EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 57750/17
Samuel EZE
against Sweden

The European Court of Human Rights (Third Section), sitting on 17 September 2019 as a Committee composed of:
Georgios A. Serghides, *President,*
Branko Lubarda,
Erik Wennerström, *judges,*
and Stephen Phillips, *Section Registrar*,
Having regard to the above application lodged on 26 July 2017,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Samuel Eze, is a Nigerian national, who was born in 1993. He was represented before the Court by Ms M. Harr, a lawyer practising in Örebro.

2. The Swedish Government ("the Government") were represented by their Agent, Ms K. Fabian, of the Ministry for Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In August 2010, after having participated in a football tournament in Denmark, the applicant applied for asylum in Sweden, stating that his name was Samuel Obi. He alleged that, if returned to Nigeria, he might fall victim to a bloody land conflict between his home village and the neighbouring village. He stated that he had never had any identity documents but submitted, as proof of identity, a membership card in a student association

which did not indicate his birth date. He claimed, however, that he was born on 16 November 1994. In October 2010, the applicant submitted a document from the High/Magistrate's Court of Lagos State, in Ikeja, dated 1 September 2010, according to which he had made a sworn declaration to the court on that day that he had lost his birth certificate but that he had been informed by his parents that he was born on 16 November 1991. When asked by the Swedish Migration Agency (*Migrationsverket*) how he had managed to sign the document in Ikeja on 1 September 2010, after his arrival in Sweden, the applicant acknowledged that a friend had given him the document to sign and that he had not, in fact, given a sworn declaration in front of the court.

5. On 21 December 2010 the Migration Agency rejected the asylum application and ordered the applicant's deportation to Nigeria. The Agency found it odd that the applicant could not properly remember his birth year. It concluded that he had failed to plausibly show his identity but had made it probable that he originated from Nigeria. Furthermore, the Agency found many of the applicant's statements – concerning his schooling, his travel to Sweden and his involvement in the land conflict – to be vague and contradictory. It further noted that he had not sought protection from Nigerian authorities. In the Agency's view, those authorities were sufficiently able and willing to protect the applicant from criminal acts.

6. The applicant appealed and submitted, among other things, a certificate of 19 January 2011 from the Nigerian Embassy in Stockholm, stating that his name was Samuel Obi and that he was born on 16 November 1991. It also indicated the applicant's home village.

7. On 23 August 2011 the Migration Court (*Migrationsdomstolen*) in Stockholm upheld the Migration Agency's decision. Essentially agreeing with the Agency's reasoning, the court found that the applicant had failed to show that he risked ill-treatment upon return. It further agreed with the Agency that he had not sufficiently demonstrated his true identity, despite the certificate from the Embassy.

8. The Migration Court of Appeal (*Migrationsöverdomstolen*) refused the applicant leave to appeal on 25 October 2011.

9. In May 2011 the applicant met T.J., a Swedish citizen with whom he started a relationship. They married in Sweden on 30 June 2012. The couple later travelled to Nigeria to apply for a Swedish residence permit for the applicant based on family ties.

10. On 17 September 2012 the applicant applied for a residence permit at the Swedish Embassy in Abuja. He now stated that his name was Samuel Eze and that he was born on 16 November 1993. He submitted a Nigerian passport, issued on 16 April 2009, containing this information and a picture of him, and explained that he had not used his passport and his real identity when initially applying for asylum as people he had met had advised him not to.

11. On 25 October 2012 the Migration Agency (*Migrationsverket*) rejected the application for a residence permit, finding that he had not proved his identity, which is a legal requirement for the grant of a permit based on family ties. The Agency noted the discrepancy between the information provided by the 2009 passport and that given in the 2011 certificate from the Nigerian Embassy in Stockholm which, the applicant acknowledged, had been issued entirely on the basis of information provided by him. The Agency therefore concluded that there was reason to call into question that the passport had been issued following a careful control of the applicant's identity.

12. The applicant subsequently submitted to the Migration Agency a copy of his birth certificate, issued on 20 November 1999. The Agency therefore re-examined the matter and, by a decision of 29 October 2012, granted the applicant a temporary residence permit until 15 April 2014, the expiry date of his passport and thereby, under Swedish law, the limit for the validity of the permit. The Agency stated that, through the submission of his birth certificate, the applicant had proved his identity.

