

# Refugee Law and Policy In Selected Countries

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# Comparative Summary

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## **I. Introduction**

This report describes the law and policy on refugees and other asylum seekers in twenty-two geographically dispersed countries and, at the supranational level, in the European Union (EU). The individual surveys cover such topics as participation in relevant international conventions; laws and regulations governing the admission of refugees and handling refugee claims; processes for handling refugees arriving at the border; procedures for evaluating whether an applicant is entitled to refugee status; the accommodations and assistance provided to refugees in the jurisdiction; requirements for naturalization; and whether asylum policy has been affected by international emergencies, such as the current refugee crisis in Europe. A bibliography of selected relevant English-language materials from recent years is included.

## **II. Refugee Convention**

All of the countries surveyed here, other than Jordan and Lebanon, are states parties to the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. The EU's Common European Asylum System is also based on the principles in the Convention. States parties to the Convention are required to protect refugees that are in their territory and to adhere to the principle of non-refoulement—that is, to not return refugees to places where their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. In practice, the states parties to the Convention vary significantly in their receptivity to asylum seekers and the extent to which conflicting national policies affect adherence to norms prescribed in the Convention.

## **III. Application and Evaluation**

Asylum seekers are required to submit an asylum application to the country's competent authority. Different procedures apply to different categories of applicants—for example, those applying for asylum upon arriving at the border versus those applying from outside the country through the United Nations High Commissioner for Refugees (UNHCR), or those applying for refugee status versus those applying for humanitarian protection. The Convention permits divergent practices in the processing of applications. Screening requirements that involve collecting personal details, fingerprints, and photographs of the applicant are common. The determining authority typically examines submitted documentation and interviews the applicant. Denied applicants commonly have the opportunity to appeal an adverse determination.

#### **IV. Assistance to Asylum Seekers**

The surveys describe the varying types of assistance provided to asylum seekers in the jurisdictions. Assistance includes housing, food, access to medical care, education, employment, travel documentation, and information about their legal rights.

#### **V. Family Members**

Most surveyed countries include immediate family members of applicants among those entitled to asylum protection. Some countries also have provisions for family reunification, allowing those granted international protection to apply for such protection for family members outside the country.

#### **VI. Path to Citizenship**

The surveys also show diversity with respect to whether a person's refugee status affects the requirements needed to obtain naturalization. In some countries, the requirements for naturalization are no different for refugees and ordinary immigrants, while in others certain criteria, such as the required length of residency, vary between refugees and other migrants.

#### **VII. Monitoring of Applicants and Restrictions on Travel**

The surveys describe the monitoring of asylum applicants and the travel restrictions placed on them in the countries. Countries usually impose residence requirements, obligations to report to governmental authorities at specified intervals, and the like. Practices vary dramatically with respect to permission to travel within and outside the jurisdiction and the type of documentation required for allowed travel.

# Australia

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**SUMMARY** Australia's Refugee and Humanitarian Programme consists of several different visas that are available to refugees and others in need of protection. The total number of places available under the program each year is currently 13,750, although 12,000 additional places have been made available in response to the refugee crisis that has emerged from conflicts in Iraq and Syria. The majority of visas are designated for offshore applicants, most of whom are assessed as refugees by the UNHCR and referred to Australia for resettlement. Visas available to offshore applicants provide permanent residence status and access to a range of services and assistance. Holders can sponsor family members for visas and can also apply to become Australian citizens under the same rules as other permanent residents.

There has been much debate and many law and policy changes over the years regarding the approach to handling asylum seekers who arrive in Australia by boat without a valid visa. The current rules mean that anyone who arrives unlawfully after January 1, 2014, will be taken to a third country for processing and resettlement; they will not be able to apply for visas in Australia. Boats that enter Australian territory may be returned to international waters. Around 30,500 asylum seekers who arrived in Australia prior to January 1, 2014, are being invited, in stages, to apply for temporary protection/safe haven visas that are valid for three or five years. Visa holders cannot sponsor family members and only those who meet criteria relating to living and working in regional Australia will have a pathway to permanent residence. A permanent protection visa is available to people who seek asylum after arriving in Australia on a valid visa.

