

Judicial procedure in aliens and citizenship cases



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Foreword

The Swedish Migration Board is the authority in Sweden that decides in matters concerning residence permits, Swedish citizenship and other similar matters. A decision reached by the Migration Board can be appealed in one of Sweden's three Migration Courts, located at the Administrative Courts in Stockholm, Gothenburg and Malmö. Decisions reached by the Migration Courts can be appealed in the Migration Court of Appeal at the Administrative Court of Appeal in Stockholm.

General information is provided in this brochure on the judicial procedure when someone appeals against a decision made by the Swedish Migration Board in an aliens or citizenship matter.

The brochure explains the normal procedure in the general administrative courts and in particular in aliens and citizenship cases. The brochure is aimed at persons involved in informing others about the court procedure and also at people looking for information about the procedure.

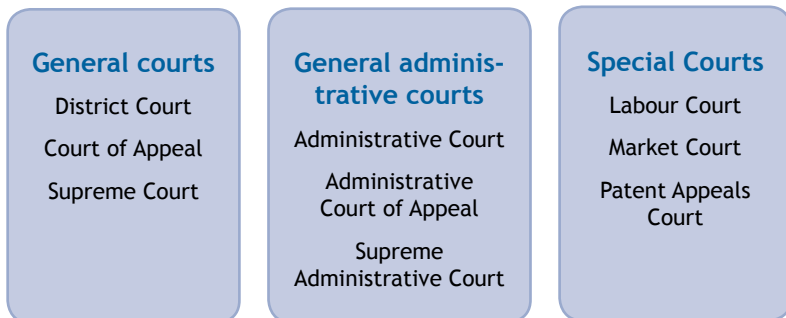
The courts

The courts are divided into general courts, general administrative courts and special courts. The general courts are the District Courts, the Courts of Appeal and the Supreme Court. The kinds of cases dealt with by the general courts are mainly criminal cases and disputes between private individuals and/or companies (contentious civil cases).

The general administrative courts are the Administrative Courts, the Administrative Courts of Appeal and the Supreme Administrative Court. These courts resolve disputes where private individuals, companies or organisations are dissatisfied with an official decision. This could be a decision reached by the Social Insurance Office, the Tax Agency, the Migration Board or the municipal social services department.

There are also special courts that determine disputes involving certain special areas of the law. The special courts are the Labour Court, the Market Court and the Patent Appeals Court.

According to the Constitution, the courts enjoy independent status. Neither the Swedish Parliament nor any other public authority can determine how a court should adjudicate in a particular case.



General administrative courts

There are 12 administrative courts in Sweden. The decisions of the Administrative Courts can be appealed to the Administrative Courts of Appeal, which are located in four cities throughout the country.

Decisions of the Administrative Courts of Appeal can in most cases be appealed to the Supreme Administrative Court, which is the final instance.

Cases in the administrative courts can involve an extremely broad range of matters, such as tax, social insurance issues, the right to financial assistance, psychiatric care and other compulsory care.

The composition of the court in the Administrative Courts and the Administrative Courts of Appeal can vary depending on the kind of case being dealt with. In the Administrative Courts a legally qualified judge and in the majority of cases three lay judges adjudicate jointly. The lay judges are appointed by the County Council Assembly.

Most cases in the Administrative Court of Appeal are heard by three legally qualified judges. Lay judges are only included as members in certain kinds of cases. Cases involving leave to appeal are heard by two judges.

Summary

The courts comprise general courts, general administrative courts and special courts.

The general administrative courts resolve disputes where private individuals, companies or organisations are dissatisfied with an official decision.

Under the Constitution, the courts enjoy independent status in their adjudication.

Administrative court procedure

The Administrative Court Procedure Act (1971:291) governs the procedure in the general administrative courts. Knowledge of this procedure makes it easier to understand how the Migration Courts and the Migration Court of Appeal function. In the case of the Migration Courts, the Administrative Court Procedure Act is supplemented by special provisions in the Aliens Act (2005:716) and the Swedish Citizenship Act (2001:82). See page 12.

The Administrative Court Procedure Act governs the administration of justice within the general administrative courts to which the Migration Courts and the Migration Court of Appeal belong. The Act regulates each step in the proceedings – from when a case has been received through to the final decision. The Administrative Court Act (1971:289) stipulates which members should make up the court. There should, for example, normally be lay judges in the County Administrative Courts, but only in certain cases in the Administrative Court of Appeal.

