EMN Ad-Hoc Query on AHQ on ill TCN invoking their state of health ONLY FOR BE, NL, DE, UK, ES, IT, PT, SE

Requested by Tamara BUSCHEK-CHAUVEL on 27th June 2016

Residence

Responses from Belgium, Blocked / Unknown, Germany, Italy, Netherlands, Portugal, Spain, Sweden, United Kingdom (9 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:

French law provides the issuance of a temporary residence permit for third-country nationals on the ground of health reasons (Article L. 313-11, 11° of the Code on Entry and Residence of Foreigners and Right of Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, CESEDA)). This right has been changed significantly by Article 13 of the law on the foreigners' right of 7 March 2016 (law n° 2016-274). In particular the assessment of the application has been tightened. Before issuing a residence permit due to health problems, the availability of care services and the characteristics of the health system in the applicant's country of origin are evaluated.
In the context of the preparation of the regulations implementing the law of 7 March 2016, it has proved necessary to provide evidence of comparative law of certain EU Member States : Belgium, Netherlands, Germany, United Kingdom, Spain, Italy, Portugal and Sweden.

Questions

1. 1. Issuance of residence documents to ill third-country nationalsa.) Do you issue residence documents to ill third-country nationals habitually residing in your country if their health status is such that a lack of medical care could bring very serious health consequences?b.) Do you have specific provisions for ill third-country nationals who entered the territory with a short-stay visa and who got sick while not habitually residing in your country?c.) Or is the right to stay for ill third-country nationals only based on the provisions of the article 3 of the European Convention on Human Rights, i.e. the risk of being exposed in case of return to the country of origin to "inhuman or degrading treatment or punishment"?
2. 2. Health examination a.) In your country, how does the competent administrative authority examines the health of a third-country national who refers to his/her health issues in order to be admitted for residence / not be returned?b.) Who is in charge of the procedure - administrative officers or doctors?c.) In your country, what role do doctors play in the procedure?
3. 3. Protection of ill third-country nationalsa.) In order to insure the protection of ill third-country nationals, do you assess the possibilities to be cured in the country of origin but also to have an effective access to medical care? If yes: If the conditions are not met, do you deliver residence documents? b.) Which source of information do you use to know the existing health system in the country of origin, i.e. the existence of an available and suitable treatment and the existence of a health care system (welfare, insurance and solidarity)?

Responses

	Country	Wider Dissemination	Response

	Belgium	Yes	**1.** a) In Belgium, ill third-country nationals can apply for authorization to reside in the country based on article 9ter of the Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals (Immigration Act). The procedure with a view to medical regularization in accordance with article 9ter of the Immigration Act is aimed at allowing truly seriously ill foreigners to stay if their removal would have unacceptable humanitarian consequences, i.e. if the ill person suffers from an illness in such a way that this presents a real risk to his/her life or physical integrity, or poses a real risk of inhuman and degrading treatment, when there is no adequate treatment in the country of origin or country of residence. The foreigner is requested to submit, in his/her application, all useful and recent information about his/her illness and the possibilities for and access to adequate treatment in his/her country of origin or country of residence. Please find more detailed information on the above-mentioned article 9ter of the Immigration Act in French: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi b) The above-mentioned procedure applies as well. c) It is important to note that article 9ter of the Immigration Act does not refer to a right to stay but rather to an authorization to stay for which the foreigner has to apply. It goes beyond Article 3 of the European Convention on Human Rights. **2.** a) It is largely a written procedure where technical admissibility conditions are first checked by a caseworker: submission of application by registered letter, proof of identity or exemption, effective residence in Belgium, submission of standard medical certificate signed by a doctor (the certificate cannot be older than three months and must contain three necessary information: diagnosis, severity and treatment). If the application does not meet the technical admissibility conditions, the caseworker takes a decision of inadmissibility and the application is thus negatively closed. If the application meets all the technical admissibility conditions, the caseworker asks the doctor to assess whether the claimed elements have already been invoked in a previous application and / or whether the claimed elements do not manifestly respond to a disease as stated in Article 9ter §1. § 1. L etranger qui sejourne en Belgique qui demontre son identite conformement au § 2 et qui souffre d une maladie telle qu'elle entraine un risque reel pour sa vie ou son integrite physique ou un risque reel de traitement inhumain ou degradant lorsqu'il n'existe aucun traitement adequat dans son pays d'origine ou dans le pays ou il sejourne, peut demander l autorisation de sejourner dans le Royaume aupres du ministre ou son delegue. The doctor establishes a medical advice on this and gives it to the caseworker. If the advice is negative, the caseworker takes a decision of inadmissibility. If the advice is positive, a decision of admissibility is taken and, pending a decision on the merits, the applicant (and other members of the nuclear family, if listed in the application) are granted an immatriculation certificate (attestation d immatriculation A.I.) with registration in the foreigners register. The applicant and his/her family members can then benefit from social services provided