13. On 22 March 2014 the applicant applied for an extension of his residence permit and submitted, among other things, a newly issued passport. However, when the authenticity of the passport was checked by the Migration Agency, it turned out that it was a forgery. The applicant claimed that he had contacted the Embassy in Stockholm to get a new passport but had been informed that, due to a technical problem, no passports could be issued by the Embassy; instead, the applicant had to contact the Nigerian immigration service in the matter. When he later got in touch with an employee at that authority, he had been told that he did not need to travel to Nigeria to have a new passport issued; it would be sent to his home address in Sweden. The applicant stated that he did not know that the passport he had later received and had submitted to the Agency was fake.

14. On 24 June 2015 the applicant and his wife had a son, of which they have joint custody.

15. On 19 August 2016 the Migration Agency rejected the application for an extension of the residence permit, following interviews conducted with the applicant and his wife in November 2015. It found that the applicant had failed to prove his identity. It took into account the diverging identity information given by him in support of his several applications, which had included the submission of two family names, three birth years and two birth places, differing descriptions of his family in Nigeria, several documents which had proved to contain untrue information and a birth certificate which had previously been declared lost. The Agency concluded, due to the applicant's incoherent submissions made in regard to his identity and the fact that the new passport was a forgery, that the expired passport together with the birth certificate, which had once been accepted as

sufficient evidence, could no longer serve as proof of his identity. On the same basis, it even considered that the applicant had failed to make his identity plausible. The Agency also took into account that he had chosen not to travel to Nigeria to obtain an authentic passport, although advised to do so by the Agency. Furthermore, it found that there were no particularly distressing circumstances suggesting that the applicant should anyway be allowed to remain in Sweden. It noted in that respect that the he had family in Nigeria and had no health problems, and that his wife had previously visited Nigeria with him and thus could travel to that country again with their one-year-old son. While the son would probably be negatively affected if the applicant were forced to return to Nigeria, his young age would likely make the effect less negative than if he had been older and had lived with the applicant for a long time.

The Migration Agency also examined the case under Article 8 of the Convention, having regard to Strasbourg case-law. In addition to the considerations mentioned above, the Agency took into account that the applicant and his wife had started their relationship at a time when they knew that the applicant did not have a residence permit and that the applicant, after his application for asylum had been rejected, had failed to cooperate with the Agency regarding his return to Nigeria and had evaded enforcement for a considerable amount of time. He had also contributed to a situation in which his family risked being separated since he had knowingly provided different identities and submitted documents that had obstructed the assessment of his identity. In sum, the Agency concluded that, although the applicant's deportation would interfere with his right to respect for his family life, it would not involve a violation of Article 8 since, in the case at hand, the State's interest in upholding immigration control weighed more heavily than the interest of the individual.

16. The applicant appealed to the Migration Court. Later, he travelled to Nigeria and had a new passport issued on 17 November 2016. On 6 December 2016 the Swedish Embassy in Abuja refused the applicant an entry visa to Sweden. The passport was sent to the court on 14 December 2016.

17. The Migration Agency, in an opinion requested by the court, argued that the appeal should be rejected. It stated that it was unclear on the basis of which documents and oral statements the new passport had been issued and that therefore, having regard to the previously submitted identity documents which had turned out to be false, it could not be used to establish the applicant's identity.

18. The applicant replied that, in order to get the new passport, he had been required to submit the old expired passport and an application for a new passport and to be present in person when applying. Moreover, his fingerprints had been registered at the time of an earlier passport application and the Nigerian authorities thus had been able to confirm the applicant's

identity. The applicant pointed out that the forged passport had not contained any incorrect information about his identity; it included the same data as the passport issued in 2009 and the new one issued in 2016. He also asserted that, as the Migration Agency had not examined the authenticity of the new passport, it could not reasonably claim that it was not authentic. Furthermore, the Agency's position meant that he had no means left to prove his identity. In any event, he had made his identity plausible and should be relieved of the burden to prove that identity due to his right to family reunification and to the principle of the best interests of the child.

