

Legal analysis: Deportation risks of young adults with parents who are LGBTQ+

Teenagers and young adults whose parents have protection and residency in Sweden based on SOGIESC, today face substantial risk of being deported despite risking being perceived as LGBTQI+ and thus facing serious risks in their parents' country of origin. - A violation of International Refugee and Human Rights Law.

With funding from AMIF, RFSL is able to provide legal advice and assistance to hundreds of asylum seekers, refugees and their family members, every year. Our target group is people in need of protection based on SOGIESC grounds, sexual orientation, gender identity, gender expression, sex characteristics. This analysis is intended to give information to former asylum seekers and their families, as well as professionals meeting and assisting them, and the general public, to shed light on how the last years' legal changes and new case law concerning so-called "teenage deportations" affect families with SOGIESC asylum grounds.

Background

Before 2021 permanent residency was normally granted in cases regarding family reunification. In 2021 the law was changed, and temporary permits were instead granted. One issue in that legislative matter was how the amendment affected applications for extended residence permits for young adults who had turned 18 during the period of their permit. The legislator referred to certain provisions in the Swedish Aliens Act, including a so-called 'escape clause' designed to address exceptionally compassionate circumstances. In the same legislative matter, this requirement had been made less restrictive for adults who had held a residence permit, so that they could be granted a residence permit if the circumstances were particularly compassionate and the adult had formed a special connection to Sweden during the period of validity. The amendment was repealed in 2023.

A recent precedent in February 2026 from the Migration Court of Appeal (case number UM 3254-25) gives legal guidance for how the assessment should be made when a young person turns 18 years and applies for extension of a residence permit which they were previously granted as a child to a parent. This precedent represents a significant legal shift in Sweden, effectively confirming that there is a "legal wall" generally for all these teenagers the moment they turn 18. According to this new legal guidance, the Migration Court of Appeal has clarified and confirmed that there is no longer an automatic path to a residence permit for those who arrived as children once they reach adulthood. One legal

question that was addressed in this precedent was the interpretation of the criterion that after a change in the Aliens Act now must be fulfilled which is a "special dependency" between the young adult and the parent. The court clarified that this goes far beyond normal emotional, or social ties; in practice. This means that unless a young adult has severe medical needs or disabilities that make them physically or mentally incapable of living independently, they are legally viewed as independent individuals who can be separated from their parents.

This new precedent from the Migration Court of Appeal can be expected to have severe and devastating consequences for teenagers and young adults who are children of parents with SOGIESC asylum grounds. Teenagers and young adults of LGBTQI+ parents will face greater risk of deportation to countries where LGBTQI+ people and their children risk persecution. By stripping away the protection of family unity, where a young person risks persecution in their country of origin because of their parents' SOGIESC. Because the Migration Court of Appeal assessed a physically healthy 18-year old as adaptable, these individuals are often expected to return to their country of origin alone, even if their parents have permanent residency in Sweden based on their SOGIESC grounds for protection.

How are families affected where a parent has protection based on SOGIESC?

RFSL is regularly contacted by former LGBTQI+ asylum seekers and their families, where for example a parent has been granted refugee status and residency based on their SOGIESC asylum grounds. Their children are normally granted as well together with the parent's application, or later after family reunification. However, after changes in asylum law, as soon as the child turns 18 years old, their permit is no longer prolonged, and they are deported when it expires, despite risking persecution based on for example their parent's known SOGIESC, and being perceived as having the same SOGIESC themselves.

Regarding children and young adults to parents with residency in Sweden based on SOGIESC asylum grounds, the primary protection ground for persecution for the child would in most situations be perceived SOGIESC as an independent Convention ground. Persecution based on perceived identity targets individuals because persecutors attribute LGBTQ+ characteristics to them, not because of family relationships alone. "Perceived SOGIESC" is legally recognized as a ground for protection in the Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967

Protocol relating to the Status of Refugees (articles 1, 13, 40, 41, 42, 44), as well as the Swedish Migration Agency's own legal position paper, RS/015/2021.