Investigation

One important rule is the ‘principle of official processing’. This means that the court should ensure that the case is examined sufficiently. The full extent of this responsibility may vary depending on the nature of the case.

The case is normally started by an appeal or an application being sent to the court. The court is then responsible for the counterparty being served with the appeal or the application. A written response must then be submitted, unless the court decides that a response can be presented at an oral hearing. In the response, the counterparty’s position should be presented, i.e. whether he or she contests or accedes to the claims or opposes a particular measure. The counterparty must also provide reasons for his/her position together with supporting evidence. The response is then sent to the applicant or

the appellant for a statement or for information. This ‘communication’ continues until the case has been examined so thoroughly that a decision can be made.

Presentation

In a general administrative court, most cases are decided following a presentation. This means that the case is presented orally to a legally qualified judge and lay judges by a court employee. During the course of the presentation, the facts of the case are put forward and a presentation is made of the legal investigation that has been carried out, with reference to the relevant statutory provisions and legal cases as well as any relevant legal literature. Cases that can be regarded as forming legal precedent and a source of guidance are given particular attention.

Procedure

Normally, the procedure is in writing although the court may decide that an oral hearing should be held when it is felt this would be of benefit in the examination or if it would result in the case being resolved speedily. Oral hearings can also be requested by the parties to the case.

Oral hearing

An oral hearing does not replace the written procedure in the case. The aim of an oral hearing is to supplement the examination and to allow the parties to present their case in more detail.

An oral hearing is presided over by a legally trained judge. The presiding judge conducts the hearing and ensures compliance with the legal rules. The judge should also provide the court and the parties with an opportunity to present questions and ensure that any uncertainties are clarified.

The persons summoned to the oral hearing are:

- The parties
- Representatives or public counsel
- Witnesses and experts
- An interpreter, when someone involved in the hearing does not speak Swedish

The case is usually outlined for the court before the hearing starts. The oral hearing then continues as follows:

- The case is called and the parties and any witnesses are summoned into the courtroom.
- An attendance check is made – the judge checks that everyone has arrived. If someone fails to attend it is generally the case that the hearing must be postponed until a later date.
- After the attendance check has been made, the witnesses must leave the courtroom. They will be called back when the time comes to examine them.
- The court can decide that the hearing should be held behind closed doors (in camera) if information will be disclosed that is subject to secrecy. (Read more about this under the heading 'Behind closed doors').
- The judge starts the hearing by briefly presenting the content of the documents, explaining that the case was presented prior to the hearing and that the members of the court are well acquainted with the material. It is also confirmed that the documents are part of the case material even if the content is not presented again in court.
- The appellant's/applicant's application and grounds are presented.
- The counterparty's opinion regarding the application and grounds are presented

- The appellant/applicant is allowed to explain the grounds for his/her position.
- Evidence is gathered, i.e. any witnesses and experts are examined. They must take the oath and a digital audio recording is made of the hearing.
- The parties conclude their arguments.
- The parties submit claims for costs in conjunction with the oral hearing.
- The hearing is concluded and the judge states when and how the judgment in the case will be pronounced. The decision of the court is then based on both the written documentation and the oral hearing.

Decision

After the presentation, and any supplementary oral hearing, the court will deliberate, during which possible questions and various views for and against will be discussed. In most cases the subsequent decision is unanimous. If it is not possible to reach agreement there will be a vote and the opinion that is supported by more than half of the members will apply. The judge has the casting vote. Any member who does not wish to support the decision of the court is permitted to file a dissenting opinion.

Summary

The Administrative Courts, the Administrative Courts of Appeal and the Supreme Administrative Court are general administrative courts.

The operations of the general administrative courts are basically governed by the Administrative Court Procedure Act.

The court is responsible for ensuring that the examination of the case is conducted properly.

The administrative courts normally adopt a written procedure.

The written procedure may be supplemented by an oral hearing.

Key issues regarding aliens and citizenship cases

Cases in the Migration Courts and the Migration Court of Appeal are basically dealt with in the same way as other administrative law cases. However, there are important differences. The differences result from the Aliens Act (2005:716) and the Swedish Citizenship Act (2001:82). You can read more about the characteristic features of aliens and citizenship cases below.

Migration Courts and the Migration Court of Appeal

Decisions by the Swedish Migration Board in aliens and citizenship matters can be examined by a Migration Court. The procedure is a two-party procedure, which means that the applicant and the Swedish Migration Board meet as two parties in the Migration Court.