## I. Introduction

### A. Refugee and Humanitarian Programme

Australia's immigration system involves two major components: the Migration Programme for skilled and family migrants, and the Refugee and Humanitarian Programme "for refugees and others in refugee-like situations."<sup>1</sup> Within the Refugee and Humanitarian Programme there are separate tracks for those seeking asylum following arrival in Australia (referred to as "onshore protection"<sup>2</sup>) and refugees who are outside Australia and in need of resettlement (referred to as

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<sup>1</sup> *Fact Sheet – Australia's Refugee and Humanitarian Programme*, DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION (DIBP), <https://www.border.gov.au/about/corporate/information/fact-sheets/60refugee> (last visited Dec. 31, 2015), archived at <https://perma.cc/KPG3-ZZHP>.

<sup>2</sup> *What is 'Onshore Protection'?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-onshore-protection> (last visited Jan. 5, 2016), archived at <https://perma.cc/YHV8-97NS>.

“offshore resettlement”).<sup>3</sup> The offshore resettlement component is further divided into two categories: the Refugee category and the Special Humanitarian Programme category, which allows people in Australia to sponsor close family members in other countries who face human rights abuses.<sup>4</sup> Within the onshore protection component, asylum seekers are treated differently depending on whether they entered Australia with or without a valid visa.

Australia is a party to the Convention Relating to the Status of Refugees of 1951 (1951 Refugee Convention) and its 1967 Protocol. It has been involved in the United Nations refugee resettlement program since 1977.<sup>5</sup> The majority of people granted visas through the offshore Refugee category have already been assessed as refugees by the UN High Commissioner for Refugees (UNHCR) and referred to the Australian government for resettlement consideration.<sup>6</sup>

The total number of places available in the Refugee and Humanitarian Programme is set each year by the government.<sup>7</sup> Since 2009–10 (July 1 to June 30), the planned intake has been set at 13,750, although this was temporarily increased to 20,000 in 2012–13 in line with the recommendations of the Expert Panel on Asylum Seekers.<sup>8</sup> Currently, of the 13,750 places available, at least 11,000 are to be used for people applying from outside Australia, including 5,000 places under the Special Humanitarian Programme.<sup>9</sup>

<sup>3</sup> *What Is Australia's Refugee and Humanitarian Programme All About?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-australias-refugee-and-humanitarian-program-all-about> (last visited Jan. 5, 2016), archived at <https://perma.cc/X4VZ-LQJ2>.

<sup>4</sup> *What is 'Offshore Resettlement'?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-offshore-resettlement> (last visited Dec. 28, 2015), archived at <https://perma.cc/4R5J-LKB3>; *The Special Humanitarian Programme (SHP)*, DIBP, <https://www.border.gov.au/Trav/Refu/Offs/The-Special-Humanitarian-Programme-%28SHP%29> (last visited Jan. 5, 2016), archived at <https://perma.cc/Q5UH-VSP9>; Janet Phillips & Elibritt Karlsen, *Budget Review 2014–15: Migration and Humanitarian Programs*, AUSTRALIAN PARLIAMENTARY LIBRARY (May 2014), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201415/Migration](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201415/Migration), archived at <https://perma.cc/J32K-E83E>; Janet Phillips, *Australia's Humanitarian Program: A Quick Guide to the Statistics Since 1947* (Australian Parliamentary Library, Jan. 7, 2015), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/Quick\\_Guides/Humanitarian](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/Quick_Guides/Humanitarian), archived at <https://perma.cc/L67F-FD2M>.

<sup>5</sup> Janet Phillips, *Asylum Seekers and Refugees: What Are the Facts?*, AUSTRALIAN PARLIAMENTARY LIBRARY (updated Mar. 2, 2015), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/AsylumFacts](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/AsylumFacts), archived at <https://perma.cc/EBY2-LY8M>.

<sup>6</sup> *Refugee and Humanitarian Visas*, DIBP, <https://www.border.gov.au/Trav/Refu/Offs/Refugee-and-Humanitarian-visas> (last visited Jan. 5, 2016), archived at <https://perma.cc/A9U2-DLDM>.

<sup>7</sup> Migration Act 1958 (Cth) s 39A, <https://www.comlaw.gov.au/Details/C2015C00618>, archived at <https://perma.cc/JVQ9-UAS7>.