			by the Public Welfare Center if needed. The help can be financial, material, social, medical or psychological. In case of positive advice, the application is further examined on the merits. The doctor must again provide an assessment of the alleged disease, its severity and the necessary treatment and the possible availability and accessibility of treatment, and if, in the absence of this treatment, there would be a risk to the life or physical integrity of the person concerned or there would be a risk of inhuman or degrading treatment. It must also be evaluated if the person can travel and needs care/assistance provided by family members or by others. If no advice can be provided on the basis of the documents contained in the file, the applicant may be asked to submit additional documents or to present himself/herself to the consultation. If the availability of treatment is examined by the doctor, its accessibility must also be investigated (unless medical care is not available and the person concerned is eligible for regularization). It is the caseworker who does this investigation after the doctor so requests it and has provided a draft of the medical advice. For the report of accessibility of the treatment, the caseworker relies on the entire administrative file and the information made available by MedCOI (see answer to 3.b. below). If the medical elements are not retained, the caseworker takes a decision stating that the application is unfounded. If necessary, the decision is accompanied by an order to leave the territory. If the applicant is in possession of an A.I. after a decision of admissibility, instructions are given to the municipality to withdraw this document and to remove the concerned person from the foreigners register. If the doctor recommends to proceed with a medical regularization, the caseworker, after a final check on whether the person concerned is not known for acts relating to public order, gives instructions to the municipality to grant a Certificate of Registration in the Foreigners Register (Certificat d Inscription au Registre des Etrangers C.I.R.E.) valid for one year (the A card). b) Both administrative officers and doctors play a role in the procedure see answer to 2.a. above. c) Doctors give a medical advice and caseworkers take the decision on the application for residence permit. Usually the advice of the doctors is followed but in certain cases, e.g. in cases involving offenses committed against public order, it may be that this is not the case. **3.** a) Once an application based on 9ter of the Immigration Act is examined on the merits (beyond admissibility stage), the availability and accessibility of medical care are investigated. The availability has to be understood as the objectively determined presence of medical treatment, specific doctors or medication in the country of origin. The accessibility relates to the question of whether the applicant will be in the ability to obtain the necessary care. More concretely the investigation into the accessibility of medical care means to examine that there are no financial obstacles and that social security systems or private insurance are present, that the applicant has access to the labor market, that there is no discrimination or that measures to combat this are elaborated ... As mentioned above, if the conditions are not met, the caseworkers take a negative decision on the

			application for medical regularization. b) Belgium has its own MedCOI cell (Medical Country of Origin Information). The core task of the Belgian MedCOI cell is collecting, analyzing and processing information about the accessibility of health care in the countries of origin. The information, that is made available via Questions & Answers, Country Fact Sheets and Fact Finding Missions Reports, intends to be relevant, accurate, reliable, neutral, balanced and transparent and is in line with the Common EU Guidelines for Processing Country of Origin Information. The MedCOI cell is currently responsible as the Belgian Desk for Accessibility (BDA) within the European MedCOI project. This European project focuses on collecting information on accessibility and availability of medical care in countries of origin and placing such information in a non-public database that is only accessible to the partners in this project. The Netherlands (BMA: Medical Advice Bureau) is responsible for gathering the information on the availability of medical care, that Belgium uses in order to check the availability of medical care. The BMA obtain information through the following sources: International SOS, Allianz Global Assistance and local doctors.
	Blocked / Unknown	Yes	**1.** Third-country nationals habitually residing in France are given a temporary residence permit if their health status is such that a lack of medical care could bring very serious health consequences. This is provided under 11° of article L. 313-11 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA). **2.** In order to make a decision regarding the issuance of residence permits to ill third-country nationals, the French regulation provides many procedural safeguards: • a medical report is established by an “approved doctor” or by a “hospital practitioner”; • this report is sent to a doctor from the Regional Health Agency (Agence régionale de santé) who delivers an opinion specifying some criteria regarding the individual’s health; • this opinion (favorable or not) is sent to the prefect (competent administrative authority) who makes a decision based upon the health status regarding the application for residence or protection against return. **3.** In order to ensure the protection of ill third-country nationals, French procedure provides an assessment of the possibilities to be cured in the country of origin and if they exist also if the person in question is entitled to benefit from the national health care system. If these conditions are not met, the ill third-country national is allowed to stay in France and receives a residence permit.
	Germany	Yes	**1.** a) Ill third-country nationals are not issued regular residence documents for this reason. However, if third-country nationals are obligated to leave the country and are to be deported, their deportation could be

