Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Media relations
P.O. Box, 9023 St. Gallen

St-Gall, 7 December 2022

Press Release

regarding judgment F-2739/2022 of 24 November 2022

Adaptation of the waiting period for family reunification

Henceforth, the statutory three-year waiting period for family reunification may no longer be strictly and automatically applied in the case of persons temporarily admitted to Switzerland. The Federal Administrative Court is bringing its case-law into line with a judgment handed down by the European Court of Human Rights.

In October 2020, two Eritean nationals, a mother and her son, were temporarily admitted to Switzerland. In March 2021, the mother and son filed an application for permission to enter the country and inclusion in their temporary admission order in favour of their husband, respectively father, an Eritrean national residing in Israel. The application was rejected by the State Secretariat for Migration (SEM) on the grounds that the three-year waiting period had not yet elapsed. In June 2022, the appellants filed an appeal with the Federal Administrative Court (FAC) against the SEM's decision.

Decision in principle of the European Court of Human Rights
The appellants invoked their right to respect for family life within the meaning of Article 8 of the European Convention on Human Rights (ECHR). In their appeal, they relied on a judgment handed down by the European Court of Human Rights in July 2021 (ECtHR, Application no. 6697/18 *M.A. v Denmark*) which had found that the strict and automatic application of a waiting period longer than two years was inconsistent with the right to respect for family life. Thus, after a period of two years, the national authorities must conduct an individual assessment of each case taking namely account of the intensity of the family ties, the integration already achieved in the host country, the existence of insurmountable obstacles to enjoying family life in the country of origin, and the best interest of the child in order to determine whether a deferral of family reunification violates the right to respect for family life.

Respect of international law
The Swiss authorities have so far strictly applied the three-year waiting period stipulated in Article 85 of the Federal Act on Foreign Nationals and Integration (FNIA). However, considering the clarifications made by the ECtHR and until the FNIA is amended, the SEM and the FAC must modify their practice in the matter. Therefore, when nearly two years have elapsed since the temporary admission, the SEM must conduct an individual assessment of the merits of the case, based on the criteria named by the ECtHR, to determine whether or not a shorter

waiting period is appropriate regarding the respect for family life. In the proceedings at hand, the case is referred back to the SEM for a new assessment.

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 365 employees (305.6 FTE) and its 72 judges (64.5 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.