<sup>8</sup> Janet Phillips, *Budget Review 2013–14: Migration and Humanitarian Programs*, AUSTRALIAN PARLIAMENTARY LIBRARY (May 2013), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201314/Migration](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201314/Migration), archived at <https://perma.cc/4XMN-DCFG>; GOVERNMENT, REPORT OF THE EXPERT PANEL ON ASYLUM SEEKERS (Aug. 2012), available at [http://apo.org.au/files/Resource/expert\\_panel\\_on\\_asylum\\_seekers\\_full\\_report\\_0.pdf](http://apo.org.au/files/Resource/expert_panel_on_asylum_seekers_full_report_0.pdf), archived at <https://perma.cc/8SUN-VTDJ>.

<sup>9</sup> Harriet Spinks, *Budget Review 2015–16: Migration and Humanitarian Programs*, AUSTRALIAN PARLIAMENTARY LIBRARY (May 2015), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201516/Migration](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/Migration), archived at <https://perma.cc/G37T-XXKD>.



In response to the humanitarian crisis arising from the conflicts in Syria and Iraq, the Australian government announced in September 2015 that an additional 12,000 permanent humanitarian places would be made available during 2015–16 to those displaced from the two countries.<sup>10</sup> Priority will be given to “the women, children and families of persecuted minorities who have sought refuge from the conflict in Jordan, Lebanon and Turkey.”<sup>11</sup> The Australian government will also contribute about AU\$44 million to assist with addressing the humanitarian crisis in Iraq and Syria.

The government has stated that the number of places available in the Refugee and Humanitarian Programme will increase to 16,250 in 2016–17 and to 18,750 in 2018–19.<sup>12</sup>

## B. Relevant Laws

The Migration Act 1958 (Cth) contains the overarching provisions relating to the grant of visas to noncitizens of Australia. The Migration Regulations 1994 (Cth) set out further rules for different “classes” and “subclasses” of visas.<sup>13</sup> The four classes of “Protection, Refugee and Humanitarian” visas are listed in part 4 of schedule 1 of the Regulations: protection (class XA), refugee and humanitarian (class XB), temporary protection (class XD), and safe haven enterprise (class XE). The first two visa classes involve permanent residence, while the remaining two are temporary visas.

Schedule 2 of the Regulations lists the criteria that applicants must meet in order to be granted a visa under the various visa subclasses. This includes references to the “public interest criteria” that are contained in part 1 of schedule 4 of the Regulations.

Australia’s immigration laws are administered by the Department of Immigration and Border Protection (DIBP).

## C. Debate Regarding Treatment of Asylum Seekers Arriving by Boat

There has long been considerable debate regarding how Australia should handle asylum seekers, particularly those who attempt to enter Australian territory by boat without a visa, often via Indonesia and with the assistance of people smugglers.<sup>14</sup> Such people are currently referred to

<sup>10</sup> Press Release, Hon. Tony Abbott et al., The Syrian and Iraqi Refugee Crisis (Sept. 9, 2015), [http://foreign.minister.gov.au/releases/Pages/2015/jb\\_mr\\_150909a.aspx](http://foreign.minister.gov.au/releases/Pages/2015/jb_mr_150909a.aspx), archived at <https://perma.cc/2A9S-QQU5>.

<sup>11</sup> *Id.* See also *Syrian/Iraqi Humanitarian Crisis*, DEPARTMENT OF SOCIAL SERVICES (DSS), <https://www.dss.gov.au/settlement-and-multicultural-affairs-programs-policy/syrian-iraqi-humanitarian-crisis> (last updated Nov. 16, 2015), archived at <https://perma.cc/C6VD-UF2T>.

<sup>12</sup> Press Release, Peter Dutton MP, Minister – Restoring Integrity to Refugee Intake (May 12, 2015), <http://www.minister.border.gov.au/peterdutton/2015/Pages/restoring-integrity-to-refugee-intake.aspx>, archived at <https://perma.cc/7DV6-7LMU>.

<sup>13</sup> Migration Regulations 1994 (Cth), <https://www.comlaw.gov.au/Details/F2015C00989>, archived at <https://perma.cc/SFM5-739G>.

