

## **European Migration Network**

### **Study 2008 (I)**

## **THE ORGANISATION OF ASYLUM AND MIGRATION POLICIES IN SWEDEN**

### **Executive Summary**

The Government and the Parliament (the Riksdag) determine the direction of the national migration policy. Effective 2009, the overarching objective is to “ensure a sustainable migration policy which, within the framework of regulated immigration, facilitates movement across borders, promotes needs-governed labour immigration, utilises and takes into consideration the effects of migration on development and enhances European and international cooperation.”

On the national level, a reform towards more open and flexible labour migration based on the needs of employers for labour has recently been implemented. The reform is one component of the current Government’s development of the migration policy. The possibility of implementing a sponsorship/support requirement as a condition for dependant immigration is also being studied. Aimed at improving reception of asylum seekers, a committee of inquiry has been appointed and tasked with prioritising asylum seekers’ opportunities for employment and self-support. Housing for asylum seekers is also being reviewed with a view to giving individuals incentive to settle in regions where conditions are favourable for housing and employment or education. Another prioritised issue is to achieve an asylum system that is balanced with efficient return of people whose expulsion or non-admission orders have taken legal force.

The Migration Board is the central administrative authority in the migration area and is responsible for applying statutes pertaining to immigration, refugees, return migration and citizenship. In addition to the Aliens Act and the Citizenship Act, the work of the Migration Board is governed by laws including the Reception of Asylum Seekers and Others Act. According to that law, the Migration Board must arrange accommodation for asylum seekers, pay daily allowance and offer meaningful occupation while the application is being examined.

The Migration Board is also obliged to ensure that Sweden has capacity to receive people in need of protection who have been granted residence permits and to assist them as needed with settlement in Sweden.

As well, the Migration Board must work to ensure that people whose applications for asylum have been rejected and who have been formally refused admission or expelled leave the country. If the person refuses to

return voluntarily or absconds, the case is turned over to the police to enforce the order.

The numbers who have received expulsion orders have recently increased. In response, the Government has prioritised efforts related to involuntary return. The objective is to shorten waiting times for people who must return and increase the percentage of people who return within the time stipulated by law. In order to achieve success, cooperation with the police and other relevant actors has been strengthened.

After a certain period of time, people who have settled in Sweden may apply for Swedish citizenship. Decisions on citizenship are under the Migration Board's purview. In 2008, the Migration Board decided almost 28,000 citizenship cases.

Most foreign citizens who want to work, study or settle in Sweden on the basis of family connections must either register or have a residence permit. Many people who want to stay in Sweden for shorter periods must have a visa. Visas and residence permits must as a rule have been arranged prior to entering the country. Applications are lodged with a Swedish mission abroad. Once the Swedish mission abroad has performed its investigation, the case is transferred to the Migration Board for decision. Missions abroad are empowered to take decisions in some cases, and do so in the majority of visa cases.

New rules took effect on 15 December 2008 that make it easier for people from countries outside the EU/EEA to work in Sweden and for employers to recruit labour from a third country. One of the new rules is that asylum seekers whose applications have been rejected can now, under certain circumstances, seek change of status and apply for a residence permit as an employee without being required to leave the country.

Much of the development work pursued in the area of migration in recent years has been aimed at adapting activities to the new rules of jurisdiction and procedure in aliens' cases implemented in 2006 when the new Aliens Act took effect. Appeals of Migration Board decisions are now heard by a Migration Court. If further appealed and leave to appeal is granted, final appeals are heard by the Migration Court of Appeal, which is the court of last resort. When a decision to reject an application has taken legal force, the Migration Board may examine any impediments to enforcing the expulsion order.

People not defined as refugees under the Geneva Convention may be granted subsidiary protection in Sweden. The definition of 'refugee' was expanded in the Aliens Act of 2006 to include persons who are persecuted on the basis of gender and sexual orientation. The law also clarified the grounds for subsidiary protection in relation to humanitarian reasons.

The reform was instituted following protracted debate on the migration policy and its application. One key objective was to create a more open asylum process that better upheld due process. The reform is also thought to have increased trust in the system. An evaluation is in progress, scheduled for completion by 30 June 2009, that may result in adjustments.

Sweden has experienced large migrant flows in recent years, which applies to both immigration and emigration. A total of 350,000 applications to enter Sweden for a short stay or settlement were lodged in 2007. Family connections are the most common grounds for a residence permit. Of the total of about 86,000 applications for residence permits, slightly more than one third were approved on those grounds.

There was a moderate increase of 5% in the number of work and residence permits granted in 2008 compared to 2007, with a total of 90,021 work and residence permits granted (including EU/EEA cases). The greatest increase was in the number of work permits and student permits, while the number of residence permits issued to asylum seekers declined by almost 40%.

There was a strong upturn in asylum seeking in 2007 in the wake of unrest and conflicts around the world, especially in Iraq, when 36,207 people sought asylum in Sweden, more than in any other country in Europe. The number declined to about 24,000 in 2008. The forecast is that the number will remain about the same in 2009.

A comprehensive development process is ongoing within the Migration Board aimed at utilising the opportunities provided by modern technology. The purpose is to enhance service and efficiency while achieving faster processing with equal or better quality. Among else, the Migration Board is implementing a methodological reform of the asylum process to shorten waiting times.

The development project was initiated partly in response to the challenges brought by globalisation and greater international movement of persons. Naturally, the harmonisation of asylum and migration policy ongoing in the EU is extremely important. Several proposals for Community law have been presented that may affect the Swedish system.

## **1. Introduction**

This study was produced at the initiative of the European Migration Network, EMN. Similar studies will be produced for all EU Member States (other than Denmark, which has been exempted) to enable comparisons within the Union.

These studies must be based on current, accurate material available in the Member States and synthesised in a report that follows the specifications adopted by the EMN to facilitate comparisons.

The Swedish Government's overarching objective for migration is to "ensure a sustainable migration policy which, within the framework of regulated immigration, facilitates movement across borders, promotes needs-governed labour migration, utilises and takes into consideration the effects of migration on development and enhances European and international cooperation."<sup>1</sup> This objective is entirely new and takes effect in 2009. The previous objective was similar, but stated that Sweden should "safeguard the right to seek asylum in Sweden and internationally; maintain regulated immigration; introduce greater possibilities for labour migration; and increase the harmonisation of asylum and migration policy in the EU."<sup>2</sup>

Organisationally within the Government, the migration area is divided into three divisions: Asylum; Managed Migration, and Citizenship.

Sweden has in recent years experienced the greatest migrant flows in more than a century, both with respect to immigration and emigration. Nearly 100,000 people immigrated in 2007, while almost 50,000 emigrated.<sup>3</sup>

### **1.1. Purpose**

The purpose of the study is to provide an overview of the migration system in Sweden as it stood at the end of 2008.

Since the study was produced at the behest of the European Migration Network, EMN, the study is organised according to the specifications adopted by EMN and thus according to a fixed format.

Despite these limitations, the hope is that the study will be of interest to decision-makers, other government agencies and members of the public who want to learn how the migration system in Sweden works.

### **1.2. Methodology**

The method used was to collect available, current information about the organisation of the Swedish migration system.

The contribution of this study is to attempt to synthesise information fragmented among a great many publications into a joint report.

The primary factual sources were public documents such as laws, bills and Government Communications. However, some information was also taken from internal reports and evaluations produced by the Migration Board.

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<sup>1</sup> Government Bill 2008/09:1, expenditure area 8, p.11, see also Government Communication Skr 2006/07:58, p. 7, Government Communication, Skr 2008/09:33, p. 4.

<sup>2</sup> Government Communication, Skr 2008/09:33, p. 4.

<sup>3</sup> Government Communication, Skr 2008/09:33, p. 4.

Material published by others has also been used, such as a couple of books oriented more towards legal issues, as has material found on the websites of the Migration Board, the Riksdag and the Swedish Government.

The main problem encountered with the study is that it was sometimes difficult to follow the established structure of the study. A different structure would have made it easier in some cases to explain the Swedish system. As a result, there may be some repetitions.

One limitation of the study is that it focuses on migration from third countries; in other words, migrations within the EU are not included.

## **2. OVERVIEW OF ORGANISATION OF POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORKS IN SWEDEN**

Only Swedish citizens have an unconditional right to be in Sweden. Aliens must in principle have a permit to be in the country, either a visa or a residence permit. Visas enable regulated entries to the territory, since a visa is a permit to enter and stay for a short time in the country. A residence permit is a permit to stay in the country and may be temporary or permanent.<sup>4</sup> There are certain exceptions to the rules on visas and residence permits for citizens of the Nordic countries and EU Member States, but they will not be addressed in this study.

The Riksdag is the supreme governing body in Sweden and takes the major and fundamental decisions in many social areas on behalf of citizens. The Riksdag accomplishes this by enacting laws, adopting the central government budget, appointing the prime minister and overseeing the Government.

The Government governs the realm, which involves initiating and presenting bills to the Riksdag and executing the Riksdag's decisions.<sup>5</sup>

“The Riksdag and the Government determine the direction of the migration policy. Swedish migration policy takes a holistic perspective that encompasses refugee, migration and integration policy, as well as return migration and support to return migrants. //...// From a longer term perspective, efforts are also made in foreign, security, trade and development policy towards eliminating the root causes that compel people to leave their countries of origin and facilitating return.”<sup>6</sup>

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<sup>4</sup> Diesen et al. 2007, p. 31.

<sup>5</sup> Swedish Constitution Instrument of Government

<sup>6</sup> Government Communication 2006/07:58, p. 7.

## Legal System

The migration system in Sweden is governed by the Aliens Act, which was enacted by the Riksdag, and emanating from that law, the Aliens' Ordinance, which is decided by the Government. The current Aliens Act took effect 31 March 2006.<sup>7</sup> The Administrative Judicial Procedure Act also governs with regard to appeals.<sup>8</sup> The Administrative Procedure Act also contains certain general statutes that govern all administrative agencies.<sup>9</sup>

The Aliens Act is the most important law in the migration area and addresses essentially all aspects of migration. The law contains provisions which regulate:

- conditions on which an alien may enter, stay and work in Sweden (ch 2),
- visas (ch 3),
- right of residence (ch 3a),
- refugees and persons otherwise in need of protection (ch 4),
- residence permits (ch 5),
- long-term resident status in Sweden for third-country nationals (ch 5a),
- work permits (ch 6),
- withdrawal of permits (ch 7),
- refusal of entry and expulsion (ch 8),
- controls and coercive measures (ch 9),
- detention and supervision of aliens (ch 10),
- how an alien held in detention shall be treated (ch 11),
- enforcement of refusal-of-entry and expulsion orders (ch 12),
- procedure in cases handled by administrative authorities, etc. (ch 13),
- appeal against the decision of an administrative authority (ch 14),
- declaration of acceptance (ch 15),
- Migration Courts and the Migration Court of Appeal (ch 16),
- duty to provide information (ch 17),
- public counsel (ch 18),
- liability for costs (ch 19),
- penalty provisions, etc. (ch 20),
- temporary protection (ch 21),
- tribunal witnesses (ch 22) and
- special authorisations (ch 23).<sup>10</sup>

The new Aliens Act of 31 March 2006 is considered the most far-reaching reform in the migration area of modern times. The motivation was the need for a more transparent asylum process with greater opportunities for oral hearings and transparency in the process, and the notion that appeals should take place in two-party proceedings in court. Accordingly, appeals are now

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<sup>7</sup> The Aliens Act (2005:716)

<sup>8</sup> The Administrative Judicial Procedure Act (1971:291).

