

Family Reunification of Refugee Minors

Amendment to the Aliens Act concerning family reunification by beneficiaries of international protection

According to the Aliens Act, requirements for secure means of support also apply to sponsors' nuclear family members who are beneficiaries of international protection. The Parliament passed the amendment proposed by the Government, and it entered into force in July 2016.

The new limits for secure means of support also apply to children who have arrived alone. In practice, extending the income limit to sponsors who are minors prevents children from having their parents into the country.

If the sponsor has been granted asylum ("refugee status"), his or her family members are allowed to submit an application for family reunification, without requirements for secure means of support, within three months of receiving a residence permit. In practice, applying for residence permits based on family reunification has been made so difficult through administrative decisions, since 2012, that applying for them within three months is often impossible for people living in countries in a crisis. Therefore, in practice, the limits for secure means of support apply to all those who have arrived in Finland due to a need for international protection.

Legislation concerning aliens does not take the child's best interests into account in the spirit expressed by Articles 9 and 10 of the Convention on the Rights of the Child: States Parties shall ensure that a child shall not be separated from his or her parents against their will, and that applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with "in a positive, humane and expeditious manner".

The Aliens Act mentions taking into account the best interests of the child but, administrative practices and interpretation of the law by various court instances have shown, even before this legislative amendment (see, e.g., Kuusisto-Arponen 2016, Refugee Advice Centre 2014), that the child's best interests are no longer regarded to be of primary significance, as a factor that bypasses other motivations in decisions on residence permits.

In 2014, the Refugee Advice Centre made a survey of decisions on appeals made by its clients against decisions concerning family reunification at various court instances. Courts only diverge from the requirement for secure means of support stipulated in the Aliens Act for very exceptional reasons. The decisions often refer to circumventing provisions on entry into the country, or the fact that there is no family tie or that it has been severed voluntarily. For example, the use of a smuggler during a child's flight is interpreted as an attempt by the parents to use the child as an instrument in entry into the country, and on these grounds family reunification is usually refused from a minor.

The provisions now and even before the new tightening were based on the premise that immigration policy is often confused with judicial decision-making. Administrative and legal decision restrict a child's right to family life in a way that is not based on the law or international obligations on securing the rights of the child but on political guidelines and the desire to make a signal impact.

The Aliens Act should be amended such that it enables family reunification and makes it possible to take the child's best interests into account. The fact that the limit for secure means of support also applies to minor sponsors should be eliminated from the Act.

Sources mentioned:

Refugee Advice Centre 2014: Lapsen edun arviointi tuomioistuinten perheenyhdistämispäätöksissä 2014 (in English: Assessment of a Child's Best Interests in Decisions on Family Reunification Made by Courts of Law). www.pakolaisneuvonta.fi/files/LapsenetuPY%20160315F.ppt

Kuusisto-Arponen, Anna-Kaisa 2016. Perheettömiksi suojellut: Yksin tulleiden alaikäisten oikeus perheeseen (in English: Protected to Have No Family: Right of Minors Who Entered Alone to Have a Family). In the book titled Perheenyhdistäminen: Kuka saa perheen Suomeen, kuka ei ja miksi? (in English: Family Reunification: Who Can Have Their Family in Finland, Who Cannot and Why?) Edited by Outi Fingerroos, Anna-Maria Tapaninen, Marja Tiilikainen. Vastapaino, Tampere.