

Mobility: Immigration alert

January 2024



Sweden

Migration Court of Appeal issues decision relaxing requirements for individuals who apply for permanent residence permits

Executive summary

The Swedish Migration Court of Appeal recently upheld a decision by a lower court allowing a third-country national to obtain a permanent residence permit despite not having an employment contract that is valid for at least 18 months, as is the current requirement. This judgment may impact the way the Swedish Migration Agency ("Agency") assesses permanent residence permit applications and benefit applicants.

Background

The Swedish Aliens Act states that individuals who seek to apply for a permanent residence permit must demonstrate their financial self-sufficiency for a specific period, usually by having an employment contract valid for at least 18 months from the date the application is examined by the Agency. This maintenance requirement is intended to ensure that applicants can support themselves financially. In 2021, a third-country national holding a Swedish temporary residence permit had her permanent residence permit application rejected as her employment contract was issued for only one year at a time (although it had previously been extended annually). The applicant appealed her case to the Administrative Court in Luleå in January 2023, which overturned the Agency's decision and granted her a permanent residence permit as she could not obtain an employment contract in her field that was valid for more than one year based on the regulations of the Higher Education Ordinance (1993:100). The Court concluded that she fulfilled the maintenance requirement. The Agency then filed an appeal with the Migration Court of Appeal.

Key developments

In December 2023, the Migration Court of Appeal upheld the Administrative Court's decision that the 18-month employment duration requirement should be interpreted less stringently. The Migration Court observed that this requirement can be met if the applicant submits proof (e.g., an employment contract) that they will receive, or are likely to receive (based on forecasts), sufficiently high income for at least one year after filing the application. The Court added that it found no reason to treat this case differently than that of a temporary residence permit, as observed in case law MIG 2019:12 (where a dependent was granted a residence permit as the reference person provided proof that they would receive, or were likely to receive, a sufficiently high income for at least one year after filing the application), and that individuals who apply for a permanent residence permit must have held multiple temporary residence authorizations in Sweden prior to application. The Migration Court consequently concluded that a more flexible assessment must be conducted that takes into consideration applicants' previous employment history with their current employers and whether it is likely that employment with the same employer will continue.

Impact

The Agency is yet to comment on whether it will change the way it enforces the maintenance requirement. If it adopts the interpretation of the Migration Court of Appeal, individuals who apply for permanent residence permits, especially those who

hold residence permits for guest researchers and PhD students, are expected to benefit.

Key steps

EY will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our immigration professionals.

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EYG no. 000431-24GbI

2101-3682263
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