

## Complaint to the European Commission

This complaint concerns Sweden's failure to comply with article 5(4) in the Council directive 2003/86/EC of 22 September 2003 on the right to family reunification.

### **Complainants**

Stockholm City Mission (Stockholms Stadsmission), Gothenburg City Mission (Göteborgs Stadsmission) and the Swedish Network of Refugee Support Groups (FARR)

### **Country**

Sweden

### **National Legislation**

Aliens Ordinance, (2006:97), chapter 4, section 21a (Utlänningsförordning)

### **Governmental Agency**

Swedish Migration Agency (Migrationsverket)

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## Introduction

According to article 4 of directive 2003/86/EC Member States shall authorise the entry and residence of third country nationals who are the family members of a sponsor who holds a residence permit within the meaning of article 3. As stipulated in article 5(4) of the abovementioned Directive, an application made by such a family member shall be addressed as soon as possible and shall not in any event be subject to administrative procedure for a longer time than 9 months. Only in exceptional circumstances linked to the complexity of a specific application may the time limit of 9 months be extended and Member States must be able to justify every such case individually. In that regard, administrative capacity can never justify such an exceptional extension.

The Swedish Migration Agency has for several years exceeded the 9 months' time limit routinely without any individual justification. This application causes a severe obstacle for families who wish to reunite in Sweden and it obstructs an effective enforcement of directive 2003/86/EC. In the present complaint we bring to the fore statistics to support this claim and in that regard, it should be noted that the statistics presented show average duration and that many application procedures greatly exceed these numbers. From a survey that right now is being conducted by the Swedish Network of Refugee Support Groups (FARR) we learn that many family reunification applicants have waited between 18 months and three years for their application to be processed. Therefore, the claims brought to the fore in this complaint must also be considered in the light of those families that have been waiting up to three years for a decision.

The present complaint is filed by Stockholm City Mission, City Mission Gothenburg and The Swedish Network of Refugee Support Groups (FARR).

- Stockholm City Mission (Stockholm Stadsmission) is an idea-driven organization, independent of state, municipality and church, which cooperates with municipalities, county councils and other non-profit organizations. The organisation was established in 1853 and the activities are conducted for people in homelessness and addiction, children, young people, the elderly and

migrants. Stockholm City Mission also conducts school activities and social enterprises. The work is carried out by employed staff and volunteers. The business is funded with gifts from individual donors, companies, parishes, funds and foundations, state, municipal and county contributions, and social enterprise income.

- City Mission Gothenburg (Göteborgs Stadsmission) is a NGO that was established in 1952 and it works to alleviate poverty, homelessness and alienation in the city of Gothenburg. Among other things, City Mission does offer support to their visitors and mediate contact with the Swedish authorities. They also work to compile and mediate knowledge about migration in the EU and vulnerability on local, national and European levels.
- The Swedish Network of Refugee Support Groups, FARR, is an umbrella organization founded in 1988 with the aim to promote asylum rights. Around 900 individuals and 60 organizations, most of them local groups, are members of the network. FARR as a national organization summarizes the members' experiences to influence the authorities and gives support by reliable information and direct advice.

## Case studies collected by the complainants

Through the family reunification survey conducted by FARR we have received information about the obstacles individuals meet when trying to reunite in Sweden. The survey was sent to persons who had turned to FARR with questions concerning family reunion. Many informants brought the lengthy procedural times to the fore, some mentioned the obstacles of reaching an embassy to apply for family reunification and others the problem of children turning 18 before a decision is taken. In addition, some of them described the personal consequences of not being able to reunify with their families. Below are a few examples from the survey:

- One mother, whose children were still in a war zone in Syria, wrote to FARR after she had started the web application for family reunification and got a message that her family could expect to get a decision after 21 months.
- A social worker told FARR about an unaccompanied child who tried to get his parents to Sweden. Every time they asked for a decision the expected time was extended. The migration officer explained that minors who were nearly 18 had priority and since he was younger he could wait. However, when the applicant's 18th birthday was upcoming he was informed that the queue system had been changed and there was no priority for him. When he turned 18 the case fell back in the queue and at the time of the interview the family had been waiting in Turkey for almost three years.
- Some of the informants reminded FARR that also the asylum procedure had been lengthy. The informant had waited two years for decision and then again two years for family reunion.
- One family in Lebanon told FARR that they cannot leave to visit an embassy in another country as their documents will expire before they have been granted an interview and they do not know if they will be let in again. Therefore, they cannot finish the procedure.
- One of the informants from Syria told FARR that he has not seen his family in 2,5 years. They got time for interview at an embassy but couldn't get visa. Now the daughter is 18 and he is afraid the family can't reunite
- One informant concludes: "I waited for my wife for two years and I have wasted so much time being worried, and this influences my ability to create an independent life in Sweden, though I am normally an active person".