Three of the Administrative Courts in Sweden, namely the Administrative Court in Stockholm, the Administrative Court in Gothenburg and the Administrative Court in Malmö, are Migration Courts.

The Administrative Court of Appeal in Stockholm is the Migration Court of Appeal.

Judicial districts of the Migration Courts

Which migration court will consider the decision of the Swedish Migration Board depends mainly on where in Sweden the Board made its decision. The judicial districts are divided into three geographical catchment areas.



Decisions reached by the Migration Courts can be appealed to the Migration Court of Appeal, which is part of the Administrative Court of Appeal in Stockholm. However, it is not possible to appeal decisions of the Migration Court of Appeal to the Supreme Administrative Court, which is the final instance in other cases in the general administrative courts. For aliens and citizenship cases, the Migration Court of Appeal is thus the final instance.

Oral hearing in aliens cases

The main rule in aliens cases, as in other cases in a general administrative court, is that proceedings should be in writing. However, because of the nature of certain cases, it is common for oral hearings to be held at the Migration Court if the appellant so requests. This applies particularly in cases relating to applications for asylum.

Behind closed doors (in camera)

A basic rule in Sweden is that court hearings are public. This means that the public and the media can attend the hearing. However, there are rules in the Public Access to Information and Secrecy Act (2009:400) that protect an individual's personal circumstances. Secrecy can apply in particular in asylum cases where reference is made to details of the individual's circumstances, such as details of persecution, torture, etc. The hearing could take place behind closed doors (in camera) in order to protect the individual. In principle, only the members of the court, the parties and their representatives as well as an interpreter may be present in the courtroom during such a hearing.

Lay judges in the Migration Courts

In the Migration Courts lay judges are involved in the decisions. However, there are no lay judges in the Migration Court of Appeal.

Leave to appeal

Leave to appeal is required to allow a decision of the Migration Court to be considered in full by the Migration Court of Appeal.

The Migration Court of Appeal can grant leave to appeal in the event of ‘precedence exemption’ or ‘extraordinary exemption’. Precedence exemption means that it is believed a case could provide guidance in future decisions. Extraordinary exemption means that there are particular reasons for considering the appeal – if, for example, the Migration Court committed some serious error when processing the matter.

If leave to appeal is not granted, the decision of the Migration Court always stands.

If leave to appeal is granted, this means that the hearing of the case continues and is finally decided in the Migration Court of Appeal.

Precedential rulings

Rulings in cases where leave to appeal has been granted provide guidance (precedents) for decisions in the Migration Courts and at the Swedish Migration Board in similar matters. The rulings of the Migration Court of Appeal are published in Swedish at www.lagrummet.se.

Summary

Decisions by the Swedish Migration Board can be appealed to a Migration Court, where the parties meet in a two-party procedure. Migration Courts are located at the Administrative Courts in Stockholm, Gothenburg and Malmö.

Decisions by the Migration Courts can be appealed to the Migration Court of Appeal, which is at the Administrative Court of Appeal in Stockholm.

Leave to appeal is required before the Migration Court of Appeal can consider a case.

The Migration Court of Appeal is the final and precedent-forming instance.

Decisions that can be appealed

It has already been mentioned that it is the task of the Migration Courts to review decisions made by the Swedish Migration Board in aliens and citizenship matters. Some of the decisions that can be appealed are described below:

Rejection of applications for various kinds of residence permit

A residence permit can be granted to an applicant who is already in Sweden or to an applicant who is abroad. A person who is in Sweden can apply for asylum. Asylum is a residence permit that is given to a refugee. Consequently, if such an application is rejected, a decision will also be made regarding 'refusal of entry' or 'expulsion', which means that the applicant must leave Sweden. Both decisions can be appealed.

A decision by the Swedish Migration Board not to grant a residence permit to someone who is abroad and who, for example, wants to study or wants to be united with his/her family in Sweden, can also be appealed.

Re-examination of residence permit matters

Even if there is a final decision regarding refusal of entry or expulsion which is scheduled to be enforced, a residence permit matter may, subject to certain preconditions, be re-examined by the Swedish Migration Board. This may happen, for example, when something has occurred in the person's home country that makes it impossible for them to return. The decision not to grant re-examination can be appealed.

Detention decision

The Swedish Migration Board can make decisions whereby a person's liberty is removed, i.e. the person is held in detention. Such a decision can be made, for example, when there is a risk that the person will go into hiding when a decision on refusal of entry or expulsion is to be enforced. A detention decision can be appealed.

