



Ad-Hoc Query on Proof o relationship of persons applying for asylum

Requested by CZ EMN NCP on April 5, 2011

Compilation produced on May 27, 2011

esponses from Austria, Belgium, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden (16 in Total)

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1. Background Information

Department for Asylum and Migration Policy is interested in the practice of asylum offices in other Member States regarding to proofs of relationship (marriage in particular) of applicants for international protection and dealing with cases in which the declared relationship is later disproved.





We will very much appreciate receiving your responses by May 5, 2011.

2. Responses

		Wider Dissemination?	<p>1) How do the asylum seekers prove their relationship to the persons with whom they apply for international protection (in particular their maternity/paternity or marriage)? Is it necessary that they submit relevant documents or does an affidavit suffice?</p> <p>2) How does your Member States regard the documents proving relationship of asylum seekers (birth certificates, marriage</p>
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			<p>certificates, certificates of civil status) if the copies are not attested and the documents are submitted without apostille or super-legalization, scanned or faxed? Are the documents accepted without reserve or are they regarded poor evidence?</p> <p>3) Does your Member State recognize, for the purpose of asylum procedure or family reunification of asylum seeker, just the marriage according to the law of the country of origin, or, also the traditional or church wedding not registered with civil authority?</p> <p>4) How does your Member State act in case that the declared relationship proves false (during or after asylum procedure), and in the case that the foreign national enjoying international protection seeks family reunification with another spouse and denies the relationship he/she originally declared? Does your Member State accept the new claim or does it require to be proven by relevant documents? How is then the residence status of the “original”, now disproved spouse affected?</p>
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	<p>1) According article 4 § 5 of council directive 2004/83/EC which have been transposed into national legislation the applicant has the duty to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:</p> <p>(a) the applicant has made a genuine effort to substantiate his application;</p> <p>(b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;</p> <p>(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;</p> <p>(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and</p> <p>(e) the general credibility of the applicant has been established.</p> <p>The same principle is valid regarding sufficient proof of relationship; documents have to be submitted when possible, but there is no absolute condition to submit these documents when there is a satisfactory explanation regarding the lack of these documents or when there is no reason to doubt the relationship. By contrast, documents are no absolute proof (possibility of false documents). Documents are always assessed in the context of the statements of the applicants.</p> <p>2) See answer question 1 + It is evident that a fax or copy has a limited probative value compared to original documents.</p> <p>3) To recognize the marriage in Belgium as an official marriage, only the marriage according to law in the country of origin is recognised.</p> <p>4) In this situation the full burden of proof shall be placed on the applicant. Relevant documents would probably e required.</p>
	Czech Republic	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Estonia	Yes	1. It is sufficient to submit profound data concerning person's relationship or family status. It is necessary that family has been



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			<p>created already in the country of origin or that marriage has been registered before arrival to Estonia. An asylum seeker should be able to submit thorough information concerning his/her family members, their curriculum vitae and any relevant documents. In case it is not possible to submit relevant documents applicant must confirm this and no additional measures are taken unless the information is hardly credible.</p> <p>2. The applicants are not obliged to submit attested/apostilled/legalized documentation. The documents submitted by the applicants are accepted without reserve.</p> <p>3. In the asylum application procedure we recognize the confirmation of the applicant concerning the fact that the marriage has been registered in the country of origin, we accept data on the family members and do not require marriage certificate from the civil authority in case it is not possible to submit.</p> <p>4. In case there is reasonable doubt during the asylum procedure concerning the status of the applicant and the information he/she provides, additional research is done and relevant documents may be asked to submit. New claims are object to additional documentation. The residence status of the person who has received protection is not affected until the extension procedure. During the extension procedure all relevant information concerning the attempt of fraud will be taken into consideration.</p>
	Finland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Germany	Yes	<p>1) As far as it is possible to present documents or any other certificates which prove the relationship they will be accepted. But asylum seekers are conceded to have no evidence, therefore it is a matter of plausibility, whether claimed relationship will be accepted as true or not.</p> <p>2) As far as it is possible to verify the authenticity of the presented documents by means of COI-information or physical-technical analysis, documents will be regarded as authentic.</p> <p>3) Marriages: This depends of the customs as it is practised in the country of origin the asylum seeker comes from. If traditional or church marriages are more common than legal marriages according to the law and if additional circumstances provide evidence to be a matter of fact, then such marriage will be recognized.</p> <p>4) The Federal Office for Migration and Refugees is not the competent authority to decide about this matter of fact, as it does not concern the asylum status. This has to be decided by the Aliens Offices in the Federal States of Germany.</p>
	Hungary	Yes	<p>1) The asylum seekers can prove relationship to the person with whom they apply for international protection with especially official, presented in original documents, for example birth certificate, marriage certificate, etc. In absence of official documents the applicant can only likely to lead the existence of family ties with his/her declaration. In this context, we examine and confront the declaration of the family member as well as declaration of the person who has been granted international protection for the family relationship.</p>




