



## Swedish Code of Statutes

**SFS 2009:1542**

Published

30 December 2009

### **Act amending the Aliens Act (2005:716)**

issued on 17 December 2009.

In accordance with a decision of the Riksdag<sup>1</sup> it is enacted<sup>2</sup> concerning the Aliens Act (2005:716)

*firstly*, that Chapter 5, Section 26, Chapter 14, Sections 12 and 13, and Chapter 16, Section 7 shall cease to apply;

*secondly*, that Chapter 1, Sections 1, 3, 7 and 12, Chapter 4, Sections 1–3, 5 and 6, Chapter 5, Sections 1, 3, 3a, 15a, 18, 20, 21, 24 and 25, Chapter 5a, Section 4, Chapter 6, Section 6, Chapter 7, Section 7, Chapter 8, Sections 11, 13, 14, 16 and 18–21, Chapter 9, Section 8, Chapter 10, Sections 11 and 13–16, Chapter 11, Section 5, Chapter 12, Sections 3, 4, 8, 11, 14–17 and 19–21, Chapter 13, Section 1, Chapter 14, Sections 5, 6, 9 and 11, Chapter 15, Section 3, Chapter 16, Sections 1, 6, 8 and 11, Chapter 18, Section 1, Chapter 20, Section 2, Chapter 21, Sections 2 and 5, Chapter 22, Section 2, the headings of Chapter 4 and Chapter 14, and the headings immediately preceding Chapter 4, Sections 3, 5 and 6, Chapter 5, Section 1, and Chapter 14, Sections 6 and 9 shall have the following wording;

*thirdly*, that eighteen new sections shall be introduced, namely, Chapter 1, Section 14, Chapter 4, Sections 2a–2c, 3a–3c, and 5a–5c, Chapter 5, Sections 1a–1c, Chapter 12, Sections 8a and 19a, Chapter 13, Section 9a, Chapter 14, Section 14a, and Chapter 18, Section 1a, worded as follows, and that immediately preceding Chapter 4, Section 5b, Chapter 12, Section 8a, and Chapter 14, Section 14a, new headings shall be introduced, worded as follows;

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<sup>1</sup> Government Bill 2009/10:31, Committee Report 2009/10:SfU8, Riksdag Communication 2009/10:133.

<sup>2</sup> Cf. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004, p. 12, Swedish version republished as OJ 204, 5.8.2005, p. 24, Celex 32004L0083, corrected as Celex 32004L0083R[02]) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13, Celex 32005L0085).

*fourthly*, that a new heading shall be introduced immediately preceding Chapter 5, Section 2a, with the wording ‘Residence permits for long-term residents’.

## **Chapter 1**

### **Section 1<sup>3</sup>**

This Act contains regulations on

- the contents of the Act, certain definitions and general provisions (Chapter 1),
- conditions on which an alien may enter, stay and work in Sweden (Chapter 2),
- refugees and others in need of protection (Chapter 4),
- residence permits (Chapter 5),
- long-term resident status in Sweden for third-country nationals (Chapter 5a),
- work permits (Chapter 6),
- withdrawal of permits (Chapter 7),
- refusal of entry and expulsion (Chapter 8),
- controls and coercive measures (Chapter 9),
- detention and supervision of aliens (Chapter 10),
- how an alien held in detention shall be treated (Chapter 11),
- enforcement of refusal-of-entry and expulsion orders (Chapter 12),
- procedure in cases being handled by administrative authorities, etc. (Chapter 13),
- appeal against the decision of an administrative authority (Chapter 14),
- declaration of acceptance (Chapter 15),
- migration courts and the Migration Court of Appeal (Chapter 16),
- duty to provide information (Chapter 17),
- public counsel (Chapter 18),
- liability for costs (Chapter 19),
- penalty provisions, etc. (Chapter 20),
- temporary protection (Chapter 21),
- tribunal witnesses (Chapter 22), and
- special authorisations (Chapter 23).

### **Section 3**

In this Act, ‘asylum’ means a residence permit granted to an alien because he or she is a refugee or a person eligible for subsidiary protection.

### **Section 7**

For the purposes of this Act, ‘security cases’ are cases in which the Swedish Security Service, for reasons relating to national security or otherwise bearing on public security, recommends

- that an alien be refused entry or expelled,
- that an alien’s application for a residence permit be rejected or that an alien’s residence permit be withdrawn,

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<sup>3</sup> Latest wording 2006:219.

- that an alien not be granted a status declaration or that an alien’s status declaration be withdrawn, or
- that an alien not be granted a travel document.

A case before the Swedish Migration Board concerning whether a re-examination shall be granted under Chapter 12, Section 19 or 19a is a security case if the refusal-of-entry or expulsion order has been issued in a security case.

### **Section 12**

An application for a residence permit that is based on circumstances specified in Chapter 4, Section 2a shall be processed as an application for asylum.

### **Section 14**

If an alien has applied for a residence permit, a status declaration or a travel document and the Swedish Security Service has applied for the expulsion of the alien under the Act concerning Special Controls in Respect of Aliens (1991:572), the applications shall be processed together in accordance with the Act concerning Special Controls in Respect of Aliens.

An application for a residence permit, a status declaration or a travel document from an alien who has been expelled under the Act concerning Special Controls in Respect of Aliens or has been issued with an equivalent order under a previous Act and is in Sweden shall be processed in accordance with that Act.

## **Chapter 4 Refugees and others in need of protection**

### **Section 1<sup>4</sup>**

In this Act, ‘refugee’ means an alien who

- is outside the country of the alien’s nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group, and
- is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.

This applies irrespective of whether it is the authorities of the country that are responsible for the alien risking being subjected to persecution or whether these authorities cannot be assumed to offer protection against persecution by private individuals.

- A stateless alien shall also be considered a refugee if he or she
- is, for the same reasons that are specified in the first paragraph, outside the country in which he or she has previously had his or her usual place of residence, and
  - is unable or, because of his or her fear, unwilling to return there.

