



## EMN Ad-Hoc Query on 2019.34 SK AHQ on Family Reunification of Beneficiaries of International Protection

Requested by Simona MESZAROSOVA on 11 March 2019

### Protection

Responses from EMN NCP Austria, EMN NCP Lithuania, EMN NCP Latvia , Bram DEVOS, EMN NCP Belgium, EMN NCP Germany (6 in total)

#### Disclaimer:

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*



## **Background information:**

The Slovak Republic is currently addressing a situation when a person who has been granted asylum for humanitarian reasons (the protection status granted by the Slovak Republic) under the Act on Asylum, cannot apply for family reunification according to the same Act. Bearing in mind, that the right to family life is one of the fundamental human rights, we are interested in ways Member States address such situation regarding family reunification of persons whose ID/travel documents of their country of origin are not considered to be trustworthy by the MS.

## **Questions**

**1. Have you encountered in your practice any case of a person demanding family reunification even though his/her status does not legally allow family reunification (and at the same time the ID /travel documents of his/country of origin are not consider trustworthy in your Member State), but the family reunification would be, for example, in the interest of the child?**

Available choices:

Yes, No

**2. If yes, how did you proceed?**

**3. How do you proceed in a case when the person concerned is dwelling in a different third country than his/her country of origin?**

## **Responses**

### **EMN NCP Austria**

Wider Dissemination: Yes

*Martin Stiller, Wider Group*

1. Yes

Clarification:

In order to consider an application for family reunification, the Federal Office for Immigration and Asylum has to verify the person's identity and family membership. When applying for family reunification in accordance with the Asylum Act 2005, at least a travel document and a photograph must be provided to verify the identity and family membership. In practice, birth certificates and, if applicable, marriage certificates as well as country-specific certificates are required, in addition to travel documents and photos. Especially birth certificates, adoption certificates, and family photographs or videos may be provided to verify the family membership of children. Alternatively, the possibility of a DNA analysis is provided. --- Source: Ministry of the Interior

2. See answer to question 1. --- Source: Ministry of the Interior

3. The application for entry may be filed at any embassy, so the person does not need to be in his/her country of origin. (--- Mol)

## EMN NCP Lithuania

Wider Dissemination: Yes

*Vytautas EŽERSKIS, EMN NCP Lithuania*

1. Yes

Clarification:

Yes, there were a few applications for a family reunification with an alien, whose family members were not entitled to family reunification under the provisions of the Republic of Lithuania Law on the Legal Status of Aliens. In these cases, parents of a minor child had a temporary residence permits in Lithuania, but they did not meet the conditions for an alien whose family members arrive for the purpose of family reunification because they had not lived in Lithuania for the last 2 years.

2. Temporary residence permits were issued.

Clarification:

Taking into account the best interest of children and in accordance with the United Nations Convention on the Rights of the Child, children were granted temporary residence permits in Lithuania on the basis of family reunification, in order to ensure that the rights of the child outlined in the United Nations Convention on the Rights of the Child are secured.

3. N/A

## EMN NCP Latvia

Wider Dissemination: Yes

*Stanislavs LOPATINSKIS, EMN NCP Latvia*

1. No

2. N/A

3. Please find answer down below in clarification section.

Clarification:

In accordance with the Asylum Law a refugee or a person having acquired subsidiary protection status has the right to reunite with family members who are in foreign countries. The person having acquired subsidiary protection status has such right, if he or she has resided in the Republic of Latvia for at least two years after acquisition of such status. An unaccompanied minor who has been granted international protection and who is not married has the right to receive the mother and father who have arrived from a foreign country. A family member of the refugee shall be issued a permanent residence permit. A temporary residence permit shall be issued to the family member of a person having acquired subsidiary status for the same time period as the temporary residence permit has been issued to the person having acquired subsidiary protection status. A family member according to the definition included in the Asylum Law is family member is the spouse of an asylum seeker, refugee or a person who has been granted subsidiary protection status or temporary protection, and also the minor child of an asylum seeker,