			discontinued because of their health status in accordance with Article 60 para. 7 of the Residence Act , granted that their health condition would due to deportation change for the worse. b) See 1a) c) See 1a) **2.** a) Health examination of third-country nationals lies within the responsibility of the federal states (alien´s offices). No findings how health examinations are arranged in particular in each state. b) See 2a) c) See 1a) **3.** a)Yes. If health care in the country of origin is not guaranteed, there would be no residence documents issued, but – in case of need – a toleration. The above according to 1a) applies as appropriate. b) Different sources of information are being analyzed, for example situation reports of the Foreign Office, reports of NGO´s, media. They are documented referring to the countries of destination.
	Italy	Yes	**1.** a) If a third-country national habitually resides in Italy lawfully, by virtue of the residence permit he or she holds, that TCN is entitled to being registered with the National Health Service and, therefore, to receive all medical care needed to avoid the negative consequences of his or her illness. If a TCN is in Italy illegally, he or she receives the urgent or necessary outpatient or hospital care that may be required by his or her health conditions in public or accredited private establishments, without being issued a residence document. b) If a TCN who is in Italy with a short-term visa (for instance, a tourist visa) contracts an illness and finds himself of herself in a condition of serious physical distress, that TCN may be issued a residence permit on humanitarian or medical grounds. Such a residence permit will have the validity of the length of the medical treatments, as estimated based on relevant medical certifications. In practice, the choice of the type of permit to be issued to a TCN who is ill lies with the Questura (provincial authority of the state police), following an assessment of the clinical information submitted with the application. c) No. The right of a TCN who is ill to remain in Italy is linked to the need of protecting his or her right to health, as a fundamental right enshrined in the Italian Constitution. **2.** a), b), c). The examination of the requirements for issuing a residence permit on grounds of medical care to a TCN who has irregular status or has a short-term visa is the responsibility of the Questura (Sate Police). The Police receives the residence permit application, which includes the medical certificates that healthcare professionals have to write to document the compromised physical condition giving entitlement to remain in Italy and receive healthcare. **3.** a), b), c). When a TCN proves his or her compromised health through medical documentation, there is no

			need to assess whether the same treatment could be provided in the TCN's country of origin. The fact that some illnesses might not be properly treated in a given country is an additional element, to be assessed on a case-by-case basis, supporting the issuance of the above-mentioned types of residence permit.
	Netherlands	Yes	**1.** a) In The Netherlands, a foreign national can apply for and be granted a residence permit on medical grounds if he meets several conditions (according to the Aliens Decree): a. The Netherlands must be the first choice country for the medical treatment, as described in the Aliens Act Implementation Guidelines; b. the treatment must be considered necessary; and c. the finance of the medical treatment must be reliably/properly regulated. In addition to these general conditions are applicable requirements of Article 16 of the Aliens Act, such as: 1. passport requirement 2. sufficient means of existence requirement 3. Regular Provisional Residence Permit requirement Exemptions of these requirement can be granted (exemptions of the requirements mentioned under 2 and 3 can for example be granted if the person applies for a residence permit after he was granted delay of removal for a period of at least one year). The Netherlands is for example considered the first choice country for the medical treatment if the Person undergoes a medical treatment and suspension of the medical treatment would lead to a medical emergency (see also below) and the necessary medical treatment is not available in the country of origin. A foreigner can also be granted delay of removal based on his/her medical situation if 1) travel is not possible for the foreign national due to the health situation or 2) suspension of medical treatment would lead to a medical emergency and the medical treatment of the medical problems is not available in the country of origin or another country where the foreign national could depart to. A medical emergency is defined as a situation in which the foreign national suffers from a disturbance, of which the current medical-surgical knowledge states that absence of treatment will lead to death, invalidity or another form of serious mental or physical damage within three months. This delay of removal may be granted for a maximum of one year at a time (and granted multiple times) but this does not constitute a residence permit. b) If the short stay visa cannot be extended, the person can apply for a residence permit on medical grounds or delay of removal (see above). c) See above. There is specific policy for foreigners who want to stay in the Netherlands on medical grounds. **2.** a) The applicant has to file an application form and submit required documents. Regarding the medical situation the IND decision maker will take advice from the Medical Advisors Office. The decision maker is not qualified or authorized to make his/her own medical judgments. The decision maker only asks the Medical Advisors Office for medical advice if: • there is a declaration of consent, which allows the medical details to be requested by the BMA from doctor(s)/physician(s) (currently) treating the applicant; and • the applicant can