It follows from Section 2b that in certain cases, an alien who is covered by this Section is barred from being considered a refugee.

### **Section 2<sup>5</sup>**

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<sup>4</sup> Latest wording 2005:1239.

In this Act, a ‘person eligible for subsidiary protection’ is an alien who in cases other than those referred to in Section 1 is outside the country of the alien’s nationality, because

1. there are substantial grounds for assuming that the alien, upon return to the country of origin, would run a risk of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, or as a civilian would run a serious and personal risk of being harmed by reason of indiscriminate violence resulting from an external or internal armed conflict, and
2. the alien is unable or, because of a risk referred to in point 1, unwilling to avail himself or herself of the protection of the country of origin.

The first paragraph, point 1 applies irrespective of whether it is the authorities of the country that are responsible for the alien running such a risk as is referred to there or whether these authorities cannot be assumed to offer protection against the alien being subjected to such a risk through the actions of private individuals.

The first and second paragraphs also apply to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

It follows from Section 2c that in certain cases, an alien who is covered by this Section is barred from being considered eligible for subsidiary protection.

### **Section 2a**

In this Act, a ‘person otherwise in need of protection’ is an alien who in cases other than those referred to in Sections 1 and 2 is outside the country of the alien’s nationality, because he or she

1. needs protection because of an external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses, or
2. is unable to return to the country of origin because of an environmental disaster.

The first paragraph, point 1 applies irrespective of whether it is the authorities of the country that are responsible for the alien running such a risk as is referred to there or whether these authorities cannot be assumed to offer protection against the alien being subjected to such a risk through the actions of private individuals.

The first and second paragraphs also apply to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

It follows from Section 2c that in certain cases, an alien who is covered by this Section is barred from being considered a person otherwise in need of protection.

### **Section 2b**

An alien is barred from being considered a refugee if there is particularly strong reason to assume that he or she has been guilty of

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<sup>5</sup> Latest wording 2005:1239.

1. a crime against peace, war crime or crime against humanity, as defined in the international instruments established for the prosecution of such crimes,
2. a serious non-political crime outside Sweden before coming to this country, or
3. acts that are contrary to the purposes and principles of the United Nations, as enshrined in the Preamble to and Articles 1 and 2 of the Charter of the United Nations.

What is stated in the first paragraph also applies to an alien who has instigated or otherwise participated in the committing of crimes or acts mentioned there.

### **Section 2c**

An alien is barred from being considered eligible for subsidiary protection or otherwise in need of protection if there is particularly strong reason to assume that he or she

1. has been guilty of such crimes or acts as are referred to in Section 2b, first paragraph, point 1 or 3,
2. has been guilty of a gross criminal offence, or
3. poses a threat to national security.

What is stated in the first paragraph also applies to an alien who has instigated or otherwise participated in the committing of crimes or acts referred to in the first paragraph, points 1 and 2.

### **Status declaration**

#### **Section 3**

An alien who, citing grounds for protection, has applied for a residence permit shall be declared a refugee (refugee status declaration) if he or she is covered by the definition in Section 1 and is not barred from being considered a refugee under Section 2b.

However, an alien may be refused a refugee status declaration if he or she

1. has shown by committing an exceptionally gross criminal offence that public order and security would be seriously endangered by allowing him or her to remain in Sweden, or
2. has conducted activities that have endangered national security and there is reason to assume that he or she would continue to conduct such activities here.

#### **Section 3a**

An alien who, citing grounds for protection, has applied for a residence permit shall be declared a person eligible for subsidiary protection (subsidiary protection status declaration) if he or she is covered by the definition in Section 2 and is not barred from being considered eligible for subsidiary protection under Section 2c.

An alien who, citing grounds for protection, has applied for a residence permit shall be declared a person otherwise in need of protection (status declaration as a person otherwise in need of protection) if he or she is covered by the definition in Section 2a and is not barred from being considered otherwise in need of protection under Section 2c.

**Section 3b**

The question of status declaration may not be examined if the application for asylum is dismissed under Chapter 5, Section 1b or Section 1c, second paragraph.

**Section 3c**

An alien who has been granted a residence permit in Sweden may apply for a status declaration. Such an application shall be examined under Section 3 or 3a.

**When an alien ceases to be a refugee or other person in need of protection****Section 5**

A refugee ceases to be a refugee if he or she

1. voluntarily re-avails himself or herself of the protection of the country of his or her nationality,
2. voluntarily reacquires the citizenship that he or she has previously lost,
3. acquires citizenship in a new country and obtains the protection of that country,
4. voluntarily returns to settle in the country of his or her nationality or the country where, if stateless, he or she previously had his or her usual place of residence, or
5. because of substantial and permanent changes in the country of origin or in the country where, if stateless, he or she previously had his or her place of residence is no longer in such a situation that he or she can be regarded as a refugee and therefore cannot continue to refuse to avail himself or herself of the protection of that country of origin or that country of residence.

**Section 5a**

An alien ceases to be eligible for subsidiary protection or otherwise in need of protection if the circumstances that led to him or her being deemed in need of protection no longer exist or have changed to such an extent that protection is no longer needed. In making this assessment, attention is to be paid only to substantial and permanent changes.

**Withdrawal of status declaration****Section 5b**

A refugee status declaration shall be withdrawn if it comes to light that the alien cannot be considered to be a refugee.

In the event of circumstances such as those specified in Section 3, second paragraph, a refugee status declaration may be withdrawn.

**Section 5c**

A subsidiary protection status declaration shall be withdrawn if it comes to light that the alien cannot be considered eligible for subsidiary protection.

A status declaration as a person otherwise in need of protection shall be withdrawn if it comes to light that the alien cannot be considered otherwise in need of protection.