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			<p>Statement in writing sworn is not used in the Hungarian asylum law.</p> <p>2) In the case of the original or certified copies, the attached documents are subjected under document investigation in all cases, and the content has been accepted depending on the results. In the Hungarian case law the scanned, faxed, photocopied, downloaded or any other official documents without legalization have not probative force, do not prove the authenticity, and thus are unsuitable for proving the family relationship.</p> <p>3) According to the Act LXXX of 2007 on Asylum the family relationship with the spouse has to exist before arrival in Hungary. Consequently, not only the marriage according to the law of country of origin, but also the marriage according to the law of third country shall be acceptable, if it has occurred before arrival in Hungary. The church wedding without registration by civil authority shall be accepted, if it accepted and recognized by the personal law of asylum seeker.</p> <p>4) If declared relationship proves false, the application will be rejected. If this fact reveals after the final decision, or the granting of the international protection of the family member, the status of the family member may be withdrawn.</p> <p>If the foreign national has international protection status and denies the originally declared relationship in the procedure, which was initiated by the family member, the application will be rejected.</p> <p>Hungary has no any relevant experience, if nevertheless the previously accepted family relationship will be disproved, the status of the family member will be withdrawn by the asylum authority and initiates a criminal proceeding (forgery) , unless the person has also such characteristics, which entitle his/her for international protection.</p>
	Ireland	No	<p>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</p>
	Italy	Yes	<ol style="list-style-type: none"> 1. If asylum applicants cannot provide official documents proving their relationships, Italian diplomatic and consular authorities may release the requested certification on the basis of verifications that are considered necessary whose costs are covered by the applicants. In order to prove blood relations, such as paternity and maternity, the DNA test is usually requested. As regards the marriage status, the authorities may accept any other evidence of relationship, including an affidavit. 2. It is usually the Territorial Commission for International Protection, in charge of assessing the asylum application, which carries out further verification and certifies the relationship of asylum applicants, also without valid certificates.




