



Switzerland - Federal Administrative Court,
judgment no. F-2453/2017

The applicant was a Syrian national of Kurdish ethnicity, who unsuccessfully applied for asylum in Switzerland. He subsequently claimed that he has been deprived of Syrian nationality and therefore ought to be recognised as stateless. The State Secretariat for Migration and the Court decided that he did not meet the standard of proof to substantiate his statelessness of 'full proof'.

Case number: F-2453/2017

Citation: https://www.swissrights.ch/bvge/2019-F-2453_2017.php

Date of decision: 04/10/2019

State: Switzerland

Court / UN Treaty Body: Federal Administrative Court of Switzerland

Language(s) the decision is available in: German

Applicant's country of birth: Syria

Applicant's country of residence: Switzerland

Legal instruments: 1954 Statelessness Convention

Key aspects: Access to social and economic rights, Burden of proof, Deprivation of nationality, Standard of proof, Statelessness and asylum, Statelessness determination

Facts

The applicant was born 1980 and arrived in Switzerland on 14 November 2008, with his wife and two children, where they applied for asylum on 15 November 2008. The applicant initially claimed to be a Syrian national of Kurdish ethnicity. In his asylum application it appeared that he has already applied for asylum in Germany with a different identity, affecting his credibility with the authorities. The asylum application in Switzerland was initially rejected and a deportation ordered against the family, but it was replaced with a temporary permission to remain, as the deportation was deemed unacceptable and also because he was recognised as a

refugees (but not granted asylum) due to political activities sur place.

On 28 July 2016 the applicant requested to be recognised as stateless. He submitted that when he attempted to register with Syrian authorities the birth of his youngest child, who was born in Switzerland in the meantime, he was informed that he was no longer in the records of the Syrian authorities. His passport could neither be extended nor renewed, and he lost his nationality sometime between 2006 and the present. On 16 March 2017 the applicant's request to be recognised as stateless was rejected.

Legal arguments by the applicant

The applicant explained that he believed he was no longer Syrian, and has therefore become stateless, due to a number of reasons. The registration of his youngest son with the Syrian authorities failed. He moreover asked his uncle in Syria to sell his apartment, but the uncle was told that the apartment belonged to the Syrian state now. The applicant believed that his nationality was withdrawn because he came from a politically active family (his three sisters were recognised as refugees in Switzerland), and possibly also because of the work of his brother. The latter was accused of having exported carpets to Israel. During an interrogation, his brother had given the applicant's name in order to exonerate himself, since the applicant was already abroad and would not suffer the consequences. Since connections with the Israeli state are considered to be a form of high treason, it is conceivable that these events would lead to the withdrawal of applicant's nationality. The applicant does not rule out the possibility that his nationality could have been withdrawn for a completely different reason, such as that the Syrian authorities were convinced that he was a serious threat to the regime.

The applicant also submitted a judgment of a Sharia Court in Aleppo, sentencing him to seven years in prison for illicit activities and incitement to demonstrations by a banned party against the state. In addition, his civil rights have been withdrawn. The judgment was issued in absentia and is final. No further clarifications could have been obtained about this judgment, as the relevant Syrian lawyer appeared to be in prison.

Legal arguments by the opposing party

The State Secretariat for Migration (SEM) submitted that the applicant failed to provide a clear explanation as to why his nationality was withdrawn – his testimony

was largely guesswork.

SEM argued that the applicant is a Syrian national. This was the applicant's claim since entering Switzerland in 2008, and it is supported by the applicant's testimony about his parentage in light of relevant legal provisions in Syria – he ought to be assumed he is a Syrian national. His arguments for why this may no longer be the case are not credible.

With regard to the applicant's claim that he belongs to a politically active family, those arguments were already judged as not credible in the applicant's asylum procedure. The fact that his sisters have been recognised as refugees does not change this. With regard to applicant's claim concerning the activity of his brother related to the carpet trade, those were considered not credible in the context of the applicant's brother's asylum procedure.

Considering the above, the authenticity of the judgment of the Aleppo Court submitted by the applicant is not credible. It is now generally known that the evidential value of (new) Syrian documents is very low, and that any kind of Syrian documents can be obtained from abroad. Forged documents, or genuine document with falsified information are widely accessible. Since such unreliable documents can easily be acquired, the evidence at hand is of low evidentiary value, and therefore not suitable to prove the alleged deprivation of nationality of the applicant, which has already been established as improbable for other reasons. As a secondary argument, concerning the Aleppo judgment, SEM argued that its content anyway does not lead to the conclusion that the applicant is stateless, but merely that he has been deprived of his civil rights.

Decision & Reasoning

The Court firstly considers the definition of a stateless person, and elaborates on the issue that voluntary statelessness does not give rise to entitlement to international protection.

The Court reasoned as follows about the lack of a statelessness determination procedure in Switzerland and the standard of proof:

“In the absence of a special legal regulation, the procedure for the recognition of statelessness follows the Administrative Procedure Act and the general principles of administrative procedural law. Therefore, in principle, full evidence must be provided

for the existence of a fact. If the proof is unsuccessful, the lack of evidence comes at the expense of the party who derives rights from the fact, according to the general rule on the burden of proof [...].”

“The principle of investigation places the responsibility for verifying the facts on the authority [...] The principle of investigation is balanced out by the individual’s obligation to cooperate in the investigation of the facts. The duty to cooperate comes into play, among other things, in proceedings that are initiated at the request of the individual [...], and applies in particular to facts which the individual knows better than the authority, or which the authority cannot investigate the facts at all or without excessive effort without the participation of the individual [...]. It must be considered that in the present claim a negative fact out to be established (in particular: the lack of a nationality). However, this does not change anything about the distribution of the burden of proof [...].”

After having considered the evidence presented by the applicant, the court concluded that “the claim of deprivation of nationality has no basis”.

The Court concludes that:

“[T]he applicant has neither proven nor credibly demonstrated that he has been deprived of his nationality and is therefore stateless.”

Decision documents

[F-2453_2017.pdf](#)

Outcome

The Court upheld the decision of the State Secretariat for Migration not to recognise the applicant as stateless.