

Communication concerning the decision of the Curia of Hungary
in administrative case no. Kfv.VI.37.616/2017

In 2014, the plaintiff, a Bangladeshi national, submitted an application for his recognition as a refugee in Hungary. He argued that he was married and his wife had remained in Bangladesh with their four children. The administrative and labour court reversed the administrative authority's decision and recognised the plaintiff as a refugee.

One of the plaintiff's minor children, the applicant in the present case, filed an application with Hungary's foreign mission in New Delhi to obtain a residence permit for the purposes of family reunification in respect of his parents and his siblings. The applicant submitted that the plaintiff was his father who had been married to his mother, in addition, the parents' marriage certificate and the children's birth certificates were also presented.

The first instance aliens policing authority rejected the applicant's application for a residence permit. The authority stated that, according to the expert opinion of the Expert Institute of the National Security Service, the documents attached to the application had been falsified. The minor applicant provided the authority with false data and untrue facts in order to obtain a residence permit, and he failed to prove that he had family ties with the plaintiff.

Proceeding upon the applicant's appeal, the second instance authority, the defendant in the present case, upheld the first instance administrative decision. The second instance authority did not see any reason to conduct a personal interview with the plaintiff or to carry out a DNA testing.

The plaintiff brought an action against the defendant's decision, as a result of which the administrative and labour court quashed the first and second instance administrative decisions and ordered the first instance authority to reopen its proceedings. The court specified that the defendant had failed to take the relevant international instruments on children's rights into consideration and to comply with its obligation to clarify the facts of the case. Furthermore, the false or falsified documents attached to the application do not necessarily mean that their contents are not true and correct.

Proceeding upon the plaintiff's petition for judicial review, the Curia upheld the final court decision. It pointed out that false data and false (falsified) documents did not fall into the same category. The submission of a false document implies, however, a rebuttable presumption pursuant to which false data or facts have been stated in it. In the absence of any other evidence, the aliens policing authority can reasonably conclude on the basis of the false (falsified) documents that the data contained therein are also false. The client, on the other hand, is entitled to provide evidence to the contrary.

In its reopened proceedings, the first instance authority has to examine whether the pieces of evidence are capable of proving the family ties between the persons concerned, if not, then the authority has to give the applicant the opportunity to prove his family ties with the plaintiff. Finally, due consideration has to be given by the authority to the primacy of the best interests of the minor applicant.

Budapest, the 21st of June 2018

Administrative and Labour Department of the Curia of Hungary