## **Decision-making authority, etc.**

### **Section 6**

Decisions under this Chapter are issued by the Swedish Migration Board.

However, the Swedish Migration Board may not grant a status declaration to an alien who has been expelled by a general court on account of a criminal offence. If such an alien applies for a status declaration and the Swedish Migration Board finds that he or she should be granted a status declaration, the Board shall not take a decision in the matter but shall turn it over to the migration court to which the Board's decision on a status declaration could have been appealed, attaching its own opinion.

## **Chapter 5**

### **Residence permit as a person in need of protection**

#### **Section 1<sup>6</sup>**

Refugees, persons eligible for subsidiary protection and persons otherwise in need of protection who are in Sweden are entitled to a residence permit.

However, a refugee may be refused a residence permit if he or she

1. has shown by committing an exceptionally gross criminal offence that public order and security would be seriously endangered by allowing him or her to remain in Sweden, or
2. has conducted activities that have endangered national security and there is reason to assume that he or she would continue to conduct such activities here.

A residence permit granted under the first paragraph shall be permanent or valid for at least three years. However, this does not apply if compelling considerations of national security or public order require a shorter period of validity. However, a residence permit granted under the first paragraph may not be valid for a shorter period than one year.

#### **Section 1a**

If an alien who holds a temporary residence permit is granted a status declaration after an application under Chapter 4, Section 3c, the period of validity of the residence permit shall be reviewed and set in accordance with the provisions of Section 1, third paragraph.

#### **Section 1b**

An application for asylum may be dismissed if the applicant

1. has been declared a refugee in another EU state,
2. has been declared a refugee in a country that is not an EU state or has equivalent protection there, if the applicant will be allowed entry into that country and is protected there against persecution and against being sent on to another country where he or she risks persecution, or
3. can be sent to a country where he or she  
– does not risk being subjected to persecution,

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<sup>6</sup> Latest wording 2005:1239.

- does not risk suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,
- is protected against being sent on to a country where he or she does not have equivalent protection,
- has the opportunity to apply for protection as a refugee, and
- has such ties to the country concerned that it is reasonable for him or her to travel there.

However, in cases referred to in the first paragraph, point 3, an application may not be dismissed if

1. the applicant has a spouse, a child or a parent who is resident in Sweden and the applicant does not have equally close family ties to the country to which a refusal-of-entry or expulsion order may be enforced, or
2. the applicant, because of a previous extended stay in Sweden with a residence permit or right of residence, has acquired special ties to this country and lacks such ties or ties through relatives to the country to which a refusal-of-entry or expulsion order may be enforced.

### **Section 1c**

The Dublin Regulation contains provisions on the transfer of asylum seekers that are to be applied with respect to EU states and to Iceland, Norway and Switzerland.

In the event of a transfer order under the Dublin Regulation, the application for asylum shall be dismissed.

### **Section 3<sup>7</sup>**

Unless otherwise provided in Sections 17–17b, a residence permit shall be given to

1. an alien who is a spouse or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden,
2. a child who is an alien, is unmarried and
  - a) has a parent who is resident in or has been granted a residence permit to settle in Sweden, or
  - b) has a parent who is married to or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden,
3. a child who is an alien, is unmarried and has been adopted or is intended for adoption by someone who at the time of the adoption decision was and who still is resident in or has been granted a residence permit to settle in Sweden, if the child is not covered by point 2 and if the adoption decision
  - has been issued or is intended to be issued by a Swedish court,
  - is valid in Sweden under the Act on International Legal Relations concerning Adoption (1971:796), or
  - is valid in Sweden under the Act consequent on Sweden's Accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1997:191), and
4. an alien who is a parent of an unmarried alien child who is a refugee or other person in need of protection, if the child arrived in Sweden separately from both parents or from another adult person who may be regarded as

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<sup>7</sup> Latest wording 2006:220.

having taken the place of the parents, or if the child has been left alone after arrival.

When an application for a residence permit is based on a decision on adoption issued by a Swedish court, the ties that have arisen as a result of this decision shall be accepted in the residence permit case.

A residence permit under this Section shall be valid for at least one year. A residence permit granted to an unmarried child under the first paragraph, point 2b shall be valid for the same time as the parent's residence permit.

### **Section 3a<sup>8</sup>**

Unless otherwise provided in Section 17, second paragraph, a residence permit may be given to

1. an alien who intends to marry or enter into a cohabitee relationship with a person who is resident in or who has been granted a residence permit to settle in Sweden, if the relationship appears to be serious and there are no special grounds not to give a permit,
2. an alien who in some way other than those referred to in Section 3 or in this Section is a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin,
3. an alien who is to exercise access rights that are not of limited scope to a child that is resident in Sweden, and
4. an alien who is of Swedish origin or has lived in Sweden on a residence permit for a long time.

If an alien has been given a residence permit under the first paragraph, point 1, a residence permit for the same period shall be given to unmarried children of the alien.

When there are exceptional grounds a residence permit may also be granted to an alien in cases other than those referred to in the first and second paragraphs if the alien

1. has been adopted in Sweden as an adult,
2. is a relative of an alien who is a refugee or other person in need of protection, or
3. has some other special ties to Sweden.

### **Section 15a<sup>9</sup>**

A temporary residence permit may be granted to an alien whose application for a residence permit as a refugee under Chapter 4, Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a or corresponding older provisions has been rejected by a decision that has become final and non-appealable, if the alien is staying in this country and

1. for at least six months has had employment that satisfies the requirements specified in Chapter 6, Section 2, first paragraph and concerns a period of at least one year from the time of application, or

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<sup>8</sup> Latest wording 2006:220.

<sup>9</sup> Latest wording 2008:884.

2. as defined in Section 3, first paragraph, points 1–4, Section 3a, first paragraph, point 1 or second paragraph, has strong ties to a person who has been granted a residence permit under point 1.

