[Translation]

Guidance notes

Ministry of Immigration and Integration

Guidance notes on section 16(7) of the Executive Order on Visas

1. Introduction

These guidance notes describe the possibilities of granting a visa based on a specific assessment in pursuance of the provision in section 16(7) of the Danish Executive Order on Visas (*visumbekendtgørelsen*), according to which a visa may be granted, irrespective of the provisions set out in subsections (3)-(5), to an applicant who was born and raised in Denmark, or came to Denmark as a young child, and who falls within main group 5 in Annex 2 if the applicant's time-limited re-entry ban has expired, see section 32(5)(1) of the Aliens Act, and if the applicant's right to respect for his or her private life in pursuance of Denmark's international obligations will be violated if a visa is not issued.

The provision was inserted in connection with the amendment to the Executive Order on Visas effective as from 1 January 2025 as a consequence of the judgment delivered by the European Court of Human Rights in *Sharafane v. Denmark* (application No. 5199/23).[1]

1.2. Sharafane v. Denmark (application No. 5199/23)

The case concerned the expulsion of an Iraqi national, who was born and raised in Denmark. The alien was sentenced to imprisonment for a term of two years and six months, expelled from Denmark and banned from re-entry for six years for drug-related offences. The alien had no prior convictions, nor had he started a family of his own.

The European Court of Human Rights found that Denmark had violated the alien's right to respect for his private life, see Article 8 of the European Convention on Human Rights (hereinafter 'the ECHR').

In its judgment, the European Court of Human Rights considered the significance of whether aliens have a real prospect of being allowed to return after the expiry of a time-limited re-entry ban imposed under section 32(5)(1) of the Danish Aliens Act (*udlændingeloven*) in connection with an expulsion order.[2] The European Court of Human Rights found that, in the judgment delivered by the domestic court, the

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[1] https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22sharafane%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-237958%22]}

[2] *Sharafane v. Denmark*, para. 70.

[6] Published in Danish on this date. English translation published on 10 October 2025.

limitation on the duration of the re-entry ban appears to have been a 'decisive' factor in the proportionality test made in cases where the domestic courts have reduced the duration of the re-entry ban in pursuance of section 32(5)(1) of the Aliens Act.[3] Where the limitation on the duration of the re-entry ban was decisive, the alien's prospects of returning after the expiry of the re-entry ban must be taken into account in the assessment of whether the re-entry ban is compatible with Article 8 of the ECHR. According to the judgment delivered by the European Court of Human Rights, the said assessment must be based on the current rules and the actual facts of the relevant case.

The European Court of Human Rights found that, for an alien who falls within main group 5 for visa purposes and who has no spouse or partner, the prospects of re-entering Denmark after the expiry of the re-entry ban are purely theoretical, see paras 65 and 66. It is the opinion of the Ministry of Immigration and Integration that the same applies to aliens who have no (minor) children living in Denmark or a family life protected under the Convention.

Sharafane v. Denmark, paras 65-68:
65. It is unclear why, among the 18,811 foreigners expelled from Denmark with a time-limited re-entry ban, so few have applied to be readmitted on the basis of a residence permit in the last five years. The figures seem to indicate, however, that **for a person who has a spouse or a partner, the prospect of re-entering Denmark on the grounds of family reunification does not remain purely theoretical**.

66. For an Iraqi national **without a partner, such as the applicant, the situation is quite different**. As there is no indication that he would be eligible for a residence permit on other grounds, for example work or education, his only option is to apply for a visa to re-enter Denmark for a visit.

67. The Court notes that by virtue of the Danish legislation on visa requirements for entering the country (see, notably, Executive Order no. 1454 of 25 November 2022 – *Bekendtgørelse om udlændinges adgang til Danmark på grundlag af visum* (see paragraph 21 above) and the Visa Code (see paragraph 32 above)), the requirements for obtaining a visa depend on the citizenship of the person applying (see paragraphs 20-32 above).

68. A person from a country designated as belonging to visa group 5 – that is, a national of Afghanistan, Eritrea, Iraq, Pakistan, Russia, Somalia or Syria (see paragraph 25 above) – generally only qualifies for a visa to enter Denmark if there are "extraordinary circumstances", such as the death or terminal illness of a family member living in Denmark. A visa will be refused if the person poses a risk to public order and security. The Court notes that the "extraordinary circumstances" mentioned in the rules are the same as those where a visa can exceptionally be granted to a person with a re-entry ban that has not expired. In *Savran*, cited above § 200, the Court found that such a limited

[3] *Sharafane v. Denmark*, para. 57.

basis for issuing a visitor's visa meant that **the possibility of the applicant re-entering Denmark even for a short period remained purely theoretical**.
(emphasis added by the Ministry)

