



St. Gallen, 3 October 2018

Press Release

regarding judgment F-2888/2017 of 26 September 2018

Residence permit of Chechen national rejected

The Federal Administrative Court rejected the request for a residence permit by a Chechen student due to his improper conduct when trying to extend his stay in Switzerland.

Upon his arrival in Switzerland in 2010, a young Chechen national submitted an asylum application, which was rejected in 2011 by the State Secretariat for Migration (SEM), formerly the Federal Office for Migration (FOM). The Federal Administrative Court (FAC) confirmed this decision in its judgment delivered in 2013. In the same year, the Chechen national submitted a request for reconsideration, which was rejected in 2016 by the SEM, followed by the FAC. In 2016, the appellant requested the granting of a residence permit, arguing primarily that his virulent publications against the Russian government and his recent coming-out made him a particular target for the country's authorities.

The SEM did not approve the granting of a residence permit and concluded that the applicant's integration was not exceptional enough to justify the granting thereof. As regards the risk incurred if he were to be deported to his country of origin, the SEM considered this element to fall outside the scope of the dispute, since the latter was limited to the issue whether there was a case of extreme seriousness. The person in question appealed to the FAC against the decision of the SEM in May 2017.

Restrictive conditions of the Asylum Act

The Court recalls that the exemption clause for asylum is based on restrictive conditions. Under the Asylum Act (AsylA) and subject to the SEM's approval, a residence permit may be granted in accordance with the applicable provisions on asylum to any person who has stayed in Switzerland for at least five years from the date the asylum application was submitted, whose place of residence has always been known to the authorities and for whom it is a case of serious hardship due to a high level of integration. The appellant fulfils the first two conditions. With respect to the third condition, the Court underlines, in particular, the misuse of procedures for the purpose of artificially extending the appellant's stay. Following an analysis of all the elements involved, it reached the conclusion

that the person's track record in Switzerland to date was not of a nature that justified the granting of a residence permit.

Examination of the exigibility of the deportation order

The exigibility of the deportation order concerning the applicant raises difficult issues due to the homosexuality of the man (alleged for the first time before the FAC) and his publications, taken as a whole. Nonetheless, the FAC stresses that, strictly speaking, it is not responsible for examining the exigibility of ordering the appellant's deportation to Russia. It will primarily fall within the responsibility of the man himself to ask for the re-examination of the deportation decision already made if he believes there to have been a significant change in circumstances in the meantime. This may allow him to obtain temporary leave to remain provided that the applicable requirements are fulfilled.

This judgment is final and may not be challenged before the Federal Supreme Court.

Contact

Andreas Notter
Head of communication
+41 (0)58 468 60 58
+41 (0)79 460 65 53
medien@bvger.admin.ch

Amandine Mareschi
Communication
+41 (0)58 483 91 09
medien@bvger.admin.ch

About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 347 employees (306.2 FTE) and its 77 judges (69 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal 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 7,500 judgments every year.