## Claims

- Firstly, with regard to the wording and purpose of article 5(4) of Directive 2003/86/EC, it is submitted that the provision is transposed incorrectly into Swedish national legislation.
- Secondly, it is submitted that the Swedish Migration Agency's processing times regarding applications for family reunification to Sweden are incompatible with article 5(4) and constitute an obstacle to the enforcement of the Directive's purpose as it is expressed in recitals 4 and 13.
- Thirdly, it is submitted that the Swedish Migration Agency fails to fulfil its obligations with regard to the right to good administration, stipulated in article 41 of the Charter of Fundamental Rights.
- In the light of these submissions we, Stockholm City Mission, City Mission Gothenburg and the Swedish Network of Refugee Support Groups (FARR), request the European Commission to launch an investigation and initiate an EU Pilot procedure.
- In the event that Sweden does not bring national law in to compliance with EU Law we request the Commission to open an infringement proceeding against Sweden under article 258 TFEU.

## Breach of Union law

Article 5(4) of directive 2003/86/EC is transposed incorrectly into Swedish law and neither the wording nor the purpose nor the general scheme of the directive have been taken into account.

It is settled case law that, in accordance with the need for a uniform application of EU law and the principle of equality, a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, and that interpretation must take into account, *inter alia*, the context of the provision and the objective pursued by the legislation in question

(C-225/16 *Ouhrami*, para 38 and the case-law there cited). As follows from the wording of article 5(4), a family reunification procedure must not, in any event, be of longer duration than 9 months. Moreover, as is stipulated in subparagraph 2, Member States may derogate from that time limit only in exceptional cases linked to the complexity of the application.

From a comparative perspective, the wording of article 5(4) subparagraphs 1-2 is equally clear, precise and unconditional in the English and in the Swedish language versions of the directive. However, the transposed measure in Swedish national law (Aliens Ordinance, (2006:97), chapter 4, section 21a) differs from the wording, purpose and general scheme of article 5(4). The Swedish provision corresponding to article 5(4) stipulates that an errand should be processed within 9 months unless there are special reasons for extending that time limit. The Swedish provision does not stipulate that the special reasons that could sanction an extension of the time limit must be linked to the circumstances of a specific case. On the contrary, within Swedish jurisprudence “special reasons”, as for instance in Aliens Ordinance, (2006:97), chapter 4, section 21a, is a relatively lax criterion that can be met by any circumstances that directly or indirectly may impact the duration of the procedural time, including the workload of an administrative body.

Considering that the wording of the corresponding provision in Swedish law is different from the wording of article 5(4) in such a way that the national provision is given a meaning and scope that deviates from article 5(4), even though article 5(4) does not provide for any Member State discretion with regard to the time limit of the procedures, the transposition of article 5(4) of directive 2003/86/EC into Swedish national legislation must be considered incompatible with EU law.

Furthermore, Aliens Ordinance, (2006:97), chapter 4, section 21a is incompatible with EU law since it reflects neither the objectives pursued by article 5(4) nor the context of article 5(4).

The purpose of Directive 2003/86/EC, as expressed in its article 1 and recital 4, is to make family life possible. Furthermore, in accordance with recital 13, in order to provide appropriate legal certainty to those concerned in family reunification Member States shall adopt effective and manageable procedures, taking into account the normal workload of the Member States' administrations. For the purpose of such effective procedures with regard to article 5(4), it must be reiterated that in accordance with the Commission's guidance on the application of the provision, the possibility for derogation under article 5(4) must be interpreted strictly and on a case-by-case basis. Also, Member States must be able to justify every derogation of the time limit with regard to the specific complexity of that particular case, and administrative capacity issues cannot justify an exceptional extension (COM(2014) 210 final, p. 10).