			proof his medical condition sufficiently (actively undergoing medical treatment e.g. in the case of pregnancy, hospitalization (can be mental or physical) or tuberculosis) To assess the application for a residence permit on medical grounds the IND requires in addition to these documents, other documents (for example a passport, proof of sufficient means of existence etc.). These documents are also checked for accuracy and completeness by the caseworker/decision maker. If the applicant when submitting the application does not submit all documents, the applicant shall be given the opportunity to correct the omission. The IND's Medical Advisors Office (BMA), which is part of the Ministry of Security and Justice, will upon request advise the Immigration and Naturalization Service (INS) about medical aspects related to foreign nationals. The BMA is assisted by medical advisors: doctors who may or may not be employed by the Ministry of Security and Justice. The medical advisors form an opinion about the medical aspects of a case based on the medical documents they receive (from doctors treating the foreign national and with his/her permission) about the patient. There is no consultation with the patient, the evaluation is based on the documents. If necessary, BMA may call in the expertise of an independent expert on specific issues. BMA objectively answers the questions posed by the INS. Its position is independent and impartial with regard to the foreign national as well as the INS. b) The administrative officers receive the application and make the final decision on whether or not to grant delay of removal. For the medical assessment, they call in the advice of the Bureau for Medical Advice which consists of medical experts. (see above) c) The BMA is assisted by medical advisors: doctors who may or may not be employed by the Ministry of Security and Justice. The medical advisors form an opinion about the medical aspects of a case based on the medical documents they receive (often from doctors treating the foreign national and with his/her permission) about the patient. The doctor treating the foreign national provides medical information about the medical situation of the foreign national. In order to assess the availability of medical treatment in countries of origin, the BMA has a network of doctors in various countries which provide general advice on such questions. **3.** a) No, the factual accessibility to medical care is not included in the evaluation whether or not to grant delay of removal or a residence permit. Factual accessibility is defined as the accessibility of medical treatment for an individual whereby non-medical factors such as political, discriminatory, safety, geographic, economic, infrastructural and income-related aspects play a role. b) In order to assess the existing health systems in countries of origin, BMA uses information provided by large international organizations such as International SOS and Allianz Global Assistance. BMA is also in contact with local doctors, who are reviewed and selected by the Dutch embassies in the various countries.

	Portugal	Yes	**1.** a)Yes. They are granted a short stay visa, according to point a) of nº 1 of Article 54 of Law 23/2007 of July 4, as amended by Law 29/2012 of August 9. b)Yes, in those specific cases, TCNs may require an extension of their short stay visa, according to nº 1 of Article 49 of Implementing Decree 84/2007 of November 5, as amended by Implementing Decree 2/2013 of March 18. c) See answer above. **2.** a)In these cases, the residence request must have a medical certificate. b)The medical certificate must be issued by an official health institution or by a recognized one. c)Doctors are responsible for evaluating the patient and for signing the medical certificate, duly recognised by the PT national health system. **3.** a) According to point g) of nº 1 of Article 122 of Law 23/2007 of July 4, as amended by Law 29/2012 of August 9, TCN's who suffer from a disease which requires extended health care and that prevents the return to the country of origin in order to avoid health risk to themselves can be granted a temporary resident permit. b) This issue is solved between PT health system and the health system from the third country where the foreigner is from.
	Spain	Yes	**1.** a) Spanish law provides for the granting of a temporary residence permit on humanitarian grounds to aliens who suffer supervening disease of a serious nature requiring specialized healthcare, not accessible in their country of origin, and the fact of being interrupted or not receive it suppose a serious risk to health or life. b) The Spanish regulation state that an alien who has entered into Spain for purposes other than work or residency, with a short stay visa, and stay within the period of stay, may request an extension of short duration stay, crediting the reasons for this (in this case by supervening disease). c) Not. The Spanish legislation is not based solely on the provisions of Article 3 of the European Convention on Human Rights, but also includes the possibility of need for healthcare not available in the country of origin. **2.** a) For the purposes of proving the necessity, you will require a clinical report issued by the relevant health authority. b) The health authority. c) The decision is based on medical certificates issued by a health specialist. **3.** a) See above. b) More detailed information will be provided.
	Sweden	Yes	**1.** a. In Swedish national law (the Alien's Act) there is a provision for granting residence permit on humanitarian grounds. When applying this provision, illness is to be taken into account. Serious illness and the

