CONDITIONS FOR FAMILY REUNIFICATION IN THE EUROPEAN UNION: SWEDEN

National Report to the European Policy Centre on the Family Reunification Project 2011

Forming a basis to:

*Conditions for Family Reunification under Strain: A comparative study in nine EU member states*
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CHAPTER 1 - GENERAL QUESTIONS

Q.1 Did national rules regarding family reunification change after 2007?

   Yes
   No

Q.2 If yes, when have the new rules been adopted?
On 1 January 2010 new rules were introduced into the Swedish Aliens Act1 (SFS 2005:716; amendments to the act through 2009:1542) which means that a person who is a refugee or other person in need of protection will be granted a status declaration. Furthermore, on 15 April 2010 rules (amendments to the Aliens Act made through 2010:175) regarding maintenance requirement for family member integration were introduced in the Aliens Act and in the Aliens Ordinance (SFS 2006:97).

Q.3 Are these rules of legislative or regulatory nature?

The rules are both of legislative and regulatory nature. The rules about status declaration are of legislative nature and derive from the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons such as refugees or as persons who otherwise need international protection and the content of the protection granted (The Qualification Directive). The rules about maintenance requirement for family member integration are of both legislative and regulatory nature.

Q.4 Did these modifications touch upon conditions required for family reunification?

   Yes
   No

Q.5 If yes did they concern

   Sickness insurance
   Accommodation conditions
   Resources
   Integration measures

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Minimum period of lawful residence

Other

In any of the above mentioned cases, please explain briefly (introduction of supplementary new conditions, reinforcement of existing conditions,...)

Accommodation conditions and resources:
Sweden introduced a maintenance requirement, derivative from the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Directive on Family Reunification) which means that the sponsor must be able to support herself/himself and have an accommodation of adequate size and standard for herself/himself and the family member (Chapter 5 Section 3 b of the Aliens Act, amendments made through 2010:175). There are exceptions to this principal rule (Chapter 5 Section 3 c-e of the Aliens Act, amendments made through 2010:175).

Other:
The new rules implementing the Qualification Directive mean that a person who is a refugee or other person in need of protection will be granted a status declaration. These amendments mean that the categories of persons in need of protection referring to the Aliens Act have increased, but the amendments do not involve any material change. From having two categories, there are now three separate categories: refugees, persons eligible for subsidiary protection and/or persons otherwise in need of subsidiary protection (Chapter 4 Section 1, 2 and 2 a of the Aliens Act, amendments made through 2009:1542). The first two categories are covered by the Qualification Directive, but the third category is national.

This change had an impact on the rule about family reunion for unaccompanied minors as the categories changed in accordance with the above mentioned amendments. Accordingly, the amendments concerning family reunion does not involve any material change either. (Chapter 5 Section 1, first paragraph and Chapter 5 Section 3, first paragraph, point 4 of the Aliens Act, amendments made through 2009:1542.)

CHAPTER 2 - MEMBERS OF THE FAMILY ENTITLED TO FAMILY REUNIFICATION

Spouse

Q.6 Is spouse entitled to family reunification?

Yes
No

According to Chapter 5 Section 3, first paragraph, point 1 of the Aliens Act (amendments made through 2009:1542) a spouse is entitled to family reunification, including both heterosexual and same sex couples.

If no please explain

Q.7 Do national rules set an age limit?

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If yes, what is the age required? If it has changed recently, explain why?

If either of the spouses or cohabiting partners is less than 18 years of age a residence permit may be refused. When assessing whether a residence permit should be refused, account must be taken of the alien’s other personal circumstances and family situation (Chapter 5 Section 17 a, second paragraph, point 3 and third paragraph of the Aliens Act, amendments made through 2006:220). The reason for this rule is to counteract marriages and cohabitee relationships between minors. The regulation is a codification of earlier statements made in the preparatory work and case law. Accordance to case law, a residence permit can be granted if a spouse, less than 18 years of age, is pregnant (MIG 2006:8; MIG refers to a case dealt with by the Migration Court of Appeal).

CHAPTER 3 – WEDDING AND PARTNERSHIP

Q.8 When the wedding is supposed to take place in the Member State, what documents must be provided for its celebration?

According to Chapter 5 Section 3 a, first paragraph, point 1 of the Aliens Act (amendments made through 2009:1542) a residence permit may be given to an alien who intends to marry or enter into a cohabitee relationship with a person who is resident in Sweden or who has been granted a residence permit to settle in Sweden, if the relationship appears to be serious and there are no special grounds to refuse a permit. If the marriage is to take place in Sweden, no documents are required for its celebration. Instead, the Migration Board investigates the seriousness of the relationship.

According to the preparatory work, the Migration Board should control how long the relationship has lasted, if the couple has met to some extent, how much they know about each other and if they have a common language to communicate in. If the couple has lived together abroad on a permanent basis with a common household, in practice for at least two years, the applicant has got the same right to family reunification in Sweden as if they had been married, provided that the applicant and sponsor can prove their cohabitation abroad.

Q.9 Are specific procedures organised to prevent the celebration of weddings in the Member State?

Yes
No

Q.10 If yes, which authority is in charge?

3 Government bill 2005/06:72, Implementation of the EC directive on family reunification and som questions on the processing and DNA analysis for family reunification [Genomförandet av EG-direktivet om rätt till familjëåterförening samt vissa frågor om handläggning och DNA-analys vid familjëåterförening], p. 98.

Q. 11 What are the legal grounds upon which the authority is entitled to refuse the celebration of the wedding? (validity of documents, absence of genuine marital life, purpose of the wedding,...)?

If the relationship is not determined to be serious according to the Swedish Aliens Act, the application for a residence permit can be rejected (Chapter 5 Section 3 a, first paragraph, point 1 of the Aliens Act, amendments made through 2009:1542). The grounds for when a relationship is considered as serious are specified in the preparatory work (how long the relationship has lasted, if the couple has met to some extent, how much they know about each other and if they have a common language to communicate in, see above para Q. 8) and the assessment is based on the information given by the applicant and the sponsor.

Q. 12 When the wedding has been celebrated in a third country, what documents must be provided for its recognition?

A wedding certificate in original must be shown and a copy of the certificate must be submitted according to the internal handbook that is applied by the Migration Board (The Aliens Handbook). It is important that an official gets the opportunity to see the original document and assess its value as evidence. It is the officials at the Swedish Embassies and General Consulates who do the validity checks. The certificate should be translated into English and, if possible, be signed by a notary public or similar in the third country. If possible the applicant should also submit a document which shows that the marriage is registered in the third country.

If there are several elements before the marriage ceremony and these elements are documented, those documents can also be of importance according to the handbook because the elements are often crucial for the completion of the marriage and for the persons to be declared husband and wife. Furthermore, the handbook states that the principal rule is that the sponsor registers the marriage at the Swedish Tax Authority. If the marriage cannot be registered in Sweden the sponsor should explain why (The Aliens Handbook Chapter 10.2).