Thus, considering Aliens Ordinance, (2006:97), chapter 4, section 21a in light of the purpose and context of article 5(4), it is evident that a derogation from the 9 months stipulated time limit by reference to "special reasons" within the meaning of Swedish law cannot be considered to provide appropriate legal certainty for applicants. A provision as such assumes a system where the effective enjoyment of family reunification may become contingent on the workload at any given time of the competent administrative authorities, or to political priorities concerning the staffing of those authorities. In that respect, the transposed provision rather establishes an arbitrary obstacle to the effective enjoyment of family reunification that clearly jeopardizes the objectives pursued by the Directive.

Taking this into consideration, the Swedish provision corresponding to article 5(4) subparagraph 1-2, the Aliens Ordinance, (2006:97), chapter 4, section 21a, must, with regard to the wording of article 5(4) and in light of the purpose of Directive 2003/86/EC, be considered to be transposed incorrectly into Swedish national legislation.

The Swedish Migration Agency's processing times regarding applications for family reunification to Sweden are incompatible with article 5(4) and constitute an obstacle to the enforcement of the Directive's purpose as it is expressed in recitals 4 and 13.\*

With regard to applications at the Swedish Migration Agency for the purpose of family reunification in connection with directive 2003/86/EC, the general procedural time during 2017 (excluding applications for adoption, earlier stay in Sweden and children born in Sweden) amounted to a period between approximately 13 and 15 months depending on whether it was an electronic- or a paper application (see appendix 1). Accordingly, the general procedural time during 2017 far exceeded the time limit as stipulated in article 5(4).

These excessive procedural times at the Migration Agency have been subject to criticism by the Swedish Justitieombudsman. In its audit of the agency in 2017 the Ombudsman concluded that it was common that the *de facto* processing of applications had not even begun until 18-24 months after the applications were lodged (JO dnr 5600-2016, p. 6). Criticism was also brought to the fore by the Justitieombudsman in 2014, leading the Ombudsman to conclude that the procedural times with regard to family reunification were unreasonably long and that the time limits were far exceeded on a routine basis (JO dnr 5497-2013, p. 12 – 13). It must thus be concluded that the problem with long procedural times at the Swedish Migration Agency is not new. The Migration Agency's response to this criticism has been that the excessively lengthy procedures are due to a high influx of asylum seekers (JO dnr 5497-2013, p. 10) and to a high amount of applications for residence permits (JO dnr 5600-2016, p. 4).

According to our analysis of the Migration Agency's statistics however, the replies from the Migration Agency cannot in a satisfactory way explain the excessively lengthy procedural times. In 2014 the number of asylum applications lodged at the Migration Agency were 81 301 and the general procedural time for family reunification was 6,5 months. In 2015 the Migration Agency received 162 877 asylum applications and the

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\* All statistics in this section refer to first time applications.

general procedural time for family reunification increased to 7,5 months. In 2016 the number of asylum applications dropped to 28 939 but the general procedural time for family reunification increased to almost 9 months. Lastly, in 2017 the number of asylum applications at the Migration Agency amounted to 25 666 and the average procedural time for family reunification increased to 10,5 months. Consequently, the statistics do not show a tangible correlation between a high number of asylum seekers and long duration with regard to procedural times for family reunification.

Similarly, it is not possible to find any correlation between a general increase in duration of procedural times and the amount of applications for family reunification. The flow of such applications has been rather stable between 2014 and 2017, ranging between approximately 65 000 (the highest amount) in 2016, to around 54 000 (the lowest amount) in 2015 and in 2017.

The statistics show that there must be other reasons for the protracted procedure than a high influx of migrants. By analyzing the procedure for family reunion, we can identify the practical obstacles that arise for those who need to attend an embassy in a third country as one of the reasons. We can also see that the additional requirements for reunification included in the temporary Asylum Act currently in force in Sweden affect the processing time due to the extra questions, documents and investigations that are needed (see appendix 3).

By looking at the statistics in detail, it is apparent that certain kinds of reunification procedures greatly exceed the time limit of 9 months. In 2017 a paper application for reunification with a minor child had an average procedural time of 13 months and a similar electronic application took on average 10 months. For the matter of applications for newly established relations, the reunification procedures amounted to an average duration of 16 months for paper applications and an average duration of 13,5 months for an electronic one. In general, the paper-submitted applications stand out and in 2017 (excluding applications for adoption, earlier stay in Sweden and children born in Sweden) paper applications made from third countries showed an average procedural time of 12 - 16 months depending on the category of reference person.