<sup>9</sup> The Administrative Procedure Act (1986:223).

<sup>10</sup> The Aliens Act (SFS 2005:716)

heard by the recently established Migration Courts, which is meant to instil greater trust in the process and guarantee due process for asylum seekers.<sup>11</sup>

One difference compared to the earlier law is that grounds for protection were given greater prominence. Thus, it is now easier to gain an overview of the grounds upon which residence permits have been granted to people for protective reasons. The persons in need of protection covered by the Aliens Act are:

1. Refugees
2. Persons otherwise in need of protection (see also the text of the law in the footnote).<sup>12</sup>

The Swedish definition of 'refugee' is consistent with the Geneva Convention.<sup>13</sup>

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<sup>11</sup> National Financial Management Authority 2008:25, p. 31.

<sup>12</sup>The Aliens Act (2005:716)

Ch 4 §1 In this Act, 'refugee' means an alien who

– is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and

– is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.

This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals.

A stateless alien shall also be considered a refugee if he or she

– is, for the same reasons that are specified in the first paragraph, outside the country in which he or she has previously had his or her usual place of residence and

– is unable or, because of fear, unwilling to return there.

§2 In this Act, a 'person otherwise in need of protection' is an alien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality, because he or she

1. feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,

2. needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or

3. is unable to return to the country of origin because of an environmental disaster, or

4. feels a well-founded fear of persecution on grounds of his or her gender or homosexuality.

The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

<sup>13</sup> Utne et al. 2007, p. 77.

Swedish legislation pertaining to aliens is based on a coherent process in which all forms of protection and other grounds for permits are considered in the same process. The Aliens Act is also structured so that the grounds are listed in the order in which they must be considered. Thus, reasons for protection (asylum) are considered before family connections, which are considered before exceptionally distressing circumstances.<sup>14</sup>

As a result of the new legislation, the percentage of persons granted residence permits as persons in need of protection has increased.<sup>15</sup> The reason for this is that many people were previously granted residence permits for humanitarian reasons, a concept that is not found in the new law. See also the table in section 4.1.3.2. However, if none of the main grounds for a residence permit are applicable, a permit may in exceptional cases be granted on the grounds of exceptionally distressing circumstances.<sup>16</sup> When assessing whether exceptionally distressing circumstances exist, particular attention must be paid to the alien's state of health, adaptation to Sweden and his or her situation in the country of origin. However, this is an exceptional provision and may be applied only if a permit cannot be awarded on other grounds and only in extremely unusual cases.<sup>17</sup>

The Riksdag has yielded normative competence to the Government with regard to many matters of migration law through special authorisations in the Aliens Act. For that reason, there are many provisions in the Aliens Ordinance in this area aimed at specifying the rather general statutes in the law.<sup>18</sup> This applies in particular to:

- travel documents (ch 2)
- visas (ch 3)
- right of residence (ch 3a)
- residence permits (ch 4)
- work permits (ch 5)
- controls and coercive measures (ch 6)
- duty to provide information (ch 7) and
- refusal of entry, expulsion, fees (ch 8)<sup>19</sup>

In addition to these general normative standards, a number of other laws pertain to certain aspects of the migration process, such as the Citizenship Act<sup>20</sup> and the Public Counsel Act.<sup>21</sup>

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<sup>14</sup> Utne et al. 2007, p. 34.

<sup>15</sup> Government Bill 2008/09:1, expenditure area 8, p. 12, Government Communication Skr 2006/07:58, p. 6.

<sup>16</sup> Government Communication Skr 2006/07:58, p. 8.

<sup>17</sup> Utne et al. 2007, p. 95.

<sup>18</sup> Diesen et al. 2007, p. 19.

<sup>19</sup> The Aliens Ordinance (2006:97).

<sup>20</sup> The Citizenship Act (2001:82).

<sup>21</sup> The Public Counsel Act (1996:1620).

Examination of asylum applications and enforcement of non-admission or expulsion orders is legally governed by the Aliens Act.<sup>22</sup> Processing by the Migration Board is also governed by the Administrative Procedure Act.<sup>23</sup> The Migration Courts, which are administrative courts, are also governed by the Administrative Judicial Procedure Act.<sup>24</sup> The Aliens Act is general and shall apply to everyone who applies for asylum, regardless of how many people come to Sweden. Thus, every asylum seeker's application must be considered based on his or her personal situation. Accordingly, government agencies must have great organisational flexibility in order to manage variations in the number of asylum seekers while upholding due process.<sup>25</sup>

The Administrative Judicial Procedure Act<sup>26</sup> is also applicable to appeals, which are heard by special Migration Courts established within the County Administrative Courts in Stockholm, Skåne and Göteborg. The Migration Court of Appeal is found at the Administrative Court of Appeal in Stockholm.<sup>27</sup> Leave to appeal is required by the Migration Court of Appeal.<sup>28</sup>

The new Aliens Act also contains provisions on examination of impediments to enforcement of non-admission or expulsion orders that taken legal force that which depart from earlier statutes in this area. The new provisions on examination of impediments to enforcement are aimed at limiting opportunities to have a non-admission or expulsion order re-examined. Instead, reasons must be presented and examined by the Migration Board when the application is considered the first time.<sup>29</sup> Thus, in the past it was possible for an alien who had received a final non-admission or expulsion order to re-apply for a residence permit to the Aliens Appeals Board, which formerly had jurisdiction over appeals. This is no longer possible, but the new Act provides an opportunity to have the question examined of whether new circumstances exist that constitute an impediment to enforcement of a non-admission or expulsion order that has taken legal force.

## **Administrative System**

The administrative policy system in Sweden differs from the rest of Europe and the division of tasks thus also differs. All Government decisions in Sweden are collective and all public agencies are subordinate to the entire Government. Unlike their colleagues in many other countries, Swedish state secretaries have little opportunity to take independent decisions. All Government decisions are taken jointly by the Government. Various state

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<sup>22</sup> The Aliens Act (2005:716).

<sup>23</sup> The Administrative Procedure Act (1986:223).

<sup>24</sup> The Administrative Judicial Procedure Act (1971:291).

<sup>25</sup> National Financial Management Authority 2008:25, p. 13.

<sup>26</sup> The Administrative Judicial Procedure Act (1971:291).

<sup>27</sup> Government Bill 2008/09:1, expenditure area 8, p. 24.

<sup>28</sup> Government Bill 2008/09:1, expenditure area 8, p. 25.

<sup>29</sup> National Financial Management Authority 2008:25, p. 32.

secretaries within the Government are responsible for various areas and may also be heads of ministries – ministers. Swedish ministries are small and public agencies are independent. In other words, one could say that some tasks performed by ministries in other countries are in Sweden performed by civil service departments, which are organised under a ministry. The Migration Board reports to the Ministry of Justice and there is considerable cooperation at various levels between the two. However, the Migration Board is formally subordinate to the Government as a whole and not the Ministry of Justice.

The Migration Board is the central administrative authority in the area of migration. According to its instructions,<sup>30</sup> the Board has process and coordination responsibility for the divisions for Asylum and Managed Migration and Citizenship.<sup>31</sup> This coordinating responsibility includes working to ensure that handling of cases pursuant to aliens and citizenship legislation is efficient and upholds due process. The Migration Board also has main responsibility for aliens without residence permits until such time that a permit has been granted and the person has settled in a municipality.<sup>32</sup> Legal provisions pertaining to the Migration Board are found primarily in the Aliens Act<sup>33</sup> and the Ordinance<sup>34</sup> with Instructions for the Migration Board.<sup>35</sup> The Government also manages the Migration Board through annual budget appropriation directives that specify the operational budget and objectives.<sup>36</sup>

While an application is being examined or appealed, the asylum seeker is covered by the Reception of Asylum Seekers and Others Act (Swedish Statute 1994:137), which is administered by the Migration Board.<sup>37</sup> Once there is a ruling in the asylum case, Migration Board Reception Units are responsible for facilitating settlement in a municipality or return migration if asylum or a residence permit on other grounds was not granted.<sup>38</sup>

The Migration Board is managed by a Director-General. The Consultative Senior Management is made up of the Director General, the heads of the major divisions<sup>39</sup> and the head of Communications.<sup>40</sup> The former Board of Directors has been replaced by an Advisory Council. The Migration Board also has an Ethics Council.<sup>41</sup>

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<sup>30</sup> Ordinance (2007:996) with Instructions for the Migration Board .

<sup>31</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

<sup>32</sup> Reception of Asylum Seekers and Others Act (1994:137).

<sup>33</sup> The Aliens Act (2005:716).

<sup>34</sup> Ordinance (2007:996) with Instructions for the Migration Board

<sup>35</sup> Government Bill 2004/05:170, p. 86.

<sup>36</sup> 2008 Government Budget Directive for the Migration Board

<sup>37</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

<sup>38</sup> National Audit Office, 2006, p. 22.

<sup>39</sup> Administration, Managed Migration and Citizenship, Asylum Examination and Asylum Reception

<sup>40</sup> Government Communication Skr 2006/07:58, p. 22, Migration Board Informational Material.

<sup>41</sup> Government Communication Skr 2006/07:58, p. 22.

The Consultative Senior Management is made up of the Executive Office of the Board and representatives of the various divisions.<sup>42</sup> The former Board of Directors has been replaced by an Advisory Council. The Migration Board also has an Ethics Council.<sup>43</sup>

The Aliens Act defines who is a refugee and who must be granted asylum in Sweden. The Migration Board is responsible for examining asylum applications and deciding whether to issue residence permits. Negative decisions may be appealed to a Migration Court and in cases of significance to case law, to the Migration Court of Appeal.<sup>44</sup> Leave to appeal to the Migration Court of Appeal is required.

