**Regularization Report: Finland**

by Finnish Refugee Advice Centre

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4. **Background**

There are no exact figures on the number of undocumented migrants currently in Finland. However, it has been estimated that majority of them came to Finland as asylum seekers during the years 2015-16 or earlier. The quality problems in the Finnish asylum system back then[[1]](#footnote-1) and raising the threshold for examining any subsequent asylum application in 2019 have led to a situation where people have not been granted protection but are still unable to return due to their fear or other reasons.

Earlier it was possible to grant a temporary residence permit according to Alien’s Act section 51 in cases where removal from the country by the police was not possible. However, after the 2015 amendment residence permit according to this section has not been granted in cases where voluntary return is possible. This greatly increased the number of undocumented migrants in Finland.

People have also come to Finland due to other reasons and some have had a residence permit to Finland before becoming undocumented (for example, through unemployment, divorce, expiration of a residence permit). While staying in Finland many of the undocumented persons have established links and ties to Finland, such as family, work, language and degree studies. There are also families with children, all of them undocumented.

Especially those who have fled their home countries may have experienced human trafficking either in their home country, in transit, or in Finland. Years of uncertainty and fear of deportation has led to severe mental health problems to many. As undocumented migrants are usually entitled only to the minimum level of social assistance and health care,[[2]](#footnote-2) they may be exposed to different kinds of abuse and their health problems get worse as time goes by. Without a residence permit and a right to work, they cannot legally work even if they want to.

1. **Regularization programmes and mechanisms in Finland**

There have so far not been any regularization programmes or mechanisms in Finland dedicated to giving pathways to regularization for undocumented migrants. On February 2022 the Ministry of the Interior published two reports: the *Report on the travel document requirement and the issue of alien’s passports*[[3]](#footnote-3) and the *Report on possible national solutions to the situation of people without a right of stay in Finland*. Among other things the latter report shortly examined if "irregular stay could be legalised by enacting a temporary special act*",* but the government has not yet taken any concrete action based on this report – on the contrary, the proposals have been shoot down by many political parties, even some parties represented in the government.

In addition, a citizens’ initiative ”Right to Live” passed the 50 000 signature threshold and was given to the parliament in June 2022[[4]](#footnote-4). It called for a regularization bill for a specific group of undocumented migrants. This initiative will anyway lapse because the bill is not going to be considered during this current electoral term.

1. **Problems within the current legal framework in terms of regularization**

As there are currently no specific mechanisms or programmes for undocumented migrants to regularize their status, their pathway to regularization is through normal procedures, such as residence permit application or asylum application. Problems within the Finnish asylum system will not be considered in this paper.

Even if a person has grounds for a residence permit (such as job offer, family ties, study place), regularization may still be practically impossible for many undocumented migrants. This is mainly due to strict interpretation of certain provisions of the law. Some of these problems within the current legal framework will be explained below.

1. Requirement for a valid national passport

According to Aliens Act (301/2004)[[5]](#footnote-5) section 35, A valid national passport is a requirement for most residence permit types. While there are some exceptions to this rule (such as international protection, compassionate grounds, right to family life in some cases), in practice this means that certain residence permits cannot be granted to a person who has not proven his or her identity by showing a valid national passport to Finnish authorities.

The above mentioned leads to a situation where, as a rule, a somali citzen cannot get a residence permit to Finland for work or studies, because Finnish authorities does accept Somali passport neither consider it as a credible proof of identity.

It should be noted that undocumented migrants with other nationalities have also encountered problems with fulfilling the passport requirement, as it may be impossible for many to apply for or renew a national passport while in Finland. The report by the Ministry of the Interior did underline this matter and there were plans on legal reform, but unfortunately no government proposal was given.

*Case example:* a residence permit for work was not granted to an undocumented migrant of Somalian nationality. The person had been well integrated to Finland – had learned the language, graduated with a professional degree here and had a work contract or job offer in the same field. There were no other grounds for refusal than the absence of a valid passport.

1. Irregular stay considered as a misuse of the system

According to Aliens Act section 36, 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.*

The Finnish Immigration Service has applied the section 36.2 to large and growing number of undocumented migrants who are trying to regularize their stay in Finland by applying a residence permit. In its decisions from recent years the Supreme Administrative Court has approved this interpretation even in cases of family reunification and applicants with Finnish children.[[6]](#footnote-6) It was considered that the individual’s right to family life has to give way as granting a residence permit would have been against the public interest in migration management.

