



Switzerland - Federal Administrative Court, judgment no. F-6073/2014

The family applied for statelessness determination, claiming to be stateless since they were not able to receive identity documents from any state, despite trying for years, and were not recognised by any state. The authorities rejected the application for statelessness determination with the argument that they did not fulfil their duty to cooperate. The lack of any form of documentation is interpreted as a sign for the lack of credibility and willingness to cooperate rather than a possible indication of statelessness. The Federal Administrative Court upheld the decision arguing that the applicants had not demonstrated that they had undertaken the necessary steps to receive identity documents. The situation of the children is not examined separately. Arguments relating to the best interests of the child are not discussed.

Case name (in original language) : Switzerland - A,B,C,D, E gegen
Staatsekretariat für Migration

Case status: Decided

Case number: F-6073/2014

Date of decision: 06/04/2017

State: Switzerland

Court / UN Treaty Body: Federal Administrative Court
(Bundesverwaltungsgericht)

Language(s) the decision is available in: German

Applicant's country of birth: Sierra Leone

Applicant's country of residence: Switzerland

Key aspects: Burden of proof, Childhood statelessness, Statelessness
determination

Relevant Legislative Provisions:

Art. 13, Bundesgesetz über das Verwaltungsverfahren vom 20. Dezember 1968
(Law of administrative procedures) a duty to cooperate

Facts

The applicant and his Russian wife (who is not recognised as a Russian citizen by Russian authorities) apply for asylum in Switzerland which was rejected by the authorities. While A. claims he is from Sierra Leone, the Swiss asylum authorities maintain that he most likely is from Nigeria. Furthermore, his wife could not establish her Russian citizenship as the Russian authorities were not able to identify her on the basis of the documents she submitted. The children were born in Switzerland and not able to acquire any nationality from either the father or the mother. The authorities found the applicants to lack credibility and repeatedly asked them to disclose their identities. Since the authorities were not able to expel the family as no country would take them back, the applicants received a temporary permit to stay in the country. However, their application for a permanent residence permit was rejected since the applicant could not provide identification documents. The family applied for statelessness determination, claiming to be stateless since they were not able to receive identity documents from any state, despite trying for years, and were not recognised by any state. The authorities rejected the application for statelessness determination with the argument that they did not fulfil their duty to cooperate. The lack of any form of documentation is interpreted as a sign for the lack of credibility and willingness to cooperate rather than a possible indication of statelessness. The Federal Administrative Court upheld the decision arguing that the applicants had not demonstrated that they had undertaken the necessary steps to receive identity documents. The situation of the children is not examined separately. Arguments relating to the best interests of the child are not discussed.

Legal arguments by the applicant

Para 4.2: With regard to the required paperwork, the applicant stated that they tried everything possible to provide the requested documents and proof of their nationalities, but to no avail. Apart from the Nigerian embassy, no representation wanted to confirm their efforts in writing and thus, without the involvement of the lower court, it is not possible to prove their request. The SEM thus requests evidence which cannot be provided. The applicant and his families have had no relationship with their country of origin for a long time.

Legal arguments by the opposing party

Para 4.1: the identity of the applicant and his family remains unclear to this day. Furthermore, it is unclear what steps have been taken by them in order to receive the requested documents and therefore, they did not fulfil their duty to cooperate based on Art. 13 of the Law of administrative procedures and thus, did not put enough effort to clarify the nationality of their kids.

Decision & Reasoning

Para 3.2: According to federal case law, a person can only be considered as stateless if her or his statelessness is not based on their own fault. This is the case if she has never had a nationality or has lost a former one without her assistance, or if she is unable to acquire or re-acquire a nationality. If a nationality is voluntarily dropped or the person fails to acquire or re-acquire it without good reason, he is not protected. This prevents the status of statelessness to become a matter of personal preference. The Stateless Statute has not been created so that individuals can obtain a privileged status at will. It should only help people who get into trouble without their own fault.

Para 5.5: Finally, it should be noted that, contrary to the opinion of the legal representative, it can not be the task of the lower court to clarify the citizenship of the complainants. The applicant has the duty to cooperate, especially in cases which are initiated by themselves. However, in the present case, the applicant has the burden of proof since he only had vague information regarding his CV which makes it difficult for the Swiss authorities gather further information. The applicant has failed to make every effort to obtain the corresponding travel document and thus, the statelessness status has been denied by the Court.

Decision documents

[Federal Administrative Court, judgment no. F-6073/2014](#)

Outcome

The applicants were not recognised as stateless and the decision of the first instance court was upheld.