FINNISH REFUGEE ADVICE CENTRE

UNHCR
The UN Refugee Agency

Family Reunification Practices in Finland

A report by the Finnish Refugee Advice Centre

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1. INTRODUCTION

In the autumn of 2015, an exceptional number of asylum-seekers arrived in Finland. In response, several legislative changes were made regarding asylum-seekers' right to legal aid, the appeal process in asylum cases as well as family reunification (FRU). The rules on FRU for refugees and beneficiaries of subsidiary protection were made stricter by introducing an income requirement for these groups on 1 July 2016. The on-going legislative reform combined with stricter policy guidelines and jurisprudence have effectively led to a situation where the right to family life of refugees and beneficiaries of subsidiary protection has not been realized to a sufficient decree in Finland.[1]

The introduction of an income requirement is part of a long-term trend in restricting FRU for beneficiaries of international protection in Finland**.** In addition to restrictive legislative changes since 2010, a tendency of a stricter implementation can also be identified as well as practical economic and administrative barriers making it difficult to even file an application. Currently, the application process requires physical travel to a Finnish Embassy multiple times, obtaining necessary identity documentation and high application fees, which poses tremendous practical and economical challenges, especially to applicants who are in a precarious and vulnerable situation.

The possibilities for FRU have become especially limited for unaccompanied children (UAC), throughout the years, due to changes in legislation and decision-making policy. In a report of March 2020, the Non-Discrimination Ombudsman (NDO) assessed the reasons for negative FRU decisions of UACs and the role of fundamental and human rights in decision-making, expressing concerns about the fulfillment of children's rights.[2]

2. PURPOSE OF THE REPORT

This report describes the current legal framework, policies and practices regarding the right to FRU for refugees and beneficiaries of subsidiary protection in Finland and identifying practical, legal and financial obstacles in access to FRU. The findings are based mainly on the practical experience of the Finnish Refugee Advice Centre (FRAC), consisting of around 130 cases yearly regarding residence permits based on family ties in different instances (Immigration Service, the Administrative Courts and the Supreme Administrative Court (SAC). The case examples in the report are precedent-setting decisions of SAC and other decisions of Finnish Administrative Courts and of SAC in FRAC's own cases.

The report, commissioned by UNHCR, has been prepared by FRAC's Executive Lawyer Hanna Laari, who focuses on FRU in her work at FRAC.

3. STATISTICS

The number of applications for a residence permit based on family ties for family members of beneficiaries of international protection has risen somewhat since 2015, but it has remained at around or under 2000 per year, representing approximately 15 % of all applications based on family

[1] Non-Discrimination Ombudsman (NDO), Pakolaisen Oikeus Perhe-Elämään ja Lapsen Edun Ensisijaisuus, 21 February 2018, available at: https://syrjinta.fi/documents/25249352/42721244/Yhdenvertaisuusvaltuutetun+kannanotto+pakolaisen+oikeudesta+perhe-el%C3%A4m%C3%A4%C3%A4n.pdf/bd8c86d3-df14-4175-9a28-fc86909b221b/Yhdenvertaisuusvaltuutetun+kannanotto+pakolaisen+oikeudesta+perhe-el%C3%A4m%C3%A4%C3%A4n.pdf?t=1603875035819.
[2] NDO, Children Without Families – FRU of Under-Age Beneficiaries of International Protection, 2 March 2020, available at: https://syrjinta.fi/en/publications.

ties.[3] The acceptance rate for family members of beneficiaries of international protection is somewhat lower than for applicants in general, for the past two years, after the most recent restrictions, by approximately 10 percentage points.[4] The below table indicates the number of decisions of the Finnish Immigration Service (MIGRI) with respect to FRU applications made by nuclear family members and other relatives of persons who have been granted international protection in Finland between 2015 – 2019:[5]

FRU decisions 2015-2019	2015	2016	2017	2018	2019
Application for a first residence permit	**1391**	**1462**	**2699**	**2512**	**2144**
Custodian of a beneficiary of international protection	20	17	62	76	77
Negative	15	6	31	43	33
Positive	5	11	31	33	44
Child of a of a beneficiary of international protection	898	993	1779	1590	1336
Negative	118	85	238	271	212
Positive	780	908	1541	1319	1124
Other relative of a beneficiary of international protection	175	92	190	281	190
Negative	142	60	131	219	124
Positive	33	32	59	62	66
Spouse of a beneficiary of international protection	298	360	668	565	541
Negative	131	132	219	224	244
Positive	167	228	449	341	297

4. THE LEGAL FRAMEWORK

The Finnish Aliens Act (301/2004)[6] (AA) regulates the process and the grounds for issuing residence permits on the basis of family ties. According to Section 1 AA, the objective of the Act is to implement and promote good governance and protection under the law in migration affairs. A further objective is to promote managed immigration and the granting of international protection with respect for fundamental and human rights and in consideration of international treaties binding on Finland.

Other national legislation to be taken into account in the FRU process includes the Constitution of Finland, the Administrative Procedure Act (434/2003), the Marriage Act (234/1929) and the Act to amend the Marriage Act (1226/2001) as well as, for instance, the Adoption Act (153/1985).

At the European level, Finland has implemented Council Directive 2003/86/EC of 22 September 2003 on the right to FRU (EU FRU Directive) as of 1 July 2006, when the amendments to AA as required by the ratification of the Directive, came into force. However, even before this amendment, the AA complied with many of the Directive's principles. A general reform of the AA was carried out in 2004 when most of the conditions set out in the Directive were adopted.[7] Finland

[3] MIGRI, Statistics, 20 January 2021, available at: https://tilastot.MIGRI.fi/index.html#applications/21205/59/1?l=en.
[4] MIGRI, Statistics, 20 January 2021, available at: https://tilastot.migri.fi/index.html#decisions/21205/59/1?l=en.
[5] MIGRI, Statistics, 20 January 2021, available at: https://tilastot.MIGRI.fi/index.html#applications/21205/59/1?l=en.
[6] Aliens Act, 301/2004 amendments up to 1163/2019 included, available at: https://www.finlex.fi/en/laki/kthe AAnnokset/2004/en20040301.pdf.
[7] European Migration Network (EMN), FRU of Third Country Nationals in the EU – National Report of Finland, March 2016, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/09a_finland_family_reunification_en_fi.pdf.

is also bound by the Charter of Fundamental Rights of the EU, where respect for private and family life is safeguarded in Article 7.

Finland has ratified the European Convention for the Protection on Human Rights and Fundamental Freedoms (ECHR), which in Article 8 guarantees the right to private and family life. Finland has also accepted the five protocols to to ECHR. Moreover, Finland has ratified the European Social Charter (revised) (RESC), ETS No. 163 (1996), that protects family life (Part 1, principle 16 and Part 2 (Article 16)). Of the resolutions of European Council, Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience is often cited in MIGRI decisions.[8]

The right to family life is further protected by international human rights instruments that Finland has ratified such as the Universal Declaration of Human Rights (UDHR), especially Articles 12 and 16(3), International Covenant on Civil and Political Rights (ICCPR), especially Articles 17 and 23(1), International Covenant on International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 10(1), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW) Articles 14 and 44(1) and the UN Convention on the Rights of the Child (CRC), Articles 9, 10 and 16.

Finland is one of few countries that has accepted the Optional Protocol to the CRC on a communications procedure (CRC-OPIC), which makes it possible for a child to file an individual complaint to the CRC Committee. CRC-OPIC came into force in Finland on 12 February 2016. Currently, there are two cases pending against Finland.[9]

The 1951 Convention relating to the Status of Refugees (1951 Convention) does not specifically refer to the family. However, the Final Act of the Conference of Plenipotentiaries, at which the 1951 Convention was adopted, refers to "the unity of the family ... [as] an essential right of the refugee" and recommends that Governments "take the necessary measures for the protection of the refugee's family, especially with a view to ensuring that the unity of the family is maintained".[10]

The UN Refugee Agency (UNHCR) has a global mandate to provide international protection to refugees and help them find durable solutions. Based on this mandate, UNHCR promotes the unity of the refugee's family which is a principal means by which the refugee family is protected.

5. THE APPLICATION PROCESS

5.1. Submitting an application

According to Section 60 of the AA, the first residence permit has to be applied for before entering Finland and the applicants must legally reside in the country where they submit the application.[11] The only exception in the law concerns family members of a Finnish citizen who may be issued a residence permit based on family ties upon application filed in Finland or abroad (Section 50 AA).

[8] The Council of the European Union Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience [1997] OJ C 382, 16/12/1997, p. 1-3.
[9] OHCHR, Table of pending cases before the Committee on the Rights of the Child, 19 October 2020, available at: https://www.ohchr.org/Documents/HRBodies/CRC/TablePendingCases.pdf, last checked 1.3.2021.
[10] UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, available at: http://www.refworld.org/docid/40a8a7394.html.
[11] "A first residence permit shall be applied for in the country where the alien resides legally before entering Finland. A first residence permit may, however, be applied for in Finland under Sections 47h, 49, 49a, 50, 50a, 51, 52, 52a and 52d." Aliens Act (n. 6) Section 60 (1).

Based on the experience of FRAC, also applicants who are not family members of a Finnish citizen and are already in Finland, for example, after a failed asylum process, have been able to file a residence permit application in Finland and usually may wait for the MIGRI decision in Finland.

Since 2011, the reference person has not been able to submit the application on behalf of the applicant in Finland. The applicant must submit the application at a Finnish Embassy or through the online service Enter Finland (www.enterfinland.fi). When a paper application is made, a physical appointment must be booked at the Embassy where the application is submitted. When the application is submitted online, the applicant has to visit a Finnish mission (Embassy or Consulate) abroad or a service point of the MIGRI in Finland, to verify their identity. Children of all ages must also visit the Finnish mission or the service point of the MIGRI. If the applicant cannot physically verify their identity within three months of lodging the online application, MIGRI can issue a decision on the expiration of the application. The application forms and detailed information about the application process can be found on the web site of MIGRI (www.migri.fi).[12]

According to Section 60 d of the AA, in connection with the filing of a residence permit application, the fingerprints of the applicant are taken for the residence permit card issued by MIGRI or a Finnish mission. According to Section 60 d(2) the fingerprints for the residence permit card could also be taken by a mission of another Schengen State or an external service provider, if an agreement has been made with it regarding this task. To the knowledge of FRAC, there are no cases where this option would have been used.

It has been regulated by a Government Decree which embassy the nationals of different countries must visit. For example, Iraqi and Syrian nationals must visit the Finnish Embassy in Turkey, Afgans must visit the Finnish Embassy in New Delhi, India and Somali nationals must visit the Finnish Embassy in Addis Abeba, Ethiopia. For most of the applicants, applying for a residence permit means travelling abroad, even several times during the process; for submission of the application and identification, for the possible interview and finally for picking up the residence permit card. This leads to significant practical and financial barriers to FRU applications, affecting especially the most vulberable families. Therefore, in FRACs view, it would be reasonable to minimize the times that the applicant must visit the Embassy.

