

THE IMMIGRATION APPEALS BOARD

Criteria regarding suspension of legal effects of the decisions by the Immigration Appeals Board in cases of international protection

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1 Introduction

The purpose of this document is to describe the criteria which the Immigration Appeals Board uses when entering into decisions on whether there is a reason to suspend legal effects of its decisions on grounds of Article 104, para 6, of the Act on Foreigners no. 80/2016. The document neither creates a right nor duty for the parties or the Immigration Appeals Board.

2 Legal grounds

According to Article 60, item 2, of the Constitution of Iceland no. 33/1944 “...no one [...] can temporarily evade obeying an order from the authorities by submitting the matter for a judicial decision “. This provision contains the principal rule of the Icelandic judiciary that appealing a matter to court does not suspend the legal effects of final decisions by the authorities.

This principal rule is reiterated in Article 104, para 6, item 1, of the Act on Foreigners, which stipulates that initiating litigation before a court of law for invalidation of a final decision at the administrative level that a foreign national shall leave the country does not suspend its enforcement.

Upon demand by a foreign national, the Immigration Appeals Board may decide to suspend, the legal effects of a final decision if it is deemed that there exists a reason to do so, cf. Article 104, para 6, item 2 of the Act on Foreigners. A demand for suspension of legal effects must be submitted not later than 7 days after a decision is made known to the foreign national in question. If the legal effects of the enforcement of a decision are suspended such a decision is subject to the condition that a foreign national brings the matter to court inside of 5 days from the time the decision on the suspension of legal effects was made known to him and requests accelerated procedure of the case. If a request for accelerated procedure in court is denied, a legal action shall be filed within 7 days from the date of such denial. A request cf. Article 104, para 6, item 2, regards the suspension of the legal effects with a certain purpose, i.e., that a foreign national is allowed to remain in the country until the courts have addressed the lawfulness of the decision by the Immigration Appeals Board.

3 Criteria

The conclusion on whether there is a reason to suspend legal effects of a decision by the Immigration Appeals Board is determined by a comprehensive assessment of the parties’ interests of the decision’s legal effects being postponed and on views that oppose such a suspension. The views taken into consideration regarding such an assessment include the following:

- whether enforcement of the decision causes the parties irreversible harm,
- whether enforcement entails considerable obstacles in the parties’ access to court,
- whether reasons that may be of importance to the case have significantly changed, and

- whether there is a need for special caution, among other things, with respect to the interests of children.

The Immigration Appeals Board also takes into consideration the role of the authorities to ensure efficient implementation of the Act on Foreigners. It is pointed out in this respect that the Immigration Appeals Board is an independent administrative body which reviews all the factors of the decisions by the Directorate of Immigration. An appeal to it is considered to be an effective remedy in conformity with international obligations of the Icelandic state, cf. for example, Article 13, of the European Convention on Human Rights.

The Immigration Appeals Board has furthermore deemed it as being important for a decision if there is not consensus among the board members regarding the conclusion of the decision in question.

The Immigration Appeals Board has taken into account that the authorization for suspension of legal effects of the board's decisions is an exception from the principal rule which is only intended to apply to instances where there is a reason to suspend enforcement. The legal effects of a decision will therefore not be suspended for the sole reason that the decision will be brought to court; instead there must exist certain reasons in a case for the Immigration Appeals Board accepting such a request.

4 Conclusion of a request for suspension of legal effects

Since suspension of legal effects is an exception from the principal rule on the effects of appeal to a court of law, the board frequently rejects such a request. Requests on the postponement of the legal effects sometimes contain new information that requires a revision of the decision by the Immigration Appeals Board to the effect that the foreign national shall leave the country. In such instances the Immigration Appeals Board has advised the parties to submit a request for reopening or the board reopens a case at its own initiative.

5 Examples of decisions where postponement of the legal effects has been accepted

- Decision in cases nos. KNU19120037 and KNU19120038 dated 10 January 2020. The conclusion on whether a case should be reviewed on its merits in Iceland was determined by a majority of two board members. The parties were parents with a young child, and a focus was also on the interests of the child.
- Decisions in cases nos. KNU18120003 and KNU18120004 dated 13 December 2018. The conclusion about whether international protection should be granted was determined by a majority of two board members.
- Decision in case no. KNU18030022 dated 5 April 2018. The parties had stayed in Iceland for about 4 years during which time they had two children. This long period of stay by the parties and the births of their children in Iceland were deemed to weigh heavily when their interests from staying on in Iceland while waiting for the conclusion of the court were weighted against the interests relating to the effectiveness of the enforcement of the Act on Foreigners and the role of the authorities in this respect.
- Decision in case no. KNU18080029 dated 26 September 2018. The board concluded that the mental health of the applicant and the circumstances in his home country could cause him difficulty in engaging in such interaction with his lawyer that was deemed as necessary to effectively proceed with his court case in Iceland.
- Decision in case no. KNU181000039 dated 8 November 2018. The board concluded that in light of a comprehensive assessment of the applicant's circumstances in the host country, i.e. his

support needs due to his physical disability, it would be difficult for him to engage in such interaction with his lawyer that was deemed as necessary to effectively proceed with his court case in Iceland.

- Decision in case no. KNU15050013 dated 9 July 2015. The applicant, a child, was undergoing active therapy in Iceland and in the opinion of his physician consistency in the treatment was an important prerequisite for his recovery. The Immigration Appeals Board considered that a disruption of this treatment and transportation to the home country could cause him harm that would not easily be rectified.