RFSL can conclude that Sweden is deporting teenagers to LGBTQI+ parents, to countries where for example homosexuality is criminalized. This violates binding obligations under both national and international law, such as the Swedish Aliens Act, CJEU case law, the ECHR the Refugee Convention and the UNHCR Guidelines no. 9. The central legal issue is persecution based on perceived sexual orientation or gender identity: young adults with LGBTQI+ parents are at substantial risk of being perceived as LGBTQI+ themselves, regardless of their actual sexual orientation or gender identity. In countries where homosexuality is criminalized and LGBTQI+ individuals face persecution, persecutors attribute LGBTQ+ identity to children of LGBTQI+ parents based on assumptions about intergenerational transmission, behavioral markers acquired through Western socialization and presumed recruitment or upbringing, and visibility as members of "LGBTQI+ families."

Why is this happening - why are deportations carried out despite a risk of violence?

The Swedish Migration authorities fail to assess the future risk of persecution based on the teenagers' perceived sexual orientation, gender identity, gender expression or sex characteristics, and rather, they focus erroneously on an "actual", "genuine" self-identified LGBTQI+ identity of the teenagers, instead of assessing the "eye of the persecutor" When perceived SOGIESC is not assessed as the legal ground for protection that it is, leading to deportations, this violates non-refoulement obligations under Refugee Convention Article 33, ECHR (European Convention on Human Rights), Article 3, CRC Article 6 as well as Swedish Migration authorities are systematically failing to assess persecution risk based on teenagers' perceived sexual orientation or gender identity. Instead, they focus erroneously on the actual identity of teenagers rather than on persecutor perceptions, which violates non-refoulement obligations under Article 33 of the Refugee Convention, Article 3 of the ECHR (European Convention on Human Rights), and Article 6 of the CRC, as well as the Swedish Migration Agency's own legal position

<https://lifos.migrationsverket.se/dokument?documentSummaryId=45289> and, UNHCR guidelines Article 1, in which perceived or attributed membership of the social group LGBTQI persons" is recognized as a ground for asylum.

<https://www.unhcr.org/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation>

Under the Swedish asylum process, Sweden grants asylum to LGBTQ+ refugees pursuant to Article 1A(2) of the Refugee Convention, which includes "membership of a particular social

group” (the UNHCR interpretation encompasses LGBTQ+ individuals). Following the 2015-2016 Utlänningslagen amendments that introduced temporary residence permits, children who accompanied their LGBTQ+ parents or who were later reunified with their LGBTQ+ parents after refugee status was granted were not automatically granted permanent residence as their parents. When these minors reach 18 years of age, their residence permits are not renewed, resulting in deportations to countries where homosexuality is criminalized. These deportations occur despite multi-year Swedish residence during formative years, educational and linguistic integration, and documented persecution risks based on perceived LGBTQ+ identity.

The deportations violate Swedish and international law

The current legal position from the Swedish Migration Agency (Migrationsverket), RS/015/2021“Prövning av skyddsskäl för hbtqi-personer”, explicitly states in section 3.2.2 that both self-identified and perceived (tillskriven) LGBTQ belonging must be considered:

“Vid prövningen ska det därför inte bara beaktas om personen själv identifierar sig som hbtqi-person utan även om personen av omgivningen tillskrivs en sådan tillhörighet.”

This means that, according to the latest RS/015/2021, authorities must assess the risk of persecution both for those who identify as LGBTQI and for those who are perceived as such by others, regardless of their actual identity.

The Migration legal guideline RS/015/2021 and UNHCR guideline 9, addressed the question of whether an individual is perceived as LGBTQI by their surrounding community, and how this impacts eligibility for protection. A key principle from both is that risk assessments should include both self-identified and ascribed sexual orientation or gender identity, even if the person does not publicly identify as LGBTQI. The court reiterated the importance of considering both actual and ascribed belonging when assessing the risk of persecution, instructing lower courts to take into account societal perceptions and stereotypes.