Q. 13 Are specific procedures organised to control the validity of a celebrated wedding?

Yes
No

If yes, please indicate:
- which authority is in charge?
- legal grounds to cancel the wedding
- the period during which the wedding can be challenged
- remedies available against negative decisions

The Migration Board is in charge of controlling the validity of the marriage, but it is officials at the Swedish Embassies and Consulates who do the validity checks of the original documents submitted by the applicant (see above at para. Q. 12). Furthermore, it is important that the validation and assessment made by the official is thoroughly documented, as the Migration Board handles applications for family reunification from a lot of different counties and cultures (The Aliens Handbook, Chapter 10.2). The Migration Board is obliged to ensure that the case is being sufficiently

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investigated according to a general administrative principle of law, ‘the principle of official investigation’\(^7\), but the applicant has got an obligation to submit the needed documents.\(^8\) The Swedish Embassies and Consulates conduct interviews with the applicants and the Migration Board conducts interviews with the sponsor, if needed. The purpose of the investigations and/or interviews is to verify the validity of the submitted documents, verification of genuine relationship and cohabitation abroad. The application for family reunification should be decided in nine months from the date when the application was submitted, unless there are special grounds (Chapter 4 Section 21 a Aliens Ordinance, amendments made through 2006:262).

If the Migration Board finds that the marriage is not legal in Sweden\(^9\) the Migration Board does not have the authority to cancel a wedding, but the Board can refuse a family reunification and a residence permit. If the applicant and sponsor cannot prove the validity of their marriage the Migration Board controls the seriousness of the relationship. If the relationship seems serious according to the Swedish Aliens Act the applicant will get a time-limited residence permit because of the seriousness of the relationship. If the sponsor is married to another person and living with that person in Sweden the Migration Board shall refuse a residence permit (Chapter 5 Section 17 b of the Aliens Act, amendments made through 2006:220).

According to the preparatory work it can be difficult to get a divorce in some situations and therefore there is a difference (may or shall be refused) between being married to someone else and being married to someone else and living together with that person (Government bill 2005/06:72, p. 37). According to earlier preparatory work the risk of social exclusion when being forced to stay in the home-country without the spouse should be taken into consideration when assessing residence permits because of marriages between minors (Government bill 1982/84:144, About Immigration and Refugee Policy [Om invandringss- och flyktingpolitiken], p. 75). As for marriages between minors the risk of social exclusion when married to more than one person can be taken into consideration. If the marriage is legal, but the spouses were joined in matrimony solely to get a residence permit for the alien or if the spouses do not live together or have the intent to do so, the Migration Board may refuse to grant a residence permit (Chapter 5 Section 17 a, first paragraph, point 2 of the Aliens Act, amendments made through 2006:220).

A residence permit may also be refused if the spouses or cohabiting partners do not live together or do not intend to do so, if one of the spouses is married or a cohabiting partner to somebody else or if one of the spouses is a minor (Chapter 5 Section 17 a, second paragraph of the Aliens Act). If the applicant or the sponsor knowingly has given false information or if they knowingly have not told the Migration Board certain information a residence permit may be refused if this information is significant for obtaining the permit (Chapter 5 Section 17 a, first paragraph, point 1 of the Aliens Act). In the assessments in the above cases the Migration Board has to consider the alien’s personal circumstances and family situation (Chapter 5 Section 17 a, third paragraph of the Aliens Act).

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\(^7\) There is no legislation regarding the ‘principle of official investigation’ but Section 4–7 Administrative Procedure Act [Förvaltningslagen], SFS 1986 :223, regarding the service-duties and co-operation of authorities, is considered to express the principle.

\(^8\) Government bill 2005/06 :72, p. 52. See also MIG 2008 :18 where it is stated that it is the applicant who has got the burden of proofing that a legal marriage exists.

\(^9\) See Section 7 and 8 a of the Act on International Legal Relations Concerning Marriage and Guardianship [lag om vissa internationella rättsförhållanden rörande äktenskap och förmyndarskap], SFS 1904 :26, p. 1. See also MIG 2007:19.
The marriage can be challenged during the assessment of the application, which can occur more than once. The reason for multiple assessments is because a residence permit is limited in time if the applicant and sponsor have not been living together abroad on a permanent basis, in practice at least two years, and therefore a new assessment is made when the applicant applies for a permanent residence permit. The time-limited residence permit should be granted for at least one year for spouses and partners according to Chapter 5 Section 3, third paragraph of the Aliens Act (amendments made through 2009:1542).

During the second assessment the Migration Board interviews the applicant and the sponsor. If the relationship continues and the alien has held a temporary residence permit for two years, the alien may be granted a permanent residence permit. If there are special reasons a permanent residence permit can be given before the end of the two-year period. A residence permit may also be granted if the relationship has ended but the alien has special ties to Sweden, the relationship has ended primarily because the alien or the alien’s child has been subject to violence or some other serious violation of their liberty or peace in the relationship, or if there are other strong grounds for prolonging the alien’s residence permit (Chapter 5 Section 16 of the Aliens Act, amendments made through 2006:220).

If the Migration Board does not grant a residence permit for family reunification the decision can be appealed by the applicant. Decisions made by the Migration Board can be appealed to a migration court (Chapter 14 Section 3 of the Aliens Act, amendments made through 2006:219). A decision of a migration court can be appealed to the Migration Court of Appeal (Chapter 16 Section 9 of the Aliens Act). In normal administrative matters the highest court is the Supreme Administrative Court, but in migration matters the highest court of appeal, the Migration Court of Appeal, is the Administrative Court of Appeal which is one step lower than the Supreme Administrative Court.

A permission to appeal to the Migration Court of Appeal is required. Leave to appeal is issued if it is of importance for the guidance of the application of the law that the appeal is examined by the Migration Court of Appeal or there are other exceptional grounds for examining the appeal (Chapter 16 Section 11-12 of the Aliens Act, amendments made through 2009:1542). If the Migration Board finds that a decision which the Board has issued is incorrect because of new circumstances or some other reason the Board shall change the decision if it is not to the detriment of the alien. If the case has been turned over to a migration court this duty is not applicable (Chapter 13 Section 13 of the Aliens Act).

Q.14 Are specific procedures organised to control the sincerity of a wedding after it has taken place? (see former Q. 83 and subsequent)

Yes
No

If yes, please indicate:
- which authority is in charge?
- legal grounds to cancel the wedding
- the period during which the wedding can be challenged
- remedies available against negative decisions

The Migration Board is in charge of controlling the sincerity of a wedding after it has taken place.

If the marriage is legal but the spouses were joined in matrimony solely to get a residence permit for the alien, the Migration Board may refuse to grant a residence permit. If incorrect information has
knowingly been supplied or circumstances have knowingly been suppressed that are of importance for obtaining the residence permit a residence permit may also be refused. In the assessment in the above cases the Migration Board has to consider the alien’s personal circumstances and family situation (Chapter 5 Section 17 a, first paragraph, point 1-2 and third paragraph of the Aliens Act, amendments made through 2006:220). If the Migration Board suspects that a marriage is a marriage of convenience or fraud a thorough investigation should be done according to the preparatory work which further states that it is the Migration Board that has got the burden of proving that the marriage is a marriage of convenience or fraud. The investigation should include questions regarding when the spouses met and started their relationship and how well they know each other (Government bill 2005/06:72, pp. 39-40).

The Migration Court of Appeal has assessed the question regarding the burden proof of the Migration Board a couple of times. The court has stated that it is the state which has the burden of proof and the assessment should be done objectively. Further on the Migration Board has to make it probable that the marriage is a marriage of convenience or fraud by showing several concrete circumstances which are typically dedicated to question the object of the marriage and that the spouses has joined in matrimony solely to get a residence permit. The investigation should be deepened and resemble an investigation regarding an assessment of the seriousness of a relationship (MIG 2007:19, MIG 2007:60 and MIG 2009:25).

