



EMN Ad-Hoc Query on Number of applications for humanitarian reasons (third country nationals applying for residence permits for medical reasons) limited to NO, SE, FI, BE, DE, AT,NL, LU, FR and UK

Requested by Christelle CAPORALI-PETIT on 19th September 2018

Residence

Responses from Austria, Belgium, Finland, France, Germany, Hungary, Luxembourg, Netherlands, Sweden, United Kingdom, Norway (11 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

Since 1st January 2017, the doctors from the French office for immigration and integration (OFII) are in charge of processing medical records of TCN applying for a residence permit for medical reasons (article 13 of Law 2016-274 of 7 March 2016 regarding the right of foreign nationals, which modified article L.313-11 of the Code for entry and stay of foreign nationals and right of asylum - CESEDA).

Thus these doctors have to give a medical opinion once the Prefect has officially requested it through a college of doctors from the OFII.



The OFII would like to receive the number of applications and the acceptance rate from the other EU Member States.




Questions



1. How many applications from TCN applying for residence permit for health reasons in 2017 (and for the first semester 2018 if available) ?
what is the acceptance rate ?
2. The OFII doctors are also competent for issuing a medical record in case of applications for protection against return for TCNs in detention, under house arrest or subject to a removal order but not detained or under house arrest (article L.511-4, 10° of the CESEDA).



How many applications from TCNs applying for protection against return have you registered in 2017 (and first semester 2018 if available) ?
what is the acceptance rate ?



Responses

	Country	Wider Dissemination	Response
	Austria	No	
	Belgium	Yes	<p>1. In 2017, 1.431 individuals applied for a residence permit for medical reasons (article 9ter). The acceptance rate in 2017 was 8,95% (per individual). From January to June 2018, 749 individuals applied for a residence permit for medical reasons (article 9ter).</p> <p>2. No data available.</p>

	Finland	Yes	<p>1. It is impossible to give exact figures for Finland, as health reasons are usually only a part of the reason for either applying for or granting a residence permit. The following figures are only estimations. According to the Asylum unit 16 residence permits were granted on compassionate grounds in the asylum process in 2017-18, which include the key words "health reasons". A further 20 persons were granted international protection, where the decision included the key words "health reasons" but these were not the main reason for granting protection. The Migration Unit estimates that during the same period approx. 90 applicants of 1730 stated health reasons as a ground for the application, of these approx. 60 persons were granted a residence permit for health reasons.</p> <p>2. In Finland, the Police is responsible for implementing the return decisions. In general, health reasons can be a reason to postpone the return, but it does not prevent it altogether. More severe health reasons came up in the earlier stages of the process and thus does not reach the Police and the implementation stage of the return process.</p>
	France	No	
	Germany	Yes	<p>1. Preliminary remark: There is no medical organisational unit in Germany comparable to the Medical Council of the OFII (French Office of Immigration and Integration). Foreigners must prove their own health-related grounds by submitting a suitable medical certificate. The competent authority (the Federal Office for Migration and Refugees or the local foreigners authority) can, in individual cases, arrange for the foreigner to undergo a medical examination by a public medical officer or a medical specialist or for an expert opinion to be drawn up. 1. A foreigner may be granted a residence permit for a temporary stay only if his or her continued presence in the federal territory is necessary on urgent humanitarian or personal grounds (Section 25 subsection 4 of the Residence Act (Aufenthaltsgesetz - AufenthG)). Health-related grounds are not a residence purpose explicitly provided for by the German Residence Act and are therefore not statistically recorded as a reason for granting a residence title. In the year 2017 in Germany 7.329 persons got 16.592 permits for tolerated stay because of medical reasons.</p> <p>2. A considerable concrete danger for health-related grounds is expressly regulated as a prohibition of deportation and thus as a reason for granting a residence permit (Section 25 subsection</p>