5.2. Requirement of legal residence

According to Section 60 of the AA, the applicants must legally reside in the country where they submit the application. As Finland only has missions in some countries, applicants are usually not able to submit the application in their home country or country of legal residence. The applicants can show the legality of their residence with a passport that has a visa submitted by the country where the applicant is residing. If the applicant does not have a passport or other identity documentation, the applicants can legalise their residence by registering with the UNHCR. This is possible in countries where UNHCR is operating and registers its persons of concern. For example, many Eritrean applicants have been able to register with UNHCR in Nairobi, Kenya. In comparison, UNHCR is not registering Afghan or Pakistani nationals in Iran. Due to this, undocumented Afghans or Pakistanis have not been able to legalise their residence in Iran and consequently are not able to submit their FRU applications where they reside.

[12] See, for example: https://migri.fi/en/moving-to-finland-to-be-with-a-family-member

There have been situations, where Finnish authorities have required from the applicants, who are family members of a refugee, documents that they actually cannot obtain, such as national passports or other identity documents *(see case example below)*. In FRAC's view, the policy where Finnish authorities do not take into account the circumstances of family members of refugees (and other beneficiaries of international protection), presents a real obstacle to FRU, which may violate Finland's obligations under human rights law. For example, according to the EU FRU Directive, special attention should be paid to the situation of refugees and more favourable conditions should be laid down for the exercise of their right to FRU.[13] Likewise, in its jurisprudence, the European Court of Human Rights (ECtHR) has concluded that when the national authorities had not given due consideration to the applicants' specific circumstances, the FRU procedure had not offered the requisite guarantees of flexibility, promptness and effectiveness to ensure compliance with their right to respect for their family life, in violation of Article 8 of ECHR.[14]

> **Case example, Decision of Helsinki Administrative Court, 12 June 2019, dnr 02778/18/3101 – 02784/18/3101, Decision of Helsinki Administrative Court 12 June 2019, dnr 00532/19/3101:** The case concerned a reference person, who had been persecuted by his country's security services and had been granted refugee status in Finland in 2016. The decision was served on 7 December 2016. His wife and six minor children lodged an electronic FRU application on 2 March 2017. Because of the danger of persecution, it was impossible for the applicants to obtain missing national passports for the two youngest children. For this reason they were not able to leave their home country in almost a year. Finally in the beginning of 2018 they were able to get to Iran. The applicants had valid Iranian visas in their falsified national passports and they had disclosed this information concerning their passports to the Finnish authorities. The Finnish Embassy in Teheran refused to book meeting times for the applicants, considering they were not legally in Iran. At the time, it was not possible to legalise the residence by registering with the UNHCR. MIGRI issued a negative decision on 16 April 2018 based on the fact that they had not identified themselves in time nor paid the application fee. The applicants appealed that decision. They also lodged a new FRU application on 20 April 2018 and this time the Embassy booked the meeting times. MIGRI issued a new negative decision on 27 December 2018, and claimed that the family life of the reference person and the applicants had possibly been broken and that the income requirement is applicable, since three months had been exceeded. The applicants appealed also this decision. In the decisions of Helsinki Administrative Court given on 12 June 2019, the Court noted that MIGRI had been aware of the applicants' difficulties concerning traveling and visiting the Embassy. The Court noted that based on advice given by MIGRI in February 2018 the applicants trusted that they could visit the Embassy in Tehran. The applicants had reasons to trust that MIGRI would not issue a final decision before they had visited the Embassy or been informed of the decision. The applicants identified themselves in the Embassy in 20 April 2018 and paid the application fees. Taking also into account the great importance of the matter to the applicants and other clarification given in the case and the requirement of good governance, the Court annulled both negative decisions by MIGRI and returned the cases to MIGRI for a new decision. In summer 2019, MIGRI granted residence permits for the applicants.

Apart from the strict policy described above, FRAC is also aware of cases where Finnish authorities, employees in the Embassies or MIGRI, have given inadequate or even false advice to the applicants. For example, the Embassies may have required a national passport from the applicant,

[13] Council Directive 2003/86/EC of 22 September 2003 on the Right to FRU [2003] OJ L 251/12, Preamble para 8.
[14] See for example, *Mugenzi v. France* App no 52701/09 (ECtHR, 10 July 2014), *Tanda Muzinga v. France* App no 2260/10 (ECtHR, 10 July 2014).

in order to proceed with the application, even though according to the AA they could only require that the applicant reside lawfully in the country. *(See also chapter 5.5. below)*

5.3. Application fees

Until May 2016, FRU applications of family members of beneficiaries of international protection were free of charge if the family ties had been established before the reference person came to Finland.[15] Since the law changed, every applicant has to pay the high application fee. The application fee for an adult is 520 euros (paper application) or 470 euros (online application). The application fee for a minor is 270 / 240 euros.[16] The application will not be processed before the application fee is paid. The application fee applies to all applicants irrespective of the status of the reference person and exemptions from paying the fee are not possible.[17]

5.4. Identity Documentation and Family Links

When applying for a residence permit on the basis of family ties, the authenticity of the family links must be proven by presenting original documents, such as a marriage certificate or a child's birth certificate. If the reference person and the applicant are unable to provide documentation as evidence of family ties, they should explain this in writing in the application. Exemptions can be made if the applicant originates from a country where it is impossible or where MIGRI considers it is too difficult to obtain identity documentation or verify family links, or where documentation is not considered reliable, such as in cases of applicants from Somalia. In such cases, identity and family links are verified through an in-person interview combined in some instances with other means of verification, such as a DNA-test to confirm the biological family links, especially between parents and children.

5.5. Requirement of travel document

According to Section 35 of the AA, an applicant must be in possession of a valid travel document in order to obtain a residence permit. However, because of the obligations stemming from international human rights instruments, it is possible to make exceptions.

According to the MIGRI guidelines on FRU,[18] the granting of a residence permit without a valid travel document is always exceptional and requires special consideration. Apart from nationals of Somalia, travel documents and legalised documents must be requested from family members. It is possible to make an exception especially when the reference person has received international protection and can not be required to return back to his/her home country or country of residence and the family ties have been established before he/she came to Finland and the applicants have the same nationality as the reference person.

To the experience of FRAC, the administrative policy of MIGRI concerning the requirement of travel document has been very strict. MIGRI has issued several negative decisions even for family members of reference persons with refugee status, based solely on the fact that the applicant does not have a valid national passport or other travel document. According to the experience of FRAC, in

[15] Sisäministeriön asetus Maahanmuuttoviraston suoritteiden maksullisuudesta annetun sisäministeriön asetuksen (1522/2015) 4 §:n muuttamisesta. 340/2016, 28 April 2016.
[16] MIGRI, Processing fees and payment methods, available at: https://MIGRI.fi/en/processing-fees-and-payment-methods.
[17] In comparison, in Denmark and Sweden beneficiaries of international protection may be exempted from having to pay the application fee. NOAS, Realizing Refugees' Right to Family Unity - The challenges to FRU in Norway, Sweden and Denmark, 2019, p. 69-70, available at: https://www.noas.no/wp-content/uploads/2019/11/Realizing_Refugees_Right_to_Family_Unity.pdf.

such cases family life has usually been established after the reference person has received refugee status in Finland. The applicant has often arrived in Finland as an asylum-seeker and has already enjoyed family life in Finland together with the reference person, before applying for a residence permit based on family ties. It has been impossible for the applicant to get a national passport while residing in Finland with no possibility to travel abroad.

> **Case example: SAC precedent, 1 July 2015, KHO:2015:107, ECLI:FI:KHO:2015:107:** Requiring a travel document as per the wording in Section 35 of the AA, would have led to a situation where the applicant could not receive a residence permit because as a citizen of Somalia he could not obtain a travel document accepted by Finland from his home country. Therefore, the reference person's and the applicant's possibility to FRU according to Section 114 (1) would be prevented for reasons beyond the applicants' control. SAC held that withholding the residence permit from the applicant, on the ground that he did not have and was unable to obtain such travel document from the Somali government that Finland would accept, limited the applicant's and the reference person's right to FRU in Finland more than necessary. [19]

> **Case example: Decision of Helsinki Administrative Court, 14 July 2020 (05029/19/3101):** The applicant was an Iraqi national, whose wife, also an Iraqi national, had been granted refugee status in Finland. MIGRI refused to grant a residence permit, because the applicant did not have an Iraqi passport. Administrative Court annulled the decision of MIGRI and stated that since the applicant is of the same nationality as the reference person and the family tie had been established before the reference person came to Finland, the applicant cannot be required to contact authorities of Iraq.

> **Case example: Decision of the Administrative Court of Eastern Finland, 28 October 2020, dnr 1654/15/2019 and dnr 1655/15/2019:** The applicant was an Ethiopian national, whose child had been granted refugee status in Finland in 2016. The applicant had arrived to Finland and enjoyed family life in Finland since 2014 with her spouse and they had minor children. The Court decided that the residence permit can not be denied solely based on the lack of travel document. The Court took into account the family's circumstances and considered that the importance of protection of family life and best interest of the child to necessitate an exception to the requirement of a valid travel document. The Court also took into account the fact that MIGRI will have the possibility to consider the existence of the requirements for a residence permit again when deciding on the subsequent residence permit for the applicant. Immigration Service has appealed this decision to SAC and applied for leave to appeal on 26 November 2020.

5.6. Hearing of the applicants and the reference person

The hearing of the reference person and the applicants can be made through written questions or orally in an in-person interview. An interview is held if there are no other means of establishing sufficient grounds for granting a residence permit. According to Section 64 of the AA, the applicant, reference person or other relative may be heard orally to establish whether the conditions for entry or for a residence permit are met. The hearing is conducted by MIGRI or by an official of a Finnish mission if the applicants are abroad.

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[18] MIGRI, Ohje kansainvälistä suojelua saaneen perheenyhdistämisestä , voimassa 1.4.2019 – 1.4.2021, MIGDno-2019-521, 26 March 2019.
[19] Following SAC alignment, MIGRI makes an exception to the requirement of a valid travel document if the applcant comes from a country, such as Somalia, where it is impossible to obtain a travel document that would be acceptable in Finland. See also, MIGRI, Missing Travel Document, available at: https://MIGRI.fi/en/missing-passport.

If the applicants need an interpreter, they assume these costs themselves. Since law requires that the applicants reside legally in the country where they visit the Finnish mission, the interview time will not be booked if they cannot show that they are legally in the country.

According to Section 6 (2) of the AA, a child who is at least twelve years old shall be heard unless such a hearing is manifestly unnecessary. The child's views shall be weighed in the decision making in accordance with the child's age and maturity. A younger child may also be heard if the child is sufficiently mature to present his or her views.

Generally, MIGRI hears the child orally in an interview. The purpose of the hearing is to clarify the best interest of the child. The child's wishes and facts the child presents have to be considered in accordance the child's age and maturity. It must be taken account that the child may have received advice on how to tell about something or not to tell something. The child may also be scared or traumatised and for that reason can not or is scared to talk about certain issues.[20] According to the experience of FRAC, in the hearings of children in the Embassies, and when evaluating their statements, too often their age and maturity have not been adequately taken into account.