19. On 30 January 2017 the Migration Court in Stockholm rejected the applicant's appeal. It found that the applicant had not proved his identity; his assertions that the newly submitted passport had been properly issued by a competent authority was not enough to accept it, in particular as he had previously submitted a forged passport and as he had sought asylum in 2010 under a different identity. The court also considered that the applicant could not be granted an exception from the requirement of proven identity, as the fault for the failure to properly establish his identity was entirely his own. Moreover, it agreed with the Agency that the case did not reveal any particularly distressing circumstances or any violation of Article 8 of the Convention.

20. The applicant appealed and pointed out that the Migration Court, like the Migration Agency, had rejected the new passport without having examined its authenticity.

21. On 7 March 2017 the Migration Court of Appeal refused the applicant leave to appeal.

22. On 24 March 2017 the applicant again applied for a residence permit. In addition to the passport issued on 17 November 2016 and the birth certificate issued on 20 November 1999, he submitted, *inter alia*, a certificate from a court in Nigeria, issued on 10 March 2017, according to which the applicant had confirmed under oath that he was the owner of the birth certificate and that the latter recorded the date of birth correctly.

23. On 6 November 2017 the Migration Agency rejected the new application. It stated, generally, that one of basic requirements for granting a residence permit on the grounds of family ties was that the applicant had proved his or her identity. Without knowing the applicant's identity, it was not possible to assess even the basic grounds for an application or whether there existed any disqualifying circumstances under Chapter 5, sections 17-17b of the Aliens Act. The Agency noted that the requirement to prove one's identity was also a consequence of a state's broader interest, and sometimes obligation, to control foreigners' entry and stay in the country.

As regards the applicant's case, the Migration Agency considered that the only document regarding his identity that had not been evaluated previously – the certificate from the Nigerian court – had only limited probative value since it had been issued on the basis of the applicant's own oral statement to the court. With reference to the Migration Court's judgment of 30 January 2017, the Agency further found that there were reasons to question on what basis the 2016 passport had been issued, that, consequently, the applicant had not proven his identity, and that he could not benefit from a reduced burden of proof as it was his own fault that he had failed to properly establish his identity. Due to this failure to prove his identity, there was no reason for the Agency to assess the applicant's connection to Sweden through his wife and child.

However, the Agency also examined the case under Article 8 of the Convention and its required proportionality between the interests of the state and that of the individual. While the applicant was married to a Swedish woman and had been previously granted a temporary right to reside with her in Sweden, the Agency nonetheless found that the denial of a new residence permit would not breach Sweden's obligations under the Convention. In so finding, it paid particular regard to that fact that the applicant now resided in his country of origin, that his wife had visited him there and that no reasons had emerged as to why it would not be possible to maintain the relationship through visits by the applicant's family in his country of origin.

24. The applicant's appeal was rejected by the Migration Court in Malmö on 25 April 2018. The court agreed with the judgment of the Migration Court of Stockholm of 30 January 2017 that the applicant had not proved his identity and that he was not entitled to a reduced burden of proof as the fault for this failure was the applicant's own. No new circumstances had emerged which gave reason to come to a different conclusion.

The court went on to make a proportionality assessment under Article 8 of the Convention. It had regard to domestic case-law according to which, in cases of family reunification, a fair balance should be struck between the right to family life and the interest of regulated immigration (Migration Court of Appeal case MIG 2016:13). It further took into account Strasbourg case-law, in particular three cases concerning Norway (*Darren Omoregie and Others*, no. 265/07, 31 July 2008; *Nunez*, no. 55597/09, 28 June 2011; and *Antwi and Others v*, no. 26940/10, 14 February 2012), and concluded that, if family life had been created at a time when the persons involved were aware that the immigration status of one of them was unclear, the removal of a family member would be incompatible with Article 8 only in exceptional circumstances. In light of these rulings, the court found that it would not breach that provision or any other treaty obligation to refuse the applicant a residence permit.

25. On 29 June 2018 the Migration Court of Appeal refused the applicant leave to appeal.

26. It appears that the applicant continues to reside in Nigeria. He sees his son once or twice a year when his wife travels to Nigeria with him.

B. Relevant domestic law and practice

1. Family reunion

27. The basic provisions concerning the right of aliens to enter and to remain in Sweden are laid down in the 2005 Aliens Act (*Utlänningslagen*; 2005:716). The provisions on family reunion are set out in Chapter 5, sections 3-3e.

