

# Intermediary activity report on SRC support for Syrian nationals applying for humanitarian visas to enter Switzerland:

**Update, analysis and recommendations**



## **Impressum**

Published by: Swiss Red Cross

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Bern, August 2016

## Summary

Since September 2013, the Swiss Red Cross (SRC) has been providing active support for Syrian nationals requesting that relatives be allowed to enter Switzerland legally. The aim of this report is to provide an update on the issues and make recommendations to the Swiss authorities to increase legal access to international protection of the persons concerned.

The SRC has pinpointed various elements causing the situation of Syrians seeking refuge to worsen and depriving them of any prospects.

The main difficulties and our recommendations are as follows:

**The conflict's worsening** and the subsequent stalemate have had a serious impact on civilians who are more and more affected by the attacks, but also by a lack of food, water and other basic necessities. Even if they themselves have not suffered persecution, a large number of Syrians need protection owing to the nature of their situation.

**This is why their individual situation must be taken into account case by case when examining humanitarian visa applications, in the light of myriad aspects of vulnerability (such as belonging to an ethnic or religious minority) rather than only in the light of the individual's persecution.**

The number of sick, handicapped or elderly people contacting the SRC because they urgently need care and have only partial or no access to treatment has increased. This highlights the lack of access to care in Syria, in neighbouring countries and along migratory routes. The fact that the sick person is in a third-party state considered a safe haven does not at all guarantee that he will have access to the care he needs.

**The medical situation and the *actual* access to care must be deciding factors in the SEM's decision to grant humanitarian visas, regardless of whether the individual is in Syria or in a third-party state.**

The prolonged asylum procedure prevents Syrians accepted provisionally from having access to family reunification. **Applications by Syrian nationals whose nuclear family members have remained in Syria or in a neighbouring country should be given priority in the asylum procedure. At the initial hearing, this should be examined and should be a deciding factor for the rest of the procedure.**

Despite Switzerland's introduction of relocation and resettlement programmes, the SRC recognizes the lack of legal access channels to international protection and/or legal entry for Syrian nationals. Humanitarian visas are therefore the only opportunity for these individuals. However, the criteria for obtaining this document are highly restrictive in the procedure applied by the Swiss authorities. **Clear criteria should be defined to enable applications to be handled faster and more transparently. If security clearance needs to be carried out, it should be ensured that this will be done quickly and that the purpose of the humanitarian visa will therefore be achieved.**

In the case of Syria, the third-party State principle very often leads to the humanitarian visa being denied, without the actual threat in the country of origin or the country of refuge being examined in any depth. The fact that the applications must be filed in a third-party State and that the individuals concerned only crossed the border for this purpose is often not taken sufficiently into account. **The provision relating to third-party countries should be fundamentally revised. If there is no Swiss diplomatic representation in the individual's country of origin and he must therefore travel to another country to file his humanitarian visa application, it is the risk present in the country of origin that should be considered predominant. However, the situation in the third-party State should also be examined case by case.**

Finally, those contacting the SRC report increasing difficulties leaving Syria for a neighbouring country. In the light of these difficulties, the increasing risk of trying to leave Syria, and the increasing number of vulnerable individuals leaving the country, it would be advisable for the Swiss authorities to allow humanitarian visa applications to be filed through alternative channels.

Switzerland has already made a great deal of effort to assume its share of responsibility in welcoming victims of the Syrian crisis. However, the number of people needing protection is not dropping, the difficulties these people encounter and their vulnerability are increasing, and in the meantime the situation is worsening in Syria.

**We request that the Swiss authorities take the above recommendations seriously into account to enable an improvement in legal access to international protection for Syrian nationals.** These recommendations also apply to humanitarian visas in general, i.e. to all requests regardless of the applicants' countries.



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# 1. Introduction

Since September 2013, the SRC has been actively supporting Syrian nationals<sup>1</sup> living in Switzerland and wishing to undertake the procedures so that family members can legally enter the country<sup>2</sup>. For quite some time already, it has also been receiving requests from individuals abroad who want to apply for humanitarian visas for themselves and their families.

Through these activities, the SRC has gained expertise and knowledge recognized by its partners and it is therefore an important observer of the way various directives and regulations on entry into Switzerland are put into practice.