5.7. DNA test

According to Section 65 of the AA, a state-funded DNA test is possible if there is no sufficient or reliable documentation of biological family links and if the DNA test may provide relevant evidence of the family link. Neither the applicant nor the reference person may demand a DNA test. After the hearing, MIGRI decides whether the test is necessary. The DNA test is voluntary and a written consent is obtained from the person taking the test.

The DNA test is usually arranged when there is no reliable documentation to prove the family ties. However, according to the experience of FRAC, the test is often not arranged if MIGRI considers that there are reasons for issuing a negative decision, despite possible biolological family ties – for example, if MIGRI considers that the applicant parent has not lived an actual family life with the child (reference person) and therefore is not the child's actual guardian.[21]

5.8. Statements from social welfare and health authorities

According to Section 63 of the AA, MIGRI may obtain a statement from the social welfare or healthcare authorities of the reference person's place of residence. A statement on the reference person's social or health situation may be requested if the reference person is an UAC, if the applicant is a relative who is not part of the nuclear family or if there are other special reasons related to establishing the family's situation. The statement that the social welfare or healthcare authorities are obliged to submit to MIGRI, notwithstanding privacy provisions, contains any information that they have about the person's social situation or health that is necessary for a decision on issuing a residence permit on the basis of family ties.

Based on the experience of FRAC, in FRU processes of UAC, MIGRI usually requests a statement from the social worker of the child, concerning the child's best interest in the matter. However, the practice of requesting a statement on the best interest of the child is not applied consistently in all

[20] MIGRI, Maahanmuuttoviraston oleskelulupaa perhesiteen perusteella koskeva ohje voimassa 2.4.2012 – 2.4.2016, MIG/2012/161, 30 March 2012.

FRU cases, including those of UAC. For example, when the reference person is an adult, MIGRI does not usually ask for a statement from a social worker concerning the best interest of the child. At the reference person's request, a social worker may write a statement concerning the reference person's circumstances, applicant's circumstances and degree of awareness of the case.

If the reference person or the applicant requests that MIGRI makes a derogation from the income requirement, for example, based on his / her health situation or circumstances, he / she can submit a doctor's statement or a statement from a social worker to MIGRI.

5.9. Overall consideration

According to Section 66 a of the AA, account shall be taken of the nature and closeness of the family ties, the duration of the alien's residence in the country and his or her family, cultural and social ties to the home country when considering a refusal of the residence permit. The same applies when considering the withdrawal of a residence permit issued on the basis of family ties or removal from the country of the reference person or his or her family member.

According to the preparatory works[22] that preceded the legislation of Section 66 a of the AA, in a matter concerning a residence permit for a family member of a person who has been granted international protection, the decision should be made based on a general consideration of all relevant information available. Facts that support the granting of a permit and the weight of those facts should be carefully considered. However, these assessments as required by the AA have often been inadequate. Facts of great significance have been neglected, such as the reference person's refugee status which in turn means that the family life has been broken for compelling reasons and enjoyment of which is not possible anywhere else than in Finland. Moreover, the generally vulnerable circumstances of the applicants have not been given sufficient weight.

5.10. General requirements for issuing residence permits

There are also general requirements for issuing residence permits, which are set out in Section 36 of the AA. According to subsection (1), a residence permit may be refused if the applicant is considered a danger to public order or security or public health or to Finland's international relations. According to subsection (2), a residence permit may be refused if there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into or residence in the country. According to subsection (3), a residence permit on the basis of family ties may be refused if there are reasonable grounds to suspect that the reference person has received a residence permit by circumventing the provisions on entry or residence by providing false information on his or her identity or family relations.

A stricter application of Section 36 by MIGRI and the courts has been central means to restrict FRU, especially subsection (2). Section 36 (2) has been used typically when the reference person is a UAC whose custodian has applied for residence permit based on family ties. It has been argued that the custodian has intended to evade the provisions on entering the country, by sending the child to Finland in order to receive a residence permit for the rest of the family. Administrative Courts and SAC have accepted this argument even in cases of UACs that have been granted sub-

[21] Tapaninen A-M, Oikeus aitoon perheeseen: DNA-tutkimus todisteena biologisesta perhesiteestä, 8 November 2013, available at: http://etmu.fi/oikeus-aitoon-perheeseen-dna-tutkimus-todisteena-biologisesta-perhesiteesta/.
[22] Hallituksen esitys Eduskunnalle ulkomaalaislaiksi ja eräiksi siihen liittyviksi laeiksi, HE 28/2003 vp, 2003, available at: https://www.finlex.fi/fi/esitykset/he/2003/20030028.pdf.

sidiary protection in Finland. *(See also chapter 9.2.3. below)* Section 36 (2) has also been used in cases concerning FRU of a refugee where it has been argued that the family ties have been broken voluntarily. *(See chapter 8.2.2. below)*

5.11. Notification of the decision

According to Section 69 a of the AA "a decision on an application for a residence permit made on the basis of family ties shall be served to the applicant no later than nine months after the filing of the application. (…) In exceptional circumstances the decision may be served at a later date." The decision of MIGRI is served both to the applicant and to the reference person and both have the right to appeal the decision. A reference person living in Finland is informed about the decision by post. If the application was submitted online, the applicant will receive a notification in the e-service when the decision has been made. If the application was submitted on paper, the applicant is informed of the decision by the Finnish mission where the application was submitted. If the application was submitted in Finland, the applicant is informed about the decision by the police or the Finnish Immigration Service will inform the applicant about it by post.

When a residence permit is issued, MIGRI sends the residence permit card to the Embassy, where the application was submitted. At the request of the applicant, MIGRI can send the card to another Embassy (that processes residence permit applications). For many applicants, this means another visit abroad, since they need to travel to pick up the residence permit card from the Embassy before being able to travel to Finland. Applicants who have a Finnish Embassy, which processes FRU applications, in their home country are in a very different position than applicants who must travel abroad.

5.12. Right to legal aid

Asylum-seekers who do not have an income in Finland are entitled to free legal aid throughout their asylum process – both at first and second instance – but in FRU cases the right to free legal aid is much more limited. Only few people get free legal aid at first instance and principally only through the public legal aid office. According to the experience of FRAC, the policy of granting legal aid for this stage of the process is strict. It is possible almost only in cases where a person has received a request for additional information from MIGRI and, in the request it is stated that "you have the right to legal assistance". If the public legal aid office is not able to assist the person, they can provide a certificate to this effect. With this certificate, the person may get legal assistance from a private law office and the State will cover the costs.

In the application stage, the reference persons and the applicants usually need a lot of help and information – depending on their circumstances. They may, for example, need help in filling in the application forms, in gathering the necessary documents, in organising the trip to the Finnish mission, with legalising the residence in the country of the mission, and in obtaining the doctor's and other statements to support a request for exemption from the income requirement.

Without the right to free legal aid, the reference person is extremely dependant on the help he / she receives from the social worker or the guardian (in case of an unaccompanied child). Their knowledge of the legislation and practical issues concerning FRU varies a lot. Based on the experi-

ence of FRAC, the reference persons are not in an equal position in all municipalities and the amount and quality of information and support they receive in different municipalities vary.

5.13. Impact of COVID-19

The Covid-19 epidemic has caused significant delays in the FRU process. Finland suspended the reception of ordinary visa and residence permit applications starting on 19 March 2020. Activities relating to residence permit applications were gradually resumed in Finnish missions abroad on 16 June 2020 while practices vary between each mission, depending on the local health situation.[23]

Normally, an applicant should visit a Finnish mission to identify himself / herself within three months of the date on which the application was submitted via Enter Finland. The time limit for identification has been extended until 30 April 2021 and may be reviewed depending on how the situation evolves.[24]

Since March 2020, family ties interviews have not been held in some of the Finnish missions. According to MIGRI, the Finnish missions also cannot hand over residence permit cards as usual.[25]

Applicants who have been issued residence permits based on family ties, have not been able to travel to Finland normally, since borders have been closed. There have been lengthy delays in their arrival to Finland.

6. SCOPE OF ELIGIBLE FAMILY MEMBERS

6.1. The concept of family

According to Section 114 (1) of the AA, a residence permit based on family ties is issued for a family member of a reference person who has been granted refugee status or subsidiary protection if 1) the reference person lives in Finland or has been issued with a residence permit for the purpose of moving to Finland; and 2) the applicant is not considered a danger to public order or security or public health.

Like in Scandinavian countries in general, also Finland has a narrow understanding of family members eligible for reunification. Only the nuclear family members – spouse, minor children and the custodian of a minor – are family members according to the law. For anyone else it is considerably more difficult to obtain a residence permit based on family links. *(See Section 6.3.)*

The definition of family member is contained in Section 37 of the AA, according to which the spouse of a person residing in Finland and unmarried minor children for whom the person residing in Finland or his/her spouse is a custodian are considered family members. If the person residing in Finland is a minor child, the person who has custody of him / her is considered a family member. A person of the same sex is also considered a family member if the partnership has been registered

[23] Ministry of Foreing Affairs, Limited reception of residence permit applications to resume in Finnish missions abroad, 17 June 2020, available at: https://um.fi/current-affairs/-/asset_publisher/gc654PySnjTX/content/suomi-avthe AA-rajoitetusti-oleskelulupahakemusten-vastthe AAnottoa-edustustoissa.
[24] MIGRI, Effects of the coronavirus outbreak on customers who are abroad, available at: https://MIGRI.fi/en/you-are-not-in-finland *(visited 21.12.2020)*.
[25] Ibid.

nationally. Persons living in a marriage-like relationship in the same household on a permanent basis are considered to be a married couple regardless of their sex. It is required that they have lived together for at least two years. This is not required if the persons have a child in their joint custody or if there are other serious reasons.

According to Section 37 (3) of the AA, a foster child can also be considered a family member if the unmarried child is under 18 years and is under actual care of the person who has a custody of him or her and is in need of such care on the date a decision is made on the residence permit application, but no official statement is available on the dependency status. Treatment as a family member also requires reliable evidence that the persons who previously had custody of the child have died or are missing and that the reference person or his / her spouse was the person who had actual custody of the child before the reference person entered Finland. According to the wording of the law, if the biological parent is alive and not missing, the foster child can not be considered a family member.

