

Decision of the Swiss Federal Administrative Court regarding an application for recognition as a stateless person

Judgment F-6073/2014, 6 April 2017

The facts:

The applicants are 'A.', who is allegedly from Sierra Leone, his wife 'B.', who claims to be born in Grosny, Chechnya, and their three minor children, all three born in Switzerland. A. and B. arrived in Switzerland in 1999 and applied for asylum. On 6 March 2000, the Federal Office for Migration ('FOM', now the State Secretariat for Migration ('SEM')) rejected their applications and ordered their return. During the return procedure, the responsible cantonal migration office found that A. probably originated from Nigeria. But attempts of the authorities to obtain travel documents from the Nigerian and the Russian embassy were not successful. In 2012, the FOM issued a provisional admission to enable the applicants to obtain the necessary documents and valid passports. In July 2014, the applicants applied for statelessness status, arguing that they had been unable to obtain documents from their countries of origin. The FOM rejected their applications in September 2014, arguing that the applicants had not sufficiently substantiated their efforts to determine their nationalities or acquire a nationality.

Decision of the FAC:

In its decision, the FAC recalls that, in accordance with the jurisprudence of the Swiss Federal Supreme Court, a person is only considered stateless if he or she lacks a nationality through no fault of his or her own. The FAC then states that due to the lack of identity documents, A. and B.'s identities and origins have not been sufficiently established. In the case at hand, only A. and B. could substantiate their identities and nationalities respectively to obtain identity documents and passports from their countries of origin. It was the SEM's task to enquire about their nationalities with the relevant diplomatic representations. The FAC **concludes that up until now, A. and B. have not (yet) done everything possible to obtain travel documents from their countries of origin**, and are responsible for the fact that their children's nationality has still not been determined. The FAC holds that the applicants do not fulfill the criteria to be recognised as stateless persons.