The purpose of this document is as a status report on the critical situation based on SRC experience. Information collected during our operations have brought various issues to light. The aim here will therefore be to highlight the various challenges and put forward recommendations to improve the situation.

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1 To make this report easier to read, we will use the masculine form throughout, though we are referring to both sexes.

2 See the reports «Activités de la Croix-Rouge suisse en faveur de ressortissants syriens demandant un visa pour entrer en Suisse. Evaluation, analyse et recommandations à l'intention de la CRS et des autorités suisses», SRC, 2015, and «Enfin en Sécurité. Familles syriennes en Suisse», SRC, 2016.

## 2. Starting point

On adopting the urgent amendments to the Asylum Act on 28 September 2012, the Swiss Federal Assembly removed the opportunity to file an asylum application from a third-party country. However, in particular cases in which persecution under the Asylum Act is cited, it is possible to file a humanitarian visa application at a Swiss diplomatic representation abroad under the directive dated 25 February 2014<sup>3</sup>. Under the terms of this directive:

*«A humanitarian visa may be issued, in a particular case, if there is a compelling reason to consider that the life or physical integrity of a person are directly, seriously and genuinely threatened in his country of origin or homeland. The individual must be in a situation of particular distress that makes the intervention of the authorities indispensable, hence the need to grant him a visa to enter Switzerland. This may be the case, for example, in situations of especially acute armed conflicts or to escape a genuine and imminent threat to his personal safety. It is then imperative to closely examine the specific nature of the visa application. If the individual is already in a third-party State, it can general be considered that he is no longer in danger.»*

The nature of the danger is not specified in the terms of the directive.

On 6 March 2015, the Federal Council adopted new measures to protect Syrian nationals<sup>4</sup> (Syria II). These include measures to enable Syrians accepted provisionally (F permit) to apply for humanitarian visas for members of their nuclear family<sup>5</sup>, thereby facilitating family reunification.

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3 State Secretariat for Migration, 25 February 2014, updated on 2 February 2015: «Humanitarian visa directive» <https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/auslaender/einreise-ch/20140225-weis-visum-humanitaer-f.pdf>.

4 State Secretariat for Migration, 6 March 2015: Press release «New measures in support of victims of the Syrian conflict». [https://www.bfm.admin.ch/bfm/fr/home/aktuell/news/2015/ref\\_2015-03-061.html](https://www.bfm.admin.ch/bfm/fr/home/aktuell/news/2015/ref_2015-03-061.html). Under these new measures, 1,000 members of the nuclear family (spouse and underage children) of individuals provisionally admitted into Switzerland (holders of an F permit) have the opportunity to apply for authorization to enter Switzerland with a humanitarian visa. The figure of 1,000 people was reduced to 500 when the Federal Council signed a resettlement agreement with the European Union in September 2015.

5 Spouse and underage children

These two pieces of legislation enable Syrian nationals to enter Switzerland legally. The SRC provides advice and information on these two documents, both in terms of the criteria defining beneficiaries and on the procedures for filing an application.

There are other opportunities for entering Switzerland legally, such as family reunification and resettlement. Family reunification is mainly done through the legal counselling services, whereas resettlement is done through the UNHCR in cooperation with the SEM. The SRC is not involved in these procedures and refers such cases to the appropriate body.

### 3. Current situation and recommendations

The SRC has pinpointed various elements causing the situation of Syrians seeking refuge to worsen and depriving them of any prospects. Various types of problem seem to be on the increase in the applications received and new issues are arising.

According to the SEM's visa analysis of the first quarter of 2016<sup>6</sup>, 63 humanitarian visas were issued from January to the end of April 2016 under the directive dated 25 February 2014. This is only a tiny proportion of the number of people needing protection and does not appear to reflect the actual requirements caused by the Syrian crisis.

The main challenges in the SRC's work that appear to be a problem are given below. They will be accompanied by recommendations aimed at improving legal access to international protection for these people.

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<sup>6</sup> <https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/visamonitring/2016/visamonitring-2016-q1-f.pdf>, accessed on 9.6.2016.