> **Case example: Decision of the Administrative Court of Eastern Finland, 22 August 2018, dnr 03335/17/3102:** The reference person was a Somali woman, who had been granted refugee status in Finland and whose foster daughter applied for FRU. The child was still a minor when she lodged the application. At the time of the FRU process she was registered as a refugee by the UNHCR in Malaysia. The reference person had cared for the applicant since she was born, breastfeeded her and they had lived a well-established family life until their house was attacked and they got separated. They lost contact and the applicant ended up in Malaysia with another family. The family left from Malaysia to Australia. According to MIGRI and the Court the applicant was not a family member meant in Section 37 of the AA since the applicant had turned 18 three months after applying. Also it was considered that the reference person was not the actual custodian of the applicant since no documents of the custodianship had been presented and since the court considered that the father, who was still alive in Somalia, was the actual custodian. A residence permit could not be granted based on Section 114 of the AA, as a family member of a beneficiary of international protection. When considering the grounds for granting a residence permit based on Section 115 of the AA, the Court held that the applicant was not fully dependant on the reference person. The Court accepted that the purpose of the parties was to continue family life in Finland. The Court considered however, that denying the residence permit was not unreasonable since the applicant had reached the age of majority, her father was living in Somalia and the applicant had contact with him, and the applicant was living with two women who took care of her in Malaysia. The Court dismissed the appeal. SAC did not grant leave to appeal.

If the reference person is a foster child residing in Finland, treatment as a child and family member as per Section 37 of the AA requires reliable information, which shows that the applicant is the person who had actual custody of the reference person before the reference person entered Finland.

In summary, a residence permit based on 114 of the AA may be granted on the basis of family ties to nuclear family members of the reference person. It is important to note that minor siblings of a minor reference person do not fall under the definition of a family member. Yet, if their parents are granted a residence permit, the minor siblings may also be granted a residence permit in Finland.

6.2. The child must be below 18 years at the time of the decision

In June 2010, the AA was amended, requiring that the reference person/applicant must be a minor on the date of the decision in order to be assessed as a child. A residence permit may not be refused on the basis of the child coming of age if the processing of the application has been significantly delayed on grounds beyond the control of the applicant/reference person, and the applicant/reference person have contributed to getting the matter resolved. This requirement has led to several negative decisions based on the fact that the child who was applying or was the reference person had turned 18 before the decision of the MIGRI. It also led to families not applying for FRU at all, knowing that the reference person or the applicant would turn 18 before the decision and therefore would not be eligible for FRU.

In April 2018, the Court of Justice of the European Union (CJEU) issued a judgment with respect to the right to FRU of an UAC who reach the age of majority after lodging an asylum application. The CJEU found that the applicable date for determining whether a refugee was an UAC and therefore entitled to FRU with his or her parents, is the date on which he or she entered the State and made the asylum application.[26]

Because of the CJEU decision, MIGRI changed its policy and no longer requires an UAC, who is the reference person in Finland and has received refugee status, to be a minor on the date of the decision. Furthermore, Section 38 of the AA was amended on 1 June 2019. According to the current legislation, it is sufficient that the reference person (including both refugees and persons with subsidiary protection) was a minor on the date when they lodged the asylum application.
The legislation also requires that the application is submitted within three months of the date on which the reference person was served the decision granting them international protection to benefit as a child. According to Section 38, in individual cases, derogations may be made from the time limit if there are exceptionally serious grounds for such a derogation. According to the information of FRAC, this exception has been applied in a few cases where the reference person is an UAC who has been granted refugee status but whose family members had not applied for FRU earlier due to the requirement of the reference person being a minor but applied for FRU following the CJEU decision.[27]

It is important to note that the requirement of the child to be a minor at the time when MIGRI makes the decision for the FRU application still applies to children who are applicants. An applicant child who turns 18 years of age during the processing of the application may, however, receive a residence permit as "other relative" (extended family member).

6.3. Other relatives (extended family members)

According to Section 115 of the AA, a residence permit based on family ties may be issued to other close relatives of beneficiaries of international protection if a refusal of the residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the close relative is fully dependent on the reference person living in Finland. If the reference person is not a beneficiary of international protection but has been issued a residence permit on other grounds, such as study or work, his / her other relatives are not eligible for FRU.

[26] C 550/16, *A. and S. v. Staatssecretaris van Veiligheid en Justitie*, [2018] ECLI:EU:C:2018:248.
[27] FRAC has only heard of a few positive decisions and is not aware how this exeption is applied or how many cases like this exist.

According to the Section 115 (2) of the AA, an income requirement applies except in cases where the reference person is an UAC and the applicant is his/her minor sibling if the siblings have lived together and if their parents are deceased or their whereabouts are unknown. In practice FRAC observes, based on the decisions made by MIGRI and the administrative courts, that it is very difficult to obtain a residence permit as other relative *(see case examples below)*. In the decisions, family life is usually deemed to be discontinued or it is not accepted that there is an intention to resume a well-established family life that the parties enjoyed before. In practice, it is rarely accepted that the applicant is fully dependent of the reference person. Economic dependency is not enough and serious health problems or need of treatment do not constitute dependency if treatment is available in the home country.

Residence permits as an extended family member have, however, been granted in cases when a close relative who is in a vulnerable position (such as a grandmother or a sister that has turned 18 during the process) is applying for FRU together with the nuclear family and would be left alone when others are granted residence permits. Since, as a general rule, the income requirement is applied in these cases, a lack of income alone has also been a reason for negative decisions, even in cases of extended family members of a reference person with refugee status.

> **Case example: SAC (precedent) 8 November 2016, KHO:2016:167, ECLI:FI:KHO:2016:167:** SAC held that the purpose of Section 115 of the AA is to enable the continuation of family life in Finland for a larger family unit than the nuclear family. The family ought to have lived a well-established family life in their country of origin and the reason for applying for a residence permit has to be the continunation of family unity. It still would need to be considered whether it would be unreasonable to deny the residence permit. A denial would not be unreasonable if the reference person had moved from the home country voluntarily, in a considered manner and according to plans, since in that case the reference person and the applicants would have been able to take into account the fact that their fixed family life would end. Denying residence permits would also not be unreasonable if there was a delay in submitting the application for FRU since in that case the parties could be seen as having accepted the fact that the fixed family life had ended. The conditions of the applicants in their home contry also had significance in the consideration. According to SAC, since the reference person had not been able to return to his home country, the family life between him and his parents could not be seen as having ended voluntarily. The SAC also noted that parents of the reference person had applied for residence permits without delay. While SAC found that the applicants were not fully dependant on the reference person, denying them FRU was unreasonable since the stated purpose was to continue their family life, which they had enjoyed in the past. Thus, the parents had to be granted residence permits based on Section 115 of the AA.

> **Case example: SAC (precedent) 10 June 2020/2510 KHO:2020:69, ECLI:FI:KHO:2020:69**: The issue was whether the application for FRU of the parents with their son who had been granted refugee status in Finland could be refused on the grounds that the fixed family life that previously existed had been broken. The reference person and his parents had lived in the same household in Iraq and for about a year and a half in Syria. The reference person had lived with his parents all his life until he left Iraq for Turkey in 2013 due to persecution. The reference person stayed in Turkey for about two years before he traveled to Finland. During these two years, the parents visited him in Turkey twice, however, decided to return to Iraq after their visits. The Court found that by living separately for two years, their previous family life was considered interrupted during this time. The two-month visit of the parents to Turkey and the contact by telephone could not be considered as an indication of the continuation of a fixed

family life. As the separation had been the result of the reference person's parents 'own decision to remain in Iraq, their and the reference person's fixed family life could not be considered to have ended for compelling reasons due to the reference person's refugee status, but voluntarily as a result of the parent's choice of residence. Following the interruption of the fixed family life in the manner stated above, the condition set in Section 115 (1) of the AA for the continuation of family life in Finland was not met.

Case example: Decision of Helsinki Administrative Court 30 August 2019, 19/0595/71, dnr 03145/18/3101: In this case, the reference person who had been persecuted and tortured, had fled with his wife and children to Turkey. The reference person had left to Europe and applied for asylum in Finland where he was granted refugee status. His wife and children applied for FRU and were granted residence permits based on family ties and a derivative refugee status, except for one of the children who had turned 18 soon after lodging the applications. It its decision, MIGRI considered that the family ties between the reference person and the applicant had been broken. Helsinki Administrative Court accepted that the intention of the reference person and the applicant was to continue well-established family life, but issued a negative decision based on the income requirement that was not fulfilled. SAC did not grant leave to appeal.

Case example: Decision of the Administrative Court of Eastern Finland 22 August 2018, dnr 03335/17/3102. The reference person was a Somali woman, who had been granted refugee status in Finland and the applicant her foster daughter. The applicant who was registered as a refugee by the UNHCR in Malaysia, was still a minor when she lodged the application but turned 18 before MIGRI decision. The Court considered that a residence permit could not be granted based on Section 114 of the AA, as a family member. When considering the grounds for granting a residence permit based on Section 115 of the AA, the Court held that the applicant was not fully dependant on the reference person. The Court accepted that the purpose of the parties was to continue family life in Finland. The Court considered however, that denying the residence permit was not unreasonable since the applicant had reached the age of majority, her father was living in Somalia and the applicant had contact with him, and the applicant was living with two women who took care of her in Malaysia. The Court did not grant a residence permit. SAC did not grant a leave to appeal.

Case example: Decision of Helsinki Administrative Court 4 November 2020, dnr 06852/19/3101: The reference person, an Eritrean national, obtained refugee status in Finland in July 2017. Her little sister (who was raped in 2016), and the sister's child applied for reunification with the reference person in March 2019, when the little sister still was a minor. MIGRI issued a negative decision in September 2019 and the Helsinki Administrative Court dismissed the appeal in November 2020. MIGRI and the Court accepted that the intention of the parties was to continue their family life and that the family life was broken due to compelling reasons. However, it was found that denying residence permits is not unreasonable since the applicants are not entirely dependent on the reference person. The reference person and the applicants have appealed to SAC, where the case is pending.

7. INCOME REQUIREMENT

7.1. Income requirement

According to Section 39 of the AA, issuing a residence permit requires that the alien has sufficient financial resources. A derogation may be made from the requirement if there are exceptionally serious grounds for such a derogation or the derogation is in the best interest of the child.

Since the amendment of Section 114 of the AA[28] on 1 July 2016, a certain level of income of the reference person has been required for FRU of beneficiaries of international protection including refugees, with some exceptions concerning persons with a refugee status: if the family ties had been established before the reference person came to Finland and the FRU application is lodged within three months of serving of the asylum decision granting refugee status, income is not required. Similarly, if the asylum decision and refugee status has been issued before 1 July 2016, income is not required for FRU.