Deportations contravene the Convention on the Rights of the Child

On 1 January 2020, Sweden incorporated the CRC into domestic law through the Act on the Incorporation of the United Nations Convention on the Rights of the Child (SFS 2018:1197), rendering CRC provisions directly applicable and justiciable before Swedish courts. The deportation of teenagers with LGBTQ+ parents violates the following CRC provisions:

- **Article 3:** The best interests of the child must be a primary consideration in all actions concerning children. Deporting teenage adults to countries where they face

persecution or discrimination based on their family's LGBTQ+ status directly contradicts this principle. It does not matter whether the teenager is now of age; the consideration should be the kind of family values the teenager is suspected of having been brought up in. Since these young adults have likely spent their formative years in Sweden, Migration authorities must weigh the duration of their stay (based on the Maslov v. Austria ruling). It is reasonable that if a person arrives in Sweden as a child and the process took so long that they turned 18, they should still be treated with the protections of a child.

- **Article 6:** Every child has the inherent right to life, and states must ensure the child's survival and development. Returning adult teenagers with LGBTQ+ parents to environments of persecution threatens both their physical safety and psychological development.

Violation of the European Convention on Human Rights

- **Article 3** (inhuman treatment): Deportation to persecution constitutes inhuman treatment. *F.G. v. Sweden* (2016) establishes that return to LGBTQ+ persecution violates Article 3. Persecution by association targeting family members falls within this prohibition.
- **Article 8** (private/family life): Deportation of long-resident minors disproportionately interferes with private and family life. *Nunez v. Norway* (2011) held deportation of a person resident since age seven violated Article 8, emphasizing that longer residence and younger arrival strengthen protection.

The deportations are in violation of the 1951 Refugee Convention and 1967 Protocol

Sweden is a signatory to these instruments, which prohibit refoulement returning refugees to countries where they face persecution. For teenagers with LGBTQ+ parents:

- **Article 33:** Non-refoulement principle prohibits return to territories where their life or freedom would be threatened. Persecution based on "membership of a particular social group" has been interpreted by UNHCR and numerous jurisdictions to include LGBTQ+ individuals. Importantly, persecution by association is also recognized: family members can face persecution due to their relationship with LGBTQ+ individuals especially where the parent is LGBTQ+.

- **Article 33** prohibits return where life or freedom would be threatened. “Membership of a particular social group” includes LGBTQ+ individuals (UNHCR interpretation). Persecution by association targeting based on family relationships is recognized.

Persecution Based on Perceived Sexual Orientation or Gender Identity as a distinct asylum ground

The primary protection ground for teenagers with LGBTQ+ parents is persecution based on perceived sexual orientation or gender identity, an independent Convention ground distinct from persecution by association. While persecution by association targets individuals because of family relationships, persecution based on perceived identity targets individuals because persecutors attribute LGBTQ+ characteristics to them. This distinction is legally significant: perceived identity claims do not require proof of actual persecution of family members, but rather assessment of whether the minor will be perceived as LGBTQ+ and whether such perception creates persecution risk.

Refugee law recognizes persecution based on imputed or perceived protected characteristics regardless of actual possession. UNHCR Handbook p.82 establishes this principle for perceived political opinion and extends it to all Convention grounds. HJ (Iran) v. SSHD (2010) and X, Y and Z v. Minister voor Immigratie (C-199/12, 2013) confirm that persecution based on perceived sexual orientation satisfies Convention requirements. Appellant S395/2002 v. Minister for Immigration (Australia, 2003) applied this principle to family-based imputation, establishing that individuals may face persecution based on characteristics attributed to them through family relationships.

Teenagers with LGBTQ+ parents face substantial risk of being perceived as LGBTQ+ themselves through multiple intersecting factors that create persecutor perceptions regardless of their actual sexual orientation or gender identity.

Societies where homosexuality is criminalized operate on false presumptions of intergenerational transmission, treating sexual orientation and gender identity as learned behaviors or corrupting influences passed from parent to child. In such contexts, children of LGBTQ+ parents are automatically suspected of being LGBTQ+ themselves. This presumption is particularly strong where cultural and religious beliefs frame homosexuality as contagious, chosen, or environmentally determined rather than as an innate characteristic.