### 3.1 Escalation and increased danger from fighting

The Syrian conflict has now entered its sixth year and there are no signs of peace. On the contrary, the crisis is becoming more complex as new players join in the hostilities and the conflict drags on. According to UNHCR figures<sup>7</sup>, 4.8 million Syrians have fled the country since 2011 and an estimated 8.7 million people are displaced within the country. The large majority of those to have fled Syria are now in neighbouring countries, such as Lebanon (1 million Syrian refugees<sup>8</sup>), Turkey (2.7 million Syrian refugees registered<sup>9</sup>), Jordan (630,000 Syrian refugees<sup>10</sup>), and Iraq (250,500 Syrian refugees<sup>11</sup>).

The increasing complexity of the conflict and the stalemate recently led to an increase in bombings, putting civilians in even greater danger. The city of Aleppo has been especially hard hit since the start of 2016, as the ICRC and the Syrian Arab Red Crescent have emphasized several times. In a press release dated 19 February 2016, Mrs Gasser, the head of the ICRC delegation in Syria stated that, «The International Committee of the Red Cross is deeply alarmed by the situation in the Aleppo region, where fighting is intensifying, hospitals and health workers have been targeted, people have no water or electricity and more than 70,000 have now fled their homes. (...) The needs and the suffering are huge on both sides of Aleppo City and rural Aleppo. So is the courage of ordinary people, both those who have lived their whole lives in Aleppo, and those who have fled there from all over the governorate where conditions are grim and the security fragile.<sup>12</sup>»

Regions previously spared the bombings have recently seen the belligerent parties reach their territories. This is notably the case of the city of Tartus, which was subject to attacks in May 2016<sup>13</sup>.

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7 <http://www.unhcr.org/syria-emergency.html>, accessed on 8.6.2016.

8 [http://reporting.unhcr.org/node/2520#\\_ga=1.189157475.937006796.1466065388](http://reporting.unhcr.org/node/2520#_ga=1.189157475.937006796.1466065388), accessed on 16.6.2016.

9 [http://reporting.unhcr.org/node/2544#\\_ga=1.265265095.937006796.1466065388](http://reporting.unhcr.org/node/2544#_ga=1.265265095.937006796.1466065388), accessed on 16.6.2016.

10 <http://reporting.unhcr.org/node/2549>, accessed on 16.6.2016.

11 <http://reporting.unhcr.org/node/2547>, accessed on 16.6.2016.

12 <https://www.icrc.org/en/document/syria-icrc-alarmed-deteriorating-situation-aleppo-region?language=en>, accessed on 16.6.2016.

13 [http://www.nytimes.com/2016/05/24/world/middleeast/syria-bombs-jableh-tartus-assad.html?\\_r=0](http://www.nytimes.com/2016/05/24/world/middleeast/syria-bombs-jableh-tartus-assad.html?_r=0), accessed on 9.6.2016.

The situation may also change extremely quickly and people who previously were not in any danger may suddenly find themselves the targets of threats and persecution because they belong to an ethnic or religious minority. This was notably the case for the Christians during Islamist extremist incursions into a new region in central Syria<sup>14</sup>.

Civilians are more and more affected by these attacks, as well as by the lack of food, water and other basic necessities, whether or not they are in the regions under siege. Even if they themselves have not suffered persecution, a large number of Syrians need protection owing to the nature of their situation.

### **Recommendations**

The level of vulnerability linked to the place where the individuals are located and the specific nature of the situation there should be taken into account when considering a humanitarian visa application. Their individual situation must be taken into account case by case, in the light of myriad aspects of vulnerability (such as belonging to an ethnic or religious minority) rather than only in the light of the individual's persecution.

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<sup>14</sup> <http://www.newsweek.com/european-parliament-recognizes-isis-killing-religious-minorities-genocide-423008>, accessed on 16.6.2016.

### 3.2 Lack of access to care in Syria, in neighbouring countries and along migratory routes.

M. K. has been living in Switzerland since 2011 and has a B permit. His brother and sister-in-law are seriously ill and are still in Syria, in the vicinity of Latakia. About a year ago they left Aleppo where they were living with their elder son and his family. In December 2012 the brother was hit by two bullets at a checkpoint held by an Islamist group in Aleppo. One bullet hit his spine and a kidney while the other hit him in the arm. He underwent several operations during which medical errors were made, so now he is bedridden, cannot move his legs and suffers from extremely severe chronic pain.