<sup>14</sup> See *Australia Asylum: Why Is It Controversial?*, BBC (Nov. 9, 2015), <http://www.bbc.com/news/world-asia-28189608>, archived at <https://perma.cc/9927-H75Q>.

by the government as “illegal maritime arrivals” or IMAs,<sup>15</sup> and in the Migration Act 1958 (Cth) as “unauthorised maritime arrivals.”<sup>16</sup> The Australian government has introduced various measures over time to intercept, detain, and process such people.<sup>17</sup> Matters debated by politicians, advocates, and the public include the mandatory detention of asylum seekers, their transfer to detention centers offshore or in third countries, the conditions and oversight of those facilities,<sup>18</sup> whether particular measures could be in breach of the 1951 Refugee Convention, and the effectiveness of different policies in deterring asylum seekers from risking their lives by traveling to Australia by boat.<sup>19</sup>

The current policy is that anyone who tries to travel illegally by boat to Australia after January 1, 2014, will not be processed or resettled in Australia.<sup>20</sup> Boats may be intercepted at sea and returned to international or Indonesian waters (a measure implemented through “Operation Sovereign Borders”<sup>21</sup>) or the people on board may be sent to a third country for processing (“regional processing country”). These measures are intended to “stop people smugglers exploiting vulnerable people and to prevent loss of life at sea.”<sup>22</sup>

<sup>15</sup> *Illegal Maritime Arrivals (IMAs)*, DIBP, <http://www.ima.border.gov.au/en/Illegal-maritime-arrivals> (last visited Jan. 5, 2016), archived at <https://perma.cc/RPE5-VSQT>.

<sup>16</sup> Migration Act 1958 (Cth) s 5AA (meaning of “unauthorised maritime arrival”).

<sup>17</sup> See, e.g., *Timeline of Major Events in the History of Australia’s Refugee and Humanitarian Program*, REFUGEE COUNCIL OF AUSTRALIA, <http://www.refugeecouncil.org.au/fact-sheets/australias-refugee-and-humanitarian-program/timeline/> (last updated Feb. 2014), archived at <https://perma.cc/F24X-TP7D>; *Timeline of Events*, ASYLUM SEEKER RESOURCE CENTER, <http://www.asrc.org.au/resources/fact-sheet/timeline-of-events/> (last visited Jan. 5, 2016), archived at <https://perma.cc/D296-SY9J>; <http://www.aph.gov.au/DocumentStore.ashx?id=ba803e88-71a5-4283-b5cd-b10cd12e027c>; Elibritt Karlsen & Janet Phillips, *Developments in Australian Refugee Law and Policy (2012 to August 2013)*, AUSTRALIAN PARLIAMENTARY LIBRARY (Sept. 25, 2014), [http://www.aph.gov.au/About/Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/RefugeeLawPolicy](http://www.aph.gov.au/About/Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/RefugeeLawPolicy), archived at <https://perma.cc/P4GN-XABD>.

<sup>18</sup> See Janet Phillips & Harriet Spinks, *Immigration Detention in Australia*, AUSTRALIAN PARLIAMENTARY LIBRARY (updated Mar. 20, 2013), [http://www.aph.gov.au/About/Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/Detention](http://www.aph.gov.au/About/Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention), archived at <https://perma.cc/4STN-FKYA>; *Immigration Detention and Human Rights*, AUSTRALIAN HUMAN RIGHTS COMMISSION (Jan. 1, 2014; updated Aug. 14, 2015), <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights>, archived at <https://perma.cc/J9K9-35N5>.

<sup>19</sup> See Harriet Spinks & Ian McCluskey, *Parliamentary Library Briefing Book – 44th Parliament: Asylum Seekers and the Refugee Convention*, AUSTRALIAN PARLIAMENTARY LIBRARY (2013), [http://www.aph.gov.au/About/Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook44p/AsylumSeekers](http://www.aph.gov.au/About/Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/AsylumSeekers), archived at <https://perma.cc/P933-EZ9J>; Sarah Joseph, *Operation Sovereign Borders, Offshore Detention and the ‘Drownings Argument’*, THE CONVERSATION (July 23, 2015), <http://theconversation.com/operation-sovereign-borders-offshore-detention-and-the-drownings-argument-45095>, archived at <https://perma.cc/ESZ4-SCHK>.

<sup>20</sup> *Illegal Maritime Arrivals: When Will My Claims for Asylum Be Considered?*, DIBP, <http://www.ima.border.gov.au/en/Waiting-in-the-community/When-will-my-claims-for-asylum-be-considered> (last visited Jan. 5, 2016), archived at <https://perma.cc/S89G-P2UV>.

