

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court <sup>1</sup>:</b>			
<b>Migration Court of Appeal (Kammarrätten i Stockholm, Migrationsöverdomstolen)</b>			
<b>Date of the decision:</b>	22 December 2020	<b>Case number:<sup>2</sup></b>	MIG 2020:24
<b>Parties to the case:</b>			
Applicant "A" (14-year-old girl) "B" and "C" (parents). The Swedish Migration Agency			
<b>Decision available on the internet?</b>		<b>Yes</b>	
If yes, please provide the link:			
<a href="https://www.domstol.se/globalassets/episerver-forms/domstol/migrationsoverdomstolen/mig-2020-24.pdf">https://www.domstol.se/globalassets/episerver-forms/domstol/migrationsoverdomstolen/mig-2020-24.pdf</a>			
<b>Language(s) in which the decision is written:</b> Swedish			
<b>Official court translation available in any other languages?</b> No			
<b>Countr(y)(ies) of origin of the applicant(s):</b> Lebanon			
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Sweden			
<b>Any third country of relevance to the case:<sup>3</sup></b> No			
<b>Is the country of asylum or habitual residence party to:</b>			
<i>The 1951 Convention relating to the Status of Refugees</i>		<i>Relevant articles of the Convention on which the decision is based:</i>	
<i>For EU member states: please indicate which EU instruments are referred to in the decision</i>		Relevant articles of instruments referred to in the decision:	
<i>European Convention on Human Rights</i>		ECHR Article 8	
<i>The Convention on the Rights of the Child</i>		CRC Article 3	

*Key facts (max. 200 words)*

B and C arrived in Sweden in 2004 and applied for asylum. A was born in Sweden in March 2006. Her parents applied for asylum on her behalf. Their asylum applications were rejected and statute-barred after four years. The family re-applied for asylum and their applications were once again rejected. After the latest expulsion decision became statute-barred, the family applied for asylum a third time in August 2016.

In the latest decision of December 2018, which is subject to assessment of the Migration Court of Appeal (the Court), the Swedish Migration Agency (SMA) found that the family members did not meet the criteria for international protection and that there were no exceptionally or particularly distressing circumstances in the case. An expulsion of the family was also not considered to be in violation of a Swedish international treaty obligation. The SMA decided thus once more to deport A, B and C to Lebanon. In a judgment of January 2020, the Migration Court in Gothenburg upheld the decision. The family appealed the judgment to the Court. By that time, A had spent approximately 14 years in Sweden.

**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]*

The Court initially concluded that A, B and C did not meet the criteria for international protection. The remaining question before the Court was whether the conditions were met for granting the family a residence permit in accordance with Chapter 5 Section 6 of the Aliens Act compared with Section 11 of the Act on temporary restrictions on the possibility of obtaining a residence permit in Sweden (Temporary Law), i.e. if it would be in violation of a Swedish treaty obligation to deny the family a residence permit in Sweden.

The Court concluded that according to Chapter 1 Section 10 of the Aliens Act, in all actions concerning children, the best interests of the child shall be a primary consideration. The concept of "particularly distressing circumstances" was introduced in Chapter 5 Section 6 of the Aliens Act to clarify the child rights perspective and the principle of the best interests of the child. A starting point for the assessment of the Court is that the Aliens Act is compatible with the CRC and that the CRC itself cannot establish the right to a residence permit. It is the provisions of the Aliens Act that govern which aliens can be granted a residence permit in Sweden, with the restrictions that currently apply according to the Temporary Law.

The question before the Court is whether there are such strong reasons in the present case that they constitute particularly distressing circumstances. Initially, it is necessary for the Court to take a position on what constitutes A's best interest. A has lived in Sweden for just over 14 years, she was born in Sweden and has never lived in Lebanon. She speaks fluent Swedish, has friends in Sweden and goes to a Swedish school. In the assessment of the factors that build the connection to Sweden, in addition to the length of stay, of significance is the child's age, if the child goes to school, the child's social relations outside the family and the child's knowledge of the Swedish language. When assessing a child's time of residence and connection to the country, guidance should also be drawn from the case law of the European Court of Human Rights (*Osman v. Denmark*).

The Court goes on to conclude that apart from her family, A has no network in Lebanon. In case of an expulsion, A will travel there with her parents. Given her individual situation, she should be able, despite the socio-economic and security situation in Lebanon, to adapt to the new conditions that such a break-up would entail. However, it must be taken into account that the parents once left Lebanon because they considered themselves at risk of persecution there. Even if the Court has concluded that no such risk exists, the parents' reason for leaving their home country may affect A's perception of the country to which they would return. The protracted asylum process and the risk of deportation to Lebanon have had a negative effect on her condition. She has expressed a desire to live in Sweden and experiences deportation to Lebanon as negative.

Unlike younger children, whose connection is mainly to the parents and the immediate family, A is in an identity-creating age with social relationships outside her own family. In the event of deportation, the contacts A established in Sweden will essentially cease. Due to the long period of stay, A must be considered to have had such a strong connection to Sweden that there are great advantages for her to stay in Sweden compared to traveling to Lebanon. The Migration Court of Appeal therefore concludes that it is in the best interest of A to stay in Sweden.

However, the best interest of the child is not the only and decisive factor for whether a residence permit should be granted. The articles of the CRC do not individually or jointly allow a child to stay in Sweden. The CRC requires, however, that a balance of interests be implemented when assessing the proportionality of refusing the right to residence. In the present case, the best interest of the child needs to be balanced against the State's interest in controlling immigration. Both the CRC and the preparatory work for the provision regarding particularly distressing circumstances emphasize that children should be seen as independent rights holders. The preparatory work also states that children may have their own reasons for a residence permit and should not only be assessed as part of the parents' case. In present the case, the time that A has stayed in Sweden has become very long. It has also been illegal for a long time. This is because she and her family have not adhered to previous expulsion decisions. However, as A is a child, she has not had the same opportunity as an adult to influence the parents' choice not to conform to an expulsion decision. Furthermore, A's stay in Sweden has been legal for the past four years because her asylum application has been subject to review. This, too, is a considerable time considering her age.

In an overall assessment of the exceptional circumstances in A's case and with special regard to her very strong connection to Sweden, the Court considers that her best interests outweigh the opposing interests of the State. An expulsion of A to Lebanon can therefore not be considered proportionate and would thus be in violation of the CRC. A is therefore granted a residence permit in Sweden. B and C are granted residence permits as it would be in violation of Article 8 of the ECHR to separate the family.

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

Osman v. Denmark, Application no. 38058/09, Council of Europe: European Court of Human Rights, 14 June 201, available at: <https://www.refworld.org/cases,ECHR,5852b1b94.html>.

The judgment complements the following judgments from the Migration Court of Appeal:

MIG 2012:13, available at [MIG 2012:13 | lagen.nu](#). When examining whether there are such distressing circumstances that an alien should be allowed to stay in Sweden due to his adaptation to the country, the right to private life under Article 8 of the ECHR must also be taken into account.

MIG 2015:4, available at [MIG 2015:4 | lagen.nu](#). A family with a twelve-year-old child has been deported after living in Sweden for six years. The child's adaptation to Sweden in the form of e.g. schooling and friends have not been considered sufficient to constitute particularly distressing circumstances. It has also been taken into account that virtually the entire stay has been illegal. The expulsion has also not been considered contrary to Article 8 of the ECHR.

## **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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