The marriage can be challenged during the assessment of the application, which can occur more than one time. The reason for multiple assessments is because a residence permit is limited in time if the applicant and sponsor have not been living together abroad on a permanent basis, in practice at least two years, and therefore a new assessment should be made when the applicant applies for a permanent residence permit. The time-limited residence permit should be at least one year for spouses and partners according to Chapter 5 Section 3, third paragraph of the Aliens Act. During the second assessment the Migration Board interviews the applicant and the sponsor. If the relationship continues and the alien has held a temporary residence permit for two years the alien may be given a permanent residence permit (see also above para Q. 13).

A decision by the Migration Board to not grant a residence permit for family reunification can be appealed by the applicant. Decisions made by the Migration Board can be appealed to a migration court (Chapter 14 Section 3 of the Aliens Act). A decision of a migration court can be appealed to the Migration Court of Appeal (Chapter 16 Section 9 of the Aliens Act). A permission to appeal to the Migration Court of Appeal is required and leave to appeal is issued if it is of importance for the guidance of the application of the law that the appeal is examined by the Migration Court of Appeal or there are other exceptional grounds for examining the appeal (Chapter 16 Section 11-12 of the Aliens Act). If the Migration Board finds that a decision the Board has made is incorrect because of new circumstances or because of another reason the Board shall correct the decision. A correction cannot lead to a disadvantage for the alien. If the case has been brought to a migration court this is not an obligation anymore (Chapter 13 Section 13 of the Aliens Act) (see also above para Q. 13).

**Partners**

Q.15 Are partners entitled to family reunification?

   Yes
   No

Q. 16 If yes, how is partnership assessed? (former Q. 38 A to D)

   Equivalence to marriage
Registered partnership
Stable relationship
Previous cohabitation
Other criteria such as common child
Any other reliable means of proof

In any of the above mentioned cases, please explain briefly proof or documents to be provided

Cohabiting partners, heterosexual and same sex couples as well as registered partners, also have a right to family reunification. According to Section 1 of the Cohabitees Act [Sambolag], SFS 2003:376, which applies to both hetero- and homosexual relationships, the partners shall be living together as a couple on a permanent basis with a common household. According to a judgement by the Migration Court of Appeal the partners must have been living together as a couple on a permanent basis abroad (MIG 2008:30). A common child is a presumption that a partnership exists. According to the internal handbook that is applied by the Board documents to prove that the couple is cohabitating partners can be a rental agreement or a contract of sale regarding a co-operative flat or a house. Common insurance policies can also prove cohabitation as partners.

The instructions also states that, if it is possible, the applicant should submit a birth certificate for the sponsor and other documents which show that the applicant and the sponsor have been registered on the present address abroad. If the sponsor in Sweden has been registered as living abroad during the period for alleged cohabitation abroad this can be in favour of the alleged cohabitation, but this is not an absolute requirement if the applicant and sponsor in some other way can prove their cohabitation.

Furthermore, according to Chapter 5 Section 3 a, first paragraph, point 1 of the Aliens Act (amendments made through 2009:1542) a residence permit may be granted to an alien who intends to marry or enter into a cohabiting relationship with a person who is resident in or who has been granted a residence permit to settle in Sweden, if the relationship appears to be serious and there are no special grounds not to give a permit (see also above para Q. 8). According to the preparatory work the Migration Board should control how long the relationship has lasted, if the couple has met to some extent, how much they know about each other and if they have a common language to communicate in.\(^{10}\) If the couple has lived together abroad on a permanent basis with a common household, in practice for at least two years, the applicant has got the same right to family reunification in Sweden as if they would have been married, provided that the applicant and sponsor can prove their cohabitation abroad.

Q.17 Are specific procedures organised to control the validity of the partnership?

Yes
No

If yes, please indicate

- which authority is in charge of collecting proof and conducting interviews/investigations
- the purpose of the investigations/interviews (verification of the validity of documents, verification of genuine relationship, verification of the purpose of the partnership, ...)
- the length of the procedure in law and practice (if known)
- remedies available against negative decisions

The Migration Board has got an obligation to ensure that the case is being sufficiently investigated according to the general administrative principle of law, ‘the principle of official investigation’\(^{11}\), but the applicant has got an obligation to submit the needed documents.\(^ {12}\) The Swedish Embassies and Consulates conduct interviews with the applicants and the Migration Board conducts interviews with the sponsor, if needed. The purpose of the investigations and/or interviews is to verify the validity of the submitted documents, verification of genuine relationship and cohabitation abroad. (See also above para Q. 13.)

The application for family reunification should be decided in nine months from the date when the application was submitted, unless there are special grounds (Chapter 4 Section 21 a Aliens Ordinance, amendments made through 2006:262). (See also above para Q. 13 and below para Q. 34ff.)

A decision by the Migration Board to not grant a residence permit can be appealed by the applicant. Decisions made by the Migration Board can be appealed to a migration court (Chapter 14 Section 3 of the Aliens Act). A decision of a migration court can be appealed to the Migration Court of Appeal (Chapter 16 Section 9 of the Aliens Act). A permission to appeal to the Migration Court of Appeal is required, and leave to appeal is issued if it is of importance for the guidance of the application of the law that the appeal is examined by the Migration Court of Appeal or there are other exceptional grounds for examining the appeal (Chapter 16 Section 11-12 of the Aliens Act). If the Migration Board finds that a decision the Board has made is incorrect because of new circumstances or because of any other reason, the Board shall correct the decision. A correction may not lead to a disadvantage for the alien, and if the case has been brought to a migration court, this is not an obligation anymore (Chapter 13 Section 13 of the Aliens Act). (See also above para Q. 13.)

**CHAPTER 4 – CHILDREN AND RELATIVES IN THE ASCENDING LINE**

**Minor children**

Q.18 Are minor children entitled to family reunification?

Yes
No

If no please explain (this may concerns additional conditions to be provided in the case of shared custody or adopted children)

Q.19 Until what age children are considered minor? If it has changed recently, explain why

Children are considered minor until they are 18 years of age (Chapter 1 Section 2 of the Aliens Act).

Q.20 In this case, are there specific conditions for adult children?

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\(^{11}\) There is no legislation regarding the ‘principle of official investigation’ but Section 4–7 of the Administrative Procedure Act [Förvaltningslagen], SFS 1986 :223, regarding the service-duties and co-operation of authorities, is considered to express the principle.

\(^{12}\) Government bill 2005/06 :72, p. 52. See also MIG 2008 :18 where it is stated that it is the applicant who has got the burden of proving that a legal marriage exists.
A residence permit can be granted an alien if the alien is a close relative to someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin (Chapter 5 Section 3 a, first paragraph, point 2 of the Aliens Act, amendments made through 2009:1542). According to the preparatory work this can inter alia apply in cases with adult children living with their parents. The dependence between the relatives must make it difficult for the relatives to be living apart. This means that the adult child and the sponsor must have lived in the same household immediately before the sponsor moved to Sweden and that the application should be submitted relatively soon after the sponsor’s settlement in Sweden, in order to prove the dependence.

If these conditions are not fulfilled it may be difficult to prove the special relationship of dependency between the sponsor and the family member, although difficulties to apply for reunification directly after the sponsor settled in Sweden must be taken into account (Government bill 1996/97:25, Swedish Migration Policy in Global Perspective [Svensk migrationspolitik i globalt perspektiv], p. 113). If there are exceptional grounds a residence permit may also be granted an alien who has been adopted in Sweden as an adult, is a relative of an alien who is a refugee or a person otherwise in need of protection or if the alien in some other way has other special ties with Sweden. (Chapter 5 Section 3 a, third paragraph of the Aliens Act.)