Teenagers who have resided in Sweden during formative years acquire gender expression patterns, linguistic markers, cultural behaviors, and social attitudes that diverge from rigid gender norms in countries where homosexuality is criminalized. These behavioral markers

including egalitarian gender attitudes, openness in discussing family structures, non-stereotypical gender expression, Swedish language dominance, and “Westernized” mannerisms that could be perceived as indicators of LGBTQ+ identity in origin countries where gender conformity is strictly enforced and deviation is equated with homosexuality. The minor’s inability to conform to expected gender performance creates perception of LGBTQ+ identity independent of actual orientation.

Furthermore, information about or documenting LGBTQ+ persecution as the basis for parental protection are frequently accessible to authorities in origin countries through information sharing, diaspora networks, social media and returnee surveillance. These teenagers are thus identifiable as children of LGBTQ+ refugees, which creates presumptions about their own identities that are impossible to rebut without denying family relationships. The visibility created by asylum proceedings transforms the teenager into a target for persecution based on perceived identity. For this reason, teenagers returning to countries where homosexuality is criminalized face pressure to demonstrate heterosexuality and gender conformity. The combination of parental LGBTQ+ status, Western socialization, and adolescent development creates a confluence of factors that make perception of LGBTQ+ identity highly probable and persecution based on that perception virtually certain.

Swedish authorities are committing a fundamental legal error when they require proof of teenagers’ actual sexual orientation or gender identity rather than assessing whether persecutors will perceive them as LGBTQ+. This approach misunderstands the legal framework for perceived characteristic claims established in *HJ (Iran) v. SSHD* (2010) and *X, Y and Z v. Minister voor Immigratie* (C-199/12, 2013). The determinative question is not “Is this teenager LGBTQ+?” but rather “Will persecutors in the country of origin perceive the person as LGBTQ+, and will that perception result in persecution?” Refugee status determination must adopt the persecutor’s perspective: what characteristics will persecutors attribute to the teenager based on parental identity, Western socialization, behavioral markers, and visibility as a returnee from an LGBTQ+ asylum claim? Moreover, this approach ignores the reality documented in country-of-origin information: in jurisdictions where homosexuality is criminalized, persecution is triggered by suspicion, perception, or accusation of LGBTQ+ identity, not by proof of actual identity. Individuals perceived as LGBTQ+ whether accurately or not face arrest, prosecution, violence by state and non-state actors and denial of employment, housing, and education. The persecutor does not conduct an inquiry into actual sexual orientation; the perception alone suffices. This failure violates individualized assessment obligations under ECHR Article 3. Each person’s specific risk profile must be assessed: How visible is the family’s LGBTQ+ status through asylum records? What behavioral markers has the teenager acquired through

Swedish socialization? How do these markers diverge from gender norms in the country of origin? What is the person's ability to conceal family background, and what are the consequences of disclosure or discovery? How do authorities and communities in the country of origin treat individuals perceived as LGBTQ+ based on family association, Western residence, or behavioral indicators? Swedish authorities' categorical failure to conduct this assessment violates binding obligations to protect these teenagers from foreseeable persecution.

Where teenagers face real risk of persecution based on perceived sexual orientation or gender identity, deportation violates Refugee Convention Article 33 (non-refoulement), ECHR Article 3 (prohibition on inhuman treatment), and CRC Article 6 (right to life and development). To comply with these obligations, Swedish authorities must conduct individualized assessments addressing:

