



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

Application no. 5049/12
Marina SENCHISHAK
against Finland
lodged on 17 January 2012

STATEMENT OF FACTS

The applicant, Ms Marina Senchishak, is a Russian national, who was born in 1942 and lives in Espoo. She is represented before the Court by Ms Oksana Kinnunen from Helsinki.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant's situation

On 7 December 2008 the applicant arrived in Finland with a tourist visa issued for a period of 30 days, without having lodged a prior application for a residence permit at a Finnish Representation. Since then she has been living with her daughter. Her daughter moved to Finland in 1988 and she is a Finnish citizen.

In November 2006 the applicant suffered a stroke. Her right side was paralysed and she needs help with daily activities like washing, dressing, using the toilet and eating. She is confined to a wheelchair which she is not able to move herself. Her ability to speak is impaired and only her daughter understands her. She is also suffering from medium to severe depression. The applicant is totally dependant on her daughter's help, physically and mentally.

This daughter living in Finland is her closest relative. The applicant's husband died in 2007 and her other daughter went missing in 2003 and is probably dead. The applicant had raised her granddaughter from the age of

3 or 4 when the child's mother went missing. This granddaughter, who was born in 1986 and with whom and with whose family the applicant lived near Vyborg, is not able or willing to take care of the applicant due to her own difficult circumstances. The applicant did not receive proper care in Russia. When her daughter brought her to Finland she was undernourished and had a malignant tumour on her skin. Furthermore, the applicant used to live in a flat situated on the fourth floor of a house which had no lift. The flat has now been sold and the applicant no longer has anywhere to live in Russia.

The proceedings

On 17 December 2008 the applicant applied for a residence permit on the basis of family ties to her daughter.

On 31 July 2009 the Finnish Immigration Service (*Maahanmuuttovirasto, Migrationsverket*) refused the applicant a residence permit and ordered her removal to Russia.

The applicant appealed to the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), presenting new medical evidence about her state of health.

On 8 April 2010 the Helsinki Administrative Court quashed the Immigration Service's decision and referred the case back to it for a re-examination as new evidence had been presented in the matter on which it could not take a stand as a first instance.

On 29 April 2010 the Immigration Service again refused the applicant a residence permit and ordered her removal to Russia. It found that, according to the domestic law, the applicant was not entitled to a residence permit on the basis of family ties as she was not a family member (a spouse or a minor child) of a person living in Finland. Other relatives than family members were issued a residence permit only in exceptional circumstances, mainly if the purpose was to continue close family life in Finland or if the relative was completely dependent on a Finnish citizen living in Finland. The applicant and her daughter had not had any family life since 1988 when the daughter had moved to Finland. A residence permit could not be granted on the basis of health reasons either. It did not appear that the applicant could not receive proper medical treatment or care in Russia. The applicant's age, her state of health and the fact that her relatives lived in Finland were not sufficient reasons to issue her a residence permit.

The applicant appealed to the Helsinki Administrative Court, requesting that the Immigration Service's decision be quashed. She claimed, *inter alia*, that she had not received proper treatment in Russia and that such treatment could not be provided. She had no relatives in Russia who could take care of her. This meant that she would have to be put in a nursing home, the standard of which was generally poor in Russia. Her daughter could not move back to Russia either as she would have to leave her job in Finland and take her daughter with her. It was not even certain that they would be issued a residence permit in Russia. The applicant's mental condition was such that she could not endure a removal and separation from her daughter. Separation would lead to her death either through sickness or suicide.

On 27 May 2010 the Helsinki Administrative Court ordered a stay on removal for the duration of the proceedings before it.

On 16 September 2011 the Helsinki Administrative Court rejected the applicant's appeal. In its reasons the court noted that the essential question was whether the applicant was completely dependent on her daughter living in Finland. The applicant's state of physical and mental health was attested by proper medical certificates. However, it was not shown that the applicant could not receive proper medical treatment or care in Russia, in her own language. The applicant was thus not completely dependent on her daughter living in Finland, nor did she have any close ties to Finland. The applicant had close ties to Russia where she could also receive treatment. The fact that treatment would be more expensive there was not a ground to grant a residence permit. The applicant's daughter could help her financially and could also visit her in Russia.

The applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), requesting that she be granted leave to appeal and that the court order a stay on removal.

No stay on removal was ordered by the Supreme Administrative Court.

On 14 June 2012 the Supreme Administrative Court refused the applicant leave to appeal.

