

| | |
|--|---|
| Subject-matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 Articles not specified in the case (but the case is mainly linked to article 8, section 5) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 14 June 2016 |
| Deciding body (in original language) | <i>Högsta Förvaltningsdomstolen</i> |
| Deciding body (in English) | Supreme Administrative Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | 3101-15 |
| Parties | V.T. v. Swedish Tax Agency (<i>Skatteverket</i>) |
| Web link to the decision (if available) | <p>Web link to the decision is not available.</p> <p>Search in www.rattsinfosok.dom.se/lagrummet/index.jsp</p> <p>Choose: <i>Avancerad; Domstol: Högsta Förvaltningsdomstolen; Målnummer:3101-15</i></p> |
| Legal basis in national law of the rights under dispute | <ul style="list-style-type: none"> • Population Registration Act (<i>Folkbokföringslag [1991:481]</i>) paragraphs 3, 4 and 26 • Population Registration Ordinance (<i>Folkbokföringsförordning [1991:749]</i>) paragraph 10 • Alien Act (<i>Utlänningslag [2005:716]</i>) Chapter 3a, sections 1, 2, 3 and 4. |

| | |
|---|---|
| <p>Key facts of the case (max. 500 chars)</p> | <p>In the autumn of 2013, V.T. moved to Sweden from Bulgaria with her daughter and son-in-law, whom she previously lived together with in Bulgaria. In November 2013 V.T. requested to be registered in the Swedish Population Register (<i>folkbokföringen</i>). V.T. stated that she had the right to reside in Sweden in accordance with the Alien Act's (<i>Utlänningslag [2005:716]</i>) stipulations on EU citizens and their family members. Consequently, she should be registered in the Population Registration in accordance with the Population Registration Act (<i>Folkbokföringslag [1991:749]</i>). In January 2014 the Swedish Tax Agency (<i>Skatteverket</i>) denied her request since V.T. was unable to provide sufficient evidence to confirm her right to reside. The Tax Authority has the right to require other more specific forms of documentation issued by Agencies in the country of origin showing that the person is financially dependent of, or was a part of the same household as the EU-citizen in question. Such documents may also be used to that support a person's right to reside as a family member to a EU-citizen when it comes to cases regarding registration in the Swedish Population Register. A decision of the right to reside made by the Migration Agency is not necessarily considered sufficient proof of the right to reside that is required in the Population Registration Act. V.T. appealed the Tax Agency's decision to the Administrative Court in Malmö (<i>Förvaltningsdomstolen</i>) that repealed the Agency's decision. The Tax Agency decided to appeal the ruling of the Administrative Court, first to the Administrative Court of Appeal in Gothenburg (<i>Kammarrätten i Göteborg</i>), that rejected the appeal. The Tax Agency then appealed the ruling to the Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>).</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>V.T argued that she had the right to reside as a family member to an EU-citizen in accordance with chapter 3a, sections 4 in the Alien Act (<i>Utlänningslag [2005:716]</i>)</p> <p>The Tax Agency (<i>Skatteverket</i>) argued that V.T had been unable to provide sufficient evidence, in accordance with section 10 in the Population Registration Ordinance (<i>Folkbokföringsförordning [1991:749]</i>), showing that her son-in-law had lived with her and her daughter in Bulgaria or that she had been financially dependent on her daughter and son-in-law before moving to Sweden. As the daughter is an economically inactive EU citizen (i.e she has what in Sweden is called a secondary right to reside) V.T. had to show her connection to the son-in-law in order the get the right to reside and therefore also the right to be registered in the Swedish Population Register.</p> <p>The Supreme Administrative Court (<i>Högsta Förvaltningsdomstolen</i>) assessed that even though V.T. could show that she lived with her daughter already in Bulgaria she was unable to provide documents issued by Bulgarian Agencies showing that the son-in-law had lived with them back in Bulgaria or that she before residing in Sweden was financially dependent on her daughter and son-in-law, as required by Section 10 in the Population Registration Ordinance (<i>Folkbokföringsförordning [1991:749]</i>)</p> |

| | |
|---|---|
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The key issue is what kind of evidence a person must provide in order to be allowed the right to reside as a family member to a EU citizen in cases concerning registration in the Swedish Population Register in accordance with the Population Registration Act (<i>Folkbokföringslag [1991:749]</i>) and the Population Registration Ordinance (<i>Folkbokföringsförordning [1991:749]</i>) |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>) decided to approve the appeal and confirm the Tax Authority's (<i>Skatteverket</i>) decision to deny V.T her request to be registered in the Swedish population register (<i>folkbokföringen</i>). |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p><i>För att sekundär uppehållsrätt ska föreligga krävs för det andra att V.T. tillhör någon av de kategorier som räknas upp i 3 a kap. 2 § första stycket utlänningslagen. För hennes del är det i första hand tredje punkten som aktualiseras (släkting i rakt uppstigande led). Ett villkor för att omfattas av den bestämmelsen är att hon redan före flytten till Sverige var beroende av svärsonen eller dottern för sin försörjning (se rättsfallet MIG 2014:8). Om det villkoret inte är uppfyllt bör hon dock även kunna åberopa fjärde punkten (annan familjemedlem), enligt vilken sekundär uppehållsrätt föreligger bl.a. om hon ingick i svärsonens hushåll i Bulgarien.</i></p> <p><i>Av 10 § första stycket folkbokföringsförordningen (1991:749) framgår att Skatteverket i samband med en anmälan enligt 26 § folkbokföringslagen av en familjemedlem till en EES-medborgare som uppger sig ha uppehållsrätt enligt 3 a kap. 4 § utlänningslagen får begära att familjemedlemmen visar upp vissa närmare angivna handlingar.</i></p> <p><i>V.T. har således inte visat att hon i utlänningslagens mening är familjemedlem till svärsonen och att hon därmed har uppehållsrätt i Sverige. Några synnerliga skäl för att hon ändå ska folkbokföras har inte kommit fram. Överklagandet ska därmed bifallas.</i></p> <p>“For secondary right of residence (<i>sekundär uppehållsrätt</i>)¹ V.T. must belong to any of the categories listed in chapter 3a, section 2, first paragraph of the Alien Act. For her part, it is primarily the third point that is of relevance (relative in direct ascending line). A condition for</p> |

¹ Right to reside as family member of an EEA citizen is in Sweden referred to as secondary right of residence (*sekundär uppehållsrätt*).

| | |
|--|---|
| | <p>being included in this provision is that she was dependent on the son-in-law or daughter for her support prior to moving to Sweden (see case MIG 2014: 8). However, if that condition is not met, she should also be able to invoke the fourth point (another family member), according to which a secondary right to residence exists if she was part of the son-in-law's household in Bulgaria.”</p> <p>“Section 10 first paragraph of the Population Registration Ordinance (<i>Folkbokföringsförordning [1991:749]</i>) states that the Swedish Tax Agency, in conjunction with a request in accordance with Section 26 of the Population Registration Act (<i>Folkbokföringslag [1991:481]</i>) concerning a family member of a EEA-citizen claiming the right to reside in accordance with Chapter 3a, sections 4 in the Alien Act (<i>Utlänningslag [2005:716]</i>), has the right to require that the family member presents some specified documents.</p> <p>Thus, V.T. has not shown that she is a family member to her son-in-law in the meaning of the Alien Act, and therefore has a right of residence in Sweden. No particular reasons for why she nevertheless should be registered in the population register has not been presented. The appeal (of the Tax Agency) will therefore be approved.”</p> |
| <p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p> | <p>No</p> |