“The mandate of the Migration Courts and the Migration Court of Appeal is to re-examine the Migration Board’s decisions pursuant to the Aliens Act (2005:716), the Citizenship Act (2001:82) and the Public Counsel Act (1996:1620).”<sup>45</sup>

## **Actors**

The agencies with mandates in this area are the Migration Board, the Migration Courts, the Migration Court of Appeal, the Police, the Prison and Probation Service (Transport Service), Swedish missions abroad, and the County Administrative Boards.<sup>46</sup> Municipalities and County Councils also participate in these activities. Thus, many public agencies are involved in the migration process, which encompasses all activities from the time an application for a residence permit is lodged until settlement or return.<sup>47</sup>

There is also a council, attached to the Government, for refugee and migration issues, which consists of members from 18 organisations that work with refugee and migration in various ways. The purpose of the council is to provide an informal meeting place for knowledge transfer.<sup>48</sup> There is a similar council for consultation and knowledge transfer in relation to children’s issues within migration and asylum policy.<sup>49</sup> It is noteworthy that several non-governmental organisations are engaged in many activities in the area that provide support to applicants and others, although they play no formal role.

Many applications are lodged with Swedish missions abroad, so smooth cooperation is important. There are special migration attachés at 12 missions abroad.

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<sup>42</sup> Government Communication Skr 2006/07:58, p. 22.

<sup>43</sup> Government Communication Skr 2006/07:58, p. 22.

<sup>44</sup> National Financial Management Authority 2008:25, p. 23.

<sup>45</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

<sup>46</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

<sup>47</sup> National Financial Management Authority 2008:25, p. 6, Utne et al. 2007, p. 21.

<sup>48</sup> Government Communication Skr 2006/07:58, p. 22.

<sup>49</sup> Government Communication Skr 2006/07:58, p. 23.

The Migration Board also administers the European Refugee Fund and the European Return Fund, both part of the framework programme on “Solidarity and Management of Migration Flows.”<sup>50</sup>

Examination of asylum applications and enforcement of non-admission or expulsion orders is legally governed by the Aliens Act.<sup>51</sup> Processing by the Migration Board is also governed by the Administrative Procedure Act.<sup>52</sup> The Migration Courts, which are administrative courts, are also governed by the Administrative Judicial Procedure Act.<sup>53</sup> The Aliens Act is general and shall apply to everyone who seeks asylum, regardless of how many people come to Sweden. This means that every asylum seeker’s application must be considered based on his or her personal situation. Accordingly, public agencies must have great organisational flexibility in order to manage variations in the number of asylum seekers while upholding due process.<sup>54</sup>

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<sup>50</sup> Government Communication Skr 2006/07:58, p. 27, Decision No 573/2007/EC of the European Parliament and of the Council, Decision 575/2007/EC of the European Parliament and of the Council, Ordinance (2007:996) with Instructions for the Migration Board, Ordinance on the European Refugee Fund and the European Return Fund for 2008-2013 (2008:57).

<sup>51</sup> The Aliens Act (2005:716).

<sup>52</sup> The Administrative Procedure Act (1986:223).

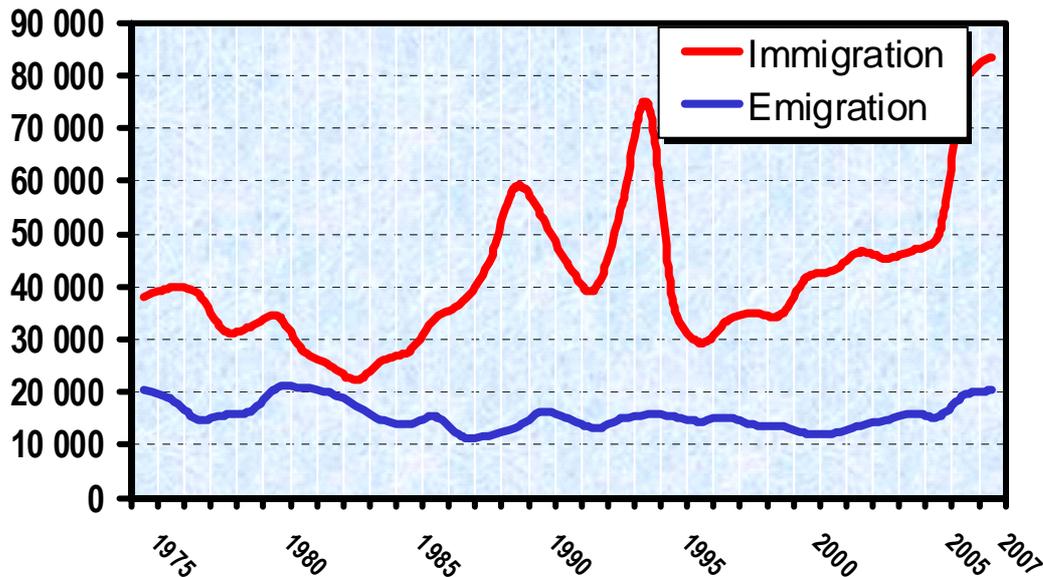
<sup>53</sup> The Administrative Judicial Procedure Act (1971:291).

<sup>54</sup> National Financial Management Authority 2008:25, p. 13.

## General Statistics

Sweden accepted more asylum seekers in 2007 than any other country in Europe.<sup>55</sup>

### Immigration and emigration of foreign nationals 1975-2007



Source: Facts & Figures from the Swedish Migration Board

### 3. DEVELOPMENT OF THE ASYLUM AND MIGRATION SYSTEM

Until 1997, all applications for asylum and for permits on other grounds were submitted to the Police. Responsibility for investigating and examining aliens cases was taken over by the former Immigration Board effective 1 October 1997.

The National Labour Market Board was responsible for reception of asylum seekers until 1985. Responsibility was subsequently assumed by the Immigration Board, which later (1 July 2000) changed its name to the Migration Board and the agency still retains the responsibility.<sup>56</sup>

<sup>55</sup> Government Bill 2008/09:1, expenditure area 8, p. 12.

<sup>56</sup> Government Bill 2004/05:170, p. 86, Migration Board, 2008, p.5-6.

At that time, the Immigration Board was tasked with making agreements with municipalities on the reception of asylum seekers and refugees in exchange for State compensation.<sup>57</sup> Between 1988 and 1994, asylum seekers were essentially forced to live in Immigration Board reception centres while waiting for a ruling on their application for asylum. The system was thereafter changed to make the waiting period as “normal” as possible, and accommodation was to be arranged whenever possible in ordinary flats, rather than reception centres. Asylum seekers were then given the opportunity to independently arrange accommodation during the waiting period (often with friends or relatives), referred to as “own accommodation.” This system for reception of asylum seekers and others was implemented on 1 July 1994 through the Reception of Asylum Seekers and Others Act (1994:137) and remains in place today.<sup>58</sup>

The majority of asylum seekers chose to arrange their own accommodation, a trend that still applies. The drawback was that housing segregation increased, since the majority chose to settle in metropolitan regions.<sup>59</sup> A committee of inquiry is currently focusing on this issue and proposals for changes are expected in 2009. The Migration Board has also been mandated to promote the relocation of asylum seekers from urban municipalities with large migrant populations to smaller towns.

The central government has always had financial responsibility for asylum seekers during the waiting period, but the arrangements have varied over time. At present, the Migration Board disburses daily allowance to asylum seekers, regardless of where they live.<sup>60</sup>

As mentioned, a new Aliens Act took effect on 31 March 2006, which changed the appeals process in migration cases.

Jurisdiction over appeals formerly lay with the Aliens Appeals Board, which was an administrative authority with quasi-judicial standing. The Aliens Appeals Board dealt with appealed cases pursuant to the Aliens Act and the Citizenship Act. It was also responsible for re-applications (RA) for residence permits following a final non-admission or expulsion order. Under the RA system, aliens who were to be refused admission or expelled under a decision that had taken legal force could apply for re-examination even though they were still in the country.<sup>61</sup> In the past, case law and precedent were set by the Government.

The Migration Courts now have appellate jurisdiction and the Migration Court of Appeal, which sets case law and precedent, is the court of last resort.

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<sup>57</sup> Migration Board, 2008, p. 7.

<sup>58</sup> Migration Board, 2008, p. 8-10.

<sup>59</sup> Migration Board, 2008, p. 18.

<sup>60</sup> Migration Board, 2008, p. 10-11, 25.

<sup>61</sup> Government Bill 2004/05:170, p. 88.

The motivations for the change also illustrate the major changes in the new process and jurisdictional system, which may be summarised as follows:

- greater transparency in the asylum process
- possibility of oral hearings of appeals, primarily so that those who are seeking asylum gain greater opportunity for a hearing
- two-party proceedings in appeals, meaning that the applicant and the Migration Board meet as opposing parties in a court hearing
- speedy processing
- main focus of the asylum process in the original jurisdiction.<sup>62</sup>

The Aliens Act was also harmonised with these changes.

The Immigration Board was reorganised in 1998 when it was relieved of responsibility for integration issues, which were transferred to a new agency, the Integration Board. As a result, the Immigration Board was responsible until the refugee had been granted a permit and placement in a municipality.

Thereafter, the Integration Board entered into agreements with municipalities on refugee reception and distributed financial compensation.<sup>63</sup> They were also responsible for following up municipal introduction programmes.<sup>64</sup> The Integration Board was dissolved on 1 July 2007 and some of its tasks were returned to the Migration Board, such as making agreements with municipalities on settlement of persons in need of protection who have been granted residence permits, and paying compensation for refugee reception to municipalities and county councils.<sup>65</sup> Certain other former tasks of the Integration Board were transferred to the County Administrative Boards.

Until 1 January 2005, the Migration Board was organised in several geographical regions. Since that date, the Migration Board has been a central agency whose organisational division is based on its various divisions. There are ten divisions and offices in about 100 towns all over the country.

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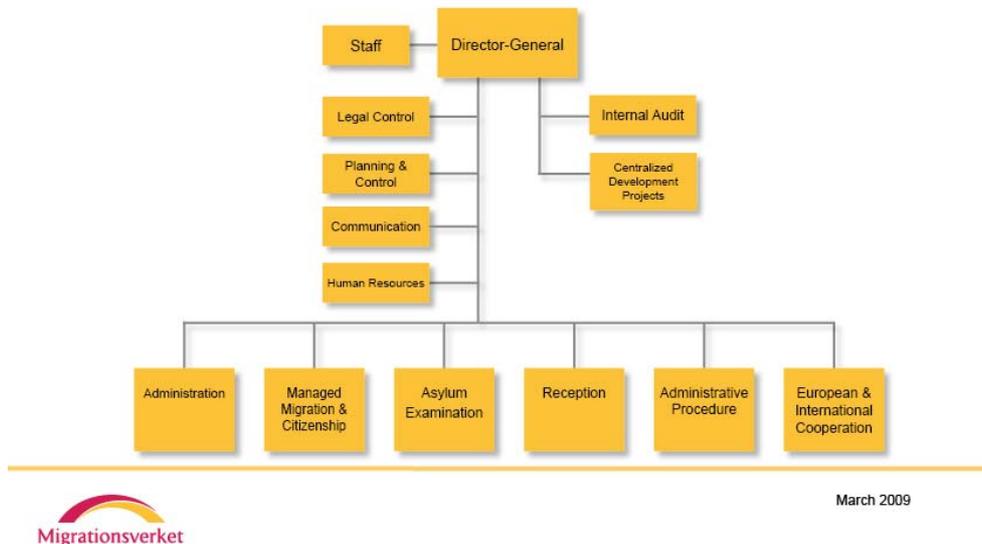
<sup>62</sup> National Financial Management Authority 2008:25, p. 32.