Concerning 2018, statistics from the Migration Agency show that the average procedural time for certain categories of family reunification have increased considerably since 2017. The general procedural time for an electronic application based on an established relationship has increased by 67 days, from almost 13 months to approximately 15 months. A paper application within the same category has had a general procedural time increase of 57 days, from 15,5 months to 17,5 months. Similarly, the average procedural time for applications for reunification with a minor child has considerably increased during 2018. With regard to an electronic application in such cases, the average time is now 12 months and for a paper application the general procedural time is nearly 14 months. (see appendix 2).

Pursuant to recital 13 of the directive, in order to provide appropriate legal certainty to those concerned by family reunification, Member States shall adopt effective and manageable procedures, taking into account the normal workload of the Member States' administrations. For that purpose and in consideration of article 5(4), it must be reiterated that administrative pressure, such as the one referred to by the Swedish Migration Agency, cannot be used to justify a derogation from the 9 months' time limit as stipulated by the Directive (COM(2014) 210 final, p. 10). In any case, such derogation must be applied restrictively so that it does not undermine the objective of promoting family reunification (C-578/08 *Chakroun*, para 43). Moreover, the Swedish Migration Agency cannot reasonably argue that the admittedly high administrative pressure on it in recent years has not been entirely predictable. It has been for the Migration Agency to take measures to anticipate its workload and to prepare itself to process applications within the time stipulated in article 5(4).

Furthermore, the purpose of Directive 2003/86/EC, as expressed in recital 4, is to make family life possible and to facilitate the integration of third country nationals in the Member States and to promote economic and social cohesion. Therefore, these excessive procedural times must be scrutinized in relation to that aim. Lengthy residence permit procedures have severe consequences for the applicants since they create an uncertainty about the family members' right of stay. Such uncertainty may affect an individual's possibility to integrate in the community. Not only does it imply

emotional suffering and worrying for the individuals concerned, but it may also entail personal economic loss for those who are waiting. It is further liable to cause adverse economic effects for local communities in Sweden and for the European community as a whole.

Considering that the time limit, as stipulated by article 5(4), is exceeded on a routine basis, the Migration Agency's application and interpretation of Aliens Ordinance, (2006:97), chapter 4, section 21a cannot be considered to be compatible with EU law. Neither can the procedures be considered manageable and effective. Rather, the excessive procedural times create severe obstacles for families who wish to reunite in Sweden and, as a consequence, such applications render the integration of third country nationals virtually impossible or excessively difficult. This being so, the excessive procedural times undermine the objectives pursued and constitute an obstacle to the effective enforcement of directive 2003/86/EC with regard to its purpose.

[The Swedish Migration Agency fails to fulfil its obligations with regard to the right to good administration, as is stipulated in article 41 of the Charter of Fundamental Rights of the European Union.](#)

Since this matter concerns a specific and identified procedure before a governmental agency, in this case the family reunification procedures at the Migration Agency, and moreover a procedure that falls within the substantive scope of an equally specific and identified provision of EU-law, in this case article 5(4) of directive 2003/86/EC, the Charter of Fundamental Rights of the European Union is applicable (article 51 of the Charter, see also C-617/10 *Åkerberg Fransson*, p. 21). Indeed, article 5(4) specifies, within its scope of application, what constitutes "reasonable time" in the meaning of the right to good administration, which is a general principle of EU law and enshrined in article 41 of the Charter (C-604/12 *H. N.*, para. 49).

The procedural requirement in article 5(4) thus constitutes a specific obligation on the Member States which corresponds to a fundamental right held by applicants for family reunion, the fulfilment of which is central to the aims of the directive and which is to be

interpreted in the light of article 41 and the general principle of good administration. Under this obligation, as stated in article 5(4), an applicant must receive “written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged”. Nevertheless, article 5(4) allows national administrations to take longer time to reach a decision in the event of “exceptional circumstances linked to the complexity of the examination of the application”. It is evident from the wording and the structure of this exception from the time limit that it is to be construed narrowly and that the national administration must be able, if it finds itself in a situation where it must avail itself of this exception, to present the reasons for taking a longer time than nine months. It is further evident that the reasons at issue must be linked to the complexity of the individual application, rather than circumstances of a general character such as the workload of the administration.