As the hospitals are overcrowded and have few resources, he was unable to obtain additional care. Even the painkillers he needs to take twice a day for the chronic pain are not always available. The SRC contacted the ICRC in Syria, but it was not able to help M.K.'s brother either.

The sister-in-law has had diabetes for four years and needs daily doses of insulin and anticoagulants. These medicines are not always available owing to the conflict, so she cannot take them regularly. This has caused her diabetes to worsen considerably over the past two years and she has also developed diabetes-related eye disease. There is bleeding at the back of her eyes, which are regularly inflamed, and she is losing her eyesight.

If these people are not quickly given access to care, they are likely to die from their respective conditions. On top of that, they are both under threat from an Islamist group because they belong to the Alawi branch of Islam, because their 22-year-old son was forcibly conscripted to fight for the regime, and also because M.K.'s brother worked as a driver for the regime.

The SRC contacted the SEM about these people to find out whether they could be issued humanitarian visas. The SEM replied that humanitarian visas could be issued for these two individuals, but then shelved the file pending security checks. The file is still on hold and they are still waiting to see whether they will be granted visas or not.

Access to medical care is extremely limited throughout Syria, whether primary health care, war injuries or the treatment of serious and/or chronic illnesses.

National and international organizations assisting refugees lack resources and cannot provide the services needed. This is becoming worse as the situation drags out and the needs are becoming greater. In addition, the hospitals are regularly bombarded, as was recently seen in Aleppo and announced in an ICRC release on 29 April 2016: *«In a further day of devastation in Aleppo, another four medical facilities on both sides of the front lines have been hit, causing extensive damage. As hundreds of shells, bombs and mortars continue to rain down on the city, killing more civilians, the International Committee of the Red Cross calls for an immediate halt in the attacks. «There can be no justification for these appalling acts of violence deliberately targeting hospitals and clinics, which are prohibited under International Humanitarian Law. People keep dying in these attacks. There is no safe place any more in Aleppo. Even in hospitals,» said Marianne Gasser, head of the ICRC in Syria.<sup>15</sup>»*

The number of SRC consultations is increasing for sick, handicapped or elderly people in urgent need of care. These concern people in Syria with no access to care as much as people who are in a neighbouring country, such as Iraq, Lebanon or Turkey, or those stuck in Greece.

The Balkan Route has now been closed for several months and more than 57,000 people, mostly Syrians, have been stuck in Greece since then. Various international organizations<sup>16</sup> have often criticized the living conditions and hygiene in the Greek camps, and also the difficulty accessing the asylum procedure in Greece.

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15 <https://www.icrc.org/en/document/syria-icrc-appalled-aleppo-attacks-violence?language=en>, accessed on 16.6.2016

16 <http://www.refworld.org/country,,UNHCR,,GRC,,574bf2984,0.html>, accessed on 08.06.2016.  
<https://www.proasyl.de/en/news/the-humanitarian-crisis-in-greece-threatens-to-escalate/>, accessed on 8.6.2016.

A large number of the people in contact the SRC suffer from chronic illnesses or cancers and require urgent treatment and long-term care that humanitarian organizations in Syria cannot provide. Even when we contact various partners in Syria it is rare to find real assistance for these people, because the organizations lack resources or they only provide primary care or urgent treatment.

Over the past few months, we have heard that several of the people in contact with our service have died from an illness that couldn't be treated. These events highlight the increasing need for long-term care for sick people fleeing the conflict in Syria, but also the lack of access to care in Syria and along the migration routes. These tragic events also raise the issue of whether these people are able to die with dignity. Ultimately these deaths leave spouses and children who find themselves widow(er)s and orphans, and whose level of vulnerability is thereby increased.

### **Recommendations**

Granting humanitarian visas to people who are seriously ill and in urgent need of immediate long-term treatment is a way of ensuring these people are protected and have access to care, but also to provide them with a dignified death and funeral. When these people are married with children, granting humanitarian visas to the whole family gives them access to protection and ensures their safety should the sick parent pass away.

