



GMS Flash Alert

Immigration Edition

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Sweden - Court Clarifies Income Requirement for Permanent Residence Permit Applicants

In December 2023, the Swedish Migration Court of Appeal¹ (*Migrationsöverdomstolen*) redefined the “certain duration” requirement for employment-based income for permanent residence permit applications. Under the new interpretation, an applicant’s income may be considered to have a certain duration if he or she is employed for at least a year or if there is a likelihood, based on employment history, that the employment will be renewed beyond a year.

This represents a notable change from the previous stance of the Migration Agency (*Migrationsverket*), which insisted that an individual should have an employment lasting at least 18 months to meet the “certain duration” criterion.

WHY THIS MATTERS

The decision is particularly favourable for individuals with consistently renewed, albeit shorter, employments – ensuring legal predictability and consistency. This new case law could be instrumental for ongoing appeals challenging permanent residency rejections while granting temporary residence permits.

Background

In 2021, an amendment to the Aliens Act (*Utlänningslagen*) introduced a requirement for the permanent residence permit, linking it to applicants’ ability to support themselves. The preparatory work stated that this requirement is fulfilled only when the income has a “certain duration” and the absence of relevant case law led to the Migration Agency interpreting this duration as either permanent or lasting at least 18 months from the decision date. The recent judgement from the Migration Court of Appeal now provides clarity on the required length of employment for permanent residence permits.

Case Tried by Swedish Migration Court of Appeal

The case in question involved a doctoral candidate who arrived in Sweden in 2017 through family reunification. Employed since May 2019 with annual temporary contracts, she applied for a permanent residence permit in July 2021. The Migration Agency rejected her application, arguing that the employment did not meet the 18-month-duration requirement. The Migration Court (*Migrationsdomstolen*) overturned the decision, considering the consistent renewals and the university's regulations on employing doctoral students. The Migration Agency appealed to the Migration Court of Appeal.

Court's Decision

The Migration Court of Appeal first established the sufficiency of the applicant's income to support herself. It then addressed the "certain duration" requirement, drawing parallels with case law MIG 2019:12 for temporary residence permits based on family reunification. The court concluded that the same interpretation should be applied to both permanent and temporary residence permits, emphasising the importance of flexibility and individual assessments. In light of the applicant's employment history, and the likelihood of her employment being renewed, the court determined that she has demonstrated continuous financial capability over an extended period. The overall assessment favoured her eligibility for a permanent residence permit.

KPMG INSIGHTS

KPMG in Sweden acknowledges the significance of this judgement in providing much-needed case law-related clarity on the interpretation of the "certain duration" requirement for permanent residency.

KPMG continues to monitor new case law developments concerning the challenges posed by current legislation for permanent residence permits. We have observed issues, for example, regarding accompanying children who although they have had temporary residence permits as family members, such children face hurdles upon turning 18 when they are seen as adults – this can give rise to struggles around obtaining permanent residence permits.

FOOTNOTE:

1 *Migrationsöverdomstolen*, MIG 2023:18. See: https://www.domstol.se/globalassets/filer/domstol/kammarratten_stockholm/ovrigt-innehall/mig-2023-18-002.pdf .

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