<sup>21</sup> *Operation Sovereign Borders*, DIBP, <https://www.border.gov.au/about/operation-sovereign-borders> (last visited Dec. 17, 2015), archived at <https://perma.cc/5P55-E9HV>.

<sup>22</sup> *Illegal Maritime Arrivals: When Will My Claims for Asylum Be Considered?*, *supra* note 20.

Unauthorized/illegal maritime arrivals who arrived between August 13, 2012, and January 1, 2014, are currently being invited to apply for temporary visas; they cannot apply for a permanent protection visa. Those who arrived prior to August 13, 2012, and whose asylum claims are still being processed can also only be granted a temporary visa.<sup>23</sup>

In 2012, the government reinstituted the transfer of asylum seekers to Nauru and Papua New Guinea for processing, as recommended by the Expert Panel on Asylum Seekers. This followed the model of the “Pacific Solution,” which had previously been in place in some form between 2001 and 2008.<sup>24</sup> Later, upon the signing of new agreements with the two countries in mid-2013, the government announced that asylum seekers who are found to be refugees as a result of such offshore processing would also be resettled in those countries, rather than in Australia. A further agreement with Cambodia, signed in September 2014, means that people can also be resettled there following processing and acceptance of their claims by Nauru.<sup>25</sup> As of June 30, 2015, there were 655 asylum seekers (including eighty-eight children) detained in Nauru, and 945 asylum seekers detained on Manus Island, Papua New Guinea.<sup>26</sup>

The Australian Parliamentary Library notes that, in recent years, “the proportion of asylum seekers applying for (onshore) protection in Australia who arrived originally by boat has fluctuated significantly in response to shifts in asylum flows and changes in Government policy.”<sup>27</sup> For example, in 2013–14, about 51.5% of asylum applications were made by people who arrived in Australia by air with a valid visa. In the previous year, 68.4% of applications were lodged by those arriving by boat without a visa.<sup>28</sup>

## II. Offshore Component of the Refugee and Humanitarian Programme

### A. Visa Subclasses

There are four visa subclasses within the refugee and humanitarian visa class (class XB) that make up the Refugee category of the Refugee and Humanitarian Programme:<sup>29</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> See Janet Phillips, *The ‘Pacific Solution’ Revisited: A Statistical Guide to the Asylum Seeker Caseloads on Nauru and Manus Island*, AUSTRALIAN PARLIAMENTARY LIBRARY (Sept. 4, 2012), [http://www.aph.gov.au/about/parliament/parliamentary\\_departments/parliamentary\\_library/pubs/bn/2012-2013/pacificsolution](http://www.aph.gov.au/about/parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/pacificsolution), archived at <https://perma.cc/LMJ3-54WS>.

<sup>25</sup> See *Transfer of Asylum Seekers to Third Countries*, AUSTRALIAN HUMAN RIGHTS COMMISSION (Jan. 1, 2014, updated Aug. 13, 2015), <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/transfer-asylum-seekers-third-countries>, archived at <https://perma.cc/V57B-4MR3>.

<sup>26</sup> *Id.*

<sup>27</sup> Janet Phillips, *Asylum Seekers and Refugees: What Are the Facts?*, *supra* note 5.

<sup>28</sup> *Id.*

<sup>29</sup> *Refugee and Humanitarian Visas*, DIBP, <https://www.border.gov.au/Trav/Refu/Offs/Refugee-and-Humanitarian-visas> (last visited Jan. 5, 2016), archived at <https://perma.cc/C7HQ-M8K2>; Migration Regulations 1994 (Cth) r 1402.

- Refugee visa (subclass 200): a permanent residence visa available to people living outside their home country and who are persecuted in their home country.<sup>30</sup>
- In-country special humanitarian programme visa (subclass 201): a permanent residence visa available to people living in and subject to persecution in their home country, and who have not been able to leave that country to seek refuge elsewhere.<sup>31</sup>
- Emergency rescue visa (subclass 203): a permanent residence visa available to people who are subject to persecution in their home country and face an “immediate threat to their life or personal security.”<sup>32</sup>
- Woman at risk visa (subclass 204): a permanent residence visa available to women who are living outside their home country, do not have the protection of a male relative, and are in danger of “victimisation, harassment or serious abuse” due to their gender.<sup>33</sup>

As noted above, the majority of people who are considered for visas under the Refugee category have been identified and referred to Australia for resettlement by the UNHCR. They must apply from outside Australia and meet the definition of “refugee” contained in section 5H of the Migration Act 1958 (Cth), including having a “well-founded fear of persecution,” which is defined in section 5J.