Sufficient financial resources are also required when the reference person is a minor, even if it is evident that a minor does not normally have such income. The AA sets out grounds for exemption from the income requirement concerning the FRU of an UAC with his / her minor sibling residing abroad, that is, if the UAC has been granted international protection or residence permit on compassionate grounds, the siblings have previously lived together and if their parents are deceased or their whereabouts are unknown and if granting the residence permit would be in the best interest of the child.[29]

According to the current Government program, it has been decided to abolish the requirement of sufficient financial resources when the reference person is an UAC with international protection in Finland. As part of a current project by Ministry of Interior to promote FRU and the best interests of the child, an amendment to the AA concerning this is underway. However, in FRAC's view, the amendment of the AA is not likely to meaningfully change legal practice, since when the reference person is an UAC the negative decisions have been based on other arguments.[30] In the project, the Ministry will also clarify the effects that the income requirement has had on the protection of family life and on FRU for beneficiaries of international protection. It will also examine other problems related to FRU and consider the need for other possible legislative amendments.[31]

The income requirement for family members of a person who has been granted international protection is the same as for family members of persons with other kinds of residence permits. The required amount is comparatively high and difficult to reach for many applicants. Indicative amounts of income needed to secure an applicant's means of support in Finland are:

Person	**EUR/month**	**EUR/year**
one adult	1,000	12,000
another adult living in the same household	700	8,400
one family member younger than 18	500	6,000
second family member younger than 18	400	4,800

[28] AA (no. 6) Section 114 stipulates the issuing of residence permit based on family tie for family members of a beneficiary of international or temporary protection.
[29] Ibid. Section 115 (2) and Section 52 (4) of the AA
[30] Ibid. Such as evading the entry provisions as meant in Section 36 (2) of the AA.*(See chapter* 9.2.3.*)*
[31] Finnish Government, Legislation on FRU to be examined in light of promoting the interests of the child, 15 July 2020, available at: https://valtioneuvosto.fi/en/-//1410869/legislation-on-family-reunification-to-be-examined-in-light-of-promoting-the-interests-of-the-child.

third family member younger than 18	300	3,600
fourth family member younger than 18	200	2,400
fifth family member younger than 18	100	1,200
sixth family member younger than 18 and other family members after that	0	0

For example, a family of two adults and two children under 18 years of age needs a total of EUR 2,600 per month to have secure means of support / the required income (EUR 1,000+700+500+400). A family of a single parent and four children below 18 years of age needs EUR 2,400 per month to have the required income (EUR 1,000+500+400+300+200).[32] In FRACs experience, the fact that the amounts are only indicative is not taken sufficiently into account in the decision policy.

Certain social benefits are taken into account when calculating the amount of the required income. Such benefits are, for example child benefits, childcare allowance, child maintenance allowance, study grant and housing allowance. An average monthly total of social benefits would, however, not amount to the required EUR 2,600 for a family size of four. If the applicant wishes that MIGRI makes a derogation from the income requirement, they must present the grounds for derogation in the application. The administrative policy on derogation of MIGRI is strict. For case examples, see chapter 7.2. below.

7.2. Exemptions to the income requirement

As mentioned above, Section 39 of the AA sets out an obligation to derogate from the income requirement where there are exceptionally serious grounds or where dictated by the best interests of the child. In addition to this, according to Section 6 of the AA, in all cases involving children, the overall assessment must always consider the best interests of the child. International treaty obligations, especially those laid out in the CRC must always be fully taken into account when assessing the best interests of the child in Finland (see *also chapter 9.1. below)*.

According to the preparatory works to the legislative amendment of 1 July 2016 of the AA, a possibility to make exemptions from the income requirement in an individual case is necessary to ascertain that the requirement of sufficient financial resources does not become unreasonable. However, circumstances such as international protection status or that the applicant is a child, are not grounds to derogate from the income requirement.[33]

Before the restrictions came into force on 1 July 2016, the Constitutional Law Committee issued a comment on the proposed law. According to the Committee, the law would expand the income requirement to a group of people who have received international protection and may face particular challenges due to their life circumstances and background (such as mental health problems, other serious health conditions) and that the income requirement should not cause an actual obstacle to FRU. The Committee underlined the meaning of Section 39 (1) (possibility to

[32] MIGRI, Income requirement for family members of a person who has been granted international protection, available at: https://MIGRI.fi/en/income-requirement-for-family-members-of-a-person-who-has-been-granted-international-protection.
[33] Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta, HE 43/2016 vp, 2016, available at: https://www.finlex.fi/fi/esitykset/he/2016/20160043.

make a derogation in an individual case) and that the conditions for a derogation must be evaluated according to the international human rights obligations that are binding on Finland.[34] In practice, the threshold for derogation is very high, often limiting the right to family life of beneficiaries of international protection and neglecting the best interest of the child.

Even though Section 39 of the AA requires exemptions to be made based on the best interests of the child but, in practice what is required by MIGRI and also the administrative courts are "*individual facts and circumstances that concretely affect the child's best interest*" as held by SAC in precedent setting *KHO:2014:50*.[35] MIGRI guidelines, referring to SAC *KHO:2014:50*, set out that certain special circumstances such as the child's serious illness or disability may be a valid ground.[36]

> **Case example. SAC precedent 19 March 2014/803, KHO:2014:50, ECLI:FI:KHO:2014:50:** The case concerned an applicant, who after having arrived in Finland, had married the reference person who had received international protection in Finland. Later on they had a child together. SAC found that family life had been established at a time when even the reference person did not yet have a residence permit in Finland and that the continuation of family life in Finland had been uncertain since the beginning. Also, the applicant had a residence permit in another European country. The applicant was not granted a residence permit based on family ties, since the family tie was "new". The income requirement was applied and not fulfilled. The best interests of the child were not considered as being a reason to derogate from the income requirement. SAC held that to derogate from the income requirement based on the best interests of the child requires *individual circumstances that concretely affect the child's best interest*. Solely the fact that denying the residence permit would lead to breaking the family life between the child and other parent does not require a derogation from the income requirement.
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> **Case example: SAC precedent 19 March 2014/804, KHO:2014:51, ECLI:FI:KHO:2014:51:** The case concerned a Somali applicant with international protection in Italy and who had formed a family with a Somali person with subsidiary protection in Finland, after this person came to Finland. Income requirement was applied but not fulfilled. It thus had to be considered if there were grounds for derogation from the requirement. The family had three small children (below school age) and the applicant was the biological father of two of them. One of the children had been treated for multiple illnesses since the child was born and was under continuous follow up. SAC held that it could not be guaranteed that the family could acquire the treatment the child needed elsewhere than in Finland. Because of this, the best interests of the child required that the family could live in Finland also in the future. Taking into account that taking care of the child required a lot of resources from the reference person considering especially that there were two other small children that needed to be taken care of, the SAC held that weighty reasons relating to the best interests of the child required the applicant's participation in the family's life in Finland. The best interests of the child required a derogation as per Section 39 of the AA.

The requirement of "other individual facts and circumstances that concretely affect the child's best interests" as established by SAC has been used also in cases where the reference person has obtained international protection and the family ties are "old", i.e. established before the reference person came to Finland and received a protection permit. Even in a case where the reference

[34] *"Perustuslakivaliokunnan mielestä on tärkeää, ettei poikkeamisen kynnys muodostu tulkintakäytännössä kohtuuttoman korkeaksi. Valiokunta korostthe AA myös sitä, että poikkeamisen edellytyksiä on arvioitava Suomea sitovien kansainvälisten ihmisoikeusvelvoitteiden mukaisesti. Näin ymmärrettynä sääntely ei muodostu valtiosääntöoikeudellisesti ongelmalliseksi." Valiokunta, Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta, PeVL 27/2016 vp, 2016, available at: https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_27+2016.aspx.*
[35] HE 43/2016 vp (no. 32).
[36] MIGRI, Ohje toimeentuloedellytyksen soveltamisesta, MigDno -2018-330, 27 March 2018 p. 15-16.

person has refugee status, and the applicant is his wife or child; negative decisions have been made based on the lack of income. *(See case examples below.)*

In numerous decisions by MIGRI and administrative courts[37] concerning FRU of a reference person with refugee status and so called "old" family ties that had been established before the reference person left the home country, MIGRI and the courts have argued that: "ECHR does not impose a general obligation for a state to respect the choice of country of residence made by the family. There is an acceptable reason to restrict the right to live family life in Finland, since the income requirement is not fulfilled as required by the AA." The fact that a case concerns "old" family ties of a person with a refugee status, has thus not been given any weight in above-mentioned decisions. SAC has not granted leave to appeal in such cases. FRAC further notes that usually in cases concerning "new" family ties established in more insecure situations and where the continuation of family life in Finland has been uncertain since the beginning, this is usually used as an argument for a negative decision.

In the written observations published by Council of Europe Commissoner for Human Rights to the ECHR on the case *Dabo v. Sweden,*[38] which concerns FRU of a refugee and income requirement, the Commissioner underlines the negative consequences of long-term family separation and the importance of FRU for all those granted international protection, successful integration and to avoid dangerous, irregular migration to Europe. The Commissioner also highlights that the maintenance requirements for beneficiaries of international protection when they have the effect of significantly delaying the reestablishment of family life as well as short time limits, raise serious issues of compatibility with Article 8 of the ECHR.[39]

> **Case example: Decision of Helsinki Administrative Court, 6 September 2019, dnr 01859/19/3101**. The reference person of Eritrean nationality arrived to Finland with three minor children on 22 September 2016 and was granted asylum and refugee status on 8 November 2016. With the decision the reference person was given a document in Finnish which included instructions on the right to apply FRU, and the three months time limit to avoid the income requirement. Only in January 2018, after moving to Vantaa, the reference person received assistance in her FRU matter from the immigrant services of the city. The applicant, her husband and the father of the children, of Eritrean nationality, lodged the FRU application in January 2018 (in the Finnish Embassy in Nairobi). MIGRI made a negative decision, since the income requirement was not fulfilled. Helsinki Administrative Court dismissed the appeal. SAC did not grant a leve to appeal. An appeal was made to ECHR in August 2020, where the case is still pending.

> **Case example: Decision of Helsinki Administrative Court 18 December 2019, dnr 06127/18/3101:** The case concerned applicants who were wife and minor children, so called "old family members" of a reference person who had been granted an asylum and refugee status in Finland. The reference person was a victim of torture and had received treatment for psychological traumas in Finland. The reference person was granted a refugee status with a delay since he had first received wrong decisions in Finland. After applying asylum the reference person had received a negative decision and a deportation decision on 27 December 2013. After appeals process, on 26 March 2015 he was granted a temporary residence permit that did not give right to FRU. He appealed the decision and was finally granted an asylum on

[37] For example case concerning FRU of a refugee, where the reference person and the applicants are Eritrean nationals. Helsinki Administrative Court, App. No. 01859/19/3101, 6 September 2019.
[38] Third party intervention by the Council of Europe Commissioner for Human Rights, Dabo v. Sweden Appl. No. 12510/18 (ECtHR, 24 May 2019) CommDH(2019)19.

23 September 2016 – a little after the stricter law concerning income requirement had entered into force on 1 July 2016. The family members were not able to apply for residence permits within three months, so income requirement became applicable. MIGRI made a negative decision to the FRU applications stating that there were no exceptionally weighty reasons for making a derogation and the best interest of the child did not require it. The reference person had received treatment in The Centre for Torture Survivors[40], but despite of this had started to work in three work relationships to fulfill the income requirement. The Administrative Court considered that the fact that the reference person has started working in the appeal stage is not taken into account. According to the court, because of the change in the circumstances, the matter in question has changed into other. SAC did not grant leave to appeal in July 2020. (The applicants lodged new FRU applications in May 2020).