			possibilities of medical care in the country of origin is assessed. b. No specific provisions for this category, but see the answer above under a). c. No, there is a specific ground in national legislation, see a) above. However, in an amendment to the Alien's Act that will enter in force in July, the scope of the provision for residence permit on humanitarian grounds when illness is claimed, will be limited to apply only in cases where there is a risk for inhuman or degrading treatment in the meaning of Article 3 ECHR. **2.** a. The burden of proof is on the applicant. On request of the applicant, a doctor may write a medical certificate, which is to be assessed by the administrative authority. The medical certificates must fulfil certain requirements to be taken into account. There must be information on the diagnosis, the necessary treatment, for how long time the treatment is foreseen and the consequences of lack of the treatment. b. See above under 2.a). c. See above under 2.a). **3.** a. The possibilities to be cured are assessed. The access to medical care is assessed in general. If yes: If the conditions are not met, do you deliver residence documents? No. b.Lifos (Swedish Migration Agency, Centre for Country of Origin Information and Analysis) mostly use the MedCOI database (Medical Country of Origin Information) which enables partner European countries to quickly access and up to date (medical) COI of the countries/regions that applicants originate from. Sometimes WHO documents or other public information on the Internet is used as a complement. Generally Lifos is submitting "availability requests". Few issues concern "Accessibility". For welfare, insurance and solidarity can information mainly be found through reports from the medical section of the Belgium Migration Office.
	United Kingdom	Yes	**1.** A residence permit will be issued where leave to remain is granted on the basis of a serious medical condition if removing an individual to their country of origin would breach the UK's obligations under the European Convention on Human Rights (ECHR). The UK does not grant a Residence Permit unless leave has been granted for at least six months. Those who apply for leave to remain on the basis of a medical condition must meet the requirements of the 'Human Rights on medical grounds' published policy. See Human Rights on medical grounds guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488179/Human_rights_on_med_grounds_v6.0_EXT_clean.pdf See also the guidance on applying for a Biometric Residence Permit: https://www.gov.uk/biometric-residence-permits/need-brp

			2. UK Response An individual who wishes to remain in the UK on grounds that their removal would amount to a breach of the ECHR, must make an application on the appropriate form which is available on GOV.UK website. The application will be considered by appropriately trained caseworkers. Applicants may submit medical evidence from doctors in support of their application and this is considered as part of the application process. The Home Office do not commission reports independently from doctors or other clinicians but if further medical information is required from the applicant, they will be advised as part of the application process that this must be obtained from their medical provider. It is the responsibility of the applicant to provide sufficient evidence to demonstrate their case. See link to application form for medical cases - https://www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-form-flro **3.** Whether or not appropriate healthcare is available in the country of origin forms part of the overall assessment as to whether return would breach the ECHR. The Courts in the UK have said that the threshold set by Article 3 of the ECHR is very high. To meet the threshold, a person will need to show that there are exceptional circumstances in their case which make removal unjustifiably harsh. Such cases are expected to be very rare. Taken together, the relevant case law of D v United Kingdom [1997] 25 EHRR 423 (http://www.bailii.org/eu/cases/ECHR/1997/25.html and N v SSHD [2005] UKHL31 (http://www.bailii.org/eu/cases/ECHR/2008/453.html) suggests that exceptional circumstances will arise when a person is in the final stages of a terminal illness, without the prospect of medical care or the support of family or friends or palliative care (i.e. relief of the pain, symptoms and stress caused by a serious illness and the approach of death) on return. The House of Lords' decision in N was upheld by the European Court of Human Rights in N v UK (2008) 47 EHRR 39, and recently affirmed by the Court of Appeal in GS (India) & Ors v The Secretary of State for the Home Department [2015] EWCA Civ 40, (http://www.bailii.org/ew/cases/EWCA/Civ/2015/40.html)in which Lord Justice Laws confirmed the very high threshold, stating that the case-law suggested that the 'exceptional' class of case is 'confined to deathbed cases' (paragraph 66). Decision makers have access to the Home Office Country Policy Information Team (CPIT) who provide country specific reports which detail, amongst other information, details about the current provision of medical facilities in the country of origin. If the decision maker requires further specific information, a request can be made for bespoke information relevant to the specific condition suffered by the applicant. See also the Discretionary Leave policy: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460712/Discretionary_Leave_2__v7_0.pdf See link to country of origin information: https://www.gov.uk/government/collections/country-

			information-and-guidance