<sup>63</sup> National Audit Office, 2006, p. 24.

<sup>64</sup> National Audit Office, 2006, p. 12.

<sup>65</sup> Government Bill 2008/09:1, expenditure area 8, p. 17.

## Organisation of the Swedish Migration Board



### 4. ORGANISATION OF POLICY

#### 4.1. Asylum and Migration

The Migration Board has original jurisdiction and takes decisions pertaining to migration and asylum in Sweden. The Migration Board has process responsibility for asylum seekers. Swedish missions abroad take most decisions related to visas to enter Sweden.

##### Overview – Asylum

“The Asylum Division of the Migration Board considers every application for asylum individually and based on applicable law. A decision by the Migration Board to reject the application, which is usually accompanied by a non-admission or expulsion order, may be appealed to a Migration Court. While an application is under consideration or appeal, the asylum seeker is covered by the Reception of Refugees and Others Act (1994:137).”<sup>66</sup>

The Government’s definition of the Asylum Division includes the following aspects:

- examination of asylum applications
- reception of asylum seekers
- preparations for settlement of asylum seekers who are granted residence permits
- preparation and implementation of return for asylum seekers who are not granted residence permits

<sup>66</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

- support for people with residence permits who wish to return
- protection, primarily for refugees and other persons in need of protection abroad, through resettlement in Sweden<sup>67</sup>

Asylum operations include all activities that must be run by the Migration Board, the Migration Courts, the Migration Court of Appeal, the Police, the Prison and Probation Service and County Administrative Boards, from the time an application for a residence permit is lodged until settlement or return migration.<sup>68</sup>

Applications are lodged at any Migration Board Application Unit and are examined by one of the Migration Board's Asylum Examination Units, where decisions are also taken. After a positive decision, the County Administrative Board and the Migration Board jointly refer the beneficiary to housing, if necessary. Negative decisions may be appealed. Appeals are routed through a Migration Board Administrative Procedure Unit and forwarded to the Migration Court. If the decision is not appealed, the Reception Unit is responsible for voluntary return. If coercion is required, the Police enforce the non-admission/expulsion order. Following a ruling by a Migration Court, the decision may be further appealed to the Migration Court of Appeals, but the latter hears only cases that are significant to case law and precedent. Regardless of whether or not the decision is further appealed, positive decisions are concluded when the asylum seeker settles in a municipality, either independently or through referral from the Reception Unit to places in municipalities negotiated by the County Administrative Board. Negative decisions are concluded when the asylum seeker returns voluntarily with the assistance of the Migration Board Reception Unit or involuntarily, in which case the Police, sometimes assisted by the Prison and Probation Service (Transport Service), enforces the non-admission/expulsion order.<sup>69</sup>

The objectives of the asylum process are: "Every aspect of the asylum process shall be humane and uphold due process. The Migration Board shall deepen and improve interagency cooperation to improve the efficiency of the asylum process. The total waiting time in relation to the preceding year shall decline. Particular consideration shall be given to children".<sup>70</sup> The asylum process is complex and governed by laws, ordinances and policy objectives. The number of asylum seekers varies from year to year, which demands considerable flexibility.<sup>71</sup>

That the asylum process must uphold due process means that every asylum seeker shall be guaranteed legally secure treatment throughout the asylum process – from application to settlement or until he or she leaves the

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<sup>67</sup> Government Bill 2008/09:1, expenditure area 8, p. 11.

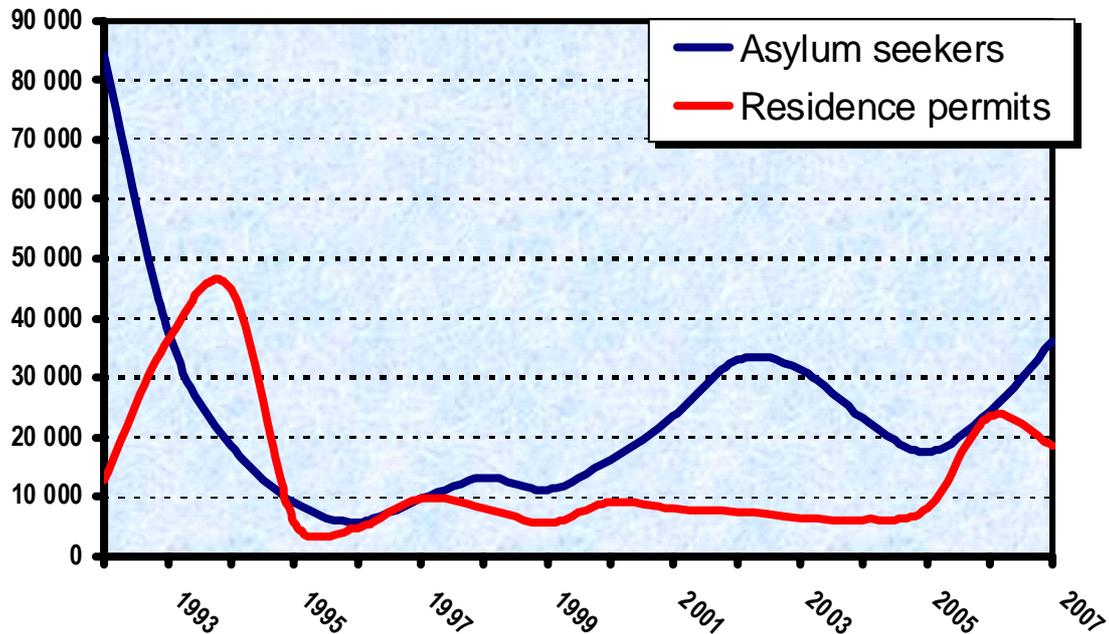
<sup>68</sup> National Financial Management Authority 2008:25, p. 6.

<sup>69</sup> See Process Map, National Financial Management Authority 2008:25, p. 8.

<sup>70</sup> 2008 Budget Appropriation Directive for the Migration Board, dated 19 December 2007, p. 1.

<sup>71</sup> National Financial Management Authority 2008:25, p. 5.

country. Handling and decisions in all jurisdictions, as well as enforcement of non-admission/expulsion orders, must be uniform and legal.<sup>72</sup>



### Overview – Migration

Examination of cases involving applications for permits for visits or settlement shall be efficient and uphold due process. Handling by the Migration Board in connection with examination, re-examination and appeal of cases and examination of impediments to enforcement shall be uniform, speedy and efficient. Particular consideration must be given to children. The waiting time for the applicant must be as short as possible, at every stage.<sup>73</sup>

The Division for Managed Migration and Citizenship at the Migration Board handles permit cases that do not involve asylum. The migration issues covered are applications for:

- Residence permits for
  - short stays (visits)
  - studies
  - family reunification
  - people with long-term resident status in another EU Member State
- Residence cards
- Aliens' passports and travel documents
- Long-term resident status in Sweden

<sup>72</sup> National Financial Management Authority 2008:25, p. 13.

<sup>73</sup> 2008 Budget Appropriation Directive for the Migration Board, dated 19 December 2007

- Visas
- Work permits
- Registration of EU/EEA citizens who settle in Sweden
- Issuing permit stickers for permanent residence permits
- Cooperation with Swedish missions abroad

#### **4.1.1. Entry Procedures**

A migration case is formally initiated in most cases with a written application to the Migration Board. If the person is abroad, the application is submitted to a Swedish mission abroad.<sup>74</sup>

Due to the Schengen Agreement, travellers can in many cases cross the border to Sweden without passing border control. However, the traveller's documents are checked at borders to countries outside the Schengen Territory.<sup>75</sup>

The Police Authorities are responsible for border control and for internal controls of people who are in the territory illegally.

##### **4.1.1.1 Entry Procedures – Asylum**

If a person seeks asylum at the border, the Police, who are responsible for border control, transfer the case to the Migration Board,<sup>76</sup> but most seek asylum after entering the country. This can be done at any Migration Board office. The Migration Board has Application Units in Stockholm, Göteborg, Märsta and Malmö.<sup>77</sup>

The Migration Board's investigation of the case begins with an interview of the applicant, assisted by an interpreter if required. The first step is to investigate the applicant's identity and determine whether any other country is responsible examining the application for asylum. The applicant is asked for a brief explanation of his or her reasons for seeking asylum and is fingerprinted and photographed. The initial asylum investigation includes establishing identity, explaining connections to Sweden, ethnic and religious affiliation, state of health, the reasons for the application for asylum, and the taking into custody and duplication of relevant documents.<sup>78</sup> When an alien applies for a residence permit in Sweden, the Migration Board or the Police may take into custody passports or other identification documents until the alien is granted a residence permit or leaves the country.<sup>79</sup>

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<sup>74</sup> Utne et al. 2007, p. 21.

<sup>75</sup> National Audit Office, 2004:24, p. 19.

<sup>76</sup> National Audit Office, 2004:24, p. 19.

<sup>77</sup> National Financial Management Authority 2008:25, p. 9.

<sup>78</sup> Migration Board, 2008b, p. 24, National Audit Office, 2004:24, p. 45.

<sup>79</sup> Diesen et al. 2007, p. 84.

In concrete terms, an application for asylum consists of registration in the Board's computer system, photographing, fingerprinting, information to the applicant regarding initial measures and investigation, and the application for daily allowance.<sup>80</sup>

The Migration Board also ensures that the asylum seeker has somewhere to live.<sup>81</sup>

The Migration Board begins processing an asylum case by determining whether Sweden is responsible for examining the application or the applicant should be handed over to another country, which is why the applicant is photographed and fingerprinted. A comparison can be made with the Eurodac database to find out whether the person has previously sought asylum in another EU Member State and thus under the Dublin Regulation must have the application examined there.<sup>82</sup> If such is the case, the person is transferred to that country. Approximately 3,600 asylum cases were referred in 2007 to another EU Member State, while Sweden took charge of 826 cases.<sup>83</sup>

The Migration Board may also order immediate non-admission if it is obvious that the applicant does not need protection and has no other reasons to be allowed to stay in the country. The asylum seeker may also be refused admission if he or she has been in another country where he or she could have obtained protection before coming to Sweden.<sup>84</sup> Such a decision must normally be taken within three months of the date of application.<sup>85</sup>

If it proves after the initial investigation that a complete asylum investigation must be performed, public counsel is arranged for the asylum seeker. Thereafter, the applicant and his or her counsel write a brief explaining the reasons for asylum, etc.<sup>86</sup> This must normally be submitted within three weeks. Thereafter, the asylum seeker and his or her counsel are called to appear at the Migration Board for an oral review with a case officer and decision-maker from the Migration Board. At this meeting, the reasons for asylum are reviewed and questions in addition to the brief may be asked.<sup>87</sup> However, the intent is that this meeting should not be an interrogation, but rather a means to ascertain whether there is sufficient information to take a decision, because the Migration Board has investigative responsibility that cannot be devolved to the applicant's public counsel.<sup>88</sup>

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<sup>80</sup> National Audit Office, 2004:24, p. 45, Migration Board, 2004, p. 12.