The fact that the sick person is in a third-party state considered a safe haven, such as Iraq, Turkey, Lebanon or Greece, does not at all guarantee that he will have access to the specialized care he needs. The medical situation and the actual access to care must be deciding factors in the SEM's decision to grant humanitarian visas, regardless of whether the individual is in Syria or in a third-party state.

### 3.3 Extending the asylum procedure prevents access to the regulations dated 6 March 2015.

M.D. arrived in Switzerland in October 2015 and applied for asylum. His wife and 4-year-old daughter are still in Syria. The Druze family is part of the Christian minority under threat from attacks and kidnappings from Islamist groups. By February 2016 M.D. had still not been called to a hearing for his asylum application. Fearing they might be kidnapped, he could not wait for the asylum procedure to end and requested an appointment for his wife and daughter at the Swiss embassy in Beirut to apply for humanitarian visas. This request was refused in March 2016 and M.D. was recommended to apply under the regulations known as «Syria II». M.D. applied but was once again refused because his asylum procedure was not yet completed and so he did not fulfil the criteria established by the SEM. The SRC intervened to the authorities and humanitarian visas have now been issued under Syria II. His wife and family arrived in Switzerland in April 2016.

The additional measures taken by the Federal Council on 6 March 2015 (Syria II) enable Syrian nationals holding a provisional right of admission to apply for humanitarian visas for their spouse and underage children.

In the light of the requests we have received, it must unfortunately be noted that access to this measure is often hindered. Our service regularly receives requests from Syrians who would like to have recourse to this measure but who cannot do so because their asylum procedure is still pending. The procedure can take several months to complete. During this time, the nuclear family of the individual in Switzerland is often living in highly precarious conditions, or even in fear of their lives owing to the conflict. Those in Syria are often victims of persecution because a family member has fled, and that adds to the danger from the fighting. In many cases, those who are in a neighbouring country or in Greece cannot be considered any safer giving the precarious living conditions and the limited access to healthcare in those countries. Those in this situation can submit a detailed written request to the SEM to accelerate the asylum procedure, but there is no certainty that this will have any impact on the length of the procedure.

According to the SEM's visa analysis of the first quarter of 2016<sup>17</sup>, 39 humanitarian visas were issued under these regulations from January to the end of April 2016. In comparison, 4,324 Syrians still had asylum procedures pending on 30 April 2016, according to SEM statistics<sup>18</sup>.

## Recommendations

Applications by Syrian nationals whose nuclear family members have remained in Syria or in a neighbouring country should be given priority in the asylum procedure. At the initial hearing, this should be examined and should be a deciding factor for the rest of the procedure.

### 3.4 Lack of access to legal international protection and/or legal entry into Switzerland

K.A. arrived in Switzerland in 2014. He is a Syrian Kurd and is 21 years old. After applying for asylum, he was granted a provisional right of admission. His parents and two underage brothers are still in Syria. His father was a member of the armed forces, then deserted. He is on the regime's wanted list for this reason. K.A. is extremely worried for his family and would like them to join him in Switzerland. A family reunification with his parents and brothers is not possible under Swiss law. His family is in northern Syria and so they do not have access to registration for the UNHCR resettlement programme, as they are displaced within their own country. The Syria II regulations were not yet in force at that time and the family would in any case not have been eligible as they did not meet the definition of candidates. The only possible legal approach was to apply for humanitarian visas, which the family did in Turkey in January 2015. The application was refused. Life in Turkey was too expensive for them, so the family was forced to return to Syria. Unfortunately, a few months later his father was killed in a bombing. His distraught wife found herself alone looking after the two young sons. Everyone in her family had left Syria for Switzerland and

17 [https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/visamonitring/2016-q1-f.pdf](https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/visamonitring/2016/visamonitring-2016-q1-f.pdf), accessed on 9.6.2016.

18 <https://www.sem.admin.ch/sem/fr/home/publiservice/statistik/asylstatistik/archiv/2016/04.html>, accessed on 9.6.2016.

she no longer had any support. By collecting information and documents about the family's situation the CRS managed to draw the authorities' attention to this particular case and visas were finally granted. The family's flights were organized and paid for by the SRC so that the family could quickly come to Switzerland to be reunited in October 2015.

Opportunities for legal access to international protection or legal entry to Switzerland are very limited for Syrian nationals, if we compare them with current requirements.