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			<p>3. In general terms, the marriage is valid if celebrated in accordance with the law of the country of origin. Nevertheless, in those cases where the assessment of such compliance is particularly difficult, the Territorial Commission that granted international protection certifies the marriage and requires the Questura (Police headquarters) to release appropriate permit to stay to the spouse, which might be issued for family reasons or, if applicable, for asylum.</p> <p>4. If the marriage proves to be false, as a consequence of the submission of false documents or false declarations, proceedings are taken but this does not affect the right to stay of the alien who has been granted international protection. However, towards the “false” spouse who has not been granted the refugee status, a removal decision may be adopted but only if protection needs do not subsist. Nevertheless, if the spouse has reached a positive social and professional integration, or if children were born from the relationship, a permit to stay for work, study or other reasons may be released.</p>
	Latvia	Yes	<p>1-3) There are no special requirements regarding asylum seekers’ documents. All documents presented by asylum seeker are taken into account and considered in compliance with information provided by asylum seeker as well as checked with COI information.</p> <p>4) According to the Asylum Law a person shall be withdrawn refugee or alternative status (<i>subsidiary form of protection</i>) if this person has provided false information or has not provided information which had critical significance in granting status, including having used falsified documents. In case when his/her status is withdrawn person may submit the new asylum claim and prove the new claim.</p>
	Lithuania	Yes	<p>1. An affidavit of an asylum seeker, even though he/she does not submit relevant documents, is accepted as sufficient for recognition of relationship status. It is not required from an asylum seeker to have documents to prove the marriage, divorce or birth, unless there are reasonable doubts about general reliability/trustworthiness of a person. However, an asylum seeker has to submit information about family members immediately after an application for international protection has been started to be examined. If information about a spouse and children is submitted after asylum procedure, when asylum seekers receives any form of international protection, documents have to be submitted as evidence that family really existed in the country of origin.</p> <p>2. There is no requirement that copies of documents, which were submitted by asylum seekers, have to be attested in the manner provided by law. If there are no reasonable doubts about reliability of documents, the documents are accepted as sufficient.</p> <p>3. For the purpose of asylum procedure, the marriage, which was established according to the laws of the country of origin, is recognized, also the traditional or church marriage, if it is common in the relevant country, is recognized.</p> <p>4. The cases of all persons, who are involved in that situation, have to be re-examined and documents to prove relationships are obligatory. It would make reasonable doubts about reliability about both asylum seekers, because both of them have submitted false information in the beginning and the possibility no to apply for them “the principle of benefit of the doubt” would be discussed.</p>
	Netherlands	Yes	<p>1) Asylum seekers can prove their relationship to the persons with whom they apply for international protection with original documents for example a marriage certificate or when that's not possible it can also be proved with a copy of that document. When there are no documents, the relationship can be proved by answering questions about their relationship.</p> <p>2) Of course original documents are the best documents to prove the relationship, but sometimes it is also possible to survey the copies. When that's not possible the relationship can be estimated by answering questions about the relationship.</p>


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			<p>3) Both the marriage according to the law of the country of origin and the traditional church wedding are recognized. Only the traditional wedding is been seen as partnership and not as a marriage.</p> <p>4) When the declared relationship proves false the family reunification will not be a proved, and the fact will take along in the asylum procedure.</p> <p>In the case the foreign national denies the relationship he/she originally declared and seeks family reunification with another spouse this reunification will be rejected. This new claim will obviously be not accepted. The status of the disproved spouse can be recalled.</p>
	Portugal	Yes	<ol style="list-style-type: none"> 1. When considering an asylum application all evidence and available information are taken into account. The applicants have a right to make declarations but no formal statement regarding family links is demanded. 2. All evidence accepted by law is admitted and will be analysed during asylum proceedings. The admission of documents contemplates the fact that such documents are often issued by States with disabilities at this level and where records are made in a rather inefficient manner. 3. The acknowledgement of a marriage celebrated abroad depends on its transcription into the Portuguese Civil Registry. However, for the afore mentioned reasons in addition to the fact that international protection applicants are unable to apply for documents to the authorities of their country of origin for fear of persecution, there is a degree of flexibility in the assessment of such evidence. 4. In such cases, PT analyzes on an individual basis the needs for protection of each of the persons involved. The status they benefit from will only be withdrawn in cases where family ties were the sole reason for granting it.
	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. If a false marriage of asylum seekers (applicants) is proven during the asylum procedure, applicants will not be considered married anymore. Moreover, submission of false information regarding this matter will be considered when processing the application. Applicants are obliged to submit all documents confirming their identity as well as family relation. However, if they do not submit such documents, affidavit is regarded sufficient until doubts occur (suspicion that declared family relationship is fictitious). In such case family relations are re-examined through other available means (testimonies, further information, DNA tests etc.). 2. In general, copies of the documents are not considered reliable evidence. However, their relevance is assessed on a case by case basis. 3. For the purpose of asylum procedure the Slovak Republic recognizes a marriage concluded according to the legislation of the country of origin (officially registered with civil authority). 4. The Migration Office of the Ministry of Interior of the Slovak Republic has not yet faced such a case. Nevertheless, if it is evident that applicants consciously submitted false information, such applications will be examined strictly, submission of documents and explanation of the previous misleading of the Slovak authorities will be required. International status can be withdrawn to the 'original' spouse if his/her marriage is proven to be false. (Act No. 480/2002 Coll. on Asylum as amended, §15.2.h – Withdrawal of Asylum: „<i>The Ministry shall withdraw asylum when h) the asylum was granted only based on false data or forged documents or for the reason that the person granted asylum concealed facts significant for a reliable establishment of the facts of the case</i>”).
	Slovenia	Yes	<ol style="list-style-type: none"> 1) Submitting relevant documents is not necessary. The facts could be established by statements, given on a record. Neither the International Protection Act (IPA) nor General Administrative Procedure Act (which provisions are subsidiary used in the procedures for