<sup>81</sup> National Audit Office, 2004:24, p. 19.

<sup>82</sup> Utne et al. 2007, p. 85.

<sup>83</sup> Government Bill 2008/09:1, expenditure area 8, p. 13.

<sup>84</sup> National Financial Management Authority 2008:25, p. 9, National Audit Office, 2004:24, p. 19

<sup>85</sup> National Audit Office, 2004:24, p. 19.

<sup>86</sup> Migration Board, 2004, p. 13.

<sup>87</sup> Migration Board, 2004, p. 16, Utne et al. 2007, p. 83, Migration Board 2008b, p.24-26.

<sup>88</sup> Migration Board, 2004, p. 20, 30.

Certain key procedures can delay processing during the course of the investigation: appointment of counsel, embassy queries, linguistic analysis (if there is doubt about the asylum seeker's origins) and Dublin requests.<sup>89</sup>

### **Reception of Asylum Seekers**

While an asylum application is being examined, the asylum seeker is registered at a Migration Board Reception Unit, but the majority of asylum seekers live with relatives or friends in the community, in what is referred to as own accommodation. Other asylum seekers are offered accommodation through the Migration Board, usually in ordinary flats in the community.<sup>90</sup>

One reason asylum seekers choose to live in own accommodation during the asylum period is that it seems to be the surest route to later reception in the municipality where they wish to live. As well, a study performed by the National Board of Housing, Building and Planning has shown that people who live in own accommodation are more easily integrated into society.<sup>91</sup> At present, only about one fourth of the people who are granted residence permits are actively placed in a municipality by the Migration Board.<sup>92</sup> In 2007, 55% of asylum seekers chose to live with relatives or friends in own accommodation in the municipalities, while the others had accommodation arranged by the Migration Board, which is referred to as provided accommodation.

During 2007, an average of 33,000 asylum seekers were registered in the reception system, which had increased to 38,800 people by the end of 2008.<sup>93</sup>

Thus, the Migration Board has main responsibility for reception of asylum seekers from the time the application for asylum is lodged until the person is received by a municipality and has been granted a residence permit, or, if the application is rejected, until the person leaves the country.<sup>94</sup> In concrete terms, this means the Migration Board arranges accommodation if the asylum seeker does not arrange it on his or her own. The Migration Board also pays daily allowance, housing allowance and special benefits to asylum seekers.<sup>95</sup> These economic benefits to asylum seekers amounted to approximately SEK 677 million in 2007. The daily allowance from the Migration Board to asylum seekers is SEK 71 per day for single adults, SEK

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<sup>89</sup> National Audit Office, 2004:24, p. 68-70.

<sup>90</sup> Government Bill 2008/09:1, expenditure area 8, p. 13.

<sup>91</sup> National Board of Housing, Building and Planning, 2008.

<sup>92</sup> Migration Board, 2008, p. 19.

<sup>93</sup> Government Bill 2008/09:1, expenditure area 8, p. 13, Migration Board Annual Report, p. 14.

<sup>94</sup> Government Bill 2008/09:1, expenditure area 8, p. 15, Government Communication, Skr 2008/09:33, p. 13.

<sup>95</sup> Government Bill 2008/09:1, expenditure area 8, p. 15, 17.

61 per day and person for adults sharing a household and SEK 37-50 per day for children age 0-17.<sup>96</sup>

Even though the state has main responsibility for reception of asylum seekers, Swedish municipalities and County Councils are responsible for certain tasks. For instance, the municipalities are responsible for preschool and school for children seeking asylum and for certain services provided under the Social Services Act, for which the municipalities are compensated by the state. County Councils are responsible for providing health and medical services to asylum seekers under an agreement between the state and the Swedish Association of Local Authorities and Regions, for which state compensation is also paid.<sup>97</sup> The right to health and medical services for adult asylum seekers is limited to urgent care, while children seeking asylum have access to health and medical services essentially equal to that enjoyed by children residing in Sweden.<sup>98</sup>

The Migration Board also offers organised occupation to asylum seekers during the waiting period, often in the form of Swedish language instruction. The applicant is expected to participate in various types of organised occupation, whose objective is to prepare the applicant for either legal residence in Sweden or return to the country of origin.<sup>99</sup>

Municipalities have been responsible for the reception of unaccompanied minors since 1 July 2006. The municipalities must arrange accommodation for the children and ensure that they are provided the support they need. The Migration Board enters into agreements with the municipalities for this purpose.<sup>100</sup> Thus, the Migration Board must first make agreements with municipalities and then refer the child to a municipality which then becomes the municipality of residence and must provide schooling, care and accommodation for the child. In exchange, the municipality receives fixed compensation in addition to the compensation paid for the child's care and accommodation. This recent legislation distilled the role of the Migration Board to entering into agreements with municipalities and examining and investigating minor children's reasons for asylum, although the Board still has overall responsibility for the reception of these children.<sup>101</sup>

In 2007, 36,207 people sought asylum in Sweden, about half of them from Iraq.<sup>102</sup> This made Sweden the EU Member State in which the most people

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<sup>96</sup> Migration Board

<sup>97</sup> Government Bill 2008/09:1, expenditure area 8, p. 15, Government Communication Skr 2006/07:58, p. 16, Government Communication, Skr 2008/09:33, p. 14, Migration Board, 2008, p. 27.

<sup>98</sup> Migration Board, 2008, p. 26

<sup>99</sup> National Financial Management Authority 2008:25, p. 9.

<sup>100</sup> Government Bill 2008/09:1, expenditure area 8, p. 16.

<sup>101</sup> Government Communication Skr 2006/07:58, p. 16-17, Migration Board, 2008, p. 29.

<sup>102</sup> Government Communication, Skr 2008/09:33, p. 8.

sought asylum and Sweden's percentage of the total number of asylum seekers in the EU increased from 7% in 2005 to 16% in 2007.<sup>103</sup>

### Asylum Seekers 2006-2008

Nationality	2006	%	2007	%	2008	%	Percentage change 2007-2008
Afghanistan	594	2	609	2	784	3	29
Africa except Somalia	2,128	9	2,664	7	2,892	12	9
Bosnia-Herzegovina	234	1	217	1	150	1	-31
Iraq	8,951	37	18,559	51	6,083	25	-67
Middle East	1,948	8	1,800	5	2,005	8	11
OSS except Russia	1,849	8	1,671	5	2,482	10	49
Russia	755	3	788	2	933	4	18
*Serbia	2,001	8	2,500	7	958	4	-62
Somalia	1,066	4	3,349	94	3,361	14	0
Stateless	815	3	1,312	4	1,051	4	-20
Others	3,981	16	2,738	8	3,654	15	33
<b>Total</b>	<b>24,322</b>	<b>100</b>	<b>36,207</b>	<b>100</b>	<b>24,353</b>	<b>100</b>	<b>-33</b>

\*2005 and 2006: Serbia and Montenegro

#### 4.1.1.2 Entry Procedures – Managed Migration

The cases classified as managed migration cases (not involving need for protection) are family connections cases, work permit cases, student cases, short stay/visit cases, EEA/registration cases, visa cases and passport cases. The bulk of cases involving residence permits are initiated when an application is lodged with a Swedish mission abroad, since the main principle is that permits must be arranged before entry to Sweden is permitted. However, there are certain exceptions from the main rule that allow application for permits from within Sweden.<sup>104</sup> Once the mission abroad has performed the investigation, the case is transferred to the Migration Board for decision. Upon special authorisation, the missions

<sup>103</sup> Government Communication, Skr 2008/09:33, p. 10. Government Communication Skr 2006/07:58, p. 30, Government Communication, Skr 2008/09:33, p. 9.

<sup>104</sup> Utne et al. 2007, p. 98.

abroad may take the decisions in certain cases, such as residence permits for certain students and employees.

Border control is the responsibility of the Police.

#### **4.1.2. Admission Conditions**

The Migration Board takes most decisions as the agency with original jurisdiction in relation to residence permits, regardless of the grounds for application. Thus, the same agency takes the decision regardless of to whom it applies (adult, child or unaccompanied minor) and regardless of the grounds for the application (asylum, family connections, studies, work, etc.). However, the handling process varies depending on the reason for applying for a residence permit. Certain types of cases may be decided by Swedish missions abroad. Missions abroad decide the majority of visa cases, which are the numerically largest case category, and only a minor portion of these cases is transferred to the Board.

##### **4.1.2.1 Admission Conditions - Asylum**

If Sweden is responsible for examining the application for asylum, the Migration Board performs an investigation and assesses whether the asylum seeker needs protection or should be granted a residence permit in Sweden on other grounds.

There must be an oral hearing element to the procedure and the applicant has the right to public counsel unless it is obvious that there is no need for public counsel, i.e. when it is likely that a residence permit will be granted or obvious that it will be denied. The public counsel must represent the asylum seeker and thus strengthen due process in the investigation.<sup>105</sup>

As in other administrative cases, the official or investigation principle applies to aliens cases. This means that it is the agency's responsibility to ensure that a case is investigated so that there is adequate decision input.

With regard to aliens cases, one can also generally say that the person who, for example, applies for a residence permit must present the circumstances that indicate he or she is entitled to receive such a permit.<sup>106</sup> How far the agency's investigative responsibility extends depends on the type of case. Generally speaking, however, investigative responsibility in application cases is generally less extensive than in onerous administrative decisions, but the agency's investigative responsibility is greater in connection with applications for asylum than for other types of application cases.<sup>107</sup> The

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<sup>105</sup> The Aliens Act (2005:716) 8:6, National Financial Management Authority 2008:25, p. 24.

<sup>106</sup> Government Bill 2004/05:170, p. 90, Migration Board, 2004, p. 5, Diesen et al. 2007, p. 92.