Q.21 In all cases relating to children, how is the family link assessed and/or proved?

official documents (birth certificates, custody documents, documents about adoption)

investigations (an assent from the parent to whom ties are not cited is required if that parent shares custody over the child, Chapter 5 Section 17, second paragraph of the Aliens Act, amendments made through 2006:220).

DNA tests (See below)

Q.22 In case where DNA testing is organised, is this type of proof immediately available or has it to be requested by a specific authority at a defined stage?

The Migration Board shall offer the applicant and the sponsor an opportunity to have a DNA analysis performed regarding the biological relationship cited in the application, if the previous investigation regarding the relationship does not provide a sufficient basis for granting a residence permit, and it is not obvious that the alleged relationship does not exist. If the application is to be rejected for reasons other than of inadequate investigation regarding the relationship, there is no requirement to provide an opportunity for DNA analysis (Chapter 13 Section 15 of the Aliens Act, amendments made through 2006:220).

If a DNA analysis has been cited in a case concerning a residence permit for family reunification the person who has paid for the analysis is entitled to compensation from the Swedish state for the cost if the applicant has not been given an opportunity to have a DNA analysis performed and the analysis shows the relationship cited and a residence permit is granted on the grounds of the family ties cited (Chapter 13 Section 16 of the Aliens Act, amendments made through 2006:220).

Q.23 Who pays for DNA testing and what is the cost?
Q.24 Do national rules limit family reunification of minor children of a further spouse? (Former Q. 28)

A residence permit may be refused in cases regarding family reunification for spouses or cohabiting partners or for unmarried children with a parent who is a spouse or cohabiting partner to a person living in Sweden, if the person to whom ties are cited or the alien who has applied for a residence permit is married to or cohabiting with someone else. When assessing whether a residence permit should be refused, account must be taken to the alien’s other personal circumstances and family situation (Chapter 5 Section 17 a, second paragraph point 2 and third paragraph of the Aliens Act, amendments made through 2006:220).

If the person to whom ties are cited is married to another person and is living with that person in Sweden, a residence permit shall be refused in the above mentioned situations (Chapter 5 Section 17 b of the Aliens Act, amendments made through 2006:220).

According to the preparatory work the circumstance of a sponsor being married to, or cohabiting with, somebody else is not alone sufficient. If the sponsor is married, he or she should also be cohabiting with the partner in Sweden for a rejection of the application. Neither should the situation with a married applicant automatically lead to a rejection of the application for family reunification in Sweden. The reason for this is that it is conceivable that the reason for being married is because of difficulties in obtaining a divorce, but in some situations there may be reason to reject an application if the applicant is married or cohabiting with somebody else (Government bill 2005/06:72, p. 37).

If the sponsor is married to somebody else but not also living with that person, a residence permit may be refused for a further spouse and a child. Furthermore, a child may only be granted residence permit after the parent to whom ties are not cited has also given his or her assent, if that parent shares custody of the child (Chapter 5 Section 17, second paragraph of the Aliens Act, amendments made through 2006:220).

According to the preparatory work the situation for children in polygamous families is different from a spouse’s right to family reunification with a spouse living in Sweden who is married to somebody else and also living with that person. The reason for this is that a child, whose parent is married to more than one person, can have an equal need to reunite with the parent in Sweden as a child whose parents are divorced and one of the parents has remarried and is living in Sweden. In both cases the parent abroad may be unable to exercise the custody over the child because of health issues or other reasons. The preparatory work also discusses the risk that the other parent (the spouse living abroad) will later on apply for reunification with the child in Sweden, as this indirectly could be considered as sanctioning polygamy. The child’s interest to be able to reunite with a parent resident in Sweden were, however, considered to be of such importance that no limitation of family reunification of minor children of a further spouse were made, despite this risk (Government bill 2005/06:72, p. 40). Hence, there are no limitations in the regulations regarding an unmarried child’s right to family reunification with a parent who is resident in or has been granted a residence permit to settle in Sweden (Chapter 5 Section 3, first paragraph, point 2 a of the Aliens Act, amendments made through 2009:1542). If a child obtains a residence permit in these situations there is a

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possibility to reject a future application from the parent abroad, according to the preparatory work, because a relationship to a child in Sweden does not entail an unconditional right to obtain a residence permit (Government bill 2005/06:72, p. 40).

First degree relatives in the direct ascending line

Q.25 Do national rules on family reunification regulate reunification of first degree relatives in the ascending line?

Yes
No

In all cases, please explain briefly

A residence permit may be given to an alien if the alien is a close relative to someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin (Chapter 5 Section 3 a, first paragraph, point 2 of the Aliens Act, amendments made through 2009:1542). According to the preparatory work this regulation *inter alia* can be applied in cases with parents whose adult children have taken care of them (Government bill 1996/97:25, p. 113). (See also para Q. 20 above.)

Q.26 Which conditions have to be fulfilled, like for instance being dependant and not having proper support in the country of origin?

According to the preparatory works concerning the above mentioned rule (Chapter 5 Section 3 a, first paragraph, point 2 of the Aliens Act, amendments made through 2009:1542) and as mentioned above, para Q. 20, the special relationship of dependence between the relatives has to make it difficult for the relatives to be living apart. This means that the applicant and the sponsor must have been living in the same household immediately before the sponsor moved to Sweden and the application should be submitted relatively soon after the sponsor’s settlement in Sweden to prove the dependence. If these circumstances cannot be proved it would be difficult to prove the dependence, but difficulties to apply for reunification directly after the sponsor settled in Sweden must be taken into account (Government bill 1996/97:25, p. 113).

CHAPTER 5 - LEGAL RESIDENCE AND PROCEDURAL ASPECTS

Type of residence permit

Q.27 Does the sponsor need to have a specific residence permit in order to apply for family reunification?

Yes
No (any type of legal residence permit allows the sponsor to apply for family reunification)

If yes, please explain

According to Chapter 5 Section 3 of the Aliens Act (amendments made through 2009:1542) the sponsor has to be resident in Sweden or been granted a residence permit to settle in Sweden. For Scandinavian citizens only settlement in Sweden is required because general requirements regarding residence permits do not apply to Scandinavians (Chapter 2 Section 8, first paragraph of the Aliens Act, amendments made through 2009:219). According to the Government bill the requirement
stated in Chapter 5 Section 3 of the Aliens Act means that a foreign or stateless sponsor has to have a permanent residence permit. The reason for the requirement of a permanent residence permit is to get a uniform, appropriate and non-discriminatory law (Government bill 2005/06:72, p. 28).

Q.28 Must the period of validity of the sponsor’s residence permit be of one year or more (former Q. 6 A)?

The sponsor needs to have a permanent residence permit. (See above para Q 27.) In several types of matters the principle rule is that the alien obtains a permanent residence permit when granted a permit. To obtain a permanent residence permit the alien has to meet the requirements set up in different grounds for residence permits. For example residence permits granted to refugees, persons eligible for subsidiary protection and persons otherwise in need of subsidiary protection, shall be permanent or granted for at least three years (Chapter 5 Section 1, third paragraph of the Aliens Act, amendments made through 2009:1542).

Q.29 Must the sponsor have a reasonable prospect of acquiring a right to permanent residence as envisaged by directive 2003/86? (former Q. 6)

See above para Q 27.

Length of prior legal residence before

Q.30 Is a minimal period of lawful residence required before reunification? (former Q. 57)

Yes
No

If yes, please indicate the length of the period

Application

Q.31 Is the application submitted by the sponsor or the family members? (former Q. 35 C)

The application is submitted by the person who wishes to obtain a residence permit, the family member (Chapter 5 Section 18 of the Aliens Act, amendments made through 2010:440).

