugees living in the Walloon Region or in Brussels.

CREDAL

COOPÉRATIVE DE CRÉDIT ALTERNATIF

GROUPE CREDAL

Place de l'Université, 16
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Tel. 010 45 25 33
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credal@credal.be

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ANTENNE BRUXELLES

Centre Dansaert
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1000 Bruxelles
Tel. 02 213 38 31
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ANTENNE CHARLEROI

Rue Monceau-Fontaine, 42/18
6031 Monceau-sur-Sambre
Tel. 071 32 81 32
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ANTENNE LIÈGE

Rue Pierreuse, 57
4000 Liège
Tel. 04 221 11 74

CHAPTER 8

Arrival in Belgium: various types of registration



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Upon arrival in Belgium, your family members will need to go through various types of registration. In addition to the essential registration at the municipal administration within 8 working days of arrival, other registrations are also important: with the mutual health insurer, at school, for trainings, etc. Please note! The right to certain social rates as well as the right to family benefits will only take effect if your family members have a proper national registration number.

You should be aware that in Belgium, each authority is competent to recognize the validity of foreign official certificates submitted to them.²⁵ It can therefore happen that certain certificates are recognized by one authority (e.g. the Immigration Office), but are not subsequently recognized by other ones (e.g. the municipal administration). These conflicts can give rise to a number of practical difficulties and lead to significant delays.

²⁵ Art. 27 § 1 Code Private International Law.

CHAPTER 9

Further information



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If you are looking for more information about family reunification of beneficiaries of international protection in Belgium, please contact your social worker, one of the partner associations of the Belgian Refugee Council near you or your lawyer.

You can also obtain further information on family reunification on the following sites:

- Immigration Office: www.dofi.fgov.be
- FPS Foreign Affairs: www.diplomatie.belgium.be
- Kruispunt Migratie-Integratie (in Dutch): www.vreemdelingenrecht.be
- Association pour le Droit Des Etrangers (in French): www.adde.be

Principal partner associations of the Belgian Refugee Council (CBAR-BCHV)

ACCUEIL ET PROMOTION DES IMMIGRÉS

Rue Léon Bernus, 35 B

6000 Charleroi

Tel. 071 31 33 70

Fax 071 31 33 70

api@brutele.be

AIDE AUX PERSONNES DÉPLACÉES

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Fax 04 340 00 90

contact@aideauxpersonnesdeplacees.be

www.aideauxpersonnesdeplacees.be

Rue d'Havré, 98

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apd.anneroulet@gmail.com

Le Sylvius

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4500 Huy

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aidepersdepl.huy@skynet.be

Rue des Fabriques, 1

5030 Gembloux

Tel. 0492 73 19 75

d.bouchat@aideauxpersonnesdeplacees.be

SERVICE SOCIAL DE SOLIDARITE SOCIALISTE (SESO)

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CARITAS INTERNATIONAL

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Tel. 063 43 00 30

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Place aux Foires, 21

6900 Marche en Famenne

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CENTRE POUR L'EGALITE DES CHANCES ET LA LUTTE CONTRE LE RACISME

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Numéro vert: 0800 12800

epost@cntr.be

www.diversiteit.be

REGIONAAL CENTRUM FOYER

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1080 Brussel

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CENTRE SOCIAL PROTESTANT

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CROIX ROUGE DE BELGIQUE – SERVICE TRACING

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**RODE KRUIS VLAANDEREN –
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