- Cultural beliefs about sexual orientation in the origin country: Do prevailing beliefs treat sexual orientation as heritable, contagious, or environmentally transmitted? Are children of LGBTQ+ individuals presumed to share parental identities?
- Visibility of the family's LGBTQ+ status: Are asylum records accessible to origin country authorities? Do diaspora networks or community surveillance systems identify returnees from LGBTQ+ asylum claims? Will the teenager's return trigger inquiries about the basis for family residence in Sweden? Which they are aware of in most of the cases.
- Behavioral and cultural markers: What gender expression patterns, linguistic markers, social attitudes, and cultural behaviors has the teenager acquired through Swedish socialization? How do these markers diverge from rigid gender norms in the origin country? Are these markers interpreted as indicators of LGBTQ+ identity? Can the minor plausibly conform to expected gender performance, or will non-conformity be visible and subject to scrutiny?
- Treatment of perceived LGBTQ+ individuals: How do state authorities and non-state actors in the origin country treat individuals suspected or perceived to be LGBTQ+ (as distinct from openly LGBTQ+ individuals)? Is suspicion alone sufficient to trigger arrest, prosecution, violence, or social ostracism? What evidentiary standards do persecutors apply, and can accusations be rebutted?
- Concealment and disclosure: Can the teenager realistically conceal family background, and what strategies would be required? What are the psychological costs of concealment? What are the consequences if family background is discovered through social media, community knowledge, or the person's own mental inability to maintain deception?

Sweden's position on deportations of teenagers with LGBTQ+ parents and former refugees is often that the teenagers did not invoke their protection grounds immediately when they had been reunited with their LGBTQ+ parents in Sweden.

Migration authorities' requirement that teenagers with LGBTQ+ parents ought to have invoked their protection needs immediately upon arrival in Sweden to join their LGBTQ+ parents constitutes a violation of multiple binding legal obligations. This procedural requirement is not merely unfair; it is legally impermissible under Sweden's treaty obligations and fundamentally incompatible with established principles of child protection and refugee law.

Immediate Invocation Requirements: A Violation of Children's Rights and Refugee Protection Principles.

The requirement contradicts CRC-Convention on the Rights of the Child Article 12 and the principle of evolving capacities. Teenagers arriving as minors in Sweden cannot be expected to comprehend that they face persecution based on perceived sexual orientation or gender identity arising from parental LGBTQ+ status. This risk is not self-evident to minors, particularly those from cultures where discussions of sexual orientation and gender identity are taboo or where the minor has not been exposed to concepts of persecution by association or imputed identity. Moreover, adolescents whose sexual orientation and gender identity are still developing cannot be expected to articulate protection claims based on how they will be perceived by persecutors, a complex legal and factual assessment requiring understanding of persecutor psychology, cultural assumptions about intergenerational transmission, and the significance of behavioral markers acquired through Western socialization. Demanding that minors immediately invoke protection based on perceived identity upon arrival presumes legal sophistication and self-awareness wholly inappropriate for their developmental stage. The ECtHR recognized in *Rahimi v. Greece* (2011) that procedural requirements imposed on minors must account for their vulnerability and limited capacity to act independently. Sweden's approach violates this principle by treating children as possessing adult-level understanding of complex persecution risks based on perceived characteristics.

- **Derivative Protection Principles:** UNHCR Handbook recognizes family members should receive derivative protection for family unity. Children face persecution by association through family relationships. Refugee Convention Preamble and CRC-Convention on the Rights of the Child Article 9 supports automatic protection extension to dependent children. Comparative European practice grants derivative

status without separate procedural hurdles. Sweden's outlier approach is unjustifiable.

- Sur Place Claims: Protection can crystallize over time. For minors: persecution risk understanding develops with maturation; country conditions deteriorate; visibility increases with age; and risk comprehension develops through education. UNHCR Handbook and *S.F. v. Sweden* (2012) endorse sur place claims. Immediate invocation requirement ignores dynamic protection needs and developmental paths.

Immediate invocation requirements violate CRC-Convention on the Rights of the Child Articles 3 and 12, derivative protection principles, sur place claim recognition, access to justice guarantees, and child-sensitive procedure standards. Rights-compliant systems must:

- automatically extend protection to dependent teenagers of LGBTQ+ parents; (b) proactively assess individual protection needs;
- accept sur place claims;
- apply flexible timing accounting for age, maturity, and dependence

Conclusions and RFSL's recommendation

Sweden's deportation of teenagers with LGBTQ+ parents violates binding non-refoulement obligations under Refugee Convention Article 33, ECHR Articles 3 and 8, and CRC Articles 3, 6, 12, and 22. Swedish Migration authorities must therefore:

Assess persecution risk based on perceived LGBTQ+ identity rather than actual identity.