<sup>107</sup> Utne et al. 2007, p. 23-24.

agency thus has investigative responsibility, but the applicant is also responsible for presenting the circumstances cited to support a claim of refugee status.<sup>108</sup> The focus of the asylum process must be with the Migration Board, as the agency with original jurisdiction.<sup>109</sup> Accordingly, it is there that all relevant circumstances and documents must be presented.<sup>110</sup>

According to the main rule, decisions cannot be enforced before they have taken legal force, but there are exceptions if the application is considered obviously unfounded, when the case must be determined within three months.<sup>111</sup> There are no special procedures for these decisions in Sweden.<sup>112</sup>

Under the new Aliens Act, there are various grounds upon which asylum seekers may be granted asylum in Sweden. It is now easier to survey the grounds upon which residence permits have been granted. In 2007, 11,321 people were granted residence permits for protective reasons, either as refugees or persons otherwise in need of protection. Of these, 2,677 were given protection pursuant to provisions based on international obligations, 1,845 were quota refugees, and 8,644 were granted residence permits pursuant to other provisions of the Aliens Act. In addition, almost 4,000 asylum seekers were granted residence permits pursuant to the exemption rule on exceptionally distressing circumstances.<sup>113</sup>

If asylum seekers need protection, they are granted residence permits in Sweden. If asylum seekers do not need protection and have no other reasons to be allowed to stay in Sweden, the Migration Board takes a decision to refuse admission or expel them. Most people whose applications are rejected by the Migration Board appeal the decision.<sup>114</sup> If the appeal is also denied, the asylum seeker must return voluntarily to the country of origin or the country from which he or she travelled to Sweden. If the person does not leave the country voluntarily, it becomes the task of the Police to ensure that he or she leaves the country.<sup>115</sup>

Most people allowed to stay in the country are granted a permanent residence permit, which in many areas conveys the same rights enjoyed by all other residents of Sweden.<sup>116</sup> However, there have been periods during which certain groups have been granted temporary residence permits while waiting for the situation in the country of origin to improve.

For the asylum process to be humane, it is important that processing times are as short as possible because long waiting times cause tremendous

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<sup>108</sup> National Financial Management Authority 2008:25, p. 23.

<sup>109</sup> National Financial Management Authority 2008:25, p. 24, Diesen et al. 2007, p. 92.

<sup>110</sup> Diesen et al. 2007, p. 92.

<sup>111</sup> The Aliens Act (2005:716) 8:6

<sup>112</sup> Government Bill 2004/05:170.

<sup>113</sup> Government Communication, Skr 2008/09:33, p. 7.

<sup>114</sup> National Audit Office, 2004:24, p. 20.

<sup>115</sup> National Audit Office, 2004:24, p. 20.

<sup>116</sup> National Audit Office, 2006, p. 24.

uncertainty, which is psychologically distressing. There are scheduled targets here which say that decisions on residence permits or non-admission/expulsion must be taken within six months of the date the application is received by the Migration Board. The target is three months for unaccompanied minors.<sup>117</sup> There is also a target for settlement, which is that the Migration Board must refer the person to an available place in a municipality no later than four weeks after a residence permit has been granted. Processing times at other public agencies, such as the courts, police, county administrative boards and the municipalities also have considerable impact on the total waiting time. However, since rights of due process are based on laws, and time targets are based on political ambitions, due process must be given precedence over the temporal aspect.<sup>118</sup>

Reception costs are extremely high and could be reduced if processing times were shorter.<sup>119</sup> The average processing time at the agency with original jurisdiction in 2008 was 267 days, while the total average time in the reception system was 446 days<sup>120</sup> (this states the total time period from application to settlement or expulsion).

## Appeals

As previously reported, new rules of procedure were instituted through the new Aliens Act, by which appeal is a two-party court proceeding in which the Migration Board is the opposing party to the individual.<sup>121</sup> This is consistent with proceedings in other cases when an individual appeals the decision of an administrative agency in a court of law.<sup>122</sup>

If the Migration Board judges that the asylum seeker does not need protection and has no other reasons to be allowed to stay in Sweden, the Board issues a non-admission or expulsion order. The applicant may return voluntarily or appeal the decision, which most do. The Migration Board then re-examines the decision. If it is not changed, it is sent to one of the Migration Courts.<sup>123</sup> This duty to re-examine the decision emanates from the general principles of Swedish administrative law, which requires the agency to re-examine its decision and change the decision if it is found erroneous due to new circumstances or other reasons.<sup>124</sup> The Migration Board and the asylum seeker and his or her counsel meet in the Migration Court in an oral hearing. An oral hearing is not mandatory, but may be held if it can be presumed helpful to the investigation or to enabling swift resolution of the case. An oral hearing must also be held if the alien requests it and it is not

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<sup>117</sup> Budget Appropriation Directive for the Migration Board 2008, Government Bill 2008/09:1, expenditure area 8, p. 14.

<sup>118</sup> National Financial Management Authority 2008:25, p. 19.

<sup>119</sup> National Financial Management Authority 2008:25, p. 27.

<sup>120</sup> Migration Board Annual Report, 2008, p. 12-13.

<sup>121</sup> Government Communication Skr 2006/07:58, p. 8.

<sup>122</sup> Utne et al. 2007, p. 36.

<sup>123</sup> Migration Board 2008b, p. 40.

<sup>124</sup> Utne et al. 2007, p. 35.

obviously unnecessary.<sup>125</sup> Overall, this means that oral hearings are common in asylum cases. The Migration Court has a quorum with one legally trained judge and three lay judges.<sup>126</sup> Migration Court rulings may be appealed to the Migration Court of Appeal, but it hears only cases that are highly important to case law and leave to appeal is thus required.

The Migration Court of Appeal is the court of last resort and thus also sets precedent.<sup>127</sup> The Migration Court of Appeal has a quorum with three legally trained judges. However, if the ruling is of great significance to case law, the Migration Court may consist of a panel of seven legally trained judges.<sup>128</sup>

If the application is also rejected by the courts, the applicant must leave the country. If he or she does not leave voluntarily, the Migration Board transfers the case to the Police.<sup>129</sup> Within the Migration Board, return migration is handled by the Reception Units.<sup>130</sup>

## **Cooperation**

Smooth interagency cooperation is essential to achieving greater efficiency, since the various agencies are interdependent. The Migration Board has the mandate as the central administrative authority for all matters related to migration and is tasked with deepening and improving cooperation with other relevant agencies.<sup>131</sup> A cooperation delegation has been created for the purpose among the Migration Board, the County Administrative Boards and the Public Employment Service. The Swedish Association of Local Authorities and Regions is also represented.<sup>132</sup> At a central level, the Migration Board cooperates with the National Police Board, including through the cooperative forum SAMSYN, which is made up of central representatives of the Police, the Migration Board, the National Courts Administration, the Coast Guard, the Ministry of Justice and the Prison and Probation Service (Transport Service). SAMSYN meets two or three times a year.

The work of non-governmental organisations is also important and they are key actors in public affairs related to these matters. Public opinion is influenced by factors including the work of NGOs.<sup>133</sup> In certain cases, there are also concrete projects in partnership with NGOs. One example is the project activities run by the Swedish Red Cross to support efforts related to

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<sup>125</sup> Utne et al. 2007, p. 39.

<sup>126</sup> Utne et al. 2007, p. 45.

<sup>127</sup> Utne et al. 2007, p. 41

<sup>128</sup> Utne et al. 2007, p. 47.

<sup>129</sup> National Financial Management Authority 2008:25, p. 9.

<sup>130</sup> Migration Board, 2004, p. 44.

<sup>131</sup> National Financial Management Authority 2008:25, p. 20, Government Bill 2008/09:1, expenditure area 8, p. 26, Government Communication Skr 2006/07:58, p. 21.

<sup>132</sup> National Financial Management Authority 2008:25, p. 21.

<sup>133</sup> National Financial Management Authority 2008:25, p. 32.

return migration to Northern Iraq, Serbia and Kosovo.<sup>134</sup> There are also various types of networks for cooperation with NGOs. The Minister for Migration and Asylum leads the refugee policy network with organisations for information and idea exchange in the policy area.<sup>135</sup> Similar networks also exist between the Migration Board and NGOs.

In partnership with the UNHCR, Sweden can also offer refugees resettlement in Sweden, which is a key component of the Swedish asylum policy. Resettlement means that Sweden offers protection to persons who are in a third country and have no other long-term solution. The purpose of resettlement is to provide protection, primarily to refugees and other persons in need of protection, but another key aim is to share responsibility with countries that are sheltering large groups of refugees.<sup>136</sup> These “quota refugees” are selected either by selection missions or dossier submissions. In the selection mission process, refugees are selected in the country where they are residing after having been interviewed on-site by missions from the Migration Board. Residence permits were granted to 1,845 quota refugees in 2007.<sup>137</sup> Selection missions took place in 2008 in Iran, Syria, India, Thailand and the Republic of the Congo.<sup>138</sup> In the dossier submission process, the UNHCR sends reports to the Migration Board, which takes a decision based on this material.<sup>139</sup>

## Statistics

In 2008, 24,353 people sought asylum in Sweden and 38,885 asylum cases were decided by the Migration Board.<sup>140</sup> During the same year, 1,510 unaccompanied minors sought asylum and the Migration Board decided 1,481 cases involving unaccompanied minors.<sup>141</sup>

### Asylum cases concluded by the Migration Board 2005-2007

Year	Concluded	Granted	Percentage granted	Rejected	Written off/Other
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<sup>134</sup> Government Communication, Skr 2008/09:33, p. 17.

<sup>135</sup> Government Communication Skr 2008/09:33, p. 24.

<sup>136</sup> Government Communication Skr 2008/09:33, p. 21.

<sup>137</sup> Government Bill 2008/09:1, expenditure area 8, p. 13.

<sup>138</sup> Government Communication Skr 2008/09:33, p. 22.

<sup>139</sup> Government Communication Skr 2006/07:58, p. 45.

<sup>140</sup> Government Bill 2008/09:1, expenditure area 8, p. 14.

<sup>141</sup> Government Bill 2008/09:1, expenditure area 8, p. 15.

2005	21,325	2,838	13	15,867	2,620
2006	18,838	7,940	42	6,977	3,921
2007	32,492	15,639	48	12,177	4,676
2008	38,885	8,276	24	18,344	3,758

#### 4.1.2.2 Admission Conditions – Managed Migration

The Managed Migration and Citizenship Division deals with all types of applications for permits to stay in Sweden, which may apply to entry and temporary stay or permanent settlement in Sweden. The applications apply to visits to family and tourist visits, stays to work or study, or settlement based on family connections. Applications are primarily lodged with a Swedish mission abroad, but may in certain cases be lodged with the Migration Board.<sup>142</sup> Regardless of where the application was lodged, the Migration Board decides most of the migration cases, meaning that Swedish missions abroad sends the applications to the Migration Board.<sup>143</sup>

Family connections are the most common grounds for residence permits, thus for the purpose of family formation or reunification.<sup>144</sup>

Under Swedish law, spouses, registered domestic partners, de facto spouses and minor, unmarried children of the family connection – the person who resides in Sweden – have a right to a residence permit in Sweden. However, a residence permit may be refused if the applicant has been convicted of a crime or the relationship is not bona fide.<sup>145</sup> Residence permits may also be granted to aliens who intend to marry or cohabit with a person who resides in Sweden.<sup>146</sup> Partners in these recently established relationships are often granted temporary residence permits that may be extended if the relationship endures. This is referred to as deferral of immigrant status.<sup>147</sup>

Residence permits may also be granted to students or people working in Sweden and their families.<sup>148</sup>

When permits are granted in all of these categories, no prerequisite integration measures are connected to the decisions.