8. IMPACT OF THE STATUS OF THE REFERENCE PERSON

8.1. The importance of status

The type of residence permit that a person is granted, that is, as a refugee or beneficiary of subsidiary protection, has a significant impact on his / her meaningful access to FRU. It will determine who can apply, nuclear family member only or also other relatives, and whether or not secure means of support are required. The status also affects the consideration whether there is a possibility to enjoy family life in the reference person's country of origin or other safe third country.

8.2. Reference person with refugee status

8.2.1. Three-month time limit

Before 1 July 2016 secure means of support were not required in order to qualify for FRU of persons with refugee status in Finland, if the family ties had been established before the reference person came to Finland. After the amendment of the Section 114 of the AA on 1 July 2016, family members of a reference person with refugee status still have a possibility to apply for FRU without an income requirement if the following conditions are fulfilled:

1) the application for a residence permit has been submitted within three months of the date on which the reference person was served the decision that he or she has been granted asylum or admitted to Finland under the refugee quota; and
2) the family tie was established either
    a) before the reference person arrived in Finland in cases where he or she has been granted asylum; or
    b) before the reference person was admitted to Finland under the refugee quota.
3) FRU is not possible in a third country to which the reference person or family member has special ties.

Within three months, the applicant should, at minimum, contact the Finnish Embassy to book an appointment for submitting a paper application, or lodge the application online in enterfinland.fi. After three months, the income requirement will be imposed and Migri can issue a negative deci-

[39] Ibid.
[40] The Centre for Torture Survivors in Finland is an adult psychiatric outpatient clinic, which assesses treats and rehabilitates severely traumatised refugee torture victims and their family members. Deaconess Foundation, Centre for Torture Survivors in Finland, available at: https://www.hdl.fi/en/support-and-action/immigrants/rehabilitation-for-torture-victims/centre-for-torture-survivors-in-finland.

sion if the reference person and the applicant do not have sufficient income. The time-limit is interpreted in a strict manner by MIGRI and the Courts:

> **Case example: SAC (precedent) 5 June 2020/2452 KHO:2020:66, ECLI:FI:KHO:2020:66:** the case concerned FRU of an Iraqi national, who had a refugee status in Finland, and who also had a physical disability as he is visually impaired. Applicants were his wife and minor children. The issue was whether the income requirement of the asylum seeker's FRU application should be applied. In connection with the notification of the asylum decision, the reference person had received instructions from the Finnish Immigration Service on the possibility for a family member to apply for a residence permit in Finland. According to the Finnish Immigration Service's instructions, if applicants for a residence permit contact the Finnish Embassy within three months of notification of the asylum decision but do not have time to submit the application within three months due to the Representation's queue, the residence permit can be applied for without an income requirement. According to the instructions, this required applicants to use the appointment they received to submit their application. The reference person had been in contact with Finnish Embassy in Ankara, Turkey, within the aforementioned three-month deadline, and the applicants had been given an appointment to submit an application for a residence permit on 19 April 2017. The family reunifier had changed the appointment date to 2 January 2017. After that, he had changed the appointment once more for submitting residence permit applications to 27 March 2017, when the applications had been submitted. MIGRI and administrative court decided that the three-month time limit was exceeded and secure means of support may be required since the applicants did not use the first given meeting time (19 April 2017). According to MIGRI and the administrative court there was also no grounds to make a derogation from the income requirement. SAC annulled the decisions made by MIGRI and administrative court. According to SAC, given that the applications had been submitted earlier than the appointment date that was originally granted, it would have been contrary to the principle of proportionality to consider the income requirement to be applicable.

> **Case example: Decision of Helsinki Administrative Court, 10 May 2019, 07180/18/3101**: the case concerned a Somalian reference person who arrived to Finland in 2015 and applied asylum together with her minor child. The reference person was informed of her asylum decision and a refugee status in February 2017. The applicant, the father of the child, her husband who had been granted a refugee status in Italy, had booked a time for lodging the FRU application in May 2017 and finally lodged the application in July 2017. MIGRI and the administrative court stated decided that income requirement is applicable even though the three month time limit was exceeded by only three days. The administrative court, however, considered that a derogation from the income requirement must be made, since the family also had a younger child, whose custodian the applicant also was, and who suffered from a serious heart defect. According to the court, the applicant was needed in caring for the child in Finland.

FRAC finds that since family members of a refugee are often refugees themselves or otherwise in a vulnerable situation, the time-limit of three months is extremely short. It is usually a tremendous challenge for the family members of a refugee to lodge the application within that time-frame. However, their particular circumstances are not considered in the Finnish process and refugees are expected to lodge the applications within three months, in order to avoid the income requirement with limited scope for exemption. When it is considered that three months limit has been exceeded and the income requirement becomes applicable, exemptions are rarely permitted, even in the case of nuclear and "old" family members. Current practice suggests that derogations are only

possible where there are exceptionally serious grounds or there are individual facts and circumstances that concretely affect the child's best interest. *(See chapter 7.2. above)*

8.2.2. Decision-making that dismisses the refugee status

Migri's policy in FRU cases concerning reference persons with refugee status has also otherwise been strict. Negative decisions have been issued based, for example, on the arguments that there has not been an actual and well-established family life, or, that the family life has been ended voluntarily (that there were no compelling reasons for the reference person to leave) or even, that the applicants are attempting to evade provisions on entering the country (as meant by Section 36 (2) of the AA).

NDO noted in its statement in February 2018 that MIGRI's interpretation of the fact when the family tie of a refugee is considered to be broken is strict and not entirely in line with the principles established by ECtHR in its jurisprudence.[41] Most of these decisions have been annulled by administrative courts or by SAC. In FRAC's experience, it must, however, be noted that even though the decision may be annulled, incorrect decisions will often prevent family life for several years considering the lengthy appeals process.

> **Case example: decision on 12 October 2018 (dnr 02202/18/3101), Helsinki Administrative Court**: the reference person was an Eritrean national with refugee status and the applicants were his wife and young child of the same nationality. MIGRI considered in its negative decision that it had not been reliably shown that there had been actual and well-established family life between the parties. According to the DNA test conducted, the reference person was the biological father of the child. MIGRI based its decision on contradictions in the interviews of the parties and lack of reliable documentation. MIGRI also held that the applicants are attempting to evade the provisions on entering the country meant by Section 36 (2) of the AA. With its decision, Helsinki Administrative Court annulled the decision of MIGRI.

In FRACs view, in the case of any reference person who is a beneficiary of international protection, it should normally be considered that there were compelling reasons for the interruption of family life and for living apart. Similarly, the family life should not be considered of having been broken voluntarily in the case of a refugee, since by granting a refugee status it has been accepted that the person has a well-founded fear of persecution in the country of origin. Also SAC has in its precedents KHO:2016:204 and KHO 2016:167, the former concerning a reference person with refugee status and the latter concerning a reference person with subsidiary protection in Finland, found that the family life has to be considered as been broken for compelling reasons.

Still, MIGRI and the administrative courts have sometimes claimed, even in the cases of reference persons with refugee status, that the family tie between the reference person and the applicant has ended and / or that it had ended voluntarily. In a case concerning a reference person granted refugee status based on *sur place* grounds (converting to Christianity), Migri rejected the application for FRU arguing that since the refugee status was granted based on a *sur place* ground and there were no compelling reasons for the reference person to leave the home country, the family life had been broken voluntarily *(see Case example below)*. In FRAC's view, however, this argument ignores the significance of refugee status and that the enjoyment of family life is not possible in their home country as well as the vulnerable circumstances of the applicants who reside as un-

[41] NDO (No. 1).

documented migrants outside their homecountry. In addition, in this particular case, the reference person and his family had suffered serious rights violations in Afghanistan before he lef the country:

> **Case example: Decision of Helsinki Administrative Court 6 April 2016; Decision of Helsinki Administrative Court 22 April 2020, dnr 06141/18/3101.** The case concerns an Afghan reference person who applied asylum first in Norway in September 2009 and then in Finland in August 2010. The reference person had been imprisoned for one month in his home country and his father and brother had been killed by the Taliban. MIGRI issued a negative decision in February 2012. SAC annulled the decisions by MIGRI and administrative court in June 2013 and returned the case back to MIGRI. In October 2013, the reference person was granted asylum and refugee status based on the danger of persecution after having converted into Christianity in Finland. The reference person's wife and children, who has fled Afghanistan and reside as undocumented migrants in Pakistan, lodged a FRU application in May 2014. In June 2015, MIGRI issued a negative decision as the applicants are not family members of the reference person within the meaning of Section 37 of the AA. According to MIGRI, the family life of the reference person and the applicants ended voluntarily when the reference person decided to leave Afghanistan in 2009, and their intention was not anymore to spend well-established family life after six years of separation. Helsinki Administrative Court dismissed the appeal in April 2016. One of three judges and the referendary considered that the family ties were broken because of compelling reasons: the reference person had a compelling reason to leave Afghanistan because of the abuses experienced by his father and brother. SAC did not grant leave to appeal in June 2016. The applicants, residing outside Afghanistan as undocumented migrants, applied for FRU again in May 2017. MIGRI issued a new negative decision in October 2018. Helsinki Administrative Court dismissed the appeal in April 2020. The case is still pending in SAC.

In 2018, MIGRI found that compelling reasons did not exist in a few FRU cases concerning unaccompanied children granted refugee status in Finland. The children were Syrian nationals who had been separated from their parents in Turkey. According to the Administrative Court decisions, annulling the decisions of MIGRI,[42] there were compelling reasons for the separation of the reference persons and the applicants, since they had been in Turkey after escaping the war in Syria before leaving to Europe. *(See also chapter 9.2.3.)*

8.2.3. Other relatives – income requirement

According to 115 of the AA, the issuance of a residence permit to an extended family member of a reference person with refugee status or subsidiary protection always requires that the alien has sufficient financial resources. An exception may be made for minor siblings a) if the residence permit is issued to a minor sibling residing abroad of a person who has arrived in Finland as an UAC, 2) if the siblings have previously lived together and if their parents are deceased or their whereabouts are unknown and 3) if granting the residence permit would be in the best interests of the child.

[42] Helsinki Administrative Court Appl. No. 00846/18/3101, 17 January 2019; Helsinki Administrative Court Appl. No. 00583/18/3101, 12 September 2018; Administrative Court of Eastern Finland Appl. No. 19/0053/5, 14 January 2019.

8.3. Reference person with subsidiary protection

8.3.1 Income requirement in all cases

Following amendments to Section 114 of the AA that took effect on 1 July 2016, sufficient financial resources are required for the granting of FRU for family members of beneficiaries of subsidiary protection. The law has been applied retroactively to applications submitted before 1 July 2016. Unlike in the case of a reference person with a refugee status, there is no possibility to exempt from the income requirement if the FRU application is made within three months, The law only provides for an exception to the application of the income requirement concerning minor siblings of the reference person who are abroad without custodians.

FRAC has had several cases where the reference person has received subsidiary protection in Finland in 2016 and his wife and minor children have applied for FRU.[43] The decisions of MIGRI and the administrative courts have been negative only because the income requirement is not fulfilled. According to the decisions, there are no exceptionally serious grounds to make an exemption. In the decisions it has been considered that the best interest of the child does not require a derogation to be made since there are no *individual facts and circumstances that concretely affect the child's best interest*. *(See also chapter 7.2. above)* SAC has not granted leave to appeal.

