

## **Switzerland - A v State Secretariat for Migration (Staatssekretariat für Migration - SEM) - Federal Administrative Court (FAC) Case no. F-1297/2017**

The Federal Administrative Court (FAC) specifies its case law on the legitimate interest in the proceedings of an application for the recognition of statelessness. The FAC approves the appeal of a member of the Ajanib minority from Syria whose application was rejected by the State Secretariat for Migration and recognizes his stateless status.

**Case name (in original language) :** Arrêt du 14 décembre 2021, A.\_\_\_\_ contre Secrétariat d'État aux migrations (SEM), Reconnaissance du statut d'apatride.

**Case number:** F-1297/2017

**Citation:** Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], A v State Secretariat for Migration (Staatssekretariat für Migration - SEM), F-1297/2017, 14 December 2021.

**Date of decision:** 14/12/2021

**State:** Switzerland

**Court / UN Treaty Body:** Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC]

**Language(s) the decision is available in:** French

**Applicant's country of birth:** Syria

**Applicant's country of residence:** Switzerland

**Legal instruments:** European Convention on Human Rights (ECHR)

**Key aspects:** Statelessness and asylum, Statelessness determination

**Relevant Legislative Provisions:**

National Law, considering recent developments in case law of the ECtHR, notably in the judgment [Hoti vs Croatia](#) (Application no. 63311/14), which ties the issue of statelessness to social identity, which is protected by the right to a private life (Article 8 ECHR).

## **Facts**

The applicant was born in the al-Hasakah province of Syria as a member of the Ajanib minority (or “foreigner”) and fled his country of birth in 2011 due to the civil war. In August 2015, he filed an application for asylum in Switzerland which was rejected in June 2016. In 2018, the applicant was included in the refugee status granted to his spouse who had arrived in Switzerland after him and obtained asylum in 2017. In the meantime, the applicant had applied for statelessness status. The State Secretariat for Migration denied his application on the grounds that he could have acquired Syrian nationality before leaving Syria in 2011.

## **Legal arguments by the applicant**

The applicant argues in his appeal that it was impossible for him - as a rejected asylum seeker - either to take steps at a Syrian embassy (abroad) in order to obtain a certificate confirming that he did not have Syrian nationality, or to go directly to Syria to apply for Syrian nationality. In this regard, the applicant states that he had never held Syrian nationality and that he refused to apply for this nationality because he did not want to serve in the Syrian army and participate in the crimes perpetrated by the current regime. Moreover, he insists that he had not refused to file such a request with the sole aim of being recognised as a stateless person, of which he had not been aware before coming to Switzerland.

## **Legal arguments by the opposing party**

Following an analysis of the status of the Ajanib minority, which was published on June 29, 2020, the State Secretary for Migration concluded that Syrian nationality was granted ipso facto to all Ajanib members registered in the civil registry of the province of al-Hasakah. The State Secretary for Migration clarifies that it therefore principally rejects all applications for the recognition of statelessness status filed by members of the Ajanib minority. The State Secretary for Migration flags in particular that the necessary steps for the registration of their nationality could be taken from Switzerland.

## **Decision & Reasoning**

In its prior case law, the Federal Administrative Court (FAC) had ruled that a refugee had an interest worthy of protection in obtaining a decision on an application for the recognition of statelessness. This was justified by the fact that the waiting period for

a residence permit in the case of stateless persons was five years and that they were thus in a privileged position compared with refugees who had to wait ten years. A legislative amendment abolished this distinction as of 1 January 2018, and the time limit is currently ten years in both cases. As a result, the FAC had ruled that there was no practical interest for a refugee to be recognised as stateless and that it was, therefore, no longer necessary to consider such applications.

In the present case the Court clarifies that a distinction must be made between the precarity of the applicant's derived refugee status, acquired through his wife, and that obtained on an individual basis (originally acquired refugee status). In the first case, the FAC states that it cannot be denied that the applicant has a legitimate interest in the statelessness recognition proceeding.

The FAC moreover states that any applicant who appears to have no nationality must in principle be recognised as having a legitimate interest, worthy of protection, in a decision on an application for recognition of statelessness status. According to the FAC recent developments in the case-law of the ECtHR, notably in its judgment [Hoti vs Croatia](#), seem to tie the issue of statelessness to social identity, which is protected by the right to a private life (Article 8 ECHR). To deny access to a procedure designed to clarify this issue constitutes an unjustifiable interference with this right.

The FAC finds that the applicant had no nationality, and that he has never had one. Considering his refugee status, the applicant cannot reasonably be expected to apply to the Syrian authorities for naturalisation under the presidential decree which grants Syrian nationality to Ajanib members registered in the al-Hasakah province. Nor, considering the situation in Syria at the time, can the applicant be deemed to have acted abusively in not applying for naturalisation during the four months he was in Syria after the decree was promulgated. As a result, the FAC grants him the status of a stateless person.

### **Decision documents**

[A v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\) - Federal Administrative Court \(FAC\)](#)

### **Outcome**

Approved - the FAC grants the applicant the status of a stateless person.

**Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)**

EU Case Law Database:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2210>

The press release:

<https://www.bvger.ch/bvger/en/home/media/medienmitteilungen-archiv/medienmitteilungen-2021/staatenlosigkeit.html>

### **Caselaw cited**

The FAC refers in its argumentation to prior case law (BVGE 2014/5 **and** F-3483/2018, 24th June 2020) as well to the [Hoti vs Croatia judgment by the EctHR \(63311/14\)](#).

### **Third party interventions**

N/A