<sup>142</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

<sup>143</sup> Government Bill 2008/09:1, expenditure area 8, p. 19.

<sup>144</sup> Government Communication Skr 2006/07:58, p. 35, 37.

<sup>145</sup> Government Communication Skr 2006/07:58, p. 10, Utne et al. 2007, p. 93.

<sup>146</sup> Utne et al. 2007, p. 94.

<sup>147</sup> Utne et al. 2007, p. 103.

<sup>148</sup> Government Communication Skr 2006/07:58, p. 11.

### Received, concluded and pending regular visa and migration cases at the Migration Board 2008

	Received	Concluded	Pending
Family connections cases (first application)	45,064	41,676	13,454
Family connections cases (extension)	18,906	18,403	4,756
EEA registration cases	23,818	23,501	3,832
Long-term resident status	470	428	132
Student cases	26,034	24,995	2,758
Work permit cases	17,457	17,606	1,999
Visit cases	10,783	10,787	324
Visa cases	3,724	3,636	176
<b>Total</b>	<b>146,256</b>	<b>141,032</b>	<b>27,431</b>
<i>Additionally:</i>			
Passport cases	38,428	37,950	7,946
Non-admission and expulsion cases	2,157	2,053	632
Visas cases at Swedish missions abroad	234,404	231,679	

Nearly 63,000 applications for residence and work permits were lodged in 2007. A total of 350,000 applications (including visa applications) were lodged with Swedish missions abroad.<sup>149</sup>

A visa is a permit required to enter and stay for a short period in Sweden, e.g., for a visit. The visa must have been issued and affixed to the passport prior to entering the country. A visa to Sweden is normally valid throughout the Schengen Territory and vice versa. Visa applications are lodged with a Swedish mission abroad. Visa decisions are taken primarily by the missions abroad, which may also take decisions in certain other cases, upon authorisation by the Migration Board.<sup>150</sup>

According to the Aliens Act, the organisation and procedures for appeal are the same for all types of permits, regardless of whether the case involves asylum, family reunification, etc. The exception is that decisions on visa

<sup>149</sup> Government Communication Skr 2008/09:33, p. 25.

<sup>150</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

applications are normally non-appealable. See section 4.1.2.1 for further information.

### **4.1.3 Legal Residence and Citizenship**

Applications for Swedish citizenship are normally examined by the Migration Board, as are matters involving retention of and release from Swedish citizenship.<sup>151</sup> There is a division within the Migration Board that examines naturalisation cases and cases pertaining to retention of or release from Swedish citizenship.<sup>152</sup>

To become a Swedish citizen through naturalisation, the applicant must be over 18 years of age, able to prove his or her identity, have a permanent residence permit, have lived in Sweden for at least five years (four years for refugees or stateless persons, two years for Nordic citizens), have demonstrated good conduct and not have committed a crime.<sup>153</sup>

There are no prerequisites linked to integration, language skills, or similar to obtain Swedish citizenship. The Migration Board received 24,400 applications for Swedish citizenship in 2007.<sup>154</sup>

#### **4.1.3.1 Legal Residence - Asylum**

The Migration Board granted residence permits to 15,600 asylum seekers in 2007, the Migration Courts granted 600 and the Migration Court of Appeals granted 30 residence permits.<sup>155</sup>

The decision on a residence permit must specify the reasons on which the decision was based. Thereafter, the applicant is informed of the decision in the asylum case at a Migration Board Reception Unit.<sup>156</sup>

“Integration programmes for recently arrived refugees and other immigrants are part of the integration policy. Municipalities receive newly arrived persons and coordinate introduction programmes, while the state finances and follows up municipal activities. In addition, every public agency is expected to adapt programmes to the individual needs of newly arrived persons, as needed and within the framework of its area of responsibility.”<sup>157</sup>

Thus, responsibility for reception of newly arrived persons is divided between the state and the municipality. The state has overall financial responsibility and must ensure that the municipalities have capacity to

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<sup>151</sup> Government Bill 2004/05:170, p. 89.

<sup>152</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

<sup>153</sup> Migration Board, informationsmaterial

<sup>154</sup> Government Bill 2008/09:1, expenditure area 8, p. 22.

<sup>155</sup> Government Bill 2008/09:1, expenditure area 8, p. 14.

<sup>156</sup> Migration Board, 2004, p. 43-44.

<sup>157</sup> National Audit Office, 2006, p. 7.

receive newly arrived persons. The municipality that accepts a refugee is responsible for implementing a good introduction programme and providing for the refugee's financial support during the introduction period.<sup>158</sup> As a result, introduction programmes may vary from one municipality to the next.

As of 1 July 2007, the Migration Board is responsible for referring a settlement location to persons who have been granted residence permits and need help finding housing.<sup>159</sup> This task was formerly done by the Integration Board. Settlement should primarily be in municipalities with a strong labour market. The Migration Board and the Public Employment Service cooperate towards achieving that end.<sup>160</sup>

The Migration Board assesses how many places are needed, after which the County Administrative Boards negotiate agreements with the municipalities, which are signed by the Migration Board.<sup>161</sup> The County Administrative Boards are responsible for negotiating with municipalities on the reception and settlement of people who have been granted legal residence. The Migration Board is responsible for entering into agreements with the municipalities.<sup>162</sup>

Settlement activities thus involve many actors, which requires cooperation and good communication. Cooperation among actors may be problematic in certain areas with regard, for instance, to goal conflicts between municipal and state actors. This is exacerbated by opinions that state financial compensation is inadequate as an incentive towards effective introduction.<sup>163</sup>

There is a central agreement between the Labour Market Administration, the Migration Board, the National Agency for Education, the National Agency for School Improvement and the Swedish Association of Local Authorities and Regions aimed at fostering cooperation at a central level concerning these issues.<sup>164</sup> The agencies of particular importance in this context are the Migration Board and the Labour Market Administration, now the Public Employment Service, in order to establish good introduction programmes.<sup>165</sup>

“Social initiatives for newly arrived refugees take place primarily within the framework of municipal introduction programmes.”<sup>166</sup> The municipalities thus are responsible for implementing organised reception. The intention is

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<sup>158</sup> National Audit Office, 2006, p. 17-18.

<sup>159</sup> National Financial Management Authority 2008:25, p. 35.

<sup>160</sup> National Financial Management Authority 2008:25, p. 35.

<sup>161</sup> National Financial Management Authority 2008:25, p. 35.

<sup>162</sup> Government Bill 2008/09:1, expenditure area 8, p. 9.

<sup>163</sup> National Financial Management Authority 2008:25, p. 36.

<sup>164</sup> National Audit Office, 2006, p. 18.

<sup>165</sup> National Audit Office, 2006, p. 20.

<sup>166</sup> National Audit Office, 2006, p. 11.

for municipalities and relevant agencies to offer specially targeted measures to newly arrived persons that will facilitate rapid establishment in Swedish society. The introduction must be based on individual needs and designed in consultation between the municipality and the refugee.<sup>167</sup>

These programmes concern the newly arrived, of which there were approximately 8,600 people in 2005.<sup>168</sup> State compensation to the municipalities is intended to cover the costs of newly arrived persons for two to three years.<sup>169</sup> The Migration Board disburses compensation to the municipalities for their costs in connection with reception and introduction of refugees and their family members pursuant to the State Compensation (Refugee Reception etc.) Ordinance (1990:927).<sup>170</sup>

Since 1 July 2006, the municipalities are also responsible for reception of unaccompanied minors. The Migration Board enters into agreements with municipalities on housing places.<sup>171</sup> The Migration Board was formerly responsible for their reception, but it was thought that this constituted a conflict, since the Migration Board was meant to both provide reception and take decisions regarding their asylum applications.

#### 4.1.3.2 Legal Residence – Managed Migration

In principle, people who have been granted residence permits on the grounds of family connections or comparable have the same right to introduction in their home municipality, in the form of Swedish language instruction and similar, as those who have been granted legal residence for protective reasons, but on a different basis in law. In these cases the Education Act and Social Services Act are applicable since they cover everyone staying in the municipality.<sup>172</sup>

### Work and residence permits granted in 2005-2008

Category	2005	2006	2007	2008	Change % 2007-2008
<b>Employment and Studies</b>	<b>12,822</b>	<b>13,588</b>	<b>18,779</b>	<b>25,699</b>	<b>37%</b>
Students	6,837	7,331	8,920	11,186	25%
Labour market	5,985	6,257	9,859	14,513	47%
- employees	3,135	3,567	4,829	7,508	55%
- visiting researchers with work permits	341	377	396	613	55%
- seasonal work permits	496	70	2,358	3,747	59%
- work experience/ au pair	609	592	587	653	11%
- performing artists	878	1,080	1,045	1,117	7%
- other <sup>1)</sup>	526	571	644	875	36%
<b>EU/EEA</b>	<b>18069</b>	<b>20461</b>	<b>19387</b>	<b>19398</b>	<b>0%</b>
Employees	7,414	9,020	8,189	7,881	-4%
Business owners <sup>2)</sup>	1,257	1,144	695	488	-30%
Family members	4 736	5 679	6 350	6 748	6%

#### **4.1.4. Access to the Labour Market**

Aliens who do not have a permanent residence permit or right of residence and are not citizens of another EU/EEA Member State must have a work permit to work in Sweden.<sup>173</sup>

Applications for work permits are lodged with the Migration Board or a Swedish mission abroad. The Migration Board then takes the decision and issues the work permit, which must have been granted and affixed to the passport before entering the country.<sup>174</sup>

Asylum seekers may be exempt from this requirement if, in the Migration Board's judgement, it is going to take more than four months for a decision. In these cases, the Migration Board issues special proof of exemption.<sup>175</sup>

An entirely new labour immigration policy entered into force in 2008. The basic premise is that focus must be on the employer's need for labour.<sup>176</sup>

The main elements of the new law may be summarised as follows:

- The former examination by a public agency of whether a need exists to recruit labour from a third country has been eliminated. The employer's assessment of whether such recruitment is necessary is now the only basis for the residence and work permit case.
- Periods of validity for temporary work permits were extended and people with temporary work permits may after four years become eligible for a permanent residence permit.
- The main rule is that residence and work permits must be arranged before entry into Sweden, but there are several exceptions to this rule. Thus, a person whose employment is terminated during the permit period may apply for a work permit while in Sweden if he or she receives a new offer of employment. Likewise, visiting students and asylum seekers whose asylum applications were rejected may apply for a residence permit while in Sweden if they have secured employment.
- The special permit grounds for seasonal work has been eliminated.

