

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹:			
Migration Court of Appeal (Kammarrätten i Stockholm, Migrationsöverdomstolen, "MIG")			
Date of the decision:	8 July 2021	Case number:²	MIG 2021:14
Parties to the case:			
Applicant "A"			
The Swedish Migration Agency			
Decision available on the internet?		Yes	
If yes, please provide the link:			
ReferatLagrummet (domstol.se)			
Language(s) in which the decision is written: Swedish			
Official court translation available in any other languages? No			
Countr(y)(ies) of origin of the applicant(s): Afghanistan			
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Sweden			
Any third country of relevance to the case:³ No			
Is the country of asylum or habitual residence party to:			
<i>The 1951 Convention relating to the Status of Refugees</i>		<i>Relevant articles of the Convention on which the decision is based:</i>	
Yes, Sweden is a party to the 1951 Convention.		<ul style="list-style-type: none"> • Article 1 C of the 1951 Convention 	
For EU member states: <i>please indicate which EU instruments are referred to in the decision</i>		Relevant articles of instruments referred to in the decision:	
<ul style="list-style-type: none"> • EU Qualification Directive 2011/95/EU 		<ul style="list-style-type: none"> • Articles 11, 14, 16 and 19 	

Key facts (max. 200 words)

A is an Afghan national who arrived in Sweden as a child. In support of his asylum application, A claimed to be threatened by Talibans who had apprehended and abducted his father, a former military in Afghanistan. He also claimed a fear of persecution due to being Shiite Hazara and the serious situation in the country with armed conflict and lack of state protection. When he was about nine years old he was sent by his mother to Iran. He currently lacks family and network in Afghanistan.

In September 2017, the Swedish Migration Agency (SMA) decided to grant A subsidiary (alternative) protection, finding that due to the very difficult situation for children in the country, A was a risk of being killed, tortured or subject to other inhumane treatment or punishment and that he lacked protection in Afghanistan. A was issued a temporary permit valid from 21 September 2017 to 21 October 2018.

In August 2018, A applied for an extension of his residence permit and claimed to be in need of protection for the same reasons as before. A added that he had left Islam some years back and would be imputed Christian faith upon a return to Afghanistan. A was now studying at high school ("gymnasiet") in Sweden.

In February 2019, the SMA decided to recall A's subsidiary protection status as A was now an adult and as this was a fundamental and lasting change within the meaning of Section 4:5a of the Swedish Aliens Act. SMA also decided to not grant him refugee status. He was granted a temporary permit for his studies.

A appealed to the Migration Court in Luleå. The Court rejected his application in May 2020, finding that A was not in need of protection.

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]

Assessment of the Migration Court of Appeal

A has previously been granted subsidiary (alternative) protection status based on the fact that at the time of the SMA's examination he was a child without network in the home country with reference to MIG 2017: 6. The assessment that first must be done is thus whether the circumstance that led to him to be assessed as in need of protection no longer exists or has been changed to such an extent that protection is no longer needed. In the assessment, only significant and lasting changes should be taken into account.

A is now an adult. In view of the importance that in the practice of the Migration Court of Appeal is attached to the difference between a child without network and an adult regarding the situation in Afghanistan, this constitutes a significant change. This change means that the protection, on the grounds that A was previously considered to be in need of protection, is no longer needed. The change is also permanent.

The need for protection that led to the granting of subsidiary protection has thus ceased. The question then is whether A should nevertheless retain his subsidiary (alternative) protection status for other reasons. In this assessment, both the situation in Afghanistan and A's personal protection needs must be taken into account and an overall assessment should be made (judgment of the European Court of Justice of 17 February 2009, Elgafaji, C-465/07, EU: C: 2009: 94).

The Migration Court of Appeal finds that the security situation in Afghanistan is still serious and there is an internal armed conflict in large parts of the country. However, according to available country information, the conflict is not such that everyone is at risk. The Migration Court of Appeal further assesses that A did not make it probable that he on a return to Afghanistan risks treatment warranting protection based on his personal circumstances and that A also not following an overall assessment of his personal circumstances and the security situation in Afghanistan runs such a risk.

There have also not emerged any compelling reasons as to why A due to previous experiences in the home country should not cease to be considered as in need of subsidiary (alternative) protection according to chapter 4 Section 5 a, second paragraph, of the Aliens Act.

The SMA has thus fulfilled its burden of proof and was justified in its decision to revoke A's subsidiary (alternative) protection status.

Conclusion of the Migration Court of Appeal

A is not to be regarded as a refugee according to chapter § 1 of the Aliens Act and can therefore not be granted refugee status.

A's alternative need for protection has ceased according to chapter § 5 a first paragraph and such reasons as are stated in chapter 4 Section 5 a, second paragraph, of the Aliens Act does not exist. A's subsidiary (alternative) protection status must therefore be revoked in accordance with chapter 5 c § the Aliens Act.

The decision of the Migration Court of Appeal. The Migration Court of Appeal rejects the appeal.

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

- UNHCR, Amicus curiae of the United Nations High Commissioner for Refugees in case number UM 2839-20, X against the Migration Agency before the Migration Court of Appeal (Kammarrätten i Stockholm, Migrationsöverdomstolen) , 21 September 2020, available at: <https://www.refworld.org/docid/5fa50ed84.html>
- CJEU judgment of 2 March 2010 (Joined cases Salahadin Abdulla, C-175/08, Hasan, C-176/08, Adem and Mosa Rashi, C-178/08, and Jamal, C-179/08, EU:C:2010:105)
- CJEU Judgment of 17 February 2009 (Elgafaji, C-465/07, EU:C:2009:94)
- CJEU judgment of 23 May 2019 (Bilali, C-720/17, EU:C:2019:448)
- MIG 2007:37
- MIG 2017:6
- MIG 2018:6