refugee or a person who has been granted subsidiary protection status or temporary protection and the spouse of such person, who is not married and is dependent on both or one of the spouses or is adopted, and also the father, mother or other adult who in accordance with the laws and regulations of the Republic of Latvia is responsible for the beneficiary of international protection, if the above-mentioned beneficiary of international protection is a minor and not married, provided that such family has already existed in the country of origin. According to the Immigration Law a foreigner shall submit documents for requesting a residence permit to a representation, which is not located in a Schengen Agreement Member State. If the foreigner has a valid residence permit in any of the Schengen Agreement Member States, he or she has the right to submit documents to a representation, which is located in the Schengen Agreement Member State. The range of those persons who are entitled to submit documents in Latvia, particularly to the Office of Citizenship and Migration Affairs in order to receive a residence permit shall be determined by the Cabinet of Ministers. The Head of the Office of Citizenship and Migration Affairs or his or her authorised official may permit the submission to the Office of Citizenship and Migration Affairs of the documents necessary for requesting a residence permit if it complies with the norms of international law, the State interests of Latvia or is related to reasons of a humanitarian nature. According to the Point 4 of the Regulations of the Cabinet of Ministers No.564 a foreigner is entitled to submit to the Office of Citizenship and Migration Affairs for the request of a residence permit, for example, if he or she resides in the Republic of Latvia with a valid visa (in specific situations defined by this Regulation), resides in the Republic of Latvia with a valid residence permit, is the citizen of a country the citizens of which do not require a visa to enter the Republic of Latvia (full text of the Regulations available on <https://likumi.lv/ta/en/en/id/212441-regulations-regarding-residence-permits> ). Taking into account above mentioned it can be concluded that national legislation does not oblige the person concerned to reside in the country of origin, as in the case of family reunification more important aspect is that the family has already existed in the country of origin.

## Bram DEVOS

Wider Dissemination: Yes

*Bram DEVOS, Practitioners (Government Officials only)*

1. Yes
2. See comments below (box too small)

Clarification:

- The documentary evidence required from the applicant to confirm the identity is a valid passport. If a person is unable to obtain a passport (for instance when he/she is not in his/her country of origin or when he/she cannot go to his his/ her embassy in the country of residence), the Belgian authorities may exceptionally and in certain cases, issue a “laissez-passer”. A “laissez- passer” is a temporary travel document which allows your family member to travel to Belgium. The person still needs to prove his/her identity by other means. Purely material aspects (the cost of the document, distance to be travelled in order to obtain it etc.) are not considered to be factors rendering it impossible to obtain a passport. Family members who are recognized as refugees by UNHCR can obtain a “blue passport”, which can also be used as a travel document.
- In case there is no authentic birth certificate of a child, the Immigration Service may ask for a DNA test.
- Family members who do not have a right to family reunification but are however dependent on a person legally residing in Belgium – like adult children, grandchildren, de facto partners, etc – can apply for a visa on humanitarian grounds on the basis of article 9 of the Immigration Act. The result is however uncertain and there are no time limits for the processing time of applications. The legal basis confers to the Minister or Secretary of State competent for asylum and immigration (and the Immigration Office) a discretionary power to grant a long-term visa on an individual basis. The Immigration Act does not provide any criteria The Immigration Office has a discretionary competence and needs to decide based on a case-by-case analysis whether the specific circumstances of the case justify an authorisation to come to or to reside in Belgium. It has to take into consideration individual and specific circumstances of each case. When family

life is at stake, an individualised analysis has to be done under Article 8 ECHR. In practice, one can observe that positive discretionary visa decisions are sometimes issued when a very close relationship with Belgium exists; when there is clear emotional and financial dependency; and when the sponsor is able to demonstrate his/her financial ability to take charge of the family members.

3. See comments below (box too small)

Clarification:

As a general rule, family members who wish to join you in Belgium should submit their application at the Belgian embassy or consulate in their country of residence. If they are already in Belgium, they may only exceptionally submit their application at the municipal authorities of their place of residence. If there is no Belgian embassy or consulate in the country where they reside, they must contact the competent Belgian diplomatic post for the country in question ([www.diplomatie.belgium.be](http://www.diplomatie.belgium.be)). Family members of a person who is a recognized refugee or has subsidiary protection status in Belgium can submit their visa application at any diplomatic post that is authorized to issue visas. This applies to every nationality, and for any standard family reunification application, as well as for a humanitarian visa application. In certain cases, the visa application will be handled by an external service provider. The application will then be transferred to the Immigration Office in Belgium. More information: <https://www.myria.be/en/fundamental-rights/family-reunification/> and <https://dofi.ibz.be/sites/dvzoe/EN/Pages/home.aspx>

## EMN NCP Belgium

Wider Dissemination: Yes

*Peter VAN COSTENOBLE,*

1. Yes

2. See answer below

Clarification:

