

“The Hungarian fortress” in the family reunification procedure

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Abstract:

Hungarian law, especially the practice and procedure of family reunification, is highly bureaucratic, can be delayed for years and, instead of showing a strong commitment towards the integration of third-country nationals, the state often denies new entry for foreign family members of third-country nationals. The Hungarian policy also favors “cherry-picking,” offering preference (if at all) only to financially independent immigrants to enter the state. This situation is well illustrated by a case study presented below, which is based on facts.

In the case presented below, an Afghan national (“Aasif”) legally residing in Hungary wants to reunite with his four children and wife, who are currently living in Afghanistan.

The first thing to be aware of is that if a third-country resident in Hungary wants to reunite with his/her third-country family members, (s)he might face serious logistical obstacles at the beginning of the process. In order to allow family reunion, the whole procedure needs to be initiated at the foreign representation of Hungary in the country where the third-country family members reside in order for them to receive a visa to enter Hungary on the grounds of family reunification. Even though there might be exceptions where the Authorities granted residence permits for family reunion purposes despite the fact that the family members entered the country with a simple tourist visa, these cases remain exceptions.

The difficulty begins at this stage, since in Afghanistan – like in other countries of the world labeled as insecure – there is no Hungarian representation where a family reunification request could be handed in. This means that Aasif firstly needed to send a letter of invitation to the Hungarian embassy in Islamabad, Pakistan, where the initial hearing of the family also took place after the family members had received his letter of invitation.

From this moment on, every further official step during the process had to be taken with the involvement of the Hungarian embassy in Islamabad. This meant that Aasif’s wife with her four children living in Kabul (400 kilometers from Islamabad) needed to travel from Kabul to Islamabad every time they needed to sign papers, attend hearings, deliver official documents

or launch an appeal. This presented a significant security risk for a woman in those regions to travel alone nearly 400 kilometers with her children.

Second, it is also a difficult question to assess how effective the communication via normal postal service might be between Hungary and Pakistan, since most of the documents are sent by post from the embassy in Islamabad to the National Immigration Office in Budapest, and often without any official notification of receipt for the family members (who reside in Afghanistan). This is also what the case of Aasif's represents: his first letter of invitation sent from Hungary to the embassy in Islamabad got lost somewhere and he needed to send the document again (incidentally, his letter of invitation actually never arrived physically to the consulate in Islamabad).

When Aasif's application was finally accepted and the family's hearing also took place in Islamabad, the request regarding the family reunion was refused in the first instance by the Hungarian Authorities. According to Section 13(1) of the law 2007/II on entry and stay of third-country nationals, "[f]or entry into the territory of the Republic of Hungary and for stays in the territory of the Republic of Hungary for a period longer than three months the entry conditions for third-country nationals shall be" among others: that they be *in possession of a valid travel document; they have accommodations or a place of residence in the territory of the Republic of Hungary; they have sufficient means of subsistence and financial resources to cover their accommodation costs for the duration of the intended stay and for the return to their country of origin or transit to a third country; and they have full healthcare insurance or sufficient financial resources for healthcare services.*

While refugees are exempted from fulfilling the requirements regarding accommodation, health insurance and resources if they submit the application within six months after the granting of refugee status, Hungary does not support "exempting beneficiaries of subsidiary protection from these requirements".¹ The Supreme Court ruled in its verdict that beneficiaries of subsidiary protection have the right to family reunification in Hungary under the same conditions as refugees². However, after this ruling Hungary changed the law, which now explicitly deprives beneficiaries of subsidiary protection from this possibility.

Even though Aasif has three different workplaces and rents a flat with three rooms in Budapest to satisfy the requirements listed above, the Authorities did not find his status in either of the conditions satisfactory in spite of the fact that he mentioned his aim of future family reunification at his initial hearing when he arrived to Hungary.

Some of these conditions are fairly irrational. When it comes to the condition on resources, for example, Authorities usually refer to the subsistence level income defined by the Hungarian Central Statistical Office. This would mean that Aasif 's net income should be

¹ The position of Hungary on the Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)

² Supreme Court Decision No. Kfv. III. 37.925/2009/7.

HUF around HUF 300 000 (approximately EUR 1050), which is the subsistence income level calculated for 6 persons in his case. By contrast, hundreds of thousands of individuals and families in Hungary live on less money than this, but it is not very likely that the Authorities take this into consideration when they give their decision.

Regarding Aasif's case, after the Authorities have rejected such a request, it is possible to launch an appeal against the decision. However, to understand the administrative hurdle the appeal against the resolution means, it is beneficial to review the process again.

Aasif's wife with her four children needed to travel again from Kabul to Islamabad first to officially receive the decision on the rejection of the application. An appeal in this case needs to be initiated within eight days at the foreign representation of Hungary and costs approximately EUR 20. This means that within these eight days the sponsor needed to be informed first about the decision (because officially the sponsor does not receive the resolution), and second the whole family needed to travel from Kabul to Islamabad again to hand in the appeal and to pay the fee.

When their appeal was finally accepted, the second instance annulled the decision of the first instance based on formal grounds. Aasif's case has been ongoing for more than a year and is still in the second instance. However, the question of whether the Authorities accept his request in the appeal about taking his situation fairly into consideration when assessing the entry criteria is still open.

It seems nonsensical why it would take more than a year for an Afghan national who is legally residing in Hungary as a beneficiary of subsidiary protection to reunite with his family who he needed to leave in Afghanistan given he had indicated upon his arrival that he intended to reunite with them in Hungary in the future. And the final outcome of his case is still uncertain.

While in Denmark and some other countries the state explicitly defines strict filtering criteria for foreign family members (e.g. pre-departure measures such as a language exam) to enter the country, Hungary does the same thing by defining in the law strict financial and material conditions for the entry of new foreigners. The case of Aasif also demonstrates that the Authorities are rather suspicious towards foreigners' requests to enter the state and like to allow entry only to financially independent immigrants, whose accommodation and subsistence is insured. This also means that socially disadvantaged immigrants or those under international protection start from a less favorable legal situation when they want to settle with their family in the country.

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