It should be noted that the section 36.2 has been applied to cases where no falseful information has been given and with no past criminal history, only due to an individual’s circumstances related tobeing undocumented in Finland or in other European countries. Also the application history (such as several earlier residence permit or asylum applications with negative decisions) can be taken into account.

According to a recent report by the Finnish Human Rights Centre[[7]](#footnote-7), this kind of argumentation has indeed been widely used against undocumented migrants by the decision maker and by the administrative courts when refusing their residence permit applications. Furthermore, it is stated in the report that the best interest of the child only exceptionally affects the outcome of the decision, according to recent case law.

According to our knowledge, the Finnish Immigration has changed its internal instructions on the application of section 36.2. just recently earlier this year. From now on just the mere fact that a person has stayed as undocumented or received multiple negative decisions, should not be the only grounds for refusing a residence permit application.

1. High threshold for the residence permit on compassionate grounds

Many European countries have included in their legislation a residence permit type which can be granted on compassionate / individual humanitarian grounds. According to Aliens Act section 52, *”Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on a discretionary basis on other humanitarian grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.”*

By definition, this residence permit on compassionate grounds could be applicable to many, especially taking into account the vulnerabilities that were illustrated in the background section of this paper. Also ties to Finland could be taken into account. There is no passport requirement for this residence permit type. However, the threshold set by the Finnish Immigration Service and the administrative courts is currently so high that residence permits based on compassionate grounds are rarely being granted.

*Case example:* A residence permit according to section 52 was not granted to a family whose parents had fled their home country because of fear and have been in Finland for almost a decade. Their children were born in Finland and one of them has already started a Finnish school. They have strong ties (cultural, linguistic and social) to Finland and due to several reasons, the family would also be in a vulnerable position in their home country.

1. Publications of the Government´s analysis, assessment and research activities 2021:10: The combined effects of the amendments to the Aliens Act and the practice of applying the Act with regard to the status of those requesting and receiving international protection. Published 16.2.2021.Available at

   <https://julkaisut.valtioneuvosto.fi/handle/10024/162850> (only abstract in English) and Independent report on the Finnish asylum system ordered by the Interior Ministry. Published 2019. Available at <https://intermin.fi/turvapaikkaselvitys> (Only in Finnish) [↑](#footnote-ref-1)
2. From 1 January 2023 onwards, the wellbeing services counties must provide necessary non-urgent healthcare services for undocumented persons (and persons whose status resembles that of an undocumented person). Press release by the Finnish Government 20.12.2022 <https://valtioneuvosto.fi/en/-/1271139/undocumented-persons-have-the-right-to-receive-necessary-healthcare-services-> [↑](#footnote-ref-2)
3. Report on the travel document requirement and the issue of alien’s passports. Published 10.2.2022. Publications of the Ministry of the Interior 2022:15. Available at <https://julkaisut.valtioneuvosto.fi/handle/10024/163826> (only abstract in English). [↑](#footnote-ref-3)
4. Webpage of the initiative available at <https://lupaelaa.fi/in-english/> (in English). Process information please see webpage of the FInnish parliament <https://www.eduskunta.fi/FI/vaski/KasittelytiedotValtiopaivaasia/Sivut/KAA_6+2022.aspx> (only in Finnish) [↑](#footnote-ref-4)
5. Aliens Act (301/2004). Unofficial translation on the governmental website available at <https://www.finlex.fi/fi/laki/kaannokset/2004/en20040301.pdf> [↑](#footnote-ref-5)
6. The Supreme Administrative Court’s decisions KHO:2020:64 and KHO:2022:69. Available at <https://www.kho.fi/en/index.html> (decisions only in FInnish) [↑](#footnote-ref-6)
7. Human Rights Centre’s publications 2/2023: Report on the case law on circumvention of entry provisions. Published 31.1.2023. Available at

   https://www.ihmisoikeuskeskus.fi/uutiset/miten-maahantulosaannosten-kiertami/ (only abstract in English) [↑](#footnote-ref-7)