- The documentary evidence required from the applicant to confirm the identity is a valid passport. If a person is unable to obtain a passport (for instance when he/she is not in his/her country of origin or when he/she cannot go to his his/ her embassy in the country of residence), the Belgian authorities may exceptionally and in certain cases, issue a “laissez-passer”. A “laissez- passer” is a temporary travel document which allows your family member to travel to Belgium. The person still needs to prove his/her identity by other means. Purely material aspects (the cost of the document, distance to be travelled in order to obtain it etc.) are not considered to be factors rendering it impossible to obtain a passport. Family members who are recognized as refugees by UNHCR can obtain a “blue passport”, which can also be used as a travel document.
- In case there is no authentic birth certificate of a child, the Immigration Service may ask for a DNA test.
- Family members who do not have a right to family reunification but are however dependent on a person legally residing in Belgium – like adult children, grandchildren, de facto partners, etc – can apply for a visa on humanitarian grounds on the basis of article 9 of the Immigration Act. The result is however uncertain and there are no time limits for the processing time of applications. The legal basis confers to the Minister or Secretary of State competent for asylum and immigration (and the Immigration Office) a discretionary power to grant a long-term visa on an individual basis. The Immigration Act does not provide any criteria. The Immigration Office has a discretionary competence and needs to decide based on a case-by-case analysis whether the specific circumstances of the case justify an authorisation to come to or to reside in Belgium. It has to take into consideration individual and specific circumstances of each case. When family life is at stake, an individualised analysis has to be done under Article 8 ECHR. In practice, one can observe that positive discretionary visa decisions are

sometimes issued when a very close relationship with Belgium exists; when there is clear emotional and financial dependency; and when the sponsor is able to demonstrate his/her financial ability to take charge of the family members.

3. See answer below

Clarification:

As a general rule, family members who wish to join you in Belgium should submit their application at the Belgian embassy or consulate in their country of residence. If they are already in Belgium, they may only exceptionally submit their application at the municipal authorities of their place of residence. If there is no Belgian embassy or consulate in the country where they reside, they must contact the competent Belgian diplomatic post for the country in question ([www.diplomatie.belgium.be](http://www.diplomatie.belgium.be)). Family members of a person who is a recognized refugee or has subsidiary protection status in Belgium can submit their visa application at any diplomatic post that is authorized to issue visas. This applies to every nationality, and for any standard family reunification application, as well as for a humanitarian visa application. In certain cases, the visa application will be handled by an external service provider. The application will then be transferred to the Immigration Office in Belgium. More information: <https://www.myria.be/en/fundamental-rights/family-reunification/> and <https://dofi.ibz.be/sites/dvzoe/EN/Pages/home.aspx>

## EMN NCP Germany

Wider Dissemination: Yes

*Heiko HECHT, EMN NCP Germany*

1. Yes

Clarification:

Spouses and children of foreigners who have been issued with a residence title on humanitarian grounds can similarly also only be permitted to join the foreigners concerned on humanitarian grounds (Residence Act, Section 29 (3)). Family reunification may be permitted for family members who are fundamentally not entitled to family reunification and for children where this is necessary in order to avoid particular hardship (Residence Act, Sections 32 (4), 36 (2)). The granting of family reunification for beneficiaries of subsidiary protection is limited to 1000 persons per month; this restriction does not extend to the issuance of residence titles under international law or on humanitarian or political grounds or to the resettlement of family members (Residence Act, Section 36a).

2. see attachment

Clarification:

In accordance with their duty to cooperate, the individuals concerned are obliged to furnish all forms of proof which may support their case. Where the documents which normally serve to confirm identity and origins (passports, ID cards, birth certificate, excerpts from registers of births, deaths and marriages or civil registers) are not trustworthy on account of the country of origin's record-keeping practices or where the foreigner concerned cannot reasonably be expected to obtain such documents (e.g. in case of residence in a third country), other certificates which are customarily issued by government authorities or religious institutions in the country concerned or witnesses' testimonies may serve as proof, as may registrations by international organisations (e.g. UNHCR). The German authority is required to verify the plausibility of the visa applicant's claimed identity and family relationship by reference to all the available substantiating documentation. The personal interview with the applicant in the course of the visa process is consequently of particular importance; simultaneous interviewing of the visa applicant by

the relevant diplomatic mission and of the family member in Germany by the foreigners authority may also take place in this connection. Where doubt persists as to the claimed family relationship following such interviews, applicants are informed of the option of having genetic testing carried out at their own expense by a specialist laboratory in Germany in order to prove parentage.

3. As explained in the answer to question 2.