Syrians are systematically refused Schengen tourist visas, mainly because there is no guarantee they will leave the territory when the visa expires. As far as we are aware, student visas and business or working visas are very rarely granted to Syrians.

Even though Switzerland has introduced two resettlement programmes in cooperation with the UNHCR (550 individuals in 2013<sup>19</sup>, then 1,000 in 2015<sup>20</sup>), access remains limited and difficult. The first programme has now been closed, whereas the second is mainly for those already registered with the UNHCR in Lebanon. However, on 5 May 2015 the Lebanese authorities asked the UNHCR to no longer register any refugees<sup>21</sup>. So it has actually been impossible for those arriving in Lebanon to access this programme since then.

In the case of the resettlement programme that Switzerland announced it would join in September 2015<sup>22</sup>, very little information has been made public at this stage on how or when it will happen. Only about 30 indi-

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19 <https://www.sem.admin.ch/sem/fr/home/themen/integration/themen/resettlement.html>, accessed on 9.6.2016.

20 State Secretariat for Migration, 6 March 2015: Press release «New measures in support of victims of the Syrian conflict». [https://www.bfm.admin.ch/bfm/fr/home/aktuell/news/2015/ref\\_2015-03-061.html](https://www.bfm.admin.ch/bfm/fr/home/aktuell/news/2015/ref_2015-03-061.html) Then the figure was lowered in an agreement with the EU on a resettlement programme: State Secretariat for Migration, 18.9.2015: Press release «La Suisse participe au premier programme de répartition des réfugiés mis sur pied par l'Union européenne et renforce son aide sur place» (in German, French and Italian only). [https://www.sem.admin.ch/sem/fr/home/aktuell/news/2015/ref\\_2015-09-180.html](https://www.sem.admin.ch/sem/fr/home/aktuell/news/2015/ref_2015-09-180.html)

21 <https://www.refugees-lebanon.org/en/section/1/unhcr-reception-centres>, Q1: Can I register with UNHCR? accessed on 9.9.2016.

22 State Secretariat for Migration, 18.9.2015: Press release «La Suisse participe au premier programme de répartition des réfugiés mis sur pied par l'Union européenne et renforce son aide sur place» (in German, French and Italian only).

viduals were resettled from Italy in May 2016<sup>23</sup>, whereas resettlement from Greece did not start until late June 2016. Those concerned must start the asylum procedure or at least register before they are eligible for resettlement, which is problematic given the Greek government's current dilemma. With such a large number of people stuck in Greece since the Balkan Route was closed, the Greek authorities are overwhelmed and aren't managing to quickly register all those wishing to apply for asylum<sup>24</sup>. This means they have to wait several months even before being able to declare they want to be resettled. The number of beneficiaries of this programme is moreover very small and only the authorities in the countries where these people are located can select the files for resettlement. This procedure does not take account of the often highly precarious situation that those in Greece must endure.

Finally, it should be noted that the number of beneficiaries of the supplementary measures taken by the Federal Council on 6 March 2016 (Syria II) remains very small given the number of people currently needing protection. Restricting this group to underage children is especially problematic, particularly in the case of young unmarried adults who have always lived with their parents. This is also true for people who may not be part of the nuclear family as defined by the SEM, yet are a dependent member of it. This could be an elderly parent, an orphaned nephew or a handicapped brother or sister.

In the light of the difficult access to these various instruments, humanitarian visas would currently appear to be one of the only ways for Syrian nationals to gain protection. However, the criteria for obtaining this document are highly restrictive in the procedure applied by the Swiss authorities. The figures published in the 2015 activity report by the SRC humanitarian visa advisory service clearly show this. In that report, 1,534 Syrian nationals contacted the SRC to obtain information about humanitarian visas in 2015 and 240 had their application accepted.

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23 <http://www.rts.ch/info/suisse/7721164-la-relocalisation-en-suisse-des-refugies-d-italie-et-de-grece-a-debute.html>, accessed on 9.6.2016.

24 <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/turkeynote%20final%20edited%20DCR%20ECRE.pdf>, accessed on 9.6.2016.