It is observed that, in case No. 72/2024,[4] which concerned a Somali national, the Supreme Court (*Højesteret*) took into account the offender's prospects of re-entering Denmark after the expiry of the re-entry ban. The Supreme Court said, *inter alia*, that it appears from a new provision in the Executive Order on Visas that a visa may be granted to an applicant who was born and raised in Denmark, or came to Denmark as a young child, and who falls within main group 5 if the applicant's time-limited re-entry ban has expired, see section 32(5)(1) of the Aliens Act, and if the applicant's right to respect for his or her private life in pursuance of Denmark's international obligations will be violated if a visa is not issued. The Supreme Court found that the relevant provision clarifies that the visa rules must be applied in accordance with Article 8 of the European Convention on Human Rights, meaning that a time-limited re-entry ban issued to an alien who was born and raised in Denmark, or came to Denmark as a young child, and who falls within main group 5 of the visa rules must not effectively have the same consequences as a permanent re-entry ban. On that basis, the Supreme Court found that the alien's prospects of being issued with a visa for Denmark after the expiry of a six-year re-entry ban could not be considered purely theoretical. Accordingly, it would not be disproportionate and thus not contrary to Article 8 of the European Convention on Human Rights to expel the alien and issue him with a time-limited re-entry ban.

2. Conditions for being granted a visa under section 16(7) of the Executive Order on Visas

For a Schengen visa to be granted in accordance with section 16(7) of the Executive Order on Visas, the general conditions for granting a visa must be met. Further, a number of additional conditions must be met. The conditions are described individually below. It is observed that the conditions are cumulative and that all conditions must therefore be met for a Schengen visa to be granted in accordance with section 16(7) of the Executive Order on Visas.

Theses guidance notes do not provide a full review of the possibilities of being granted a Schengen visa in accordance with section 16(7) of the Executive Order on Visas, for which reason a specific and individual assessment comprising all circumstances of each case must always be made.

As usual, it is the overriding rule that an applicant must provide the required documentation to prove that he or she meets the conditions for being granted a visa, including that the relevant applicant meets the conditions mentioned in section 16(7) of the Executive Order on Visas in cases where the applicant falls within main

[4] https://www.domstol.dk/hoejesteret/aktuelt/2025/3/udvisning-efter-narkotikakriminalitet/

group 5 and has previously been issued with a time-limited re-entry ban of a reduced duration in pursuance of section 32(5)(1) of the Aliens Act. It is observed in that respect that it does not appear from the systems of the visa-issuing authorities whether an applicant has previously been issued with a time-limited re-entry ban, and it is therefore not possible for the visa-issuing authorities to learn of such circumstance on their own accord.

2.1. The applicant must have been born and raised in Denmark or have come to Denmark as a young child

An applicant must have been born and raised in Denmark or have come to Denmark as a young child before the time when the applicant was expelled from Denmark by judgment and issued with a time-limited re-entry ban. In other words, the applicant must have been what is referred to as a 'settled migrant' in Denmark at the time of expulsion.

The concept of a 'settled migrant' was devised by the European Court of Human Rights in connection with the so-called 'Maslov criteria' set out by the European Court of Human Rights in the Grand Chamber judgment delivered in *Maslov v. Austria* (application No. 1638/03).[5]

> *Maslov v. Austria*, para. 75: 'In short, the Court considers that for a settled migrant who has **lawfully spent all or the major part of his or her childhood and youth in the host country** very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.' (emphasis added by the Ministry)

Most likely, it will appear from the applicant's final expulsion order whether he or she was born and raised in Denmark or came to Denmark as a young child because that element is taken into account by the Danish courts when assessing whether aliens can be expelled and issued with a re-entry ban.

Examples of cases with 'settled migrants' in the case-law of the European Court of Human Rights can be found on the 'Knowledge Sharing platform (ECHR-KS)' of the Court: https://ks.echr.coe.int/. See, *inter alia*, 'Immigration' in the 'Transversal Themes' menu.

Further, the knowledge database of the Prosecution Service (Anklagemyndigheden) includes case-law in the form of judgments delivered and decisions made by the European Court of Human Rights concerning expulsion (in Danish only): https://vidensbasen.anklagemyndigheden.dk/api/portals(6e302527-f0b3-4a5e-

[5] https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22maslov%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-87156%22]}

889a-668aa67e5491)/Print/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/bd80a67e-aada-4f2b-88cd-bb20d024a727.

2.2. The applicant must fall within main group 5 in Annex 2 of the Executive Order on Visas

When a decision on a Schengen visa application is made, the applicant must be a national of one of the countries comprised in main group 5 in Annex 2 of the Executive Order on Visas. Accordingly, the decisive factor is the time of the decision on a Schengen visa application, for which reason the applicant cannot rely on having fallen within main group 5 at an earlier point in time, such as on the day when the expulsion order was imposed or in the period when the applicant's time-limited re-entry ban was in effect.

> *For example:*
> An alien is expelled from Denmark and banned from re-entry for six years. On the day when the expulsion order is imposed, the alien is a national of a country falling within main group 5 in Annex 2 of the Executive Order on Visas. During the period when the re-entry ban is in effect, Annex 2 of the Executive Order on Visas is amended to the effect that the alien's country of nationality becomes part of main group 4. After the expiry of the alien's time-limited re-entry ban, the alien applies for a Schengen visa for Denmark claiming to fall within section 16(7) of the Executive Order on Visas. For the very reason that the alien does not fall within main group 5, the alien cannot be granted a Schengen visa under section 16(7) of the Executive Order on Visas.