Swedish citizenship

A decision by the Swedish Migration Board on Swedish citizenship can be appealed when it relates to a rejection of an application for Swedish citizenship, retention of Swedish citizenship or surrender of Swedish citizenship.

From application to final decision

If a person's application is rejected by the Swedish Migration Board, the decision can be appealed. The single largest category of decisions of the Swedish Migration Board that are appealed are decisions relating to applications for asylum. The following is a description of what happens when the Swedish Migration Board has rejected an application for asylum and the person who has applied then appeals to a court. In broad terms, the system applies to most decisions of the Swedish Migration Board that are appealed.

An asylum application is submitted to the Swedish Migration Board, which will either grant it or reject it. If the Swedish Migration Board grants the application, a residence permit is issued. In the event of rejection, the Swedish Migration Board will also make a decision on refusal of entry or, if the person who made the application is in Sweden, on expulsion.

The decision by the Swedish Migration Board to reject an asylum application and a simultaneous decision regarding refusal of entry or expulsion can be appealed. Appeals are submitted to

the Swedish Migration Board, which reconsiders its decision. If the Swedish Migration Board does not amend the decision, the appeal is forwarded to a Migration Court.

In the Migration Court, the Swedish Migration Board would be the counterparty to the person applying for asylum. The asylum seeker will often be represented by public counsel. The decision of the Migration Court can be appealed to the Migration Court of Appeal. Appeals are submitted to the Migration Court, which forwards the documents to the Migration Court of Appeal.

For the Migration Court of Appeal to hear an appeal, leave to appeal must be granted.

If the Migration Court of Appeal does not grant leave to appeal, the decision of the Migration Court will stand and it will not be possible to appeal further.

However, if leave to appeal is granted, this means that the case will be considered and decided by the Migration Court of Appeal. The decision will form a precedent and thus provide guidance in decisions reached by the Swedish Migration Board and the Migration Courts in similar matters.

The Migration Court of Appeal is the final instance and its decisions cannot be appealed.

At the Swedish Migration Board

- A person submits an application to the Migration Board.
- The Migration Board considers the application.
- The Migration Board decides to either grant or reject the application.
- The rejection decision can be appealed to the Migration Court. The appeal is submitted to the Migration Board.
- The Migration Board reviews its earlier decision regarding rejection. If the Migration Board changes the decision following a review, the application is granted.
- If the Migration Board stands by its rejection decision, the appeal is passed to the Migration Court.

At the Migration Court

- In the Migration Court, the Migration Board becomes the counterparty to the person who has applied for asylum. This is a two-party procedure.
- The Migration Court decides either to grant or reject the appeal or refer it back.
- The Migration Court decision can be appealed to the Migration Court of Appeal. The appeal is submitted to the Migration Court, which forwards the documents to the Migration Court of Appeal.

At the Migration Court of Appeal

- The Migration Court of Appeal decides whether leave to appeal can be granted.
- If leave to appeal is not granted, the decision of the Migration Court stands.
- If leave to appeal is granted, the case is heard in the Migration Court of Appeal.
- A decision - to grant the appeal, to reject the appeal or to refer the matter back - is pronounced.
- The decision acts as a precedent for decisions reached by the Migration Board and the Migration Courts in similar matters.

Important laws

The Administrative Court Procedure Act (1971:291) states how administration of justice should be conducted in a general administrative court.

The Aliens Act (2005:716) contains important provisions on the processing of aliens matters at the Swedish Migration Board, the Migration Courts and the Migration Court of Appeal.

The Swedish Citizenship Act (2001:82) regulates the processing of citizenship matters at the Swedish Migration Board, the Migration Courts and the Migration Court of Appeal.

The Public Access to Information and Secrecy Act (2009:400) states the preconditions for information being kept secret.

The Act (1994:1219) on the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Further information?

Further information about the Migration Courts and the Migration Court of Appeal is available at www.domstol.se.

Contact details for the courts

Administrative Court of Appeal in Stockholm,
Migration Court of Appeal
Telephone: 08-561 690 00 (Int. +46 (0)8 561 690 00)

Administrative Court in Stockholm, Migration Court
Telephone: 08-561 680 00 (Int. +46 (0)8 561 680 00)

Administrative Court in Malmö, Migration Court
Telephone: 040-35 35 00 (Int. +46 (0)40 35 35 00)

Administrative Court in Gothenburg, Migration Court
Telephone: 031-732 70 00 (Int. +46 (0)31 732 70 00)

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