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			<p>granting international protection (IP) status) does not provide for formal sworn statement of fact.</p> <p>2) The original documents are sufficient and apostille is not required. If the relevant facts can not be proven with the originals, they could be demonstrated by the IP seeker's statements, given on a record. But a convincing and credible explanation is needed and the evidentiary value of the statements/photocopies/scans is assessed in the light of all circumstances of the case.</p> <p>3) Just the marriage according to the law of the country of origin is recognised. With the last IPA's amendments it is provided, that in a polygamy marriage, the family member (for purpose of family reunion) can only be one spouse, namely the one who is designated by the person granted IP (3rd paragraph, Article 16. IPA). It was also provided that in a case of the original IP status holder's death, his/her family members which were granted IP status on his/her request for family reunification, may preserve their status (6th paragraph, Article 17 IPA).</p> <p>4) There has never been such a case in Slovenia yet. But if there had been, the holder of IP status would have had to prove by the original documentary evidence that he/she is (has been) entitled to family reunion with the different person/s (either on the real relationship/s at the time when falsely asserted his/her right to family reunion, or on relevant changes afterwards). Proceedings for the withdrawal of the IP status of the "spouse" would be initiated in a case that he/she would be no longer eligible for having the original IP holder's derived (same sort of) IP status and on this based residence permit. For example, if the common child/ren of the "false spouse" and to another person (from the beginning or later) married original holder of the IP status, would have common minor child/ren with the IP status (either independent or subordinated to the original IP status holder) and would live in Slovenia, then the "false spouse" would still have legal basis for his/her residence permit (and IP status) but derived from the IP status of the common child/ren). Procedure for family reunification of the original IP status holder with his/her family member would have been (concerning the "false spouse") renewed and adequate decision made (IP status and residence permit, subordinated to the common child).</p>
	<p>Sweden</p>	<p align="center">Yes</p>	<p>1-2) A family who is applying for asylum is assessed as a family as long as there is no indication that they are not related. Their family relations are <i>prima facie</i> accepted. In the asylum case the asylum claim is in focus. Not many asylum seekers present any personal documents that are reliable. We are thus limited to use the interview with all family members as a tool to detect any discrepancies. Family relations are more important if the person applies for family reunification. In family reunification cases we have a legal right to use DNA-tests of parents and children relationships if they have no document to support the relation.</p> <p>3) In an asylum case or family reunification case the parent don't have to be married to be considered a couple.</p> <p>4) If in a family reunification case the spouse declares that the relationship is false the family relationship application is denied. It is considered no serious relationship and documentation is not necessary. There are no other consequences for the person who has a residence permit based on the asylum application.</p>