Q.32 Are family members obliged to reside outside the territory while the application is examined? (former Q. 39)

Yes
No

Q.33 If the answer is yes, did your Member State organise a derogation to this rule? (former Q. 40)

Yes
No

If yes, please indicate in which “appropriate circumstances” such derogation is applicable

The alien is supposed to apply and be granted a residence permit before coming to Sweden because a residence permit cannot be granted if the application has been submitted in Sweden. Derogations,
regarding family reunification, from this principle rule are as follows: An application for a residence permit which concerns an extension of a temporary residence permit which has been granted to an alien with family ties (spouse or cohabitating partners, unmarried minor child of a parent that is married or cohabitating partner of the sponsor, person that intends to marry or begin a partnership with the sponsor and the relationship seems serious, and there are no particular reasons against a permit or an unmarried child of the former). The other derogation from this rule regarding family reunification is if the alien has strong ties to a person who is resident in Sweden and it cannot reasonably be required that the alien travel to another country to submit the application there. The Migration Board should especially consider the consequences for a child to be separated from her or his parent when deciding in this matter if the application should have been granted, if the investigation would have been done before the arrival in Sweden. An application can also be tried in Sweden if there are some other exceptional grounds (Chapter 5 Section 18 of the Aliens Act, amendments made through 2010:40).

**Examination and decision**

Q.34 What is the period of time established by law or regulation in which an application should be answered? (former Q. 41)

Unless there are special grounds, the application for family reunification should be decided within nine months from the date when the application was submitted (Chapter 4 Section 21 a of the Aliens Ordinance, amendments made through 2006:262).

Q.35 Does the combination of delays in law (length of prior legal residence and period of examination) lead to a procedure which last more than 2 years?

Yes
No

If yes, please explain briefly

Q.36 Does the combination of delays in practice (length of prior legal residence and period of examination) leads to a procedure which last more than 2 years?

Yes
No

If yes, please explain briefly

Q.37 Do national rules indicate that the time limit for examining the application can be extended? (former Q. 42)

Yes
No

If there are special grounds the time limit of nine moths for examining the application can be extended (Chapter 4 Section 21 a of the Aliens Ordinance, amendments made through 2006:262). There is no statement of possible time of extension in the Aliens Act or Aliens Ordinance or in the preparatory work to the Act and Ordinance.

Q. 38 If yes, what are the grounds? (former Q. 43 A)
Complexity of the application

Other reasons

Please explain briefly

According to the preparatory work special grounds for extending the nine month period may be if the applicant has not submitted the required basic data in due time, if the decision-making authority has not received required information from the applicant in spite of injunctions or if the applicant in some other way has not participated in the process of the case. There may also be special grounds for extension if it is a complicated investigation with questions relating to the public policy or security for example (Government bill 2005/06:72, p. 57).

Q.39 If no decision is taken within the period established by national rules, what are the consequences for the applicant? (former Q. 44)

The application is rejected
The application is accepted
Other solutions (please explain)

There are no legal consequences regarding the application and decision for the applicant if the nine month period is exceeded.

Q.40 What is the cost for a residence permit for family reunification? Indicate if it increased during the last years?

The cost for applying for residence permit for family reunification is SEK 1 500 (Euro 169) for adults and SEK 750 (Euro 84.5) for minors (under 18 years of age) (Chapter 8 Section 5, first paragraph of the Aliens Ordinance, amendments made through 2011:200). This changed was made in April 2011 and the cost tripled compared with April 2006 (SEK 500/Euro 56 for adults and SEK 250/Euro 28 for minors, amendment made through 2006:97).

According to Chapter 8 Section 5, second paragraph of the Aliens Ordinance, there is no cost for applying for family reunification if the applicant is a spouse or a cohabitating partner to a sponsor who has got a residence permit in Sweden, because he or she is a refugee or a person otherwise in need of protection. If the sponsor has got a residence permit because of exceptionally distressing circumstances there is no cost either. The same applies for an unmarried child who has got a parent who is resident or has got a residence permit to settle in Sweden, or if the child has got a parent who is married or a cohabitating partner to someone who is resident or has got a residence permit to settle in Sweden.

Further, there is no cost for applying for family reunification if the sponsor has been granted a residence permit because of a temporary law from 2005.14 (The temporary law stated that in cases of refusal of entry or expulsion where new circumstances occurred after the decision had entered into force the applicant could get a residence permit if the new circumstances meant that the applicant was a refugee or a person in need of subsidiary protection otherwise, if there were medical reasons not to carry out the decision or if it was urgent for humanitarian reasons not to carry out the decision.)

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Q.41 Does the procedure for family reunification involve any significant cost other than the price of the residence permit?

No, the procedure only involves the costs for the application.

**CHAPTER 6 – MATERIAL CONDITIONS REQUIRED**

In Sweden there are no requirements regarding the applicant’s material conditions. There is however material conditions required from the sponsor. Therefore, through this chapter, the rules regarding specific requirements concerning the sponsor is described.

**Accommodation conditions**

Q.42 Are accommodation conditions required from the applicant? (former Q. 50)

Yes

No

According to Chapter 5 Section 3b of the Aliens Act (amendments made through 2010:175) accommodation conditions are required from the sponsor.

Q.43 If yes, what conditions are required by law and/or regulation? (former Q. 51 A)

The sponsor must have an accommodation of adequate size and standard for the sponsor and the family member applying for reunification (Chapter 5 Section 3 b of the Aliens Act, amendments made through 2010:175, see also above para Q. 2-5). Certain exceptions can be made from the maintenance requirement. If the sponsor is a child, a citizen in Sweden or in another EEA-state or in Switzerland, a refugee with a residence permit or status as refugee, a quota refugee, a person eligible for subsidiary protection with a residence permit or status as a person eligible for subsidiary protection, or if the sponsor has got a permanent residence permit and has been living in Sweden with a residence permit to settle for at least four years, there are no accommodation conditions from the sponsor (Chapter 5 Section 3 c of the Aliens Act, amendments made through 2010:175).

Neither does the requirement about accommodation apply if the applicant is a child and the sponsor is a parent of the child, or if the other parent of the child is applying for residence permit along with the child (Chapter 5 Section 3 d of the Aliens Act, amendments made through 2010:175). It is possible to grant full or partial exemption from the maintenance requirement if special reasons exist (Chapter 5 Section 3 e of the Aliens Act, amendments made through 2010:175).

The Migration Board has the authority to give directions regarding the requirements of size and standard for the accommodation (Chapter 4 Section 4 b of the Aliens Ordinance, amendments made through 2010:176). According to those directions the sponsor should have an accommodation which he or she owns, rents (in first or second hand) or possesses with a co-operative. The accommodation should be of reasonable standard and of appropriate size for the number of persons who are supposed to live in it. For two adults without children there should be at least one bedroom, one living room and a kitchen or a kitchenette. If children ought to live in the accommodation there should be more bedrooms (two minor children can share bedroom).15

15 MIGRFS 07 /2010, Directions from the Migration Board regarding maintenance requirement for family member immigration [Migrationsverkets föreskrifter om försörjningskravet vid anhöriginvandring].
Q.44 Are they comparable to the conditions required to a family of nationals living in the same region? (former Q. 51 C)

The directions given by the Migration Board about accommodation is based on the general directions from the Swedish National Board of Health and Welfare about cramped housing accommodation. This would mean that the requirements about accommodation are comparable to the conditions required to a family of nationals.

