

SUMMARY AND RECOMMENDATIONS

This report concerns the immigration authorities' assessments of the best interests of the child in asylum cases. The report is based on the review of 102 individual cases from 2020, 2021, 2022 and a survey involving 121 employees at UDI (Directorate of Immigration) and UNE (Immigration Appeals Board). The reviewed assessments mainly address the question of whether asylum is granted based on humanitarian considerations in accordance with Section 38 of the Immigration Act and how the interests of the child have been safeguarded in these cases. The evaluation also addresses the question of whether there are sufficient regulations and guidelines relating to the subject area. The best interests of the child should be a fundamental consideration in cases relating to asylum, based on humanitarian considerations. The consideration of the safeguarding of the child's rights entails conducting a thorough assessment in cases where asylum is denied and where the decision may entail a level of doubt. This concerns both the doubt relating to the fulfilment of the conditions of Section 38 and doubt relating to whether asylum should be granted. KPMG considers this to be of particular importance in cases where the child has developed connection to the Norwegian society over time. In such cases, the denial of asylum with subsequent return to another country may constitute a significant burden for the child.

The evaluation reveals clear areas for improvement. It is KPMG's assessment that the best interests of the child are not sufficiently considered in several cases. In several cases, the consideration of the best interests of the child were largely overshadowed by considerations relating to the parents. In certain cases, it is not sufficiently specified whether the best interest of child is to stay in Norway. This may lead to situations where the consideration of the best interests of the child is undermined by considerations of immigration regulation. The considerations of the health and vulnerability of children should also be improved, and the child's right to be heard should be better safeguarded. UDI and UNE seem to differ in their approaches to evaluating the child's residence period and connection with the Norwegian society. The evaluation confirms that in later years both UDI and UNE have worked to strengthen the competence in child welfare. Nonetheless, KPMG considers that there remains significant room for improvement regarding competency building, guidelines and systematic learning from appeals and trials.

In this summary, KPMG outlines its mandate, findings and KPMG's recommendations for necessary improvements outlined in 11 proposed measures.

KPMG's mandate

The mandate involves answering the following questions:

- To what extent does existing regulation provide a satisfactory foundation for the consideration of the best interests of the child?

The following questions shall be addressed for UDI and UNE independently:

- Are internal guidelines in accordance with existing regulations? Do guidelines and practice notes give a satisfactory foundation for the assessments?
- Are there established routines to ensure satisfactory quality in case processing? Do case managers have sufficient time to conduct satisfactory case processing?
- To what extent are the best interests of the child evaluated in terms of the specific, individual case and in line with applicable regulation?

- To what extent are relevant factors relating to the best interests of the child sufficiently assessed?
- To what extent are good assessments relating to the consideration of the best interests of the child weighed against other considerations?
- What significance do lists of factors set forth in law and regulation have in the assessments and of the best interests of the child?
- To what extent is the situation of the child sufficiently reflected and highlighted in decisions?

KPMG has reviewed resolutions and decisions about the best interests of the child in cases relating to protection. This encompasses revocation cases and other cases where children accompany their parents, as well as unaccompanied children seeking protection. The mandate is limited to exclude revocation cases that are not connected to asylum cases, cases of family- and employment immigration, visa cases, expulsion cases and citizenship cases.

The cases reviewed by KPMG concern in total 125 children, 70% boys and 30% girls. The children come from 30 different countries. As shown in Table 1 below, KPMG divided the cases into different categories. Generally, categories 1-3 appear less demanding to evaluate. We have chosen to distinguish categories 4 and 5 because the child's residence period shall be a fundamental consideration in the assessments. The distinction between accompanying children that have or have not lived in Norway for a long period is also central in UNE's practice. Children who have lived in Norway for a long period are defined as children that have lived in Norway for at least 4.5 years and have attended school in Norway for at least one year. KPMG chose to consider Category 6, which includes cases with children having health challenges, as its own category due to evaluation of these cases appearing particularly demanding.

Table 1: Overview of cases per category.

