

CASE LAW COVER PAGE TEMPLATE

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| Name of the court ¹ (English name in brackets if the court's language is not English): Korkein hallinto-oikeus (Supreme Administrative Court) | |
| Date of the decision: 06 /02 /2014 | Case number: ² KHO:2014:22 |
| Parties to the case: Somali citizen A, Finnish citizen B, Finnish Immigration Service (Migri) | |
| Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2014/201400289 | |
| Language(s) in which the decision is written: Finnish | |
| Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Countr(y)(ies) of origin of the applicant(s): Somalia | |
| Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Finland | |
| Any third country of relevance to the case: ³ n/a | |
| 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: |
| (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: - |

Topics / Key terms:**Family reunification****Residence permit****Travel Document****Key facts**

The Finnish Immigration Service rejected a Somali citizen's application for residence permit on the basis of family ties. The decision was made on the grounds that the applicant had not provided a valid travel document accepted by Finland as referred to in Section 35 of the Aliens Act, and the applicant had not provided any justifications which could have led to derogations from the requirement that a valid travel document is needed for residence permit. The application for residence permit was based on the grounds that the person had married a Finnish citizen in Kenya.

The Supreme Administrative Court reversed the decisions of the Finnish Immigration Service and the Administrative Court, and returned the case to the Finnish Immigration Service for a new decision.

Key considerations of the court:

According to Section 35 of the Aliens Act a requirement for granting residence permit is that the alien has a valid travel document.

The application of the travel document requirement in the case at hand was open to interpretation based on the *travaux préparatoires* of the Aliens Act referred to in the Supreme Administrative Court's decision. The Supreme Administrative Court noted that in the practice followed by authorities, Section 35 of the Aliens Act had not been applied so that derogations from the requirement would be done only in cases mentioned in the legal provision. According to the Finnish Immigration Service's statement and the office's guidelines on family reunification the office considers derogations from the travel document requirement on an individual basis, not only in situations mentioned in the legal provision, but also in other cases, in particular based on the obligations in Article 8 of the European Convention of Human Rights.

The Supreme Administrative Court notes that the European Court of Human Rights has in their case law concerning protection of family life stressed that, both in the case of a State's positive and negative obligations, a fair balance between the competing interests of the society and the individual must be found.

As a family member of a Finnish citizen, the applicant had a right to be granted a residence permit in Finland in accordance with Section 50 of the Aliens Act. However, the applicant could not use this right, since as a Somali citizen, the applicant could not obtain a valid travel document accepted by Finland from the country of origin. The applicant's and sponsor's right to family reunification in accordance with Section 50 of the Aliens Act was thus prevented due to reasons beyond their control.

According to the interpretation by the Finnish Immigration Service, derogations from the travel document requirement on an individual basis could be made only when the family was established before the sponsor's arrival in Finland. Sponsors who are Finnish citizens do however have an equal right to family reunification in accordance with Section 50 of the Aliens Act, regardless of the time of establishment of the family.

The rejection of the application for residence permit on the grounds that the applicant did not possess a valid travel document accepted by Finland, and did not have an opportunity to obtain such a travel document, does not sufficiently take into consideration the applicant's right to obtain a residence permit to the spouse's home country, Finland. The Supreme Administrative Court considered that the rejection of the application for residence permit in these circumstances restricts the applicant's and sponsor's right to family reunification more than necessary. The Finnish Immigration Service could not reject the applicant's residence permit application solely due to the lack of travel documents.

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Other comments or references:

References made by the court to legal provisions, case law, regulations and studies:

Aliens Act:

Section 5, Section 7 subsection 2, Section 11 subsection 1, Section 13 subsection 1, Section 14 subsection 1, Section 35 and Section 50 subsection 1.

Government proposals 28/2003, 47/1990 and 104/2010.

European Convention on Human Rights: Article 8

European Court of Human Rights, case law:

Rodriguez da Silva and Hoogkramer v. the Netherlands from 31 January 2006

Hode and Abdi v. UK from 6 November 2012.

Finnish Immigration Service: Family Reunification Guidelines, 30 March 2012 (MIG/2012&161)

Family Reunification Study by the Finnish Ministry of the Interior (Sisäasiainministeriön julkaisu 17/2012)