Q.45 If yes, what proof need to be provided by the applicant regarding accommodation (including in case proofs relating to the size of the accommodation)?

- Title deed
- Rental agreement
- Registration to a dedicated authority
- A written declaration
- Other means

In any of the above cases, please specify

The sponsor must prove the accommodation situation with documents, for example by submitting a rental agreement or, if it is a forthcoming rental agreement, a certificate from the property owner, landlord or the housing agency. If the accommodation is rented by subletting, it shall be approved by the landlord, housing co-operative or by the rent tribunal (MIGRFS 07/2010; MIGRFS refers to the Migration Board's statute book).

Q.46 Which authority is in charge of assessing these conditions?

The Migration Board is in charge of assessing these conditions.

Q.47 Are these authorities entitled to carry on investigations?

Yes
No

If yes, please explain

The Migration Board has an obligation to investigate all cases to secure that the cases are sufficiently investigated (see also above para Q. 13). The Board investigates by examining facts and performing interviews with the persons concerned, if necessary. However, the applicant is obliged to provide information in connection with the application (See Government bill 2004/05:170, p. 153, see also Wikrén, Gerhard & Sandesjö, Håkan, Utlänningslagen: med kommentarer, [The Aliens Act with comments] 9 uppl., Norstedts Juridik, Stockholm, 2010 pp.180-181).

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16 SOSFS 2003 :5, General Directions, Judgement by the National Board of Health and Welfare regarding Cramped Housing Accommodation [Allmänna råd, Socialstyrelsens bedömning rörande hushålls trångboddhet].
Q.48 Do the authorities benefit from wide margins of manoeuvre/interpretation in assessing accommodation conditions?

Yes
No

In any of the above cases, explain briefly

The Migration Board has to follow the regulation in law. The preparatory work lacks more specific guidelines on how to assess the question of accommodation conditions and there is yet no case law regarding this issue. However, as described above, the Board has issued directions about size and standard of the accommodation and in what way the sponsor has to possess the accommodation.

Hence, in individual cases the assessment regarding accommodation is mostly based on the directions made by the Board. These directions are quite thorough and give examples of the size and standard, how the sponsor must possess the accommodation and how to prove this. It means that in individual cases the officials at the Migration Board do not benefit from wide margins of interpretation when assessing accommodation conditions.

Q.49 To your knowledge are additional conditions required only in practice?

No.

Q.50 What was the objective pursued by including this condition?

The objective of including this condition was to encourage integration, as, according to the government bill, language skills and accommodation for the own family are crucial for a good integration. If the sponsor is integrated in society by being able to support herself/himself and having an accommodation the family members’ integration is also promoted when they arrive. In the bill it is also pointed out that a sustainable asylum and migration policy should be based on a deeper European co-operation and that harmonisation of the asylum and migration rules in the European Union therefore is crucial (Government bill 2009/10:77, Maintenance requirement for family member immigration [Försörjningskrav vid anhöriginvandring], p. 19).

Q.51 To your opinion is this condition effective in the sense that it reaches the objective pursued?

There is no easy answer to this question. The requirement may encourage integration, but it may also reflect an ethnocentric view on how families are presupposed to live – i.e. the nuclear family in one accommodation. For persons who are used to live together with other relatives in addition to the nuclear family this requirement may be problematic. The requirement may also have the effect that family reunification becomes an issue of class belonging.

Q.52 Is sickness insurance required? (former Q. 52)

Yes
No

Q.53 What documents are requested to prove that this condition is fulfilled?

Q.54 What was the objective pursued by including this condition?
Q.55  To your opinion is this condition effective in the sense that it reaches the objective pursued?

Resources

Q.56  Are resources required from the applicant? (former Q. 53)

Yes
No

Q.57  What level of resources is required by month or year (please mention any significant evolution during the last few years)?

The sponsor must be able to support herself or himself (Chapter 5 Section 3 b of the Aliens Act, amendments made through 2010:175). Certain exceptions can be made from this requirement. If the sponsor is a child, a citizen in Sweden or in another EEA-state or in Switzerland, a refugee with a residence permit or status as refugee, a quota refugee, a person eligible for subsidiary protection with a residence permit or status as a person eligible for subsidiary protection, or if the sponsor has got a permanent residence permit and has been living in Sweden with a residence permit to settle for at least four years, there are no accommodation conditions from the sponsor (Chapter 5 Section 3 c of the Aliens Act, amendments made through 2010:175).

Neither does the requirement about resources apply if the applicant is a child and the sponsor is a parent of the child or if the other parent of the child is applying for residence permit along with the child (Chapter 5 Section 3 d of the Aliens Act, amendments made through 2010:175). It is possible to grant full or partial exemption from the maintenance requirement if special grounds exist (Chapter 5 Section 3 e of the Aliens Act, amendments made through 2010:175).

If the sponsor’s salary reaches a certain amount the income is sufficient for the requirement of resources. The amount is the same amount as a person must have available when her or his salary is being levied (reservation amount). Remuneration from unemployment insurance or any other similar work related income is considered equal to salary. The requirement of resources can also be fulfilled if the sponsor has got a fortune that he or she can support himself/herself on (Chapter 4 Section 4 b of the Aliens Ordinance, amendments made through 2010:176). There is no level set out in figures because the reservation amount differs depending on if you live alone, have children and the childrens’ age etc.

This requirement was introduced in April 2010. Before that there were no requirements about resources.

Q.58  How is the condition “sufficient” enshrined in the directive implemented by your Member State? Is it in comparison with national minimum wages or pensions? (former Q. 54)

As mentioned above, para Q. 57, the income is sufficient for the requirement of resources if the sponsor’s salary reaches a certain amount. The amount is the same amount as a person must have available when her or his salary is being levied (reservation amount). Remuneration from unemployment insurance or any other similar work related income is equal to salary. The requirement of resources can also be fulfilled if the sponsor has got a fortune that he or she can support himself/herself on (Chapter 4 Section 4 b of the Aliens Ordinance, amendments made through 2010:176). There is no level set out in figures because the reservation amount differs depending on if you live alone, have children and the childrens’ age etc.
Q.59 Do these resources need to be stable AND regular as requested by directive 2003/86/EC (in this case, how is the difference between stable and regular understood)?

Yes
No

If yes, explain briefly

According to law and other regulations the sponsor must be able to support herself or himself and if the income reaches the reservation amount the requirement is met. In the preparatory work it is mentioned that the income must be of certain duration, and when the assessment is made there should be reasonable grounds to believe that the sponsor will be able to support herself or himself in the future (Government bill 2009/10:77, pp. 20 and 31).

Q.60 Is this level of resources a threshold below which any application is automatically rejected?

Yes
No

Q.61 If no, is this rule applicable in your Member State

either the implementation of the jurisprudence of the ECJ in its Chakroun case law17
either a rule that was previously applicable

Please explain briefly

Current law in Sweden is not clear on this issue. As mentioned above (see para Q. 59) the preparatory work states that the income must be of certain duration and that the assessment should be forward-looking. The Case C-578/08 Chakroun would, however, indicate that an application cannot be refused without an individual assessment in each case. The Migration Court of Appeal has shown adherence in case law before regarding Council directives. For example directives have been referred to before implemented in Swedish law (see MIG 2007:9, MIG 2008:39 and MIG 2009:4).

Q.62 Is the benefit of social assistance by the sponsor a ground for rejecting the application?

Yes
No

Q.63 If yes, what types of social assistance are concerned?