Humanitarian visas are a less bureaucratic way to resolve situations quickly for particular individuals. They can therefore enable us to guarantee legal access to protection for vulnerable individuals abroad. Finally, humanitarian visas enable the authorities to keep a check on people arriving in Switzerland and better handle the allocation of arrivals between Switzerland and the other countries in the Schengen Area.

### **Recommendations**

We believe a broader and more inclusive definition of the nuclear family would be necessary in the so-called Syria II regulations so that vulnerable individuals gain access to international protection. Young adults who have always lived with their parents up to their departure from Syria, and any other socially and/or economically dependent family member must also be able to benefit from these measures. Their dependency on members of the nuclear family must be taken into account case by case, taking account of their individual circumstances.

The authorities should take advantage of the benefits of humanitarian visas. The purpose of these visas is to protect people whose lives and physical integrity are threatened by offering them the opportunity to leave within a reasonable timeframe when there is no alternative. To make this possible, clear criteria should be defined to enable applications to be handled faster and more transparently.

According to the SEM directive on humanitarian visas: «The diplomatic representation does not conduct in-depth clarifications; an initial appreciation of the circumstances is enough. It does not hold asylum interviews.<sup>25</sup>» If security clearance needs to be carried out, it should be ensured that this will be done quickly and that the purpose of the humanitarian visa will therefore be achieved. In cases of extreme urgency, an initial triage should make security clearance unnecessary, especially in cases where the information available shows that the security risk is low and that security clearance would cause a long wait when the lives of these individuals are in imminent danger. In such cases, the principle of

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25 Ibid: State Secretariat for Migration, 25.2.2014.

proportionality requires that security clearance should have secondary importance so that these people's lives can be protected within a reasonable timeframe.

If security clearance were to be carried out systematically and in depth, this would jeopardize the very meaning of a humanitarian visa in that the procedure could no longer resolve urgent situations within a reasonable timeframe.

Humanitarian visas should continue to be used and be more widespread given that they enable cases to be examined before the person enters Switzerland. If this visa were abolished, these people would continue to arrive in Switzerland but through other, mainly illegal channels. This would not reduce the number of arrivals, but would cause the Swiss authorities to lose control over these arrivals.

### 3.5 Issue of third-party States

Since the Swiss Embassy and Consulate<sup>26</sup> in Syria were closed, applications for humanitarian visas by Syrian nationals must be filed in third-party States. However, under the directive of 25 February 2014, «If the individual is already in a third-party State, it can generally be considered that he is no longer in danger.<sup>27</sup>»

Both the SEM and the Federal Administrative Court (FAC) generally apply this principle strictly and systematically in their decisions, without taking into account the specific circumstances in Syria, i.e. the fact that there is no Swiss diplomatic representation in the country and that it is therefore not possible to file a humanitarian visa application there.

In the case of Syria, the third-party State principle very often leads to the humanitarian visa being denied, without the actual threat in the country of origin or the country of refuge being examined in any depth. The fact that the applications must be filed in a third-party State and that the individuals concerned only crossed the border for this purpose is often not taken sufficiently into account.

The situation in the third-party State only results in summary checks or else it is considered as generally safe, even though people's safety, survival and access to healthcare are often not guaranteed there. The European Council on Refugees and Exiles (ECRE) recently published a report<sup>28</sup> that states that Turkey in particular cannot be considered to be a safe State under the terms of international conventions and especially the 1951 convention on the status of refugees.

In a decision from May 2016<sup>29</sup>, the FAC refers to the fact that some people have left Syria only for the purpose of filing a humanitarian visa application and have then returned home. The FAC concludes that this must be taken into account in the decision and that the individual's returning to

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26 <https://www.eda.admin.ch/countries/syria/en/home/representations/embassy.html>, accessed on 9.6.2016.

27 State Secretariat for Migration, 25.2.2014: «Humanitarian visa directive»

28 <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/turkeynote%20final%20edited%20DCR%20ECRE.pdf>, accessed on 9.6.2016.

29 Federal Administrative Court decision dated 25 May 2016, D-611/2016: <http://links.weblaw.ch/BVGer-D-611/2016>

Syria should not systematically cause the visa to be denied. Although this is positive because the decision outlines the possibility of taking account of the third-party State issue, it also raises a new dilemma. It is not acceptable for people to have to put their lives in danger by returning to a war zone in order to have the chance of obtaining a humanitarian visa which would otherwise be refused because they are in a safe third-party State.

