



EMN Ad-Hoc Query on 2019.28 Ad-Hoc Query on the status granted to family members of recognized refugees or beneficiaries of subsidiary protection (AT)

Requested by Martin Stiller on 1 March 2019

Protection

Responses from EMN NCP Austria, EMN NCP Norway, EMN NCP Luxembourg, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Belgium, EMN NCP Germany, EMN NCP Greece (8 in total)

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The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.



Background information:

Austria is currently reviewing the policy on family procedures and family reunification of beneficiaries of international protection. Therefore, we are gathering evidence on the legislation of other Member States in this field. Given the conciseness of the questions and the fact that Austria is currently amending its Aliens Law, we would be most grateful if the Member States could provide their answers in this exceptional case no later than 15 March 2019.

Questions

- 1. 1. If a family member of a recognized refugee (after fulfilling the relevant criteria) will be reunited according to Directive 2003/86/EC what kind of status does the family member receive in your country after arrival?**
- 2. 2. If a family member of a person that was granted subsidiary protection (after fulfilling the relevant criteria) will be reunited what kind of status does the family member receive in your country after arrival?**
- 3. 3. What happens if the family member applies for asylum after arriving in your country?**

Responses

EMN NCP Austria

Wider Dissemination: Yes

Martin Stiller, Wider Group

1. Austrian legislation on family reunification is regulated in § 35 Asylum Act. According to this provision, a family member of a beneficiary of international protection status may, for the purpose of filing an application for international protection according to § 34 Asylum Act, file an application to be granted an entry permit. After having been granted entry to the Austrian territory, family members receive the same scope of protection: asylum or subsidiary protection (§ 34 Asylum Act). --- Source: Ministry of the Interior
2. See Q 1. --- Source: Ministry of the Interior
- 3.

EMN NCP Norway

Wider Dissemination: Yes

Anonymous,

1. A family member of a recognized refugee, when the family member fulfils the relevant requirements for reunification, is granted a temporary residence permit for a period between 1 and 3 years. When this permit is nearing its end the family member can apply for a renewal of his/her residence permit or apply for a permanent residence permit, if the relevant requirements are fulfilled. There are usually no limitations on the number of renewals a person can be granted. A spouse, cohabitant or child of a recognized refugee are also entitled to a residence permit as a refugee (derivative refugee status), unless a. the applicant is the refugee's spouse or cohabitant and their family life was established after the refugee left the country in which the refugee risks persecution, b. the applicant has a different nationality than the refugee, c. the applicant does not wish to have refugee status, or d. there are other special grounds that contradict doing so. Note that the family member is obliged to apply for a residence permit as a refugee and will not receive status as a derivative refugee without application. Without such application the family member will have an ordinary temporary residence permit in family immigration with the sponsor.
2. Family members of a person who is granted subsidiary protection are granted the same status as family members of a recognized refugee; i.e. temporary residence permit in family immigration with the sponsor. A spouse, cohabitant or child of a person that is granted subsidiary protection can also apply for derivative refugee status.
3. If the family member applies for asylum after arriving in Norway the application will be processed and handled according to common procedure.

EMN NCP Luxembourg

Wider Dissemination: Yes

Adolfo SOMMARRIBAS, EMN statelessness platform

1. In accordance with article 69 in relation with article 74 (1) of the amended law of 29 August 2008 on free movement of persons and immigration the third-country national will be granted a residence permit for "family member".
2. See answer to Q.1.
3. If the family member applies for international protection s/he will be considered an applicant for international protection in accordance with article 5 (1) and 6 (1) and (2) of the amended law of 18 December 2015 on international protection and temporary protection and cannot be granted the residence permit for "family member" as in the two precedent cases.

EMN NCP Latvia

Wider Dissemination: Yes

Stanislavs LOPATINSKIS, EMN NCP Latvia

1. In accordance with the Section 54 (1) and (3) of the Asylum Law a refugee has the right to reunite with family members who are in foreign countries. Family member of the refugee shall be issued a permanent residence permit. In accordance with the Section 22 (2) of the Immigration Law a permanent residence permit shall be registered once every five years. No other legal status has been granted to family members of a refugee.
2. In accordance with the Section 54 (1) and (3) of the Asylum Law a person having acquired subsidiary protection status has the right to reunite with family members who are in foreign countries. The person having acquired subsidiary protection status has such right, if he or she has resided in the Republic of Latvia for at least two years after acquisition of such status. A temporary residence permit shall be issued to the family member of a person having acquired subsidiary

protection status for the same time period as the temporary residence permit has been issued to the person having acquired subsidiary protection status. No other legal status has been granted to family members of a subsidiary protection status granted person.