Under the Special Humanitarian Programme category, the global special humanitarian programme visa (subclass 202) is a permanent residence visa that requires offshore applicants to be sponsored by an Australian citizen or permanent resident, or by an Australia-based organization (referred to as a “proposer”). Applicants, who must be living outside their home country, do not need to meet the definition of “refugee,” but rather must be subject to “substantial discrimination amounting to a gross violation” of their human rights in their home country.<sup>34</sup>

Currently, up to 500 places under the Refugee and Humanitarian Programme are available for the Community Proposal Pilot program, which allows approved organizations in Australia to propose someone in a humanitarian situation outside Australia for a class XB visa. The organizations are responsible for lodging applications, and paying for application charges,

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<sup>30</sup> *Refugee Visa (Subclass 200)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/200-> (last visited Jan. 5, 2016), archived at <https://perma.cc/JYM4-BDNZ>.

<sup>31</sup> *In-country Special Humanitarian Visa (Subclass 201)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/201-> (last visited Jan. 5, 2016), archived at <https://perma.cc/EAJ2-6DNG>.

<sup>32</sup> *Emergency Rescue Visa (Subclass 203)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/203-> (last visited Jan. 5, 2016), archived at <https://perma.cc/S62A-VS5B>.

<sup>33</sup> *Woman at Risk Visa (Subclass 204)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/204-> (last visited Jan. 5, 2016), archived at <https://perma.cc/UVM9-N3Y5>.

<sup>34</sup> *Global Special Humanitarian Visa (Subclass 202)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/202-> (last visited Jan. 5, 2016), archived at <https://perma.cc/F76R-RKR2>.

medical examinations, and airfares should a visa be granted. The organizations must also support the visa recipients for up to twelve months after they arrive in Australia.<sup>35</sup>

## B. Family Members

An applicant for any of the above class XB visas can include his or her spouse or partner (except in the case of the woman at risk visa), dependent children, and other dependent relatives in the visa application.<sup>36</sup> Those who are granted a visa and move to Australia are also able to propose or sponsor immediate family members<sup>37</sup> for permanent residence under the “split family” provisions.<sup>38</sup> Proposers must have told the Australian authorities of the relationship before their visa was granted, and the relative must apply for a visa within five years of the proposer’s visa being granted.<sup>39</sup> Family members are usually granted a visa in the same subclass as the proposer’s visa.<sup>40</sup>

## C. Application Process

### 1. Overview

Applicants for the five types of class XB visas, including as part of the Community Proposal Pilot program or under the “split family” provisions, are required to complete Form 842.<sup>41</sup> Proposers under the Refugee and Humanitarian Programme, either for a subclass 202 visa or under the “split family” provisions, must fill out Form 681.<sup>42</sup> Approved Proposing Organisations under the Community Proposal Pilot must fill out Form 1417.<sup>43</sup>

<sup>35</sup> See *Refugee Visa (Subclass 200)*, *supra* note 30 (Community pilot tab).

<sup>36</sup> See *Including Family Members in Your Application*, DIBP, <https://www.border.gov.au/Trav/Visa/Incl> (last visited Jan. 5, 2016), archived at <https://perma.cc/2QYJ-XY3D>.

<sup>37</sup> *What Do You Mean by ‘Immediate Family’?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-do-you-mean-by-immediate-family> (last visited Dec. 28, 2015), archived at <https://perma.cc/AVJ3-G66D>.

<sup>38</sup> *What is a ‘Split Family’?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-a-split-family> (last visited Dec. 28, 2015), archived at <https://perma.cc/32VM-5VMP>.

<sup>39</sup> *Who is Eligible Under ‘Split Family’ Provisions?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/who-is-eligible-under-split-family-provisions> (last visited Jan. 5, 2016), archived at <https://perma.cc/XP35-F7BN>.

<sup