### **Recommendations**

The provision relating to third-party countries should be fundamentally revised. If there is no Swiss diplomatic representation in the individual's country of origin and he must therefore travel to another country to file his humanitarian visa application, it is the risk present in the country of origin that should be considered predominant. The situation in the third-party State should also be examined case by case. Criteria such as being especially vulnerable, the need for medical care, or the risk of being sent home to their country of origin, must be evaluated case by case. Appropriate use of the provision relating to third-party States requires the guarantee that the people concerned have real – and not just theoretical – prospects for long-term residency in the third-party State.

### 3.6 Increasing difficulty leaving Syria for a neighbouring country

Syrian nationals entering Lebanon from Syria have needed a special authorization since early 2015<sup>30</sup>. This has made leaving Syria to reach an embassy more difficult for Syrians wanting to file a humanitarian visa application. It is even more difficult for Palestinians in Syria for whom it is almost impossible to enter Lebanon legally. Additionally, those individuals sought by the Syrian regime, such as men considered to be deserters, opponents of the regime or State employees wanting to leave the country, cannot leave legally at the risk of being arrested at the border control.

Entering Turkey by land is also harder and harder for Syrian nationals<sup>31</sup>. Since the beginning of 2016, our service has regularly received information from Syrians of recurrent enormous difficulties entering Turkey. We have received reports of shooting at those trying to cross the border, and these cases have also been criticized by various organizations, including Human Rights Watch<sup>32</sup>. Those wanted by the Syrian regime are also likely to be arrested at the border control on this border.

Finally, as mentioned above, an increasing number of elderly, sick and handicapped persons, women and children would like to leave Syria. These vulnerable people find it particularly difficult to cross the borders in the current circumstances, even though these are the very people who are likely to have the greatest need for international protection. On account of their limited mobility, but also because they are more exposed to danger along the migration routes, it is difficult or even impossible for these people to envisage leaving Syria or making the journey to Europe illegally.

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30 <http://www.rts.ch/info/monde/6430029-les-syriens-doivent-desormais-presenter-un-visa-pour-entrer-au-liban.html>, accessed on 16.6.2016.

31 <http://www.nzz.ch/international/naher-osten-und-nordafrika/massenflucht-vor-gefechten-1.18562494>, accessed on 21.6.2016.

32 <https://www.hrw.org/news/2016/05/10/turkey-border-guards-kill-and-injure-asylum-seekers>, accessed on 9.6.2016.

## **Recommendations**

In the light of these difficulties, the increasing risk of trying to leave Syria, and the increasing number of vulnerable individuals leaving the country, we believe it would be advisable for the Swiss authorities to allow humanitarian visa applications to be filed through alternative channels.

As most of those applying for humanitarian visas have family members in Switzerland, it would be appropriate to offer the opportunity to file applications directly in Switzerland. Sending an application to a diplomatic representation by post is also a solution that should be examined.

These applications could be subject to intermediate decisions which, if they are positive, should then be confirmed after an appointment at a Swiss diplomatic representation.

This would mean that those individuals who cannot be granted visas would not be forced to take unreasonable risks simply to file an application only to have it refused.

## 4. Conclusion

Switzerland has already made a great deal of effort to assume its share of responsibility in welcoming victims of the Syrian crisis. A large number of vulnerable people have been able to be given protection, and the SRC applauds this.

However, as mentioned above, the number of people needing protection is not dropping, the difficulties these people encounter and their vulnerability are increasing, and in the meantime the situation is worsening in Syria.

We request that the Swiss authorities take the above recommendations seriously into account to enable an improvement in legal access to protection for Syrian nationals.

Finally, it is important to underline that humanitarian visas are not only available to Syrian nationals. Since 2015, the SRC counselling service has been receiving a growing number of applications from the citizens of other countries affected by crises, such as Eritrea, Afghanistan, Tibet, Iraq, Iran, Yemen and Sri Lanka. Reviewing applications and granting humanitarian visas to the citizens of these countries should also be improved and all applications handled case by case. These recommendations in the previous chapter therefore also apply to humanitarian visas in general, i.e. to all requests regardless of the applicants' countries.

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