



St. Gallen, 6 May 2021

Press Release

regarding judgment F-2233/2021 of 22 April 2021

Hardship case: residence permit extended for a transgender Mauritian national

The Federal Administrative Court has approved the extension of the residence permit for a transgender Mauritian national for important personal reasons. Since her country of origin does not recognise transgender persons, the Court deemed that the appellant's reintegration and medical follow-up would be in jeopardy if she were to return to Mauritius.

Under Swiss law, a foreign national whose union with a Swiss national has lasted less than three years is entitled to have their residence permit extended for important personal reasons, for example if their reintegration in their country of origin is in jeopardy.

In the case brought before the Federal Administrative Court (FAC), a Mauritian national, in a romantic relationship with her Swiss partner, entered into a registered partnership of same-sex partners in October 2014. The Mauritian national thus obtained a residence permit in their canton of residence. In 2016, the Mauritian national started a gender transitioning process of which her partner initially supported. However, as the transitioning progressed, the latter found it increasingly difficult to accept. As a result, the couple separated in June 2017, and finally the registered partnership was dissolved in December 2017. In September 2018, the population office of the appellant's canton of residence declared itself in favour of the Mauritian national's continued stay in Switzerland despite the couple's separation. For its part, the State Secretariat for Migration (SEM) considered that the situation of transgender persons in Mauritius was not sufficiently serious to justify an extension of stay. Therefore, it denied the concerned party's application and set a time limit for her to leave the country. In May 2019, the Mauritian national lodged an appeal against this decision with the FAC.

A difficult return home

In Mauritius, gender reassignment, be it medical or administrative, is prohibited. It follows that if the appellant were to return to her country, she would not be recognised as a woman. Nor is it certain that she would be admitted to the country since her identity and appearance no longer match those on her passport. The Mauritian national is undergoing relatively heavy medical treatment

and psychotherapy which she would not have access to in Mauritius. Furthermore, in Mauritius, transgender people are regularly subject to discrimination and are rejected by their family. The FAC therefore deems this a case of personal hardship within the meaning of the Foreign Nationals and Integration Act.

Currently on welfare support

The appellant was previously employed in the medical field. However, her gender transitioning eventually prevented the pursuit of her career. Since 2017, she receives welfare support. During this time, she has followed several vocational training courses and integration measures, including a reintegration programme, which could lead to an employment contract of several months' duration. Considering the appellant's efforts, the FAC believes that her situation is likely to change and improve in the future. Therefore, the conditions for revoking her residence permit are not fulfilled at this time. The Court underscores, however, that if the appellant were to continue to rely on social welfare, her situation would have to be regularly reassessed.

For all these reasons, the FAC allowed the appeal and approved the extension of the appellant's residence permit. This judgment may be appealed to the Federal Supreme Court.

Contact

Anaëlle Deschenaux
Communication
+41 (0)58 463 03 72
medien@bvger.admin.ch

Rocco R. Maglio
Press secretary
+41 (0)58 465 29 86
+41 (0)79 619 04 83
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 353 employees (297.3 FTE) and its 73 judges (65.15 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 7,200 judgments every year.