

The Immigration Appeals Board

Rules of procedure regarding assessment of the interests of a child who applies for international protection

PROCEDURAL ISSUES

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Assessment of the interests of the child

Children have an independent right to international protection.

In order for a child having a right to international protection, the child must have a grounded fear of becoming a victim of persecution for the reasons as stipulated in Article 37, para 1, of the Act on Foreigners or face the risk of becoming victims of treatment as described in the Act's Article 37, para 2. Applications by children for international protection are assessed on grounds of child-friendly views, aimed at determining the reasons for fleeing from the viewpoint of the child; cf. the guidelines of 2009 by the UN Refugee Agency. Additionally, when processing children's applications, the interests of the child shall prevail as provided for by the UN Convention on the rights of the child.

The interests of the child, as well as other circumstances and on grounds of total assessment, may affect the determination of whether the applicant has the right to international protection or whether there exist grounds for granting a residence permit for humanitarian reasons.

However, it is a special factor in connection with a residence permit on humanitarian grounds that the interests of a child may constitute a final impact on whether a child, and thereby its immediate family, receives a residence permit in Iceland.

Deliberation by the Immigration Appeals Board about the interests of a child

The decisions by the Immigration Appeals Board contain the principal views upon which an assessment on the interests of the child is based.

The following factors must be taken into account when assessing the interests of a child:

- Was the child given an opportunity to express itself and were its opinions taken into account in conformity with the child's age and development? (Article. 25, para 3, and Article 28, para 5).
 - Was the child interviewed or given an opportunity to express itself in a different manner?
 - If not, was this explained in the decision by the Directorate of Immigration or may it be determined from the data of the case why this was not done?
 - Are the explanations or the information satisfactory?
 - Does the decision state how the interests of the child prevailed?

- Did the individual who interviewed the child possess special knowledge about children's issues?
 - If the child was not interviewed were the child's circumstances sufficiently explained in other documents (report by the spokesperson, a transcript of an interview with the parents, reports by the Child Protection Authority, etc.)
 - Are there grounds for the Immigration Appeals Board to invite the child to be interviewed?
- Has consideration been shown to the child's safety, welfare and social development if it were to return to its home country?
 - Does the child have the support by its family (core family or immediate family)?
 - Are the circumstances of the family of such nature that gives grounds for doubting the family's competence to care for and support the child (illness, violence, destitution, etc.)?
 - Has the child been subject to violence or harassment by individuals outside of the family (measures in the home country if this is the case)?
 - Is the child subject to discrimination in its home country?
 - Does the child have access to education? In the instance of a child living in poverty, is financial support available, for example, in the form of free-of-charge schooling and educational materials)?
 - Have the child's circumstances in its home country had a negative impact on the child's mental and physical health? Is the child in need of special service and is such service available to the child in its home- / host country?
 - Is there a social support system in the home- / host country that may provide support for the child and its parents (for example, municipal social service, NGOs (non-governmental organizations) or an extensive family)? Is there a risk of the family being separated if sent back?
- Additional, in the instance of unescorted children:
 - Are there relatives, custodians or satisfactory receiving circumstances for the child in its home country?
 - Has consideration been shown to a child's possibility for joining its family?
 - If this possibility does not exist, what awaits the child in its home country? Is the child guaranteed service, for example, by the child protection service?
 - Does the child need healthcare or service because of disability? Is such a service guaranteed in the home country if the child goes into the care of the child protection service?
 - Is the child subject to discrimination in its home country?
 - Have opinions been sought from the Government Agency for Child Protection? How has this affected the assessment by the Immigration Appeals Board?

How to clarify an assessment in a decision?

The prerequisites of a decision by the Immigration Appeals Board are clarified on grounds of the principal criteria that prevailed when assessing the interests of the child. This must state that consideration was shown to the aforementioned factors as applicable. The prerequisites must state the following as a minimum:

- How did the child's opinions materialize during the procedure of the case? Consideration shall be shown for the child's opinions in conformity with its age and development.
- How is the child's access to education and other necessary service? If the child needs special measures (for example, specialized healthcare or service because of illness or disability) the clarifications must address whether the child has access to the aforementioned.

- Description of the support the child receives from the family or other custodians, including the situation of the child's maintenance.
- In the instance of a destitute family, the report must state whether there exists a public social system that may provide support for the family, or other support, for example, an extended family, housing or other measures.

The conclusion of the Immigration Appeals Board about the interests of the child and how these affected the board reaching a conclusion is based on a total assessment of all circumstances of the parties to the case.

Reservation

These rules of procedure are prepared as guidelines for the work processes of the Immigration Appeals Board. They neither create rights nor duties for the applicants or the authorities.