			<p>3, Section 60 subsection 7 sentences 1 and 2 of the Residence Act). However, the prohibition of deportation also includes other concrete dangers to life, limb or liberty, so that the case group of health-related grounds cannot be shown separately in statistics here either. Only cases in which foreigners are granted a (temporary) suspension of deportation if their continued presence in the federal territory is necessary on health-related grounds are recorded separately in the Central Register of Foreigners (Section 60a subsection 2 sentence 1 of the Residence Act).</p>
	Hungary	Yes	<p>1. Number of residence permit applications for the purpose of treatment: In 2017: 61 applications, from this accepted in 2017: 40. (66%) In 2018 (until 30 June): 72 applications, from this accepted in 2018 (until 30 June): 53. (74 %)</p> <p>2. HU does not have any statistics regarding this kind of appeal. In practice, legal advisors/lawyers of the TCNs sometimes do mention the health condition of the TCN when appealing against a return decision but the appeal is not built solely on the health condition of the TCN (usually PTSD is mentioned). When organizing forced return, a medical advice from the doctor of the detention centre is obtained. If the person is not in detention, he or she is required to present a doctor's medical advice containing general information whether the person is fit to fly or not (issued by a doctor). This fit-to-fly advice is binding for the authority but can be revised by another doctor if the authority initiates it.</p>
	Luxembourg	Yes	<p>1. 1. In Luxembourg, the article 90 of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) establishes the authorisation of stay for medical reasons. This authorisation of stay is up to 3 months. After the medical examiner report, the third country national (TCN) can be granted a residence permit for private reasons for the duration of the treatment or up to a maximum of one year. This residence permit can be renewed after a re-examination of the situation of the applicant (article 91). Furthermore, according to article 131 of the Immigration Law, the TCN who has been granted postponement for removal for medical reasons may after 2 years be issued an authorisation of stay for medical reasons. The beneficiary of this authorisation will be granted a residence permit for private reasons. In 2017, the number of applicants for an authorisation of stay for medical reasons was 4 and 4 were granted. The acceptance rate was of 100%. Concerning the first semester of 2018 the number of applications for a residence permit for medical reasons amounts to 1 and the number of authorisations issued is 1. The acceptance</p>

			<p>rate is of 100%</p> <p>2. The postponement for removal (sursis à l'éloignement) for medical reasons is regulated by article 130 of the Immigration law. The information available relates to the number of persons with positive decisions (first applications and renewals). In 2017, the number of persons with positive decisions was 13. Concerning the first semester of 2018 the number of persons with positive decisions was 16. It should be noted that a person can receive several renewals in the course of a same year.</p>
	Netherlands	Yes	<p>1. In general, the Netherlands has very little applications for a residence permit for health reasons. This is because the only reason for a TCN to apply is because the Netherlands has a specialized treatment which is not available in the country of origin. If a TCN already legally resides in the Netherlands, and due to illness wants to change the goal of the permit or apply for a permit after postponement of removal, then the application rates are higher, but still no more than circa 200 applications per year. It is not possible to give an answer to the acceptance rate.</p> <p>2. In 2017 there have been 740 grants for postponement of removal, 810 refusals of postponement of removal, and 400 other outcomes (such as not-applicable, meaning that the application will not be pursued due to the failure of providing additional information). This is a total of 1950 applications. In 2018 – January until August – there have been 500 grants for postponement of removal, 850 refusals of postponement of removal, and 310 other outcomes. This is a total of 1660 applications. Postponement of removal is only possible after a medical advice from doctors, i.e. that the TCN is not able to travel, would be in a danger of violating the EHRM art. 3 on return, pregnant, detained or in a clinic due to illness. The acceptance rate of 2017 is 37,9%. The acceptance rate of 2018 (so far) is 30,1%.</p>
	Sweden	Yes	<p>1. In Sweden you cannot apply for residence permit based on health reasons. What you can apply for is a short-term visa for medical treatment (maximum three months). Health reasons can be stated as a reason in an asylum application but this possibility for humanitarian reasons has been restricted in the temporary law current in force. In 2017 36 visas were issued for Medical treatments.</p> <p>2. In Sweden if an asylum application is rejected the person can, if there are new circumstances in</p>

			the asylum case, apply for impediment to enforcement. If so, health reasons can be one new circumstance. No statistics are available.
	United Kingdom	Yes	<ol style="list-style-type: none"> 1. Although the UK publishes a range of data on applications for citizenship and settlement, we do not have specific statistics on whether these were on medical grounds or not. 2. Nil return.
	Norway	Yes	<ol style="list-style-type: none"> 1. see attached document with table. There were 11 in 2017 and 6 in 2018 (up to Sept. 1st) and a total of 3 applications for protection granted. There are very few cases in Norway and the percent of applications that receive a positive decision varies from year to year, but on average, it is less than 20%. 2. This information is not available. N/I