



**BVwG**

Bundesverwaltungsgericht  
Republik Österreich

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# Visa for family reunification

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Are family members of beneficiaries of international protection obliged to apply from outside the Schengen-territory?

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## Starting point

- Beneficiary of international protection in Austria
- Family members in Greece
- Family members in Greece did not apply for international protection in Greece
- Family members apply for entry visas from Austria
- applications for Austrian entry visas of these family members have been dismissed

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## Visa – Austrian national legislation

- Federal Act Concerning the Granting of Asylum (Asylum Act 2005 – AsylG 2005)
  - Special Provisions relating to Family Procedures
    - § 35 (1) A family member [...] of an alien who has been granted asylum status and who is outside Austria may, *for the purpose of filing an application for international protection* [...] file an application to be granted an entry permit with the Austrian representation office abroad ....
    - § 35 (2) A family member [...] of an alien who has been granted subsidiary protection status and who is outside Austria may, *for the purpose of filing an application for international protection* [...] file an application to be granted an entry permit [...] no earlier than three years after [...] status was granted ...

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## legal considerations

- REGULATION (EU) 2016/399 – Schengen-Borders-Code
  - Article 5: External borders may be crossed only at border crossing points and during the fixed opening hours.
  - Article 6: [third-country nationals] are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001
- REGULATION (EU) 2018/1806 – EU-Visa-Regulation
  - Article 3 para 1: Nationals of third countries listed in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.

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## Decision of the first instance (Consulate)

- On the grounds of lack of competence pursuant to priority in application of the Dublin III Regulation the application for Visas for family reunification was dismissed as not permissible

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## Recent judgements of the Federal Administrative Court of Austria - BVwG

- Federal Administrative Court confirmed the first instance decision, however the legal recourse is admissible.
- Questions to the Austrian Supreme Administrative Court (VwGH)
  - Is there a primacy in application of the Dublin III Regulation?
  - Are applications for entry visas of family members of beneficiaries of international protection within the territory of the Member States inadmissible?



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# Thank you for your attention

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