General social assistance
Some types of exceptional social assistance

Please explain briefly

17 Point 48 of Chakroun states "Since the extent of needs can vary greatly depending on the individuals, that authorisation must, moreover, be interpreted as meaning that the Member States may indicate a certain sum as a reference amount, but not as meaning that they may impose a minimum income level below which all family reunifications will be refused, irrespective of an actual examination of the situation of each applicant. That interpretation is supported by Article 17 of the Directive, which requires individual examination of applications for family reunification".
The regulation about resources in Sweden only mention salary (or any equal remuneration) or a fortune as sufficient for meeting the requirement of resources. According to the preparatory work the resources should be work related. That is why general social assistance can be a ground for rejecting an application. There is no discussion in the preparatory work regarding social assistance and the Migration Court of Appeal have not decided in any cases regarding the requirement of resources, so it is not clear whether some types of exceptional social assistance may be a ground for rejection.

Q.64 Which authority is in charge of assessing resources conditions?

The Migration Board.

Q.65 Do national authorities benefit from wide margins of manoeuvre/interpretation in assessing the condition of sufficient resources?

Yes
No

In any case explain briefly

There is not much information in the law, regulation or preparatory work on how to assess the question of resources. Further, there are no directions from the Migration Board regarding resources. The only criteria mentioned are the criteria of reaching the reservation amount, that the resources should be of a certain duration and that there should be reasonable grounds to believe that the sponsor would be able to support herself or himself in the future. Because of this the Migration Board has got some margins of interpretation when deciding in cases where it is not certain if the sponsor reaches the requirement of resources or not.

Q.66 To your knowledge are additional conditions required in practice?

No.

Q.67 What was the objective pursued by including this condition?

As for the requirement of accommodation the objective pursued by the requirement of resources is to encourage integration and according to the government bill, language skills and accommodation for the family is crucial for a good integration. If the sponsor is integrated in society by being able to support herself/himself and having an accommodation the family members integration is also promoted when they arrive. As described earlier it is also pointed out in the bill that a sustainable asylum and migrations policy should be based on a deeper European co-operation and that harmonisation of the asylum and migration rules in the European Union is therefore crucial (Government bill 2009/10:77, p. 19, see also above para Q. 50).

Q.68 To your opinion is this condition effective in the sense that it reaches the objective pursued?

There is no easy answer to this question, but possibly this requirement can encourage the sponsor to get work instead of relying on social assistance, which in turn could support his or her integration into the Swedish society. The situation on the labour market may, however, makes it hard for a sponsor who wants to reunite with her/his family members to do so. The requirement may also have the effect that family reunification becomes an issue of class belonging. (See also above para Q. 51).
Integration measures

Q.69 Are integration criteria required for family reunification? (former Q. 55)

Yes
No

Q.70 What are these criteria (refer to former Q. 56 A)

Pre-departure measures OR conditions (in case explain the difference between measure and condition)
Upon arrival and during stay measures OR conditions like attendance to mandatory classes in the host country and/or succeeding a test in the host country regarding language and/or civic education
Other type of integration measures or conditions

In any of the above mentioned cases, please explain

Q.71 Do they apply indistinctly to all potential beneficiaries of family reunification? (former Q. 56 B)

Yes
No

If yes, please explain

Q.72 Which authority is in charge of assessing integration measures/conditions?

Q.73 Do national authorities benefit from wide margins of manoeuvre/interpretation in assessing integration measures/conditions?

Yes
No

In any case explain briefly

Q.74 To your knowledge are additional conditions required in practice?

Q.75 What was the objective pursued by including this condition/measure?

Q.76 To your opinion is this condition/measure effective in the sense that it reaches the objective pursued?

Public order and health

Q.77 Can public policy, public security or public health be taken into account to (former Q. 47 A to C)

Reject an application for family reunification
Withdraw an application for family reunification
Refuse to renew a family member’s residence permit

Other solutions in law or practice

Please explain

An application for family reunification can be rejected if the applicant constitutes a threat to public policy and public security. The alien’s other personal circumstances and family situation must be taken into account. This is also a ground for refusing to renew an applicant’s residence permit (Chapter 5 Section 17 a, first paragraph, point 3 and third paragraph of the Aliens Act, amendments made through 2006:220). A residence permit shall not be granted to a person with long-term resident status in another EU-state, or her or his relatives, if the person constitutes a threat to public policy or public security (Chapter 5 Section 17, third paragraph of the Aliens Act, amendments made through 2006:220).

When considering a residence permit because of the seriousness of an alleged relationship, particular attention shall be paid to whether it can be assumed that the alien or the alien’s child or children will be subject to violence or some other serious violation of their liberty or peace, if a residence permit were to be granted (Chapter 5 Section 17, first paragraph, point 2 of the Aliens Act). These residence permits are limited in time, but when applying for a permanent residence permit no control of the sponsor can be done in the police register of committed and suspected crimes can be done by the Migration Board (Chapter 5 Section 8, second paragraph, Section 16 and Section 17, first paragraph, point 2 of the Aliens Act, amendments made through 2006:220).

A residence permit can be withdrawn if it can be assumed –, because of previous activities or otherwise – that the applicant will engage in sabotage, espionage or unlawful intelligence activities in Sweden or in any other Nordic country. If the applicant has been in Sweden with a residence permit for more than three years when the question of withdrawal is examined by the authority that makes the first decision in the matter, the residence permit may not be withdrawn (Chapter 7 Section 3, first paragraph, point 3 and third paragraph of the Aliens Act, amendments made through 2008:884).

When assessing whether a residence permit should be withdrawn, account shall be taken to the ties that the alien has to Swedish society and of any other arguments against withdrawing the permit. The alien’s personal circumstances, whether the alien has children in Sweden and, if so, the children’s need to have contact with the alien, the nature of contact in the past and how it would be affected by the withdrawal of the permit, the alien’s family situation in other respects and how long the alien has been in Sweden, should also be taken into account (Chapter 7 Section 4 of the Aliens Act).

A residence permit may also be withdrawn from an alien who has been registered on the list of persons not to be permitted entry referred to in Section 3, point 2 of the Schengen Information System Act (2003:344), if there are sufficient grounds for withdrawal (Chapter 7 Section 5 of the Aliens Act).

Furthermore, a residence permit may be withdrawn from a person who is not a national of a state belonging to the European Union, if a refusal-of-entry or expulsion order has been issued in a state belonging to the European Union or in Iceland, Norway or Switzerland, and the order is based on there being a serious threat to public order or internal security. The alien also has to be convicted in the certain state of an offence for which a sentence of at least one year’s imprisonment is prescribed or the alien is being suspected, on reasonable grounds, of having committed a gross offence or if there are strong grounds which indicate that the alien intends to commit such an offence. Before
withdrawing a residence permit on this ground there shall be a consultation with the state that has ordered a refusal of entry or expulsion. This does not apply to family members of EU-citizens or citizens in Iceland, Norway or Switzerland. (Chapter 7 Section 6 of the Aliens Act, amendments made through 2006:946)

Q.78 Is the severity of the offense taken into account?

Yes
No

CHAPTER 7 - CONSEQUENCES FOR NOT MEETING THE CONDITIONS

Q.79 Is a rejection automatic?

Yes
No

Q.80 If no, which elements are taken into account by national authorities while examining the application, for example

The impact of article 17 of Directive 2003/86/EC which imposes to “take due account of the nature and the solidity of the person’s family relationship and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application (…)”

The obligation drawn from the Chakroun case law to individualize the examination of the application and to assess the conditions in order to facilitate family reunification

The best interest of the child (article 5, paragraph 5 of Directive 2003/86/CE)

Other elements deriving from national law and/or jurisprudence

In any of the above mentioned cases, please explain briefly

When deciding if a residence permit should not be granted the Migration Board should take due account to the alien’s other living conditions and family relationship (Chapter 5 Section 17 a, third paragraph of the Aliens Act, amendments made through 2006:220). (See also above para Q. 13.)