The Swedish Migration Board must have received an application for a temporary residence permit under the first paragraph no later than two weeks after the decision to reject the application for a residence permit as a refugee or other person in need of protection has become final and non-appealable.

### **Section 18<sup>10</sup>**

An alien who wants a residence permit in Sweden must have applied for and been granted such a permit before entering the country. An application for a residence permit may not be approved after entry. However, this does not apply if

1. the alien is entitled to a residence permit here as a refugee or other person in need of protection under Section 1 or can be granted a residence permit here pursuant to Chapter 21, Section 2, 3 or 4,
2. the alien should be granted a residence permit here pursuant to Section 6,
3. an application for a residence permit concerns extension of a temporary residence permit that has been granted to an alien with family ties pursuant to Section 3, first paragraph, point 1 or 2b or Section 3a, first paragraph, point 1 or second paragraph,
4. the alien can be granted or has a temporary residence permit pursuant to Section 15,
5. the alien has strong ties, as defined in Section 3, first paragraph, points 1–4 or Section 3a, first paragraph, points 1–3 or second paragraph, to a person who is resident in Sweden and it cannot reasonably be required that the alien travel to another country to submit an application there,
6. an application for a residence permit concerns extension of a temporary residence permit that has been granted to an alien pursuant to Section 10 in a case referred to in Chapter 6, Section 2, first paragraph,
7. the alien can be granted a residence permit under Section 15a,
8. the alien has been granted a temporary residence permit for studies pursuant to Section 10 and has either completed studies equivalent to 30 higher education credits or has completed one academic term in the case of postgraduate education, or
9. there are some other exceptional grounds.

Further, the rule given in the first paragraph does not apply if the alien has been granted a visa to visit an employer in Sweden or is exempt from the visa requirement if he or she is applying for a residence permit for work in a type of occupation in which there is great demand for labour. An additional requirement is that it would cause the employer inconvenience if the alien had to travel to another country to submit an application there or that there are some other special grounds.

With regard to a residence permit for an alien who is to be refused entry or expelled in accordance with a judgment or order that has become final and non-appealable, the regulations in Section 15a, Chapter 8, Section 14 and Chapter 12, Sections 18–20 apply.

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<sup>10</sup> Latest wording 2008:884.

**Section 20**

Decisions on residence permits are issued by the Swedish Migration Board.

However, the Swedish Migration Board may not grant a residence permit to an alien who has been expelled by a general court on account of a criminal offence. If such an alien applies for a residence permit as a refugee under Chapter 4, Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a and the Swedish Migration Board finds that the alien should be granted a residence permit, the Board shall not take a decision in the matter but shall turn it over to the migration court to which the Board's decision on a residence permit could have been appealed, attaching its own opinion.

Decisions on residence permits may also be issued by the Government Offices.

**Section 21**

It follows from Chapter 8, Sections 14 and 21 that the Government and the body that examines appeals against refusal-of-entry and expulsion orders may in certain cases also decide on residence permits.

**Section 24**

The Government may issue regulations on permanent residence permits with regard to a certain category of aliens because they are otherwise in need of protection under Chapter 4, Section 2a.

**Section 25**

The Government may issue regulations stating that residence permits may not be granted to persons otherwise in need of protection under Chapter 4, Section 2a, if this is necessary because limitations have arisen in Sweden's capacity to receive aliens.

The Government is to notify the Riksdag of such regulations within three months, by a special written communication.

**Chapter 5a****Section 4<sup>11</sup>**

Refugees under Chapter 4, Section 1, and others in need of protection under Chapter 4, Section 2 or 2a, are not to be granted long-term resident status in Sweden.

**Chapter 6****Section 6**

It follows from Chapter 8, Sections 14 and 21 that the Government and the body that examines appeals against refusal-of-entry and expulsion orders may in certain cases also decide on work permits.

**Chapter 7**

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<sup>11</sup> Latest wording 2006:219.

**Section 7**

A permanent residence permit shall be withdrawn from an alien who is no longer resident in Sweden.

In the case of an alien who has been a refugee or other person in need of protection in this country, however, the residence permit may be withdrawn at the earliest when two years have elapsed since residence in this country ended, if the alien has returned to a country where he or she was previously resident because political conditions in that country have changed.

**Chapter 8****Section 11**<sup>12</sup>

When a court considers whether an alien should be expelled under Section 8, it shall take into account the alien's ties to Swedish society. The court shall pay particular attention to

1. the alien's personal circumstances,
2. whether the alien has any child in Sweden and, if so, the child's need of contact with the alien, the nature of the contact in the past and how it would be affected by the alien's expulsion,
3. the alien's family situation in other respects, and
4. how long the alien has been in Sweden.

An alien who is a refugee and who needs a haven in Sweden may only be expelled if he or she has committed an exceptionally gross criminal offence and it would entail serious danger to public order and security to allow the alien to stay here. Expulsion may also take place if the alien has conducted activities in Sweden or abroad that have endangered national security and there is reason to assume that he or she would continue to conduct such activities here.

**Section 13**

An order of expulsion on account of criminal offences issued by a general court shall contain a prohibition against the alien returning to Sweden for a certain time or for an unlimited time. In an order containing a prohibition against return subject to a time limit, the alien shall be informed of the date on which the prohibition expires. In the order, the alien shall also be informed of the penalty that a breach of the prohibition may entail under Chapter 20.

**Section 14**

If the Government finds that an order of expulsion on account of criminal offences issued by a general court cannot be enforced or if there are some other special grounds why the order shall no longer apply, the Government may set aside the order wholly or in part. In connection with this, the Government may also issue a decision regarding a residence permit and work permit.

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<sup>12</sup> The amendment includes the repeal of the third paragraph.

If the expulsion order is not set aside, in cases referred to in the first paragraph the Government can grant a temporary residence permit and work permit. The expulsion order may not be enforced while the permit is valid.