3. If a family member applies for asylum, which cannot be excluded and in practice, Latvia has had some such kind of cases, the application has to be examined in accordance with the Asylum Law. Above mentioned means, that, while the case is under the examination, the person keeps rights as a family member of refugee or subsidiary protection granted person, but, if the person is granted a refugee or subsidiary protection status, the person acquires rights as a person with a refugee of subsidiary protection status in Latvia.

EMN NCP Lithuania

Wider Dissemination: Yes

Vytautas EŽERSKIS, EMN NCP Lithuania

1. Family members are issued temporary residence permits on the basis of family reunification.
2. Family member would be issued temporary residence permit on the basis of family reunification.
3. If an application for asylum is submitted, this application would be examined to establish whether the asylum seeker meets the criteria for asylum.

EMN NCP Belgium

Wider Dissemination: Yes

Bram DEVOS, Practitioners (Government Officials only)

1. Persons authorized to stay in Belgium for reasons of family reunification with a TCN, must present themselves to the municipal administration of the place of residence. They are registered in the National Register (Foreigners Register) and are issued a residence card (“A-type”) of limited duration. The residence permit of the family member may be withdrawn or not renewed if the requirements are no longer met before the autonomous stay is granted. This may happen for example if the condition on sufficient, stable and regular resources (if applicable) is no longer met, or if there is no longer an effectively married or family life (Please note that the residence permit will not be withdrawn when the separation between the spouses or registered partners resulted from domestic violence). The residence permit may also be withdrawn when false or misleading information was used during the family reunification process or fraud was committed, or where there are founded reasons to suspect that the marriage, partnership or adoption has been concluded to allow the person concerned to enter or remain in Belgium. Since the residence of the family members depends on the residence of the sponsor, the residence permit may also be withdrawn or not renewed in case the sponsor loses its residence permit, for example when the international protection status of the sponsor is ended. In Belgium refugees and beneficiaries of subsidiary protection have initially only a limited residence right, which can become unlimited. During the first five years the residence permit of the family member is of limited duration (1 year) and conditional. After this five year period, and if the sponsor has acquired (by then) a permit of unlimited duration, a residence permit of unlimited duration is also granted to the family migrant.
2. Similar to recognized refugees (same requirements). So please see Q1.

3. It is quite frequent that the family member of a beneficiary of international protection, once arrived in Belgium, applies for international protection, as he/she may also be entitled to it. In the latter case, the application will be examined in the light of the content of the asylum application of the sponsor. If the application for international protection is rejected, the family member will keep his or her residence right based on family reunification.

EMN NCP Germany

Wider Dissemination: Yes

Heiko HECHT, EMN NCP Germany

1. The family members (spouse or life partner and minor, unmarried child) are entitled to a temporary residence permit (if they meet the requirements) and subsequently to a residence permit for the subsequent immigration of dependants (Sections 27, 29, 30 and 32 of the Residence Act (Aufenthaltsgesetz)). A temporary residence permit shall be issued to the parents of a minor foreigner if the Federal Office for Migration and Refugees has granted him refugee status and if no parent possessing the right of care and custody is resident in the federal territory (Section 36 subsection 1 of the Residence Act). Other dependants of a foreigner may be granted a temporary residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship (Section 36 subsection 2 of the Residence Act).

2. The family member may be granted a residence permit on humanitarian grounds (if they meet the requirements), however, there is no legal entitlement to a residence permit. 1,000 temporary residence permits can be issued for this purpose each month. The regulation applies to the spouse or life partner and the minor, unmarried children as well as, in the case of a minor entitled to subsidiary protection, to their parents if no parent possessing the right of care and custody is resident in the federal territory (Sections 27, 36a of the Residence Act).

3. Once a family member has filed an application for asylum, a temporary residence permit issued for entry expires and the stay is no longer considered to be allowed until the decision on the granting of a residence permit has been taken, but is only granted for the duration of the asylum procedure (Section 55 subsections 1 and 2 of the Residence Act). If the asylum application is lodged after the residence permit has been issued, its validity shall not be affected.

EMN NCP Greece

Wider Dissemination: Yes

Athena BALOPOULOU, Practitioners (Government Officials only)

1. Persons that have been granted family reunification are eligible, within one month after their arrival in Greece, to be granted residence permits with the duration of the validity of the permit of the beneficiary of Convention protection.

2. Beneficiaries of subsidiary protection are not entitled to family reunification.

3. GAS ensures that family unity is maintained in all cases: A) For family members of the beneficiary of international protection who do not individually qualify for international protection and are granted family reunification, please refer to our answers question 1.1 B) For family members of the beneficiary of international protection that individually qualify for international protection, shall receive, at their request and with the same procedures, the same rights deriving from the status of the beneficiary of international protection.