A residence permit may not be withdrawn because of sabotage, espionage or unlawful intelligence activities in Sweden or in any other Nordic country, if the applicant has had a residence permit in Sweden for more than three years when the question of withdrawal is examined by the authority that makes the first decision in the matter (Chapter 7 Section 3, third paragraph of the Aliens Act, amendments made through 2008:884).

When assessing whether a residence permit should be withdrawn, account shall be taken to the ties that the alien has to Swedish society and of any other arguments against withdrawing the permit. The alien’s personal circumstances, whether the alien has children in Sweden and, if so, the children’s need of contact with the alien, the nature of contact in the past and how it would be affected by the withdrawal of the permit, the alien’s family situation in other respects and how long
the alien has been in Sweden should especially be taken into account (Chapter 7 Section 4 of the Aliens Act).

In cases involving a child, particular attention must be given to what is required with regard to the child’s health and development and the best interest of the child in general (Chapter 1 Section 10 of the Aliens Act).

CHAPTER 8 - IMPACT OF MODIFICATIONS OF NATIONAL RULES

On administrative practice

Q. 81 Did the transposition of the family reunification directive have an impact on administrative action?

Yes
No

Q.82 If yes, this impact is

Positive
Rather positive
Negative
Rather negative

In general it is difficult to grade the impact on administrative action. A comment from officials at the Migration Board regarding the impact on the administrative action when the applicant and sponsor is married, is the feeling of not having enough decision support when granting a permit. This is because the sponsor only has to fill in an affirmation of the alleged marriage, contrary to the practice before implementing the directive when an investigation of the seriousness of the relationship always was done (see below para Q. 84).

Q.83 With regard to the length of the procedure, did EU law or modification of national rules have had an impact?

Yes
No

If yes, please explain

Before implementing the directive no regulation regarding the length of the procedure existed (Government bill 2005/06:72, p. 56).

Q.84 Did EU Law or modification of national rules have an impact on controls among applications?

Yes
No

In any case please explain briefly

Before implementing the Directive on Family Reunification assessments were made regarding the seriousness of the relationship, regardless if the applicant and sponsor were married, registered as partners, in a cohabitating relationship or in newly established relations. After the implementation
of the Directive, marriages cannot be investigated if the marriage does not appear to be a marriage of convenience or fraud (Chapter 5 Section 3, first paragraph, point 1 and Section 17 a, paragraph 1, point 2 of the Aliens Act, amendments made through 2009:1542 and 2006:220).

If the applicant and sponsor are married, the Migration Board is not allowed to control if the sponsor occurs in the police register for committed or suspected crimes (see Chapter 5 Section 17, first paragraph of the Aliens Act, amendments made through 2006:220, which only allows a control of the sponsor when the applicant and sponsor intends to marry or enter into a cohabiting relationship).

If a child is going to move to Sweden, an assent from the parent to whom ties are not cited is required if that parent shares custody over the child (Chapter 5 Section 17, second paragraph of the Aliens Act, amendments made through 2006:220).

With the new rules regarding a maintenance requirement, a control has to be done of the sponsors accommodation and income (Chapter 5 Section 3 b-d of the Aliens Act, amendments made through 2010:175).

Regarding identification issues in family reunification matters two new decisions from the Migration Court of Appeal will be described. In the first decision, from 17 March 2011 (UM 9536-10), the Migration Court of Appeal dismissed an appeal made by three children from Somalia that had applied for family reunification to their father who was resident in Sweden. Children do not have the right to take proceedings in migration matters (MIG 2009:17).18 In this case the father could not submit documents which proved that he was the guardian of the children. Neither could he provide documents which showed who the guardian of the children was and a proxy in original from the guardian that stated that the father had the right to represent the children. When he could not provide the documents needed the appeal was dismissed.

In the second decision by the Migration Court of Appeal, from 12 May 2011 (UM 8325-10), the court stated that there are no explicit regulations about how the applicant has to prove her or his identity when applying for family reunification. There are statements made in preparatory work (Government bill 2005/06:72, pp. 68-69) and there is a regulation in Chapter 2 Section 1 of the Aliens Act that an alien entering or staying in Sweden must have a passport. In this case a spouse wanted to reunite with the other spouse who was resident in Sweden. They had not been living abroad on a permanent basis and therefore the applicant could only be granted a temporary residence permit.

Further, the court stated that there is a requirement of identification and the applicant has to prove her or his identity by submitting a passport or other documents. Otherwise the application shall be refused. The court comments on the difficulties to prove the identity for applicants from for example Somalia, but further states that it is not possible for the court to give exceptions from the requirements of identification in general or for a certain kind of group. Those sorts of exceptions should be done by the legislative assembly.

On number of applications

Q.85 Since 2007, do you have official figures relating to the number of long term visas issued for the purpose of family reunification?

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18 See also Nilsson, Eva, Barn i rättens gränsland. Om barnperspektiv vid prövning om uppehållstillstånd (Academic thesis) [Children in the Borderland of Law. On Child Perspectives in the Determination of Granting Residence Permits (Diss.)], Iustus Förlag, Uppsala 2007, p. 64.
There is no official statistic relating to the number of long term visas issued for the purpose of family reunification.

Q.86 Since 2007, do you have official figures relating to the number of residence permits issued for the purpose of family reunification?

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>28 975</td>
</tr>
<tr>
<td>2008</td>
<td>33 184</td>
</tr>
<tr>
<td>2009</td>
<td>34 082</td>
</tr>
<tr>
<td>2010</td>
<td>24 626</td>
</tr>
<tr>
<td>2011</td>
<td>8 333  (7 232 family reunification + 1 101 family reunification for refugees (January-April))</td>
</tr>
</tbody>
</table>

These figures include all sorts of family reunification, not only family reunification as prescribed in the Directive on Family Reunification. The figures only cover first-time applications (persons who have had a residence permit and apply for an extension of the permit are excluded).

Q.87 Do you see any significant changes in the available figures among the years?

Yes
No

Q.88 If yes, can these changes be explained by

- the introduction of new specific rules
- in particular, the introduction of conditions for family reunification
- Other

In any of the above mentioned case, please explain briefly

In 2010 there is less residence permits granted than the years before. In April 2010 Sweden introduced new rules regarding accommodation and resources of the sponsor. This may have had an impact on the permits granted. The figures of residence permits for family reunification are also dependent of the number of granted applications for asylum. Something that may have an impact on the figures of family reunification from now on are the new decisions from the Migration Court of Appeal described above, para Q. 84. These decisions will probably have an impact on family reunification for family members from countries where problems exist regarding official documents.

On the jurisprudence

Q.89 Over the past few years have national courts challenged national rules/provisions for non conformity with EU law?

Yes
No

If yes, please give a short description of the main cases

Q.90 Did national courts refer to the European Court of Justice on the basis of the preliminary procedure (are cases pending before the ECJ)?

Yes (please explain)
No
Q.91 If national courts did not refer to the ECJ but were asked to do so by applicants; do you consider the refusal the engage into such a preliminary procedure grounded in reason? Please explain?

There have not been any cases before the Migration Court of Appeal regarding the rules derivative from the Directive on Family Reunification where the applicant has asked to refer the case to the ECJ.