Overview of received cases		Category 1:	Category 2:	Category 3:	Category 4:			Category 5:						Category 6:					Total number of cases	
		Unaccompanied asylum-seeking Minors	Child-specific protection; Section 28	Accompanied Children being granted derived residence	Accompanied long-term resident Children (minimum 4.5 years of residence and 1 year of school attendance)			Accompanied Children not considered long-term resident						Children with particular health challenges						
					4.5-7 years residence	7-10 years residence	>10 years residence	<1 year residence	1-3 years residence	3-4 years residence	4-5 years residence	5-6 years residence	6-7 years residence	< 1 year residence	1-2 years residence	2-3 years residence	3-4 years residence	5-6 years residence		
UDI	Granted	9	5	8	0	5	5	0	0	0	0	0	0	0	0	0	0	0	0	32
	Denied	7	2	0	2	0	0	12	4	2	0	0	0	1	1	1	0	0	0	32
UNE	Granted	2	0	1	9	0	0	0	0	0	0	0	2	0	0	0	0	0	1	15
	Denied	2	0	0	4	0	0	4	5	0	2	0	3	0	0	1	1	1	1	23
Total number of cases		20	7	9	15	5	5	16	9	2	2	0	5	1	1	2	1	2		102

The best interests of the child as a fundamental consideration

A child is an individual legal person with rights established in the Convention on the Rights of the Child, the Immigration Act, the Human Rights Act and the Immigration Regulations. In the "Maria Case" (Rt-2015-93) the Supreme Court pronounced what shall be the basis when the child's best interests are considered in immigration cases. In paragraph 72 it is pronounced that:

«It follows from what I have discussed regarding section 104 of the Norwegian Constitution and the Convention on the Rights of the Child Article 3 no. 1 that the Supreme Court must also begin its assessment with B and what is in her interests. »

The child's best interests form a fundamental consideration. KPMG finds that the case management of the child's concrete situation should be more prominent in decisions.

KPMG's review of cases shows that in assessments of unaccompanied asylum-seeking minors, good assessments of the situation of the child are completed throughout. The same applies particularly to the cases of granting child-specific protection in accordance with Section 28 of the Immigration Act, where it is KPMG's assessment that these contain concrete and individual descriptions of situations of the children and are well justified. In the majority of the reviewed cases that concern accompanying children, we observe that the decisions are, to a greater extent, focusing on the situation of the adults than by matters related to the child. This concerns around 50

of the cases KPMG has reviewed, where derived residence is accorded, where the child's residence period is less than 7 years and cases where considerations of immigration regulation are accorded decisive weight rather than the consideration of the child's best interests. In the latter category of cases, as an example, the immigration regulatory considerations are based on reprehensible conduct by the parents, not the children. The description of the child's situation and interests should overall be specified more thoroughly. The factors of Sections 8-5 of the Immigration Regulations are not sufficiently considered and documented in a systematic manner. These observations concern mainly UDI, but also UNE to some extent.

In the analytical report "Thematic Quality Monitoring Regarding Asylum Seeking Children in Families" published by the Swedish Migration Agency in 2022, some challenges are described that may be relevant for the evaluation. The report concluded that justifications related to the concrete situation of the child were consistently lacking. They pointed out that this could indicate a lack of understanding of how the assessment of the child's best interests should be conducted and justified. The report also concluded that unaccompanied asylum seekers were examined more thoroughly than children that came with their family. The consideration of the best interests of the child were largely overshadowed by considerations relating to the parents. The report also confirms that the assessment of the child's best interests in immigration cases is demanding.

KPMG has found the best documented assessments of the best interest of the child is in cases where grants have been given. Denial of asylum tends to have the most serious consequences for children, especially when the child has lived in Norway over a long period. This suggests a risk to the safeguarding of children's rights and that the justifications in the denial cases have a clear need for improvement.

Children's connection to Norway

The child's residence period in Norway provides an objective impression of the child's connection. A short residence period generally means a lesser degree of connection. A long residence period generally means a significant degree of connection. A significant degree of connection entails more serious consequences for the child if they are not granted residence in accordance with Section 38 of the Immigration Act. KPMG considers that there is a risk that UDI and UNE have different perceptions of what is required to consider in determining if a child has a particular connection in accordance with Section 38. In addition, there is a risk that they have differing perceptions of how the child's connection shall be considered in accordance with Section 8-5 of the Immigration Regulations on the assessment of strong humanitarian considerations in Section 38 of the Act for residence permit applications from children.