It follows that the Swedish Migration Agency must fulfil the time limit stipulated in article 5(4), or, of its own motion and within the aforementioned time limit, demonstrate with a statement on the “exceptional circumstances linked to the complexity of the examination of the application” which constitute the reason, in the individual case, for its failure to do so (COM(2014) 210 final, p. 10). Those reasons must, finally, be subject to judicial review in accordance with the right to effective judicial protection enshrined in article 47 of the Charter.

Only if these requirements are met can the Agency’s practice be considered to be compatible with article 5(4) of directive 2003/86/EC and the general principle of EU law and the fundamental right to good administration enshrined in article 41 of the Charter.

As submitted above, article 5(4) is transposed incorrectly into national law and the Aliens Ordinance, chapter 4, section 21a clearly does not meet those criteria’s. Neither does the general administrative procedure act (Förvaltningslag 2017:900) fulfill the requirements as they follow from article 41 of the Charter. Indeed, the general administrative procedure act does regulate the obligation of a governmental agency to notify the applicant when a procedure is delayed, but there is no obligation that such a

delay can be motivated only with the exceptional circumstances linked to the complexity of the specific case.

Considering that the Migration Agency exceeds the time limit as stipulated by article 5(4) on a routine basis, as established in the aforementioned statistics, and does not present applicants with any reasons for its failure or indeed with any notification whatsoever of its failure, the Migration Agency fails to fulfil its obligations under EU law.

### Specific enforcement action requested from the European Commission

1. In view of the fact that this problem has endured for several years, the Commission is invited to take a strong enforcement stance in respect of this complaint.
2. In this regard, as Guardian of the Treaties the Commission is respectfully reminded that this matter falls within its explicitly stated enforcement priorities given that the Swedish rules constitute a 'systematic incorrect application of EU law detected by a series of separate complaints by individuals'. Those affected by a lengthy application procedure reside outside Sweden and often they do not have access to legal help during the appeal procedure. This makes it almost impossible for the interested parties to assert their rights before a national court.
3. As a result, the Commission is urged to launch an investigation and initiate an EU Pilot procedure in order to ensure proper application of the EU rules by Sweden.
4. In the event that Sweden does not bring national law into compliance with EU Law we request the Commission to open an infringement proceeding against Sweden under article 258 TFEU.

For Stockholm City Mission

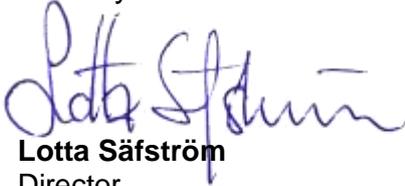


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## Appendix 1: Statistics 20170101 – 20171206

### Genomsnittlig handläggningstid anknytningsärenden 20171206

Ärendekategorier adoption, tidigare vistelse i Sverige och barn födda till föräldrar med PUT är exkluderade

Endast förstagsansökningar

### per ärendekategori och ansökningsform

År	ÄrendeKat 1A	ÄrendeKat 2	Ansökningsform	Avgjorda	Snitt hdltid totalt
2017	ANKNYTNING	ETABLERAD ANKNYTNING	ELEKTRONISK ANSÖKAN	11272	390
2017	ANKNYTNING	ETABLERAD ANKNYTNING	PAPPERS_ANS FRÅN UTL_MYND	4777	480
2017	ANKNYTNING	ETABLERAD ANKNYTNING	PAPPERS_ANS I SVERIGE	1211	393
2017	ANKNYTNING	ETABLERAD ANKNYTNING	ÖVRIGT	8	95
2017	ANKNYTNING	FÖRÄLDER	ELEKTRONISK ANSÖKAN	1306	301
2017	ANKNYTNING	FÖRÄLDER	PAPPERS_ANS FRÅN UTL_MYND	2699	363
2017	ANKNYTNING	FÖRÄLDER	PAPPERS_ANS I SVERIGE	612	318
2017	ANKNYTNING	MINDERÅRIGA BARN	ELEKTRONISK ANSÖKAN	1112	313
2017	ANKNYTNING	MINDERÅRIGA BARN	PAPPERS_ANS FRÅN UTL_MYND	2987	406
2017	ANKNYTNING	MINDERÅRIGA BARN	PAPPERS_ANS I SVERIGE	1445	325
2017	ANKNYTNING	MINDERÅRIGA BARN	ÖVRIGT	5	51
2017	ANKNYTNING	NYETABLERAD ANKNYTNING	ELEKTRONISK ANSÖKAN	15585	418
2017	ANKNYTNING	NYETABLERAD ANKNYTNING	PAPPERS_ANS FRÅN UTL_MYND	6263	497
2017	ANKNYTNING	NYETABLERAD ANKNYTNING	PAPPERS_ANS I SVERIGE	2750	478
2017	ANKNYTNING	NYETABLERAD ANKNYTNING	ÖVRIGT	5	47
2017	ANKNYTNING	SLÄKT OCH HUSHÅLLSGEMENSKAP	ELEKTRONISK ANSÖKAN	918	293
2017	ANKNYTNING	SLÄKT OCH HUSHÅLLSGEMENSKAP	PAPPERS_ANS FRÅN UTL_MYND	2043	431
2017	ANKNYTNING	SLÄKT OCH HUSHÅLLSGEMENSKAP	PAPPERS_ANS I SVERIGE	730	364