28. A residence permit shall be granted to an alien who is the spouse of a person who is resident in Sweden (Chapter 5, section 3, subsection 1 (3)). A residence permit may also be given to an alien who is a parent and has custody of and cohabits with a child who is resident in Sweden (Chapter 5, section 3a, subsection 1 (3)). There may, however, be grounds for rejecting a permit, such as the alien knowingly having given incorrect information on matters of importance, the spouses having no intention of living together or the alien being considered a threat to public order and security (Chapter 5, sections 17-17b).

29. In cases concerning a child particular attention must be given to what is required with regard to the child's health and development and the best interests of the child in general (Chapter 1, section 10).

2. Requirement of established identity

30. There is no explicit provision in Swedish law stating that an applicant's identity must be proven or established in order for a residence permit to be granted based on family ties. However, according to preparatory works and case-law, this is the principal rule (see Government Bill 2005/06:72, pp. 68-69; Government Bill 2009/10:137, p. 17; and Migration Court of Appeal case MIG 2011:11).

31. In the case MIG 2012:1, the Migration Court of Appeal found that, in family reunion matters, there may be circumstances that could justify a lower standard of proof regarding an applicant's identity, for instance when the applicant comes from a country where it is difficult to obtain acceptable identity documents. This lesser requirement has been confirmed and clarified by successive later judgments in which the Migration Court of Appeal has pointed out, among other things, that a lower standard of proof regarding identity can be applied only if the two parents have lived together before the first of them came to Sweden. Nevertheless, with reference to Article 8 of the Convention, the court has also stated that a proportionality assessment must be made between the interest of the family members to live together in Sweden and the public interest of requiring verification of identity in order to uphold regulated immigration and national security (see, for instance, MIG 2014:16, 2016:6 and 2018:4).

COMPLAINT

32. The applicant complained under Article 8 of the Convention that the refusal to grant him a residence permit had led to the disruption of his family life, as he was unable to live with his wife and young son.

THE LAW

A. The Government's objections under Article 35 of the Convention

33. The Government pointed out that, on 24 March 2017, several months before he lodged the application with the Court, the applicant had applied for a residence permit to the Migration Agency, submitting new evidence (see paragraph 22 above). He had not mentioned this to the Court, whether at the time of lodging the present application or later. The Government invited the Court to consider whether, as a consequence, the application should be declared inadmissible for non-exhaustion of domestic remedies (Article 35 § 1) or due to an abuse of the right of individual application (Article 35 § 3 (a)).

34. The applicant submitted that a new application for a residence permit normally was not an effective remedy, which was shown by the fact that the application in question had been rejected.

35. The Court notes that the applicant, on 22 March 2014, applied for an extension of his residence permit. These proceedings were finalised on 7 March 2017 when the Migration Court of Appeal refused leave to appeal, thus about four and a half months before the applicant lodged his application to the Court. Thus, while it is true that the applicant did not inform the Court of the domestic proceedings that he had started on 24 March 2017, the Court, considering that the new evidence introduced in those proceedings must be seen as having been of minor importance, finds that the applicant did put before the domestic authorities the substance of the claim he made in his application to the Court. Accordingly, it does not discern any reason to declare the application inadmissible for failure to exhaust domestic remedies or for abusing the right of individual application. The objections of the Government must therefore be rejected.

B. The applicant's complaint under Article 8 of the Convention

36. The applicant complained that the decision not to grant him a residence permit in Sweden breached his right to respect for family life under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. The parties’ submissions

(a) The Government

37. The Government argued that a fair balance had been struck between, on the one hand, the interest of the applicant and his wife and son to enjoy family life in Sweden and, on the other, the general interest of verifying the identity of immigrants and thus maintaining security, public order and controlled immigration. They submitted that the applicant, both in the early asylum case and the later proceedings concerning his family ties, had failed to make his stated identity plausible. The domestic authorities had thus had good reasons to call into question the applicant’s statements and documents and the basis on which the 2016 passport had been issued. Maintaining that domestic law and practice were sufficiently flexible in regard to the required proof of identity, the Government was of the opinion that the authorities had reasonably concluded that it was the applicant’s own fault that he had failed to properly establish his identity.