UDI's decisions seem to require that the child must have a residence period of more than 7 years for the conditions of residence to be fulfilled. This is relevant in the revocation cases. UNE's cases seem to clearly distinguish between children having lived in Norway a long time and those not having lived in Norway a long time, meaning 4.5 years of residence and 1 year of school attendance. It is our assessment that this distinction constitutes a risk for the safeguarding of the child's rights. As an example, there is a risk that UDI does not grant residence in accordance with Section 38 of the Immigration Act in revocation cases where children have lived in Norway for a shorter period than 7 years, and that this is done in a rather routine manner. Cases where the children have a residence period between 3 and 7 years that may substantiate that UDI conducts sufficient individual and specific assessments were lacking.

Concerning UNE's cases, KPMG is of the impression that the criteria for children who have lived in Norway for a long period is in practice applied as an essential requirement. In some of UNE's denial cases the child has attended school for several months, but not a full year. This entails that the developed connection through e.g., Norwegian kindergarten, leisure activities and establishment in the local community is not accorded significant weight. KPMG does not have the factual grounds to pronounce that the impression that emerges from the case review gives an indication of an established practice in a legal sense. Our point is that this constitutes a pattern in the cases we

have received. KPMG therefore believes to have pointed out a risk that should be mapped and investigated further by UDI, UNE and the Ministry of Justice and Public Security.

Children's health and vulnerability

KPMG's review shows that there are few cases where it is clear through documentation that children's health challenges and particular vulnerability have been a significant consideration. There is a risk that there are not sufficient processes in place and/or competence to catch whether the children have such challenges. Section 38 of the Immigration Act sets a lower threshold for children than for adults when it comes to the assessment of psychological or physical health challenges. KPMG, in the review, has not observed that such a lower threshold has been applied. These observations mainly concern UDI, but also UNE to some extent.

Children's right to be heard.

Children who can form their own opinions have the right to be heard on issues that concern them, pursuant to the Section 104 of the Norwegian Constitution, Article 12 of the Convention of the Rights of the Child, the Section 17 of the Public Administration Act, and Section 17-3.3 of the Immigration Regulations. In UDI's legal guide "The Best Interests of the Child in Immigration Cases: Legal guide to decisions on residence and expulsion", it is stated that:

"The right to privacy, connection to Norway, and the right to maintain their identity, for example, are closely related to the child's inner perceptions. The child is therefore usually in the best position to express which, and how strong, interests they have in this context."

KPMG's review shows that children are rarely heard directly and verbally. The child's perspective mostly appears through parents and representatives. This can lead to a risk of incorrect assessments and potential violations of the rules on hearing the child. In the most demanding cases where there is reasonable doubt whether the conditions for the issuing of a residence permit are met and reasonable doubt whether a residence permit should be granted, it is particularly relevant to speak directly with the child. KPMG's assessment is that enabling direct hearing of the child should be improved both in UDI and UNE.

Laws, regulations and guidelines

A key observation is that the regulations are characterized by highly discretionary criteria. This applies especially to the conditions for whether a residence permit can be granted when the issue is whether the child has a particular connection to Norway and/or whether there are strong humanitarian considerations. KPMG's view is that the regulations contain numerous references to the best interests of the child, but that these are seldom specific about the weight to be given to the child's best interests when deciding whether a residence permit should be granted or not. The Circular from the Ministry of Justice and Public Security from 2014 (G-06/2014) regarding the implementation of the Section 8-5 of the Immigration Regulations is now 9 years old and should be reassessed and clarified.

KPMG has not found that any of the guidelines in UDI and UNE are not compliant with the applicable regulations. However, we believe that the guidelines provide limited guidance for assessments of the best interests of the child. KPMG's assessment is that there is a need for a comprehensive and overarching guideline for the best interests of the child that summarizes, specifies and provides better guidance on the numerous discretionary questions faced by case managers in UDI and UNE. KPMG would like to highlight UDI's guide "The Best Interests of the Child in Immigration Cases: Legal guide to decisions on residence and expulsion" from 2020, as a central document that focuses on the child and describes the applicable law related to the best interests of the child. The guide provides a comprehensive, holistic, and detailed description of children's human rights and the state's obligations and deserves increased attention in case processing. Based on the fact that the guide describes the applicable law related to the best interests of the child, KPMG believes that the content should have been incorporated into UDI's guidelines to a greater extent.

Organization, competence, and learning

KPMG's assessment is that the organizations in both UDI and UNE do not sufficiently focus on the best interests of the child. A high number of case managers are involved in processing cases related to children, and many of the cases are demanding. This argues for a greater degree of specialized expertise in child welfare and organization of separate teams for the most complex cases involving children.

