Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Media relations
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Media Release

regarding judgment F-4658/2023 of 29 September 2025

Relationship between expulsion and temporary admission under the old law

The Federal Administrative Court has upheld the appeal of an Iraqi national who had challenged a decision of the Federal Office of Police to enforce his expulsion. After his expulsion had been decided, the appellant had been granted temporary admission, which was still possible at the time under the old law. When temporary admission has been granted, it is for the State Secretariat for Migration to revoke it as appropriate and order the enforcement of the expulsion.

The appellant was granted asylum in Switzerland in 2002. In 2009, after it emerged that he had provided false information about his identity during the proceedings, his asylum was revoked and his refugee status was cancelled. In 2014, the Federal Criminal Court convicted him on charges of, among other things, supporting a criminal organisation. In 2018, the Federal Office of Police (fedpol) ordered his expulsion from Switzerland, but deemed his removal to Iraq not permitted at the time under international law. Consequently, it deferred enforcement of the expulsion and transferred the file to the State Secretariat for Migration (SEM) for examination of temporary admission, which the SEM granted in 2021. In July 2023, fedpol ordered the enforcement of the expulsion which it had deferred in 2018, deeming that a removal was now permitted. The Iraqi national appealed against this decision to the Federal Administrative Court (FAC).

Expulsed and temporarily admitted: enforcement only after temporary admission is revoked

The case is based on special circumstances which could no longer come into being under applicable law today: the appellant was expulsed and temporarily admitted at the same time. After fedpol had ordered the expulsion and deferred its enforcement, the SEM ordered thereafter a temporary admission relying on applicable law at the time.

With regard to the legal situation under the old law, the Court ruled in a landmark judgment that, as soon as and for as long as temporary admission applies, the enforcement of an expulsion cannot be ordered. Not even by fedpol which had originally ordered the expulsion and deferred its enforcement. The SEM must periodically examine whether the requirements for temporary admission are still met (i.e. in the case at hand: whether the removal of the appellant to Iraq would

still not be permitted under international law). If the SEM finds that this is no longer the case, it must revoke the temporary admission and order the enforcement of the underlying expulsion. Since the appellant was still temporarily admitted when the order was issued in July 2023, fedpol no longer had the authority to order the enforcement of the expulsion. For this reason, the FAC overturned the ruling as unlawful.

Legislative rectification and significance of the judgment
The legal situation which had allowed the appellant to be granted temporary admission following his expulsion has since been amended by the legislator. Since the revision of Article 83(9) of the Foreign Nationals and Integration Act (FNIA) in 2022, after an expulsion, temporary admission – which would later have to be revoked to enforce the expulsion – can no longer be granted. In future, therefore, fedpol itself shall always decide on the enforcement of its expulsion orders.

This landmark judgment applies to the last pending individual cases with comparable circumstances in which expulsion by fedpol and temporary admission co-exist under the old law.

This judgment concerns the relationship between expulsion and temporary admission under the old law. It does not mean that expulsion cannot be enforced in the case of temporarily admitted persons such as the appellant, but establishes that temporary admission must first be revoked. The revoking of temporary admission and the issuing of the relevant enforcement order are within the remit of the SEM.

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

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About the Federal Administrative Court
Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 395 employees (334 FTE) and its 78 judges (70 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 6,500 judgments every year.