B. Relevant domestic law and practice

Aliens Act

Section 37, subsection 1, of the Aliens Act (*ulkomaalaislaki, utlänningslagen*; Act no. 301/2004), defines a family member for the purposes of the Act. The spouse and unmarried children under 18 years of age of the person living in Finland are regarded as his or her family members. If the person living in Finland is a minor, his or her guardian is considered a family member.

Under section 45, subsection 1(4), of the Act, a temporary residence permit may be issued to a foreigner before his or her arrival in Finland for special reasons. According to the *travaux préparatoires* to the Act (see the Government Bill no. HE 28/2003), a permit under this provision could be granted to a relative other than a close family member, including grandparents, or to a foreigner who is willing to acquaint him or herself with Finnish culture or nature. In certain situations a permit could also be granted to an applicant who is sent to Finland by an international organisation to receive medical treatment.

Section 48 of the Act provides that a person from the former Soviet Union can be granted a continuous residence permit if he or she is of Finnish Ingrian descent and fulfils other criteria mentioned in the provision.

Section 49 of the Act contains provisions for granting a fixed-term residence permit to an alien who has entered Finland without a prior residence permit. According to subsection 1(1), a temporary or continuous residence permit may be issued if the applicant or at least one of his or her parents or grandparents is or was a Finnish citizen by birth. According to subsection 1(4), a residence permit shall be issued if its refusal would be manifestly unreasonable. A precondition for granting a residence permit under this section is that the applicant could have been granted a residence permit abroad before his or her arrival in Finland (see section 45 of the Act).

According to section 50, subsections 1 and 2, of the Act (as amended by Act no. 360/2007),

“Family members of a Finnish citizen living in Finland and minor unmarried children of the family members are issued with a continuous residence permit on the basis of family ties upon application filed in Finland or abroad.

Relatives other than family members of a Finnish citizen living in Finland are issued with a continuous residence permit if refusing a residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the Finnish citizen living in Finland. Such other relatives must remain abroad while the application is processed.”

According to the *travaux préparatoires* to the previous Aliens Act (see the Government Bill no. HE 50/1998), “full dependency” on the Finnish citizen requires that the persons involved have previously lived in the same household and that compelling reasons have led to their separation, and that their interdependency has continued while the other person stayed in Finland. If the persons have not lived in the same household before, the circumstances of the applicant must have significantly changed, for which reason it can no longer be reasonably expected that he or she continue to live alone in the home country. The dependency could be either financial or mental. For example, weighty social and cultural reasons, serious illness or difficult handicap, attested by proper medical certificates, could contribute to full dependency. A relative as meant by this section could, for example, be the elderly parent of an adult person or, very exceptionally, an unmarried sibling.

Under section 51 of the Act, an alien residing in Finland is granted a temporary residence permit if he or she cannot be returned to his or her home country or country of permanent residence for temporary health reasons.

Section 52 of the Act contains provisions on the granting of residence permits on compassionate grounds. Under subsection 1, an alien is granted a continuous residence permit if its refusal would be manifestly unreasonable having regard to his or her health, ties to Finland or on other compassionate grounds, particularly in view of the circumstances he or she would face in his or her home country or of his or her vulnerable position.

According to section 148, subsection 2, of the Act, an alien who has entered the country without a residence permit and who is required to hold a visa or residence permit to stay in Finland but who has not applied for one or has not been granted one, may be refused entry.

Domestic practice

The Supreme Administrative Court found in its decision of 9 October 2002 (no. T 2464) that the applicant A could not be refused a residence permit in the special circumstances of the case as A was considered to be completely dependent on her only daughter, now a Finnish citizen, who had lived in Finland since 1983. A was an elderly widow who suffered from serious heart disease and hypertension.

In its decision *KHO 2006:8* of 3 March 2006, the Supreme Administrative Court found that the Russian mother of a citizen of Finland and the Russian Federation and who needed medical treatment and help in

her everyday life, could not be regarded as being fully dependent on her adult daughter who had been living in Finland since 1994.

COMPLAINTS

The applicant complains that her removal to Russia by the Finnish authorities would violate Articles 3 and 8 of the Convention.

QUESTIONS TO THE PARTIES

1. In the light of the applicant's claims and the documents which have been submitted, would her removal from Finland be in conformity with Article 3 of the Convention, given her age and state of health and the absence of any relatives in the Russian Federation?
2. Would the applicant's removal from Finland amount to an interference with her right to respect for her family life, within the meaning of Article 8 § 1 of the Convention? If so, would that interference be justified in terms of Article 8 § 2?