8.3.2. Possibility of return or to live in a third country

According to Section 114 (3) of the AA, before issuing a residence permit to a family member of a beneficiary of subsidiary protection, additional factors considered next to the income requirement are whether (1)the reference person has a possibility to enjoy family life with the applicant in a third country or whether or not (2) there are impediments to the reference person's return to their country of origin or permanent residence. To the knowledge of FRAC, there are no MIGRI decisions where this has been used as an argument for a negative decision.

8.4. Reference person that have been excluded from refugee status or subsidiary protection

According to Section 89 of the AA, a person who is not granted international protection, since there are reasonable grounds to suspect they have committed a serious crime, but would be in danger of persecution or serious harm if deported, is granted a temporary residence permit. A temporary residence permit does not give right to FRU. According to Section 113(2) of the AA, persons with a temporary residence permit are issued a continuous residence permit after three years of continuous residence in Finland if the grounds for issuing a residence permit still exist. According to Section 113 (3) of the AA, once a continuous residence permit is issued, their family members[44] may receive a residence permit. Sufficient financial resources are required.

8.5. Reference person with Finnish citizenship

According to Section 50 of the AA, a nuclear family member or another relative of a Finnish citizen may apply for a residence permit based on family ties. A residence permit for a family member of a Finnish citizen may be granted upon application filed in Finland or abroad. Other relatives are is-

[43] Helsinki Administrative Court Appl. No. 02650/18/3101, 2 July 2019; Hämeenlinna Administrative Court Appl. No. 02226/17/3101, 7 September 2018.
[44] Only nuclear family members, not extended family members.

sued a continuous residence permit only 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. Granting a residence permit for a family member or other relative of a Finnish citizen does not require income.

Often the asylum process, including appeals procedures, lasts several years and the applicant may be granted international protection after having already been in Finland continuously for four years or more. Hence, if the applicant meets the other requirements for citizenship in the Finnish Nationality Act, the applicant may be able to immediately apply for Finnish citizenship after obtaining international protection. As a consequence, after receiving Finnish citizenship no income requirement is applied in their FRU application.

9. THE RIGHT OF A CHILD TO FAMILY LIFE

9.1. The best interest of the child

According to Article 3 (1) of the UNCRC, in all actions concerning children the best interests of the child shall be a *primary* consideration. The provision corresponds to 24 (2) of the Charter of Fundamental Rights of the European Union. Moreover, article 5 (5) of the EU Family Reunification Directive sets out obligations for Member States with respect to the best interests of children when examining an application.

Section 6 (1) of the AA requires that in any decisions taken under the AA that concern a child under 18 years of age, special attention shall be paid to the best interests of the child and to circumstances related to the child's development and health. Though there is no uniform definition on the best interest of the child, the draft proposal to Section 6 (1) of the AA provides guidance as to its interpretation and application in practice:[45]

> "The best interests of the child is always individual and tied to the life circumstances of the child at that time. The best interests of the child shall be considered as a whole; taking into account the needs, wishes and opinions of the child. In judicial and administrative decisions, it is central that the decision maker ascertains which decision in the particular case is in the best interests of the child. The social workers are often in central position when clarifying the opinion and the benefit of the child concerning a decision of the authorities."

In light of the above, in FRU decisions the best interest of the child should be a primary consideration – meaning it should be given higher priority than other considerations in the matter, as pointed out by the CRC Committee.[46] Concerning the application of the concept of the best interest of the child, the Committee has also underlined that the best interest of the child is a fundamental, interpretative legal principle. According to the Committee: "If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen."[47]

[45] HE 28/2003 vp (No. 21).

[46] CRC /C/GC/14, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), paras 37-39.

[47] Ibid, para 6.

In its report "Best interest of the child" (2014), FRAC analysed a number of decisions in asylum and FRU cases involving children represented by FRAC.[48] FRAC found that the best interest of the child was, in most cases, mentioned in the decision, though often not analysed in a substantive manner. It can also be seen from the decisions of 2014 that FRU was especially difficult when the reference person was an UAC. Apart from the requirement of the child to be a minor at the date of the FRU decision, the negative decisions issued by MIGRI were based on a lack of "compelling reasons" and the parents' intentions to evade the entry provisions by sending the child to Finland, even if the child had obtained international protection in Finland. The grounds for international protection are assessed during the asylum process and evaluated again in the FRU application process.

The problems observed in the decisions of 2014 continue to be present today. According to the experience of FRAC, the best interest of the child is usually not respected as a primary consideration in the decisions. All relevant facts and circumstances regarding the child are not taken into account in the assessment. Also, the statements from social workers are not systemically requested nor are their opinion given sufficient weight in the decisions.[49] In FRAC's view, in the FRU decisions of MIGRI and the administrative courts, the restrictions set by the AA are emphasized more than the rights created by international human rights instruments and reflected in Finnish law. Restrictions that limit fundamental human rights particularly affect those with heightened vulnerabilities, such as children. As demonstrated in this report, the significance of the international protection status of the reference person (the impossibility to continue family life in the home country), the circumstances of the reference person or the applicants and the impact of the decision on the child are often neglected in the decision making, leading to decisions that are against the best interest of the child.[50]

In a report of March 2020, the NDO reviewed 66 FRU decisions of UACs who were granted international protection, with the purpose of examining how children's' right to family life is realized in FRU cases. The NDO noted that the current administrative practice does not seem to be fully in line with the CRC. According to the report, the best interest of the child is not a priority in the decision making and the child's right to family life is not considered as important as the argument of evading entry provisions, Accordingly, the child's fundamental right to family life can be limited by merely the fact that the child has arrived alone to seek asylum. The study shows that only half of the children with international protection were reunited with their families in Finland.[51]

9.2. FRU for UACs

9.2.1 Family members of a minor child and effect of the protection status

As noted above in chapter 6.1, the definition of a nuclear family member is strict in the AA. The family members of a minor child are his or her custodians. Minor siblings are treated as "other relatives" but are given a residence permit together with the custodian. Moreover, when the reference

[48] Pakolaisneuvonta, Osa II, lapsen edun arviointi tuomioistuinten perheenyhdistämispäätöksissä, 2014, available at: https://www.pakolaisneuvonta.fi//wp-content/uploads/LapsenetuPY-160315F.pdf.
[49] See also A.B v. Finland (CRC/C/86/D/51/2018) given on 5 February 2021, concerning the inadequate assessment of the best interest of the child in Finland, in an asylum case. Even though falling outside the temporal scope of the report, the case has been included in a footnote due to its thematic significance.
[50] AA (No. 6) Section 36(2); chapter 7.2. Strict jurisprudence; chapter 8.2.2. Decision making that dismisses the refugee status; chapter 9.2.3. Evading entry provisions.
[51] NDO, Children Without Families (No. 2).

person is an UAC, the status of the reference person affects which family member is eligible for FRU. If the UAC has received a refugee status or subsidiary protection, family members as well as other relatives may apply. If the UAC has received a residence permit on compassionate grounds only a nuclear family member may apply.[52]

Statistically, in Finland a significant number of UACs receive residence permits on compassionate grounds and not on basis of international protection needs. In 2016, when the amount of asylum decisions increased significantly, the percentage of residence permits based on "other grounds" (i.e. compassionate grounds and not protection grounds) was 58%. In following years, the percentage of residence permits on compassionate grounds has decreased: 37 % in 2017, 21 % in 2018 and 14,5 % in 2019.[53]

9.2.2. The impact of the requirement of the child to be a minor

According to the legislation that entered into force in August 2010, a child, whether a reference person or an applicant in a FRU application, had to be under the age of 18 at the time when the FRU decision was made and not only when submitting the application. This requirement was added to Section 38 of the AA at the same time with the legislation concerning age assessments (Section 6 a § of the AA). As the processing time for FRU applications at MIGRI at the time was often 1,5 or even 2 years, the vast majority of children who had arrived in Finland as UACs lost their right to FRU. Only since 1 January 2012 Section 69 a of the AA has included a time-limit of nine months for the processing of FRU applications. However, according to the law, in exceptional circumstances the decision may be served at a later date.

Furthermore, following the CJEU decision of 12 April 2018[54], Section 38 of the AA was amended on 1 June 2019. Current legislation thus requires that the reference person, who is an UAC and has received international protection in Finland, was a minor on the date when he or she lodged the asylum application in order to be considered as a minor for the purposes of FRU (See also chapter 6.2. above). Hereby, an UAC, who has not received international protection but has received a residence permit on compassionate grounds, loses the possibility to FRU when he / she turns 18.

9.2.3. Compelling reasons

The policy of MIGRI and the courts with regards to the concept of *compelling reasons* has made the FRU for UACs considerably more difficult in the recent ten years. In 2009, SAC held in a precedent (KHO:2009:86) concerning FRU of an UAC that the parents of the UAC had sent the 2-year-old child to Finland in order to later on receive residence permits for themselves and the rest of the family. The child had been granted a residence permit on compassionate grounds (Section 52 AA). SAC stated that the parents had not had compelling reasons for sending the child to Finland and held that Section 36 (2) of the AA, evading the provisions on entry, was applicable and there were grounds for denying residence permits for the applicants.

[52] Also in this case, as in the case of unaccompanied minors with a protection status, the siblings who are considered as other relatives may apply together with the custodian(s).
[53] Statistics obtained from MIGRI.
[54] *A. and S. v. Staatssecretaris van Veiligheid en Justitie* (No. 25).

Since then, if the UAC, acting as a reference person, has another status than refugee status, such as a residence permit on compassionate grounds or even subsidiary protection, the most common argument in negative FRU decisions has been that there were no *compelling reasons* for the separation of the child from the rest of the family and that there are reasonable grounds to suspect that the custodian intends to evade the provisions on entering the country. In such decisions, it is thus considered that subsidiary protection status, which is often based on a more general security threat in the country of origin, does not constitute an individual compelling reason for the departure of the child.[55] If the UAC has received protection on a more individual basis, it has been considered that the family has had a compelling reason for sending the child, considerably enhancing the possibility of a positive FRU decision.

Compelling reason is not a requirement for FRU according to the AA nor does the Government refer to its application in the preparatory works to legislation on FRU. However, the broad application of the Section 36 (2) of the AA in relation to FRU has significantly restricted the fundamental right of these children to live with their family.

Since the precedent in 2009, SAC has not granted leave to appeal in a number of cases in which the circumstances of the cases differed from that of the 2009 ruling, since the children were older and had received international protection status in Finland.

On 22 September 2020, SAC granted leave to appeal and issued a precedent setting decision concerning "compelling reasons" and Section 36 (2) of the AA in the case of an UAC that had received international protection in Finland. SAC did not annul the negative decision made by MIGRI and the Administrative Court and as such, upheld the reasoning on compelling grounds.