If, after the Swedish Migration Board has turned the matter over to it under Chapter 5, Section 20, a migration court or the Migration Court of Appeal finds that an alien who has been expelled by a general court on account of a criminal offence is to be granted a residence permit as a refugee under Chapter 4, Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a, the migration court or Migration Court of Appeal may set aside the expulsion order and grant a residence permit under Chapter 5, Section 1. The migration court or Migration Court of Appeal has the same powers if an alien who has been expelled by a general court on account of a criminal offence has appealed against a decision of the Swedish Migration Board not to grant a residence permit as a refugee under Chapter 4, Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a.

If a migration court or the Migration Court of Appeal does not set aside the expulsion order, it may grant a temporary residence permit under Chapter 5, Section 1. The expulsion order may not be enforced while the permit is valid.

### **Section 16**

If an application for a residence permit is rejected or dismissed or a residence permit is withdrawn and the alien is in Sweden, a refusal-of-entry or expulsion order shall be issued at the same time, unless there are special grounds not to do so.

What is prescribed in the first paragraph does not apply if the application is dismissed under Chapter 5, Section 1c, second paragraph.

### **Section 18**

Refusal-of-entry or expulsion orders issued by the Swedish Migration Board, a migration court or the Migration Court of Appeal must state the country to which the alien is to be returned or expelled.

If there are special grounds for doing so, the order may indicate more than one country.

An order from an authority referred to in the first paragraph and that concerns refusal of entry or expulsion must contain the directions concerning enforcement that may be warranted by the circumstances in the particular case.

### **Section 19<sup>13</sup>**

When the Swedish Migration Board orders refusal of entry or expulsion, the order may be combined with a prohibition against the alien returning to Sweden for a certain period of time.

A refusal-of-entry or expulsion order that refers to an EEA national or a family member of such a national may be combined with such a prohibition as is referred to in the first paragraph only if the order has been issued on grounds of public order and security.

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<sup>13</sup> Latest wording 2006:219.

**Section 20<sup>14</sup>**

An alien who, pursuant to Section 13, 19 or 21, has been prohibited from returning to Sweden for a certain period or for an unlimited time may be given special permission by the Swedish Migration Board to make a short visit to this country, if the visit has to do with exceptionally important matters. If there are special grounds, such permission may also be granted upon application by someone other than the alien.

**Section 21**

When an appealed case or court action concerning refusal of entry or expulsion is decided, a decision may also be made on the issue of a residence permit and work permit. This applies even if these issues have not been raised by the alien.

When it reviews a refusal-of-entry or expulsion order, a migration court or the Migration Court of Appeal may decide to prohibit the alien from returning to Sweden for a certain time, even if no lower instance has issued such a prohibition.

When the Swedish Migration Board, a migration court or the Migration Court of Appeal reviews a refusal-of-entry or expulsion order, such an order may at the same time be issued concerning a person under the age of 16 who is in the alien's custody. This applies even if no lower instance has examined this issue. However, in actions before a migration court and the Migration Court of Appeal, this does not apply if such circumstances as are referred to in Chapter 4, Section 1, 2 or 2a have been invoked on the child's behalf.

**Chapter 9****Section 8**

The Swedish Migration Board or the police authority may photograph an alien and, if the alien has attained the age of 14, take his or her fingerprints if

1. the alien cannot prove his or her identity upon arrival in Sweden,
2. the alien is applying for a residence permit as a refugee under Chapter 4, Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a, or
3. there are grounds for ordering detention of the alien.

**Chapter 10****Section 11**

Each re-examination of a detention order shall be preceded by an oral hearing. This also applies to a re-examination of a supervision order, unless it appears obvious in view of the nature of the investigation or other circumstances that an oral hearing is of no importance.

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<sup>14</sup> The amendment entails repeal of the second paragraph.

The provisions that apply to oral hearings at a government authority are set out in Chapter 13, Sections 1–8. Provisions concerning oral hearings in a court are set out in Chapter 16.

In cases concerning detention or supervision that are handled by the Government, the minister responsible or the official designated by the minister may order an oral hearing and instruct a migration court to hold the hearing. The provisions of Chapter 13 apply to the hearing, where relevant. A representative of the Government Offices shall attend the oral hearing. The Government Offices may order that other persons shall be heard at the hearing, in addition to the alien.

### **Section 13**

The police authority is the case-handling authority

1. from the time when an alien requests to be allowed to enter the country until a case that is to be examined by the Swedish Migration Board is received by the Board or until the alien has left the country, and
2. from the time when the authority receives a refusal-of-entry or expulsion order for enforcement and until enforcement has been carried out, even if the case is subject to examination under Chapter 12, Sections 18–20, but not during the time when the order may not be enforced on account of an order for a stay of enforcement or re-examination.

### **Section 14**

The Swedish Migration Board is the case-handling authority

1. from the time when the Board receives a case that the Board is required to examine until the Board takes a decision or the alien has left the country or the police authority has received the case or, if the decision of the Swedish Migration Board is appealed, until the case is received by the migration court, and
2. from the time when the Board receives a refusal-of-entry or expulsion order for enforcement until the order has been enforced or the case has been turned over to the police authority. The Swedish Migration Board is the case-handling authority for orders with immediate effect, even if the order has been appealed, until the court issues a stay of enforcement order.

### **Section 15**

The Government is the case-handling authority when the case has been received by the ministry responsible for preparing the case.

Decisions in questions of detention and supervision are taken by the government minister responsible for the case. The Government may not take a decision to take anyone into or keep anyone in detention or to place anyone under supervision. The Government may, however, set aside a detention or supervision order.

In a case where a stay of enforcement order can be issued pursuant to Chapter 12, Section 11, first paragraph or Section 12, the Government shall not be held to be the case-handling authority before a stay of enforcement order has been issued.

### **Section 16**

In cases where a stay of enforcement order can be issued pursuant to Chapter 12, Section 11, first paragraph, a migration court or the Migration

Court of Appeal is the case-handling authority from the time at which it has issued a stay of enforcement order.