### per ansökningsform

År	ÄrendeKat 1A	Ansökningsform	Avgjorda	Snitt hdltid totalt
2017	ANKNYTNING	ELEKTRONISK ANSÖKAN	30193	395
2017	ANKNYTNING	PAPPERS_ANS FRÅN UTL_MYND	18769	451
2017	ANKNYTNING	PAPPERS_ANS I SVERIGE	6748	403
2017	ANKNYTNING	ÖVRIGT	18	70

## Appendix 2: Statistics 20180101 - 20180518

### Genomsnittlig handläggningstid anknytningsärenden 20180518

Ärendekategorier adoption, tidigare vistelse i Sverige och barn födda till föräldrar med PUT är exkluderade  
Endast förstagångsansökningar

År	ÄrendeKat 1A	ÄrendeKat 2	Ansökningsform	Avgjorda	Snitt
2018	ANKNYTNING	ETABLERAD ANKNYTNING	ELEKTRONISK ANSÖKAN	3704	457
2018	ANKNYTNING	ETABLERAD ANKNYTNING	PAPPERS_ANS FRÅN UTL_MYND	1388	537
2018	ANKNYTNING	ETABLERAD ANKNYTNING	PAPPERS_ANS I SVERIGE	657	430
2018	ANKNYTNING	ETABLERAD ANKNYTNING	ÖVRIGT	3	12
2018	ANKNYTNING	FÖRÄLDER	ELEKTRONISK ANSÖKAN	768	395
2018	ANKNYTNING	FÖRÄLDER	PAPPERS_ANS FRÅN UTL_MYND	746	379
2018	ANKNYTNING	FÖRÄLDER	PAPPERS_ANS I SVERIGE	366	350
2018	ANKNYTNING	MINDERÅRIGA BARN	ELEKTRONISK ANSÖKAN	678	370
2018	ANKNYTNING	MINDERÅRIGA BARN	PAPPERS_ANS FRÅN UTL_MYND	1217	417
2018	ANKNYTNING	MINDERÅRIGA BARN	PAPPERS_ANS I SVERIGE	775	336
2018	ANKNYTNING	MINDERÅRIGA BARN	ÖVRIGT	1	3
2018	ANKNYTNING	NYETABLERAD ANKNYTNING	ELEKTRONISK ANSÖKAN	5234	400
2018	ANKNYTNING	NYETABLERAD ANKNYTNING	PAPPERS_ANS FRÅN UTL_MYND	1897	474
2018	ANKNYTNING	NYETABLERAD ANKNYTNING	PAPPERS_ANS I SVERIGE	1202	441
2018	ANKNYTNING	SLÄKT OCH HUSHÅLLSGEMENSKAP	ELEKTRONISK ANSÖKAN	350	351
2018	ANKNYTNING	SLÄKT OCH HUSHÅLLSGEMENSKAP	PAPPERS_ANS FRÅN UTL_MYND	570	391
2018	ANKNYTNING	SLÄKT OCH HUSHÅLLSGEMENSKAP	PAPPERS_ANS I SVERIGE	305	319
			Summa:	19861	

År	ÄrendeKat 1A	Ansökningsform	Avgjorda	Snitt hdlti
2018	ANKNYTNING	ELEKTRONISK ANSÖKAN	10734	416
2018	ANKNYTNING	PAPPERS_ANS FRÅN UTL_MYND	5818	457
2018	ANKNYTNING	PAPPERS_ANS I SVERIGE	3305	393
2018	ANKNYTNING	ÖVRIGT	4	10
			Summa:	19861

## Appendix: 3 The reunion procedure and the causes for protraction

A recurring explanation for the lengthy processing time for family reunification is the influx of asylum seekers to Sweden 2014-2015, which in the following years has led to a large number of applications for reunification. The burden on both asylum investigations and investigations of family reunification cases has affected the queues. But after two more years, when the number of asylum seekers has been normal, the processing times are still protracted.