##### **4.1.4.1. Access to the Labour Market - Asylum**

To have the right to work while awaiting a decision in an asylum case, the applicant must have proof of exemption from the work permit requirement (AT-UND). The exemption may be granted if:

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<sup>173</sup> Diesen et al. 2007, p. 59.

<sup>174</sup> Migration Board, informational material

<sup>175</sup> Diesen et al. 2007, p. 59.

<sup>176</sup> Government Communication, Skr 2008/09:33, p. 5.

- The Migration Board judges that it is going to take longer than four months to take a decision in the asylum case
- The applicant's identity has been established through identification documents or otherwise

The AT-UND is normally valid until a residence permit has been granted or the asylum seeker leaves the country.

Under the new law, asylum seekers whose applications have been rejected may also apply for a work permit. The conditions for being granted a permit include that the applicant must have had a job, from which he or she earns enough to live on, for at least six months during the waiting period and that the employment will last for at least an additional 12 months.

#### **4.1.4.2 Access to the Labour Market – Managed Migration**

Persons who wish to work in Sweden must have an offer of employment from an employer in Sweden.

Other conditions for a permit include:

- The employee must have a valid passport
- The employee must be able to live on his or her wages
- Terms of employment must be in parity with a Swedish collective agreement or customary terms in the occupation or sector
- The relevant union must have been afforded an opportunity to express an opinion on the terms of employment
- The job must have been advertised in Sweden and the EU

#### **4.1.5. Return**

An alien who does not have a visa, residence permit or other permit required for entry, stay or work in Sweden may be refused admission.<sup>177</sup> The basic premise is that the person must leave the country voluntarily.

##### **4.1.5.1 Return – Asylum**

When a person's application for asylum is rejected, a non-admission or expulsion order is attached to the decision. According to the Aliens Act, an alien who is refused admission must leave the country within two weeks after the non-admission order takes legal force. In connection with expulsion, the alien has four weeks to leave the country after the expulsion order has taken legal force.<sup>178</sup>

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<sup>177</sup> Diesen et al. 2007, p. 67.

<sup>178</sup> Government Bill 2008/09:1, expenditure area 8, p. 17, Diesen et al. 2007, p. 72.

If impediments to enforcing the decision emerge, the Migration Board may take up the case for re-examination. This may occur at the initiative of the person whose application was rejected or of the Migration Board.<sup>179</sup>

The Migration Board is responsible for enforcing non-admission/expulsion orders. When an alien's application for asylum has been rejected, he or she must leave the country. The Migration Board's objective is to engage in dialogue in order to persuade the alien to return without having to transfer the case to the Police for involuntary return using coercive measures. The Migration Board is working towards agreements with Swedish and foreign international organisations aimed at increasing the number of people who return voluntarily. Here as well, waiting times are highly significant. Shorter stays in the country lead to a larger percentage of voluntary returns.<sup>180</sup>

If an alien does not leave the country voluntarily after his or her application is rejected, the Migration Board transfers the case to a Police Authority for enforcement of the order. Enforcement may be performed by the police or in cooperation with the Prison and Probation Service (Transport Service), which may, at the request of the Police, escort the alien out of the country.<sup>181</sup> About 6,000 cases were transferred to the Police in 2007, including 2,800 transferred because it was presumed that coercive measures would be necessary and 3,300 transferred because the individual to whom a non-admission or expulsion order applied had absconded.<sup>182</sup>

A non-admission or expulsion order shall be considered enforced if the alien has left the country. A non-admission or expulsion order remains valid for four years after the order takes legal force. If the person is found in Sweden again after an order has been enforced, the order must be re-enforced if it is still valid.<sup>183</sup>

The Migration Board, the National Police Board and the Prison and Probation Service cooperate in matters related to return.<sup>184</sup>

Asylum seekers can be detained under certain circumstances, which are regulated by law.<sup>185</sup> The most common reason for detaining an alien is to prevent him or her from hiding in order to evade expulsion or non-admission. However, aliens whose identity has not been established and cannot be made likely may also be detained.<sup>186</sup> The Migration Board has

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<sup>179</sup> Migration Board, informational material

<sup>180</sup> National Financial Management Authority 2008:25, p. 39.

<sup>181</sup> National Financial Management Authority 2008:25, p. 32, Government Bill 2008/09:1, expenditure area 8, p. 18, Diesen et al. 2007, p. 72.

<sup>182</sup> Government Bill 2008/09:1, expenditure area 8, p. 18.

<sup>183</sup> Diesen et al. 2007, p. 73.

<sup>184</sup> Government Bill 2008/09:1, expenditure area 8, p. 18.

<sup>185</sup> Aliens Act (2005:716) ch 10.

<sup>186</sup> Diesen et al. 2007, p. 85.

detention centres in five locations in Sweden.<sup>187</sup> The Police Authorities were responsible for the detention centres until 1 October 1997 when the responsibility was transferred to the Migration Board.<sup>188</sup> If an alien has been taken into detention following a non-admission or expulsion order, he or she may be detained for two months, but that period may be extended if special reasons exist. The public agency handling the case decides whether the person must be detained – thus it may be a Police Authority, the Migration Board, a Migration Court, or the Migration Court of Appeal that issues the detention order.<sup>189</sup>

Efficient return of people whose non-admission or expulsion orders have taken legal force is important to Swedish interests and a high priority since it is seen as a prerequisite to safeguarding the right to asylum.<sup>190</sup>

Re-admission agreements have become increasingly important to this effort in recent years. Sweden had entered into about twenty bilateral re-admission agreements.<sup>191</sup>

A re-establishment support programme was introduced in 2007 to facilitate voluntary return to certain countries where re-establishment is difficult due to internal conflicts. The decision has since been extended so that re-establishment support may be granted to people returning to Afghanistan, Iraq, Gaza or Somalia. The re-establishment grant is SEK 30,000 per adult and SEK 15,000 per child up to a maximum of SEK 75,000 per family.

People who have residence permits may also wish to return to their countries of origin. The Migration Board is mandated to support these people who wish to return.

#### **4.1.5.2 Return – Managed Migration**

If a person does not have a residence permit in the country, he or she must leave Sweden. The individual must arrange and pay for his or her travel out of the country. If this does not occur, the Police may expel the individual or refuse admission.

The police may refuse admission at the border to people who do not have a permit to enter the country.

#### **4.2 Links with other Policy Areas**

The Government emphasises that the migration policy has links to several other policy areas, especially integration, security, development and foreign policy.<sup>192</sup>

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<sup>187</sup> Government Bill 2008/09:1, expenditure area 8, p. 16.

<sup>188</sup> Migration Board, 2008, p. 27.

<sup>189</sup> Aliens Act (2005:716) ch 10 §12.

<sup>190</sup> Government Communication, Skr 2008/09:33, p. 5, 18.

<sup>191</sup> Government Communication Skr 2008/09:33, p. 17-18.

The Government also stresses that the migration policy is a key component of Sweden's Policy for Global Development.<sup>193</sup>

## 5. ANALYSIS OF THE ASYLUM AND MIGRATION SYSTEM

In a 2004 report, the National Audit Office criticised the Government for its management of the Migration Board. The NAO found that the Government had not provided the Migration Board with the prerequisites for achieving the objectives stated by the Government. On the other hand, the NAO criticised the Migration Board for its handling of asylum cases, since two thirds of the time from the date of application to decision was lost while no action was being taken in the case. Overall, the result was that waiting times for an asylum decision were very long, which made the total costs unnecessarily high. The NAO found that if the Government's six-month target for processing time had been adhered to and if return migration had worked, the total costs for waiting times for asylum seekers could have been reduced by billions of kronor for the period of 2000-2003.<sup>194</sup>

As processing times for asylum cases have been long in recent years as well, in part due to the high influx of asylum seekers, the Migration Board initiated a major process review project in 2008 aimed at changing the asylum process in 2009 so that processing times are reduced and the six-month target is met. The main elements in the proposals for improving efficiency and reducing waiting times are:

1. Process Acceleration – As much as possible must be performed early in the process and by personnel with a high level of expertise.
2. Reinforced and structured cooperation among the examination, reception and administrative procedure units (which manage appealed cases).
3. Small work groups/teams and coaching leaders.
4. Sophisticated management and follow-up of quality, quantity and time.

Interagency cooperation is also significant to improving efficiency in the area. Efficiency in connection with examining applications has strong impact on the length of stays in the country and thus the costs for reception of asylum seekers. Cooperation from the asylum seeker is also important to ensure the highest possible efficiency.<sup>195</sup> The total cost of the asylum process was SEK 4.6 billion in 2007.<sup>196</sup>

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<sup>192</sup> Government Communication, Skr 2008/09:33, p. 5.

<sup>193</sup> Government Communication Skr 2008/09:33, p. 32-33.

<sup>194</sup> National Audit Office, 2004:24, p. 7.

<sup>195</sup> Government Bill 2008/09:1, expenditure area 8, p. 10.

<sup>196</sup> Government Bill 2008/09:1, expenditure area 8, p. 13.

One problem in the Swedish asylum process is that so few asylum seekers show a passport document when they apply. Only 6% had a passport with them when they applied in 2007. This causes problems in the asylum assessment, since there is uncertainty about the person's identity, which leads to prolonged processing times. Further problems arise if the asylum seeker is not granted a residence permit, since unconfirmed identity may lead to problems in connection with non-admission or expulsion.<sup>197</sup>

A subject that has garnered increasing attention in Sweden has to do with how newly arrived persons are treated. The goal is that it must be easy to deal with Swedish authorities and the applicant must come first. The Migration Board's new vision was formulated on the basis of that perspective: "A Sweden that with openness and transparency takes advantage of the opportunities of global migration."

Processing in asylum cases has traditionally been based on interrogation-like investigations, but with a new methodology and the new two-party proceedings in the Migration Courts, this has been changed in recent years.<sup>198</sup> In this way, it has also been made clear that the asylum seeker has the burden of proving his or her refugee status, even if the agency has the investigative responsibility. By this means, Sweden also wishes to emphasise that the process is a civil examination based on laws and case law, and abandon the former perspective, which was largely taken from the police. However, the new methodology for asylum examination that is also based on this perspective has entailed a steep increase in costs for public counsel.<sup>199</sup>

The Swedish Government strongly emphasises the positive effects of circular migration, which has to do with facilitating the movement of persons between sending and receiving countries. The idea is that this can benefit all concerned by meeting the need for labour in receiving countries while contributing to positive development effects in sending countries and benefiting the migrants themselves.<sup>200</sup> The new legislation on labour immigration to Sweden should be considered in light of these ideas.

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<sup>197</sup> Government Bill 2008/09:1, expenditure area 8, p. 15.

<sup>198</sup> Migration Board, 2004, p. 3.

<sup>199</sup> Migration Board, 2004, p. 36, 38.

<sup>200</sup> Government Communication Skr 2008/09:33, p. 34.

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