## **Chapter 11**

### **Section 5**

An alien who is being held in detention shall have access to the same level of health and medical care as a person who has applied for a residence permit under Chapter 4, Section 1, 2 or 2a, even if the alien has not applied for such a permit.

If an alien who is being held in detention needs hospital care during the period of detention, he or she shall be given the opportunity for such treatment.

The head of operations at the hospital department where the alien is being treated shall ensure that the Swedish Migration Board or the person in charge of the premises where the alien is to be kept is notified immediately if the alien wishes to leave or has already left the hospital.

## **Chapter 12**

### **Section 3**

A refusal-of-entry or expulsion order for an alien referred to in Chapter 4, Section 2, first paragraph, point 1, in cases of armed conflict, or Section 2a, first paragraph, may not be enforced to the alien's country of origin or to a country where he or she risks being sent on to the country of origin, if there are exceptional grounds not to do so.

### **Section 4**

A refusal-of-entry or expulsion order that is issued by the Swedish Migration Board, a migration court or the Migration Court of Appeal shall be enforced by sending the alien to the country or, if several countries have been specified, one of the countries specified in the order.

A refusal-of-entry order issued by a police authority and an order from a general court on expulsion on account of a criminal offence shall be enforced by sending the alien to his or her country of origin or, if possible, to the country from which the alien came to Sweden. If enforcement cannot take place to either of these countries, an alien may instead be sent to a country to which the alien has ties.

An alien who is to be refused entry or expelled may always be sent to a country where the alien shows that he or she can be received.

### **Section 8**

An order from a general court on expulsion on account of a criminal offence may be enforced, if the alien has made a declaration of acceptance and the prosecutor consents to the enforcement of the order.

## **Refusal-of-entry and expulsion of an alien who has applied for a residence permit as a refugee or other person in need of protection**

### **Section 8a**

If an alien has applied for a residence permit as a refugee under Chapter 4,

Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a, a refusal-of-entry or expulsion order may not be enforced before the application has been examined and upon examination has been rejected by a decision that has become final and non-appealable or before a decision to dismiss the application under Chapter 5, Section 1b has become final and non-appealable.

The first paragraph does not apply if the Swedish Migration Board has ordered immediate enforcement under Chapter 8, Section 6 or if the alien has been expelled on account of a criminal offence. In these cases the refusal-of-entry or expulsion order may be enforced when the residence permit application has been examined by an authority and upon examination has been rejected.

The first paragraph is not an impediment to the alien being delivered, extradited or transferred to another state or to an international court or tribunal for prosecution or to serve a custodial sentence.

### **Section 11**

When the Government, a migration court or the Migration Court of Appeal examines a question of setting aside an order of a general court on expulsion on account of a criminal offence, the Government or court may order a stay of the enforcement of the order made previously.

When a case under this Act is to be examined by the Government, the government minister responsible may order a stay of the enforcement of refusal of entry or expulsion for the period until the Government makes a decision on the case.

### **Section 14**

Refusal-of-entry and expulsion orders shall be enforced by the Swedish Migration Board unless otherwise prescribed in the second, third or fourth paragraph.

The Swedish Security Service shall enforce refusal-of-entry and expulsion orders in security cases. However, the Swedish Migration Board or the court that rules on the matter may state in its decision on refusal of entry or expulsion that another authority shall carry out enforcement.

The police authority shall enforce

1. a refusal-of-entry order made by a police authority,
2. an order of a general court on expulsion on account of a criminal offence.

The Swedish Migration Board may turn over a refusal-of-entry or expulsion case to the police authority for enforcement if the person to be refused entry or expelled has gone into hiding and cannot be found without the assistance of the police authority or if it can be assumed that force will be needed to enforce the decision.

### **Section 15<sup>15</sup>**

Refusal-of-entry orders made by a police authority, refusal-of-entry orders made by the Swedish Migration Board under Chapter 8, Section 4, second paragraph, expulsion orders with immediate enforcement made by the Swedish Migration Board and final and non-appealable orders of a general

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<sup>15</sup> Latest wording 2006:219.

court on expulsion on account of a criminal offence shall be enforced as soon as possible.

In other cases, an alien who is refused entry shall leave the country within two weeks and an alien who is expelled shall leave the country within four weeks from the date when the order becomes final and non-appealable, unless otherwise provided in the order.

If the alien does not leave the country within the prescribed period or if it must be assumed that the alien does not intend to leave the country voluntarily within this period, the order shall be enforced as soon as possible by the authority that is responsible for enforcement under Section 14.

Enforcement of a refusal-of-entry or expulsion order applying to an EEA national or a member of his or her family who has entered Sweden may take place at the earliest four weeks from the day on which the EEA national or the family member was informed of the order, unless there are exceptional grounds for enforcing the order.

### **Section 16**

If, after a review, the Swedish Migration Board grants an alien a temporary residence permit, the Board may at the same time cancel a refusal-of-entry or expulsion order made by the Board.

If the Swedish Migration Board approves a temporary residence permit without cancelling a refusal-of-entry or expulsion order, the refusal-of-entry or expulsion order may not be enforced while the temporary residence permit is valid. The same applies if a migration court or the Migration Court of Appeal grants a temporary residence permit in a case under appeal without cancelling the refusal-of-entry or expulsion order.

Chapter 5, Section 20 states that the Swedish Migration Board may not grant a residence permit to a person who has been expelled by a general court on account of a criminal offence.

### **Section 17<sup>16</sup>**

If some other authority than the Swedish Migration Board is to enforce a refusal-of-entry or expulsion order and this authority finds that it cannot enforce the order or that it needs additional information, the authority shall notify the Swedish Migration Board. The same applies if an alien, in contact with the authority, invokes the existence of an impediment to enforcement referred to in Section 1, 2 or 3, or if it comes to light in some other way that there may be such impediments.