38. The Government further pointed out that the question of a fair balance under Article 8 had been assessed four times in the applicant’s case by different domestic authorities, applying the Convention in conformity with the Court’s case-law. Considering the subsidiary nature of the Convention complaint mechanism and the State’s margin of appreciation, there should thus be very strong reasons for the Court to replace the authorities’ conclusions with its own. Also, noting that the family life in the present case had been created at a time when the persons involved were aware that the immigration status of the applicant was such that the continuation in Sweden of that family life was from the outset precarious, the Government contended, with reference to the Court’s case-law (for instance, *Darren Omoregie and Others v. Norway*, no. 265/07, § 57, 31 July 2008; and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 108, 3 October 2014), that only exceptional circumstances would constitute a violation of Article 8. In this connection, they stressed that the applicant had married a Swedish citizen at a time when he was residing unlawfully in the country and that his wife had become pregnant and given birth to their son at a time when the applicant’s temporary residence permit had expired. Moreover, apart from his wife and son, the applicant did not appear to have any ties to Sweden; in contrast, he was born in Nigeria, has lived there for most of his life, including since November 2016, and has family in that country.

39. As for the interests of the child, the Government acknowledged their primary importance and the difficulties that could be caused by the family living apart. However, those difficulties were the result of conscious decisions by the applicant and his wife to establish family life in Sweden while the applicant did not have a residence permit. Furthermore, as noted by the Migration Agency in its decision of 6 November 2017, the applicant's wife had visited him in Nigeria and no reasons had emerged as to why his family could not continue to visit him there and to maintain contact also by other means. The Government therefore maintained that the consequences of the disputed decisions for the child were neither unacceptable nor unreasonable and that there were no exceptional circumstances in the present case which would reveal a violation of Article 8. Contrasting it with the case of *Jeunesse v. the Netherlands* (cited above), where the Court found such circumstances, the Government pointed out, *inter alia*, that the applicant in that case, facing deportation to Surinam, had been a Dutch national but had involuntarily lost her citizenship, that the Dutch authorities had tolerated her presence in the Netherlands for 16 years and that she had been the primary and constant carer of the children in question.

(b) The applicant

40. The applicant argued that he had been granted a residence permit in October 2012 because he was considered to have proved his identity. He had thereafter, unknowingly, submitted a false passport, albeit with the correct information about his identity. Subsequently, he had allegedly made immense efforts to obtain relevant documents. He had travelled to Nigeria and had received a new passport which was authentic and valid. Thus, he had loyally contributed to the investigation concerning his identity. In the applicant's view, by submitting this passport, he had proved his identity and the State's interest of maintaining public security and controlling immigration had been met. There was nothing more he could do; the Swedish authorities' assessment that he had not established his identity led to the conclusion that it was impossible for him to give sufficient proof of identity. The application of domestic law had therefore been unreasonable and arbitrary.

41. The applicant further disputed that he had established family life in Sweden when he did not have a residence permit; on the contrary, the family life – and his strong connection to Swedish society – had been established at a time when he had a legal right to live in the country. The spouses had raised their son together and the applicant had created a close relationship with the son. Furthermore, the applicant claimed that he did not have strong ties to Nigeria and that his family could not reside there for economic and cultural reasons.

42. As regards the child's best interests, the applicant disagreed with the Migration Agency's conclusion that the son's young age would likely make the effect of the applicant's return to Nigeria less negative than if he had been older; in the applicant's view, the son had been deprived of the possibility to maintain a connection with his father, especially important at a young age, and was severely affected by the resultant separation. Visits to Nigeria of the wife and son could happen only once or twice a year, provided they could afford the trips. In sum, the applicant asserted that the disputed decisions in the case had been disproportionate.

2. *The Court's assessment*

(a) General principles

43. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country. The Contracting States are entitled, as a matter of well-established international law and subject to its treaty obligations to control the entry of aliens into its territory and their residence there. The corollary of a State's right to control immigration is the duty of aliens such as the applicant to submit to immigration controls and procedures and leave the territory of the Contracting State when so ordered if they are lawfully denied entry or residence (see, for this and the following general principles, *Jeunesse v. the Netherlands*, cited above, §§ 100 and 106-109, with further references).

44. While the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in effective 'respect' for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation.

