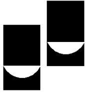
Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal



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Press Release

regarding judgment E-1813/2019 of 1 July 2020

Fair process in family asylum procedures

In a landmark judgment[1], the Federal Administrative Court acknowledged the existence of a new specific circumstance that goes against the granting of family asylum. In addition, it considered that the result of the assessment of evidence made in the original, already concluded, asylum procedure cannot be simply transposed to the subsequent family asylum procedure. The right to be heard must be granted again and the results assessed separately.

A woman of Tibetan ethnicity claimed asylum in Switzerland in 2015. Her claim was rejected by the State Secretariat for Migration (SEM). Even if the SEM was convinced that the individual concerned belonged to the Tibetan ethnic group, the latter had not been able to verify that she had fled directly from China. Based in particular on an analysis of origin led by an external expert, the SEM thus arrived at the conclusion that the individual concerned had very probably grown up within the Tibetan diaspora in India or Nepal. It therefore ordered her removal from Switzerland and the enforcement of this decision, while ruling out removal to the People's Republic of China, because of the risks of persecution to which Chinese citizens of Tibetan ethnicity have been exposed on return to this country.

In 2019, the individual concerned got married in Switzerland to a man who himself had previously obtained asylum. She lodged a claim with the SEM to be granted family asylum, in other words to be included in her spouse's status of refugee. The SEM rejected this claim principally on the grounds that the individual concerned had, in the original asylum procedure, concealed her principal place of socialisation, something which constituted a breach of the duty to cooperate. This circumstance prevented the SEM from verifying if the individual concerned, with her spouse and their child, could settle in a state whose nationality she might possess, something which would also go against the granting of family asylum.

Additional "special circumstance"

The case leads the Federal Administrative Court (FAC) to conclude in principle that the fact that the SEM was prevented from verifying whether the individual seeking family asylum has a different nationality from that of the member of her family who is already recognised as a refugee may constitute a "special

[1] This judgment was coordinated by all judges from divisions IV and V. The legal assessment goes beyond the present case and applies generally to a large number of cases.

circumstance”. This is found to be the case when the asylum seeker has committed a serious breach of their duty to cooperate in the family asylum procedure. A “special circumstance” of this kind goes against the granting of family asylum.

Granting the right to be heard again
According to the FAC, the SEM may take into account the facts and evidence from the first concluded procedure, but must give the asylum seeker another opportunity to have her say – thus grant her the right to be heard – within the context of the second procedure. The SEM is, in that case, obliged to inform the asylum seeker in advance of the implications of failing to cooperate for the outcome of the new family asylum procedure. It must then assess the asylum seeker’s response following the granting of the right to be heard with regard to the specific requirements related to the claim for family asylum.

This process is necessary because, under law, the original asylum procedure and the family asylum procedure are subject to different conditions. A statement from the asylum seeker or the fact that she does not reveal an essential element once again does not in principle have any implications for the enforcement of the removal decision, taking into account a potential right to a cantonal residence permit.

New assessment required
In the present case, the SEM must thus ask the asylum seeker, within the context of her claim for family asylum, if she stands by her statements recorded during the original asylum procedure, namely that her principal place of socialisation is Tibet, despite the conclusions to the contrary of the expert, and, as a result, that she only holds Chinese nationality, or if she changes her previous declarations and cooperates with the SEM so that this authority is able to determine her true principal place of socialisation and rule out the possibility that she acquired a new nationality there. Once the SEM is in possession of the asylum seeker’s response following the granting of the right to be heard, it must therefore carry out a new assessment of all her statements and all the evidence produced in the case file to then be able to examine, on these bases, the existence of a breach of the duty to cooperate also within the context of the family asylum procedure and, if applicable, to assess its gravity. The FAC thus overrules the decision to refuse family asylum and refers the matter back to the SEM for further investigation and reassessment.

This judgment is final and may not be appealed to the Federal Supreme Court.

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About the Federal Administrative Court
Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (300.8 FTE) and its 74 judges (66.25 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.