In 2020, UDI's internal audit conducted a review: "Assessment of the Best Interests of the Child" (Audit Report 2/2020). The purpose of the review was to assess whether the decision to establish a common basic training in child welfare expertise had been implemented in selected units in a way that would enable case managers to make the best possible assessments. The report includes a "Uniform action plan." One of the measures concerns the implementation of the guide on the best interests of the child in immigration cases. Several of the measures in the audit report have not yet been fully implemented. There has been no documented overarching assessment of whether the measures addressed in the audit report have been sufficient.

The survey conducted by KPMG involving 121 employees in UDI and UNE shows that the employees themselves experience a significant need for improvement when it comes to learning from appeals and trials. The respondents call for competency development relating to child welfare. Only 10% of the respondents in UDI agree that UDI systematically incorporates learning from appeal cases. Only about 40% of the respondents in UNE and 25% of the respondents in UDI believe that the organization systematically incorporates learning from trials involving children.

For KPMG, it has been important to highlight different patterns that emerge from the cases we have reviewed. KPMG does not take a stance on whether the 102 cases provide a sufficient basis for concluding on the practice in UDI and UNE. On the other hand, 64 decisions from UDI and 38 decisions from UNE represent a significant volume. KPMG's perspective is that the factual basis is sufficiently extensive for us to comment on whether there is a risk of various violations of regulations and guidelines.

Recommended measures

Recommendation 1: Clarification of the significance of the period of residence and the factors in Section 8-5 of the Immigration Regulations.

KPMG recommends that the Ministry of Justice and Public Security reconsiders and clarifies Circular G-06/2014 from 2014. The Circular states that it should be easier for the group of long-term resident children to obtain a permit after the implementation of Section 8-5 of the Immigration Regulations. However, the Circular says little about how the best interests of the child should be assessed for children who do not meet the criteria of long-term residence. The survey shows that UDI and UNE have different practices relating to the assessment of children's length of stay and connection, as seen in UNE's practice related to long-term resident children. It should be considered to clarify the importance of a child's length of stay and the factors in Section 8-5 of the Immigration Regulations for *all* immigration cases involving children. A change in regulations and/or a new Circular should be considered to clarify the assessments that need to be made.

Recommendation 2: Direct and verbal hearing of children.

KPMG recommends that measures should be considered to better facilitate direct and verbal hearing of children, to ensure that children are heard directly to a greater extent. This involves developing the expertise of specialists in both UDI and UNE for this purpose, and that these specialists get training and experience by being involved in case processing. Conversations with children must take place in a child-friendly and safe atmosphere. The conversations with children must be conducted by employees with child welfare expertise and who have extensive experience

in interviewing children. It is recommended that the Ministry of Justice and Public Security follows up on the question of direct verbal hearing of children in the management dialogue with UDI and UNE, including through allocation letters and expectations for annual reporting.

Recommendation 3: Clarification of what it means for there to be a "lower threshold" for a child's health to be taken into account in the assessment of residence according to the Section 38 of the Immigration Act than for adults.

KPMG recommends that the Ministry of Justice and Public Security clarifies Section 38 of the Immigration Act, third paragraph, which implies that there is a lower threshold for a child's health to be considered in assessing residence compared to adults. In KPMG's view, there is a need to clarify what constitutes relevant health problems and what weight a child's health challenges should be given when assessing whether there are strong humanitarian grounds for granting residence. This should also be considered in light of children's vulnerability and burdens. There should be a consideration of the need to amend the Immigration Regulations and the development of a circular that contributes to clarification of this issue. This recommendation should also be considered in relation to Recommendations 8 and 9 on strengthened child welfare expertise in UDI and UNE and increased use of external expert competence in the most challenging cases. As with several of our other recommendations, this should be part of the management dialogue between the Ministry of Justice and Public Safety on the one hand and UDI/UNE on the other hand.

Recommendation 4: Timing of the assessment of the best interests of the child in revocation cases

KPMG recommends that the Ministry of Justice and Public Security considers measures to enable assessments of the best interests of the child at an earlier stage in revocation cases. If the child has been a long-term resident and there is no active opposition from the parents, it may be possible to arrive at the conclusion that a new permit should be granted earlier than what is currently the case. This applies to cases where the children have relatively long residence periods and connection to the Norwegian society. Under the circumstances, this may imply a particular connection for the child according to Section 38 of the Immigration Act, first paragraph.