In such cases the Swedish Migration Board shall provide directions on enforcement or take other measures.

If an order of a general court concerning expulsion of an EEA national or a family member of such a national on account of a criminal offence is to be enforced more than two years after the decision was issued, before enforcing the order the police authority shall investigate whether the circumstances on which the order was based have changed. If it comes to light during the investigation that the circumstances have changed in such a way that the expulsion order should no longer apply, the case shall be turned

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<sup>16</sup> Latest wording 2006:219.

over to the Swedish Migration Board, which shall turn over the case to the Government for examination in accordance with Chapter 8, Section 14, attaching its own opinion. In such a case enforcement may not take place before the Government has made a decision on the case.

### **Section 19**

If, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, an alien invokes new circumstances

1. that can be assumed to constitute a lasting impediment to enforcement referred to in Section 1, 2 or 3, and
2. these circumstances could not previously have been invoked by the alien or the alien shows a valid excuse for not previously having invoked these circumstances,

the Swedish Migration Board shall, if a residence permit cannot be granted under Section 18, re-examine the question of a residence permit.

If the conditions set out in the first paragraph are not fulfilled, the Swedish Migration Board shall decide not to grant a re-examination.

The refusal-of-entry or expulsion order may not be enforced before the Swedish Migration Board has decided on the question of whether there will be a re-examination or, if a re-examination is granted, before the question of a residence permit has been settled by a decision that has become final and non-appealable.

What is stated in the first paragraph does not apply if the alien is applying for a residence permit as a refugee under Chapter 4, Section 1, or other person in need of protection under Chapter 4, Section 2 or 2a, and such an application has not been examined previously during the alien's stay in Sweden by a decision that has become final and non-appealable. In such a case the Swedish Migration Board shall examine the application and order a stay of enforcement in the enforcement case.

### **Section 19a**

If an alien who has been expelled by a general court on account of a criminal offence and who has had an application for a residence permit as a refugee under Chapter 4, Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a examined, and whose application, upon examination, has been rejected by a decision that has become final and non-appealable, invokes such circumstances as are specified in Section 19, first paragraph, point 1, and the alien could not have invoked these circumstances previously, or the alien shows a valid excuse for not having invoked these circumstances previously, the Swedish Migration Board shall re-examine the question of a residence permit.

If the conditions set out in the first paragraph are not fulfilled, the Swedish Migration Board shall decide not to grant a re-examination.

The expulsion order may not be enforced before the Swedish Migration Board has made a decision on the question of whether a re-examination is to be made or, if a re-examination is granted, before the question of a residence permit has been examined by an authority and the application, upon examination, has been rejected.

**Section 20**

If, in a case referring to an order of a general court concerning expulsion on account of a criminal offence, it comes to light that enforcement cannot be carried out, the Swedish Migration Board shall not take a decision in the case but shall promptly turn over the case to the Government for examination under Chapter 8, Section 14, attaching its own opinion.

However, what is prescribed in the first paragraph does not apply if the alien is applying for a residence permit under Chapter 4, Section 1 or other person in need of protection under Chapter 4, Section 2 or 2a or if an alien who has had such an application examined and upon examination rejected by a decision that has not ceased to apply invokes new circumstances that can be assumed to constitute a permanent impediment to enforcement such as is referred to in Section 1, 2 or 3. In these cases the question of a residence permit shall be examined under Chapter 5, Section 20 or Section 19a, respectively.

**Section 21**

A refusal-of-entry or expulsion order shall be deemed to have been enforced if the alien has left the country. However, this does not apply if the alien is extradited, delivered or transferred to another state or international court or tribunal in the context of criminal proceedings on condition that the alien shall be returned.

**Chapter 13****Section 1**

The Swedish Migration Board may not issue a refusal-of-entry or expulsion order for an alien who has applied for asylum in Sweden or refuse an alien a requested status declaration unless there has been an oral procedure at the Swedish Migration Board. An oral procedure shall also be held in other cases at the request of the alien, unless such a procedure would be of no importance for deciding the asylum case. This procedure can take the form of an oral hearing or some other form.

**Section 9a**

When the Swedish Migration Board initiates a case for withdrawal of a status declaration, the alien shall be notified.

A status declaration may not be withdrawn without the alien having been given the opportunity to state his or her position.

**Chapter 14 Appeal against the decision of an administrative authority etc.****Section 5**

A decision by the Swedish Migration Board not to grant a re-examination under Chapter 12, Section 19 or 19a may be appealed to a migration court.

**Status declaration and travel documents****Section 6**

Decisions of the Swedish Migration Board under Chapter 4, Sections 3, 3a,

3c and 4 concerning a status declaration or travel documents or the withdrawal of a status declaration may be appealed to a migration court.

## **Detention and supervision**

### **Section 9**

A detention or supervision order made by a police authority or the Swedish Migration Board may be appealed to a migration court.

A detention or supervision order may be appealed separately and without any limitation to a certain time period.

If a detention or supervision order has been made by a government minister, at the request of the alien the Supreme Administrative Court shall examine whether the measure shall remain in force.

### **Section 11**

In security cases, decisions of the Swedish Migration Board concerning refusal of entry, expulsion, residence permits, work permits, status declaration, travel documents and detention may be appealed by the Swedish Security Service.

## **Dismissal of a residence permit application**

### **Section 14a**

A decision to dismiss an application for asylum pursuant to Chapter 5, Section 1b or 1c, second paragraph, may be appealed to a migration court.

## **Chapter 15**

### **Section 3**

A declaration of acceptance cannot be withdrawn. If the alien has lodged an appeal against the order or judgment when the declaration of acceptance is made, the alien shall be held to have withdrawn his or her appeal against the refusal-of-entry or expulsion order through the declaration of acceptance. If the alien has applied for a residence permit, work permit, status declaration, travel document or alien's passport, the alien shall be held to have withdrawn his or her application through the declaration of acceptance.