> **Case example: KHO:2020:98, 22 September 2020, ECLI:FI:KHO:2020:98** The reference person had arrived to Finland as a minor and had been granted subsidiary protection. According to the decision of subsidiary protection, then security situation in Anbar province was not such that it would cause danger to anyone residing in the area. In that decision it had been stated that the child was a minor girl whose parents lived in Bagdad and she did not have an adult who could take care of her or any other safety net in her home area, Anbar province. According to the decision these personal circumstances made her especially vulnerable to become a victim of arbitrary violence in her home area, taking into account the security situation there. SAC held that the reasons she had received subsidiary protection, were not such reasons that could justify sending her away from her parents in Baghdad or in Turkey. Taking into account the reasons for subsidiary protection, SAC held that there was no compelling reason having to do with the child's life or health, to send her away from her parents to apply international protection in Finland. Taking also into account other circumstances, SAC held that there was enough certainty to conclude that the intention of the parents had been to send the appellant to Finland, to later apply residence permits for themselves. MIGRI had been able to consider that the parents of the appellant had intended to evade provisions on entering the county in the way meant in Section 36 (2) of the AA. SAC held that there was no fixed family life, and dismissing the request for residence permits did not mean violating the protection of family life contrary to ECHR.

[55] In September 2020, SAC confirmed in a precendent that the interpretation on the lack of compelling reasons can be used also in FRU of UACs who have been granted subsidiary protection. Korkein Hallinto Oikeus Appl. No. 2020:98, 22 September 2020.

Voting 6-1. The dissenting judge would have annulled the decisions of MIGRI and administrative court. He held that taking into account the subsidiary protection status, MIGRI can not have argued that the appellant has left her home country or country of residence without a compelling reason. He also took into account the especially vulnerable position of the unaccompanied minor. Referring to ECtHR judgement in Mayeka and Mitunga vs. Belgium para 84-85, he stated that the right if a minor to protection of family life and FRU must not depend on her parents' behaviour.

The SAC precedent demonstrates the differential treatment of children with refugee status and those granted subsidiary protection. In cases where the reference person has refugee status, it is usually not possible to argue that there were no compelling reasons for the child's departure and apply Section 36 (2) of the AA. However, as described above in chapter 8.2.2., in the beginning of 2018, MIGRI issued three negative decisions in cases concerning UACs who were granted refugee status in Finland:

Case example: Decision of Helsinki Administrative Court, 17 January 2019, dnr 00846/18/3101; Decision of Helsinki Administrative Court 12 September 2018, dnr 00583/18/3101; Decision of Administrative Court of Eastern Finland, 14 January 2019, dnr 00746/18/3101. In these cases the reference persons were UACs, Syrian nationals who had been transferred to Finland from Greece and who had been granted a refugee status in Finland. The applicants were their custodians and, in some cases also siblings. MIGRI considered that since the minor acting as a reference person had been separated from his family in Turkey, there were no compelling reasons for the separation of the reference persons and the applicants and therefore the family life had been broken voluntarily. MIGRI also considered that the applicants (parents and siblings) were trying to evade the provisions on entering the country. The Administrative Courts annulled two of the decisions issued by MIGRI, holding that there were compelling reasons for the separation of the reference persons and the applicants in their circumstances, even though the reference persons had lived temporarily in Turkey, since they had been in Turkey escaping the war before leaving to Europe.

In one of the cases, the mother of the reference person had died after the decision of MIGRI. The remaining applicants were the brothers of the reference person (a twin brother who had turned 18 after the decision of MIGRI and a little brother who was still a minor). According to Administrative Court, the circumstances of the family had significantly changed. The Court noted that the reference person and his twin brother had turned 18 and the reference person had lived independently in Greece before arriving to Finland. The Court stated that taking into account the changes in the family unit and the reference person's and the applicants' ages, their meaning can not be considered to be the continuation of earlier family life, and dismissed the appeal. SAC did not grant leave to appeal.

Even the youngest UACs have not always received their families to Finland. In 2013, only one out of 156 applicants received a positive decision to their FRU application in cases where the reference person was an UAC. According to the experience of FRAC, the reason for such a high number of negative decisions was especially the fact that the reference persons rarely had refugee status and therefore, in the decision it was considered that there were no *compelling reasons* for the child to leave the home country and thus, the parents' intention is only to evade the provisions on entering Finland as meant by Section 36 (2) of the AA. Similarly, the requirement of the reference person to be a minor and the fact that many had turned 18 before the decision of MIGRI have been a reason for some of the negative decisions.

FRAC recognises that compared to the situation in 2013, the possibility of an UAC to have an successful FRU application has improved. This is also due to the fact that in recent years, more UACs have been granted refugee status; 45 %, in 2019 compared to 1,5 % in 2011.[56] The prospects of FRU for UACs are not as grim as in 2013 or 2014 but still, only half of the children who have been granted international protection are reunited with their families in Finland.[57]

10. CONCLUSIONS AND RECOMMENDATIONS

FRU is an important form of legal, safe and regulated pathway for those in need of protection as the European Commission has also stated in its communication on the New Pact on Migration and Asylum.[58] Safe and legal channels remove the incentive to embark on dangerous journeys to reach Europe and legal migration while protecting the most vulnerable. The system needs to be geared to reflect the needs of children at every stage and to promote swift FRU which ultimately serves also in the best interest of the whole Finnish society.

The importance of supported and well-managed access to family reunion is further highlighted in the 2019 "UNHCR Recommendations to Finland on strengthening refugee protection in Finland, Europe and globally",[59] in which family reunification is said to clearly enable many women and children to safely access protection. Family reunion is also a strong element in support of successful integration strategies and programs as well as an important factor in reducing mental health issues among refugees. In the recommendations, UNHCR expressed concerns about the introduced restrictions to FRU in Finland and particularly that Finland's current legislation practically excludes beneficiaries of subsidiary protection from family reunification by conditioning it to strict income requirements from day one. In the said recommendations, UNHCR thus recommends Finland to provide equal access to family reunification for refugees and beneficiaries of subsidiary protection and revise resource requirements.

In the past ten years, an increasingly restrictive legal and policy framework on FRU combined with a strict implementation and practice upheld by the Finnish Courts, have led to a situation where, in FRAC's view, the fundamental right to family life and reunification of refugees and beneficiaries of subsidiary protection has not been respected in a number of instances. The fundamental right to family life has been limited with concepts that can not be found in the law or in the preparatory works, such as the lack of *compelling reasons* or the requirement of *individual facts and circumstances that concretely affect* the child's best interest.

In FRAC's view, MIGRI, the Administrative Courts and the SAC have interpreted the law restrictively, limiting the right to family life. By requiring compelling reasons for the separation of the family members and the fulfilment of a strict income requirement, the special circumstances and humanitarian needs of beneficiaries of international protection and their family members have not

[56] Of the decisions made to asylum application of UACs in 2009-2019, the percentage of decisions granting asylum and refugee status has been the following: 2009: 0,4 %, 2010: 2 %, 2011: 1,5 %, 2012: 9 %, 2013: 8 %, 2014: 12,5 %, 2015: 28 %, 2016: 13 %, 2017: 17 %, 2018: 33 %, 2019: 45 %. statistics obtained from MIGRI

[57] NDO (No. 1).

[58] European Commission, Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 23 September 2020, COM(2020) 609 final.

[59] UNHCR, Recommendations to Finland on strengthening refugee protection in Finland, Europe and globally, March 2019, accessible at: https://www.unhcr.org/neu/wp-content/uploads/sites/15/2019/03/UNHCR-Recommendations-to-Finland-2019.pdf.

been taken sufficiently into account. Further, FRAC finds that the best interest of the child has not been given primary consideration and the rights of the child have not been met adequately.
In FRAC's view, certain legislative amendments and policy changes are necessary and urgent to ensure a human rights sensitive interpretation of the legal framework on FRU in Finland. To this end, FRAC has five key recommendations:

1. **The income requirement should be abolished**. The income requirement should be abolished for all beneficiaries of international protection, because it restricts FRU and the right to family life, especially for those who are in highly vulnerable situations. As the time-limit of three months is unreasonably short and applied in a strict manner, it should, as a minimum, be extended to six months. This six-month time limit should apply to all beneficiaries of international protection, including refugees and beneficiaries of subsidiary protection. This recommendation is in line with the European Commission's recommendation on the application of the EU FRU Directive 2003/86/EC.[60]

2. **The application and interpretation of Section 36 (2) of the Aliens Act should be clearly defined**. The broad scope and general nature of Section 36 (2) according to which the residence permit may be refused if it is considered that the applicant is trying to evade the provisions on entry into the country leaves the authorities with broad discretion. This has resulted in an interpretation that, without a clear legal basis, restricts legal certainty and FRU of beneficiaries of international protection. The application and interpretation of Section 36 (2) of the Aliens Act to UACs as well as FRU in general need to be specified and clearly defined in law. A provision that limits or prevents the fundamental right to enjoy family life should always be clearly and consicely defined in law.

3. **The principle of the best interest of the child must be a primary consideration in cases involving children (a reference person or an applicant).** The best interests of the child should be assessed individually for each child and analysed in a detailed manner in the decisions. Due regard for the principle of best interests of the child further necessitates an assessment as to the short- and long-term impact of the decision on the child´s well-being and development in line with the Convention on the Rights of the Child.

4. **The vulnerabilities and other actual circumstances of the family members of beneficiaries of international protection must be taken into account throughout the application process.** The applicants should neither be required to submit documents they cannot obtain nor should the lodging of an application for FRU depend on the applicant's possibility to legalise his / her residence in the country where the Finnish mission is located. The need to specify Section 60 of the AA and the application of the requirement of legal residence to family members of beneficiaries of international protection should be evaluated. Also the application fees in these cases should be abolished or considerably lowered. Considering the relatively sparse network of Finnish Embassies, the applicants should, for example, always be allowed to visit the nearest Finnish Embassy or the sponsor can be granted the option to apply on behalf of their family and waive the requirement for family members

[60] *"The Commission considers that the humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees, and encourages MSs to adopt rules that grant similar rights to refugees and beneficiaries of temporary or subsidiary protection. The convergence of both protection statuses is also confirmed in the recast Qualification Directive 2011/95/EU as part of the 'EU Asylum Package'"*, European Commission, Communication from the Commission to the European Parliament and the Council on Guidance for Application of Directive 2003/86/EC on the Right to FRU, 3 April 2014, COM/2014/0210 final, Art. 6(2).

outside Europe to confirm the application in an embassy. States should also make greater use of the provisions on bilateral arrangements in the EU Visa Code Regulation to enable family members outside of Europe to apply for and collect visas at the embassy of another EU State if the country to which they intend to travel has no consular representation where the family members live.

5. **A human rights-sensitive interpretation of the law from the beginning of the process is needed**. When the case concerns a fundamental right, such as the child's right to family life, even if the decision is corrected after appeal, the consequences of a delay in FRU can have a significant impact on the child's development and on the integration of all family members. For consistency and equal treatment of all persons of concern, the role of jurisprudence, especially precedent-setting decisions of the Supreme Administrative Court, is evident.