Recommendation 5: Assessment of the best interests of the child when using limited residence permits issued under the provisions of Section 38 of the Immigration Act § 38, in accordance with Sections 8-8 and 8-12 of the Immigration Regulations.

KPMG recommends that the Ministry of Justice and Public Security considers measures to clarify expectations for the consideration of the best interests of the child in the assessment of the use of limitations in permits. This is to avoid unnecessary burdens and consequences for the affected children.

Recommendation 6: Overarching guidelines for the best interests of the child in UDI and UNE.

KPMG recommends that the Ministry of Justice and Public Security initiate the development of overarching guidelines in UDI for the best interests of the child in immigration cases that describe the significance of the child's residence period and age, and that the list of factors in Section 8-5 of the Immigration should be considered in the individual case categories. The survey shows that UDI and UNE have different practices relating to the assessment of children's residence period and connection, as seen in UNE's practice related to long-term resident children. KPMG understands that UDI handles many cases. Therefore, we believe that difficult cases should be prioritized, such as cases where the children's residence period is of 3-7 years or longer. UNE is not a directorate under the Ministry of Justice and Public Security like UDI. This means that the Ministry of Justice and Public Security cannot instruct UNE on legal interpretation and exercise of discretion. Any guidelines for exercise of discretion should therefore be given through amendments to the law or regulations. Alternatively, UNE may consider developing its own internal guidelines.

Recommendation 7: Focus on continuous improvement - learning from appeals and trials in UDI and UNE.

KPMG recommends that UDI strengthens its learning and improvement work based on appeals processed by UNE. At the same time, KPMG recommends that UNE strengthens its learning and improvement work from trials. The survey conducted involving UDI and UNE employees shows that a significant number of employees do not believe that there is currently sufficient systematic learning promoted. It is recommended that the Ministry of Justice and Public Security follows up on the issue of learning and improvement in the management dialogue with UDI and UNE, including through allocation letters and expectations for annual reporting.

Recommendation 8: Organizing teams with high child welfare expertise for the most complex children's cases in UDI and UNE.

KPMG recommends that both UDI and UNE consider organizing teams with high child welfare expertise to handle the most complex cases involving children, regardless of the type of case. This team should conduct interviews with children themselves, possibly with the support of external child welfare experts. Adequate training is necessary to conduct good and safe conversations with children.

Recommendation 9: Competence requirements for case managers who handle cases involving children.

KPMG recommends that both UDI and UNE define concrete competence requirements for case managers who handle cases involving children, and specific requirements for those who handle the most complex cases.

Recommendation 10: Improvements to the case management tool DUF for assessments of the best interests of the child

KPMG recommends that the case management tool in UDI and UNE includes a separate mandatory section in the decision module for "The child's situation" with i) fields for the child's age and ii) residence period in Norway. Furthermore, it is recommended to implement the list of factors in iii) section 8-5 of the Immigration Regulations as fixed headings in all cases involving children where Section 38 of the Immigration Act is applied. Additionally, KPMG recommends having separate fields for "Has the child been heard directly and verbally" and "The child's vulnerability" (ref. UDI's guidelines).

The child's situation:

- Child's age.
- Child's residence period in Norway.
- The child's need for stability and continuity.
- Languages spoken by the child.
- The child's psychological and physical health situation.
- The child's attachment to family, friends, and surroundings in Norway and the home country.
- The child's care situation in Norway.
- The child's care situation upon return.
- The social and humanitarian situation upon return.
- Other individual circumstances, such as the child's vulnerability.
- Has the child been heard directly? The child's own opinion.

It is an essential point that these factors are described for all children and in more detail depending on the complexity of the case. This will also provide better statistics for further analysis and improvement work in the future.

KPMG also recommends establishing a separate section in the decision module where the case manager considers:

- whether staying in Norway or returning is best for the child, with a brief justification,
- whether the conditions for residence under Section 38 of the Immigration Act are met or not, with a brief justification, and
- If the conditions are deemed to be met, how the child's interest in stay is weighed against immigration-regulatory considerations.

Recommendation 11: Follow-up of measures from internal audit in UDI

KPMG recommends significant strengthening of the process for systematic follow-up of measures in reports from the internal audit function in UDI.