It is observed, however, that an assessment of Denmark's international obligations must be made in all cases where such assessment is relevant, such as where the applicant's country has been transferred to another main group after the expulsion order was imposed. For further details, see paragraph 3.

2.3. The applicant's time-limited re-entry ban, see section 32(5)(1) of the Aliens Act, must have expired

The provision in section 16(7) of the Executive Order on Visas can only be applied where the duration of the applicant's re-entry ban was reduced in pursuance of section 32(5)(1) of the Aliens Act and where the re-entry ban has expired.

This means that it is a requirement that the applicant has had a re-entry ban whose duration was reduced in pursuance of section 32(5)(1) of the Aliens Act. It follows from the said provision that a re-entry ban of a shorter duration can be imposed where the alien is expelled under section 22, section 23 or section 24 of the Act, and the imposition of a re-entry ban of the duration mentioned in section 32(4) will entail that expulsion would for certain be contrary to Denmark's international obligations.

It also means that the re-entry ban must have expired.

The duration of the applicant's re-entry ban will appear from the final expulsion order, from which it will also appear whether the provision in section 32(5)(1) of the Aliens Act was applied when the duration of the time-limited re-entry ban was determined.

2.4. The applicant's right to respect for his or her private life

An applicant can only be granted a visa in accordance with section 16(7) of the Executive Order on Visas if the applicant's *right to respect for his or her private life* in pursuance of Denmark's international obligations would be violated if a visa is not issued.

Accordingly, the applicant's right to respect for his or her family life under Article 8 of the ECHR is not relevant in connection with assessments under section 16(7) of the Executive Order on Visas. It is observed, however, that an assessment of Denmark's international obligations must be made in all cases where such assessment is relevant.

The case-law of the European Court of Human Rights comprises no cases in which the Court has decided whether it would be contrary to an applicant's right to respect for his or her private life, see Article 8 of the ECHR, to deny the applicant a Schengen visa. An assessment of whether the applicant's right to respect for his or her private life under Article 8 of the ECHR would be violated if a Schengen visa is not granted to the applicant must be made in light of the case-law of the European Court of Human Rights from cases concerning expulsion combined with a time-limited re-entry ban.

When assessing whether it would amount to a violation of an applicant's right to respect for his or her private life to deny the applicant a Schengen visa, it may be taken into account whether, in its assessment of the issue of expulsion and a re-entry ban, the Danish court took into account the applicant's prospects of being issued with a visa to re-enter Denmark after the expiry of the re-entry ban. This includes in particular cases where, referring to section 16(7) of the Executive Order on Visas, the Danish court has taken into account that applicants' prospects of obtaining a visa for Denmark after the expiry of the re-entry ban cannot be considered (purely) theoretical and has, on that basis, imposed a time-limited re-entry ban whose duration has been reduced in pursuance of section 32(5)(1) of the Aliens Act.

3. *Further details on the processing of applications from applicants who no longer fall within main group 5 at the time of the decision on the visa application*

As mentioned in paragraph 2.2, it is a decisive factor when determining whether an applicant falls within section 16(7) of the Executive Order on Visas that the applicant

falls within main group 5 at the time of the decision on the visa application.

Also, an assessment of Denmark's international obligations must be made *in all cases where such assessment is relevant*, such as where the applicant's country has been transferred to another main group after the expulsion order was imposed.

The European Court of Human Rights has not yet delivered judgments in cases concerning aliens who fell within main group 4 at the time of expulsion. When considering cases concerning applicants who fell within main group 5 at the time of expulsion but who fall within main group 4 at the time of the decision on their visa applications, it will therefore always be relevant to consider whether Denmark's international obligations (the relevant applicant's right to respect for his or her private life, see Article 8 of the ECHR) suggest that the applicant should be issued with a visa.

On 12 November 2024, the European Court of Human Rights delivered its judgment in a case where the alien, a Turkish national, fell within main group 3. In *Savuran v. Denmark* (application No. 3645/23), which concerned an alien from Turkey (main group 3) who had not yet started a family of his own, the domestic courts had reduced the duration of the re-entry ban in pursuance of section 32(5)(1) of the Aliens Act and had given the alien a six-year re-entry ban instead of a permanent one. The European Court of Human Rights found no basis for setting aside the expulsion order. The European Court of Human Rights therefore found no basis for setting aside the domestic courts' decision to impose an expulsion order.

Accordingly, in connection with the processing of cases concerning an applicant who fell within main group 5 at the time of expulsion but who falls within main group 3 at the time of the decision on the visa application, the case-law of the Court indicates that an applicant with no family life of his or her own who falls within main group 3 cannot be considered to have a merely theoretical prospect of being allowed to re-enter Denmark.

However, it would always still be relevant to consider whether Denmark's international obligations (the applicant's right to respect for his or her private life, see Article 8 of the ECHR) suggest that the applicant must be issued with a visa.