45. Where immigration is concerned, Article 8 does not impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest. Factors to be taken into account in this context are the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned and whether there are factors

of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion.

46. Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious. It is the Court's well-established case-law that, where this is the case, it is likely only to be in exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8.

47. Where children are involved, their best interests must be taken into account. On this particular point, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance. Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it.

(b) Application of the general principles to the present case

48. At the outset, the Court notes that the applicant's situation amounts to family life within the meaning of Article 8 § 1 of the Convention. Furthermore, the impugned decisions not to grant him a residence permit in Sweden interfered with his right to respect for family life.

49. As to whether the interference was justified under Article 8 § 2, the Court is satisfied that the decisions were in accordance with Swedish law and pursued a legitimate aim, notably the economic well-being of the country, including the effective implementation of immigration control. It remains to be examined whether the refusal of a residence permit was necessary in a democratic society and proportionate within the meaning of Article 8 § 2.

50. The Court first notes that the applicant has submitted conflicting information about his identity in the various domestic proceedings. In particular, the Migration Agency, in its decision of 19 August 2016, noted that he had submitted two family names, three birth years and two birth places, differing descriptions of his family in Nigeria, several documents which had proved to contain untrue information and a birth certificate which had previously been declared lost. Also having regard to the fact that the passport submitted in 2014 was a forgery, the Agency concluded that the expired 2009 passport and the applicant's birth certificate, which together had previously been accepted as sufficient evidence, could no longer serve as proof of his identity, even if the lower standard of proof, requiring only that the identity be made plausible, was applied. The Migration Court, on

30 January 2017, subscribed to this view, despite the applicant's submission of a new passport, issued in 2016, in support of his appeal.

51. Given the aggregate of conflicting information submitted in the domestic proceedings and noting that some of the documents containing incorrect information ostensibly had been issued by Nigerian authorities, the Court finds that the Swedish authorities have had good reasons to conclude that the applicant had failed to sufficiently prove his identity and that there were grounds for calling into question the basis on which the 2016 passport had been issued. This is so notwithstanding that he was once, in October 2012, considered to have proved that identity and that the authenticity of the 2016 passport has not been subjected to an examination.

52. The Court acknowledges that the decision to refuse the applicant a permit to reside in Sweden will have a considerable impact on his family life, as his wife is a Swedish citizen and she and their common child are living in Sweden. However, there does not seem to be any insurmountable obstacles for them to move to the applicant in Nigeria. In any event, they have been visiting him there and could continue to do so.

53. Furthermore, an important factor in the present case is that the applicant and his wife created their family life at a time when the applicant had no residence permit. They started a relationship in mid-2011 when the applicant's asylum application had been rejected at first instance and married a year later when that application had been dismissed by a final decision and there was an enforceable deportation order against the applicant. Their son was born in June 2015, more than a year after the expiry of the applicant's temporary residence permit and following the Migration Agency's conclusion that the passport submitted in support of his application for an extension was a forgery. Thus, the applicant's family life was both established and extended at times when his immigration status was such that the persistence of that family life in Sweden was precarious. The applicant therefore had no reasonable expectation that he would be able to remain in the country and maintain his family life there.

54. In the above circumstances, the refused residence permit for the applicant could be incompatible with Article 8 only in exceptional circumstances. As the applicant and his wife have a four-year-old son, regard must be had to his best interests. In this respect, the Court notes that the Swedish authorities have carefully considered the issue, both under domestic law and under the Convention. In particular, the Migration Agency took into account that the applicant's wife and son should have no difficulties to visit the applicant in Nigeria. Furthermore, regard must be had to the fact that the son lived together with the applicant in Sweden only for a period of little more than a year, until the autumn of 2016. There are therefore no exceptional circumstances at issue in the present case. Instead, the Court is satisfied that sufficient weight was attached to the best interests of the child in refusing the applicant a residence permit.

55. Having regard to the above considerations, the Court finds that the Swedish authorities, acting within their margin of appreciation, did not fail to strike a fair balance between the applicant's interests, on the one hand, and the State's interest in ensuring effective immigration control, on the other. Nor was their assessment disproportionate in pursuance of the legitimate aim under Article 8 of the Convention.

56. It follows that the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 October 2019.

Stephen Phillips Registrar	Georgios A. Serghides President