There must be other reasons for the processing time than the influx. The description below of the procedure and obstacles aims to clarify how the protraction occur. It is easy to identify the practical obstacles that arise for those who need to attend an embassy in a third country, especially considering that certain documents must be obtained from their home country. We can also see that the requirements for reunification affect the processing time. The temporary asylum law currently in force in Sweden contains additional requirements for family reunification and has thereby probably also contributed to protracted processing times. The Migration Agency must check that the conditions are met and often ask additional questions. The applicant and the reference person must acquire additional documents.

### Basic rules

Those who are entitled to reunite in Sweden are the nuclear family, that is, adult couples and their minor children. Other close relatives may according to the ordinary Aliens Law be allowed to reunite on certain conditions, like showing special dependency, sharing households just before the flight and that application is made within around ten months. If the reference person has been an asylum seeker s/he must have permanent residence, or have a good chance of obtaining a permanent residence permit.

Proven identity is required for the applicant abroad. In some exceptional situations where passport can not be achieved, the evidence requirement can be lowered if DNA tests show the relationship between parent and child. In order for an orphaned

child to apply, application must be made by a deputy appointed (with documents approved by Sweden). In order for children to travel alone or to accompany a parent to Sweden, there must be consent from the other parent or proof that the other parent has disappeared or is deceased. Additional documents required may be marriage certificates, birth certificates, adoption papers, documents showing that a couple have lived in the same place, etc. Documents from the reference person can be required about housing, employment, and actual salary.

#### [Obstacles to reach a Swedish embassy](#)

Sweden has no embassies or other offices handling family reunion in Syria, Afghanistan, Eritrea or Somalia. The embassies are located in other countries with visa requirement. Afghans can travel to Iran, Pakistan or India, but visa, travel and subsistence is expensive. Syrians and Eritreans have often been denied visa for the countries where Sweden has embassies.

It can also be difficult to get visa valid for the time of appointment, if the embassy and the authorities of the country don't cooperate. This has caused months and years of extra waiting time in Jordan.

Syrians staying in Turkey or Jordan can give in applications from the Swedish embassies in these countries but the Swedish embassy in Lebanon doesn't handle family reunion.

Today Eritreans and Syrians are called to the Swedish embassy in Khartoum, Sudan. For Eritreans this is very risky. Many incidents of arrest, kidnapping and rape have occurred at the border.

#### [Requirements in the temporary Limitation Act](#)

In June 2016, the Swedish Parliament adopted a time-limited law restricting. This means inter alia, that no residence permits for asylum reasons are permanent and that the right to family reunification is limited. The restrictions are as follows:

### General restrictions

- Persons who have got a temporary residence permit during the Limitation Act because of need of subsidiary protection do not have the right to family reunification if they applied for asylum later than November 24, 2015.

Those with subsidiary protection who sought asylum before this date and those entitled to refugee status can be reunited with their families under certain conditions:

- No additional categories in addition to the nuclear family are allowed.
- Both adults must have reached the age of 21.
- The family must have been formed before the stay in Sweden. Exceptions from this and from the age requirement can be made if the couple has a common child.

### Subsistence Requirements

Adult reference persons must have accommodation spacious enough for the family and be able to support the entire family with regular income.

Income and housing requirements are detailed. The requested income level is relatively high and is calculated after tax and rent have been paid, which requires further documentation. The subsistence requirement can be avoided if the relationship is established abroad for some duration AND the family can not be reunited in another non-EU country AND the application is submitted within three months after the reference person has obtained a residence permit.

### Exception Clause

According to the Limitation Act, family reunification shall be allowed if a decision to refuse a residence permit would be contrary to a convention commitment signed by Sweden.