## **Chapter 16**

### **Section 1**

The Government shall issue regulations stating which county administrative courts are to be migration courts and ordering that only one of these courts shall be competent to hear security cases. The Migration Court of Appeal is the Administrative Court of Appeal in Stockholm.

The general provisions on county administrative courts and administrative courts of appeal and their administration of justice apply to the migration courts and the Migration Court of Appeal and to procedures in these courts, unless otherwise provided in this Act.

**Section 6**

In a court action concerning refusal of entry, the Swedish Migration Board is the opposite party of the alien.

When an appeal is lodged against a decision in a security case, both the Swedish Migration Board and the Swedish Security Service are the opposite parties of the alien when the case is processed by the migration court and by the Migration Court of Appeal.

**Section 8**

If it becomes clear, when a migration court is processing a court action, that it is a security case under this Act or a case to be processed under the Act concerning Special Controls in Respect of Aliens (1991:572), the court shall set aside the order under appeal and remand the case to the Swedish Migration Board for processing.

If it becomes clear in the course of processing by the Migration Court of Appeal that it is a matter of a security case under this Act or a case to be processed under the Act concerning Special Controls in Respect of Aliens, the court shall set aside the order of the migration court and the Swedish Migration Board and remand the case to the Swedish Migration Board for processing.

**Section 11**

Leave to appeal is required to appeal a decision of a migration court to the Migration Court of Appeal.

However, leave to appeal is not required to appeal a decision of a migration court under Section 9, second paragraph. Nor is leave to appeal required to appeal a decision of a migration court concerning a status declaration or a residence permit following referral under Chapter 4, Section 6, second paragraph or Chapter 5, Section 20, second paragraph.

**Chapter 18****Section 1<sup>17</sup>**

Unless it must be assumed that there is no need for counsel, a public counsel shall be appointed for the person whom the measure concerns in court actions and other cases concerning

1. refusal of entry, but not at a police authority unless the alien has been held in detention for more than three days under Chapter 10, Section 1 or 2,
2. expulsion under Chapter 8, Section 7 or Section 7a,
3. enforcement of a refusal-of-entry or expulsion order under this Act, if a stay of enforcement order has been issued by the Swedish Migration Board, a migration court or the Migration Court of Appeal or if a re-examination has been granted,
4. enforcement of a refusal-of-entry or expulsion order under this Act, but only concerning the question of detention under Chapter 10, Section 1 or 2 in cases where the alien has been held in detention for more than three days, and
5. repatriation under Chapter 23, Section 2.

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<sup>17</sup> Latest wording 2006:219.

A public counsel shall always be appointed for children held in detention under Chapter 10, Section 2, if the child does not have a custodian in this country.

### **Section 1a**

In court actions concerning an appeal against a decision of the Swedish Migration Board on the question of a status declaration, a public counsel shall be appointed at the alien's request if the alien is in Sweden, unless it is obvious that the alien will not be granted the status declaration claimed for.

## **Chapter 20**

### **Section 2<sup>18</sup>**

An alien who stays in Sweden intentionally even though he or she did not have the right to return to Sweden according to an enforced expulsion order under Chapter 8, Section 8 or an equivalent order under an older Act, shall be sentenced to imprisonment for at most one year or, if the offence is minor, to a fine.

The provisions in the first paragraph are not applicable if the alien has fled to Sweden for reasons referred to in Chapter 4, Section 1, 2 or 2a.

In the case of minor offences, prosecution under the first paragraph shall only be instituted if this is called for in the public interest.

## **Chapter 21**

### **Section 2**

An alien who is covered by a decision on temporary protection under Directive 2001/55/EC and who is transferred to or received in Sweden in accordance with the Directive shall be given a temporary residence permit, a *residence permit with temporary protection*.

An alien may only be refused a residence permit with temporary protection if there are circumstances under which an alien is barred from being a refugee under Chapter 4, Section 2b, or under which a refugee may be refused a residence permit under Chapter 5, Section 1.

### **Section 5**

The fact that an alien has been granted a residence permit with temporary protection is not an impediment to the examination of an application for a residence permit as a refugee under Chapter 4, Section 1. This also applies to an application for a refugee status declaration under Chapter 4, Section 3 and an application for travel documents under Chapter 4, Section 4.

The examination of an application under the first paragraph may only be postponed if there are special grounds for doing so. If an application has not been examined before the temporary protection expires, it shall be examined as soon as possible after that date.

## **Chapter 22**

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<sup>18</sup> Latest wording 2009:16.

**Section 2**

A temporary residence permit for at least one year shall be given to an alien for whom a request for the relocation of a witness or a close relative of a witness has been made by an international court or tribunal, if the request is deemed to be justified.

For the purposes of this Section, a 'witness' is a person who has given or is to give evidence in hearings before an international court or tribunal in accordance with its rules of procedure and evidence.

A 'close relative of a witness' means the witness's

- spouse or cohabiting partner,
- dependent children, and
- other relative who is a member of the same household as the witness and between whom and the witness there is a special relationship of dependency.

If a request under the first paragraph is held to be justified, a residence permit may only be refused if there are circumstances under which an alien is barred from being considered a refugee under Chapter 4, Section 2b, or under which a refugee may be refused a residence permit under Chapter 5, Section 1.

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1. This Act enters into force on 1 January 2010.
  2. Cases concerning appeals that have been lodged with the Government but have not been decided before 1 January 2010 shall be turned over to the Migration Court of Appeal for examination. Cases that have been referred to the Government under Chapter 12, Section 20, second paragraph as previously worded but have not been decided before 1 January 2010 shall be turned over to the Swedish Migration Board for examination.
  3. In applying the new regulations in this Act, 'declaration of refugee status' shall be equated with 'refugee status declaration'.

On behalf of the Government

BEATRICE ASK