The restrictions and exceptions described above will probably have an impact on the processing time because of the increased need for investigation, supplements and considerations before family reunification can be granted. For example, the fact that a relationship is "established" can appear as a simple condition, but requires evidence

and the evidence must be assessed.

The fact that the temporary residence permits are followed by reapplications - most often within 13 months - may also have an impact due to increased pressure on the Swedish Migration Board.

### [Procedure for application](#)

This description relates to applications for family reunion made by internet.

(app = applicant, ref = reference person, mig = Migration Agency)

The procedure starts when the reference person gets permission to stay in Sweden.

- Mig: The residence card is produced and the holder is informed when it can be picked up at the agency.
- Ref: When the residence card has come, turn to the tax service (Skatteverket) to apply for personal identity number = social service number and to register the marriage.
- App: Check passports validity period and perhaps apply for new passports from country of origin.  
(This can be a problem in itself. It can be very expensive to get passport outside of your country. In some cases it can be dangerous for the applicant or for remaining family to approach their embassy.)
- App: Gather documents showing the relation.  
Scan to pdf or other portable format:  
+ copies of the pages in spouse's and the children's passport which show their personal information, photograph, signature (where appropriate), passport number, passport issuing country, the passport's period of validity and permission to live in countries other than your country of origin.

- + marriage certificate if available
- + any document proving that the marriage is registered in the country of origin  
(+ documents to show that the couple have had common residency if they are not married)
- + birth certificates for the children where both parents' names are indicated  
(+ adoption papers if any child is adopted)  
(+ document showing who has custody and can make the application if a child is seeking to unite with relatives in Sweden)  
(+ document showing consent from the other parent if one parent applies to bring a child to Sweden, for example to reunite with another child. Alternative: document showing that the other parent is dead or missing)
- App/ref: Get all documents translated to Swedish or English by an authorized translator. Save the translations to portable format.
- Ref: Check the asylum application and what is written therein about family members. If there is any material difference compared with the persons concerned for reunion, approach the Migration Agency about the need of correction.
- Ref: Inform the applicant about ref person's Swedish identity number, as well as postal address, telephone number and email address.
  
- App: Make the webb application and attach the scanned documents when prompted. In practice, the webb application can be made from anywhere, but you must have an address in a country outside Sweden where you have the right to stay for this purpose.
  
- Ref: If support requirement applies:
  - + Check that employer pays tax and insurances
  - + Save employment contract and pay slips to prove salary
  - + Save contract for apartment.
  
- Mig: Email is sent to ref. with instructions to use a webb form for his/her part of the application. No questions to minor who wait for reunion with parents.

- Ref: Answer the the webb form.

*QUEUE (weeks or months)*

- Mig: Case officer is appointed and check the case in brief. Decision can be taken if there are obvious reasons to reject the application.

(• App is informed if further documents are needed, for example if passports are not considered valid.)

(• Ref is asked for additional information if needed, in particular concerning the support requirement)

- Embassy is informed of which questions should be put to the applicant.

- App is invited to book appointment at Swedish embassy.

The possibility to reach an embassy is a problem in itself, causing big part of the waiting times. See below about embassy problems.

(• App: Seek visa for travel to embassy, if needed\*)

*QUEUE (big differences between countries. Khartoum is the worst with up to 21 months)*

- App: Interview at the embassy. Sign letter of appointment for spouse or other representative in Sweden, if relevant. Hand in documents. Leave fingerprints and photos.

(• DNA test is made with help of embassy, if relevant)

*QUEUE (weeks or months)*

- Mig: The case is investigated by the same officer as before, or a new one.

- DNA test of ref is taken, if relevant

- (• If needed: ref is invited to answer further questions or is called to interview)

- (• If needed: App is invited to answer further questions)

- Mig: Decision\*\*

The situation at this time is decisive. If the employment is over or the child has turned 18 or the passport has expired, the decision can be negative.

- Mig: If the application is approved: Residence card is made

- If the application is approved, applicant is called to the embassy.

- (• App: Seek visa for new visit at embassy, if needed)

- App: Visit embassy to fetch residence card.

If the application is rejected, appeal to administrative court is possible and is done by written procedure.

When application is made on paper at an embassy, the procedure is similar with fewer steps, but in practice probably takes more time rather than less. A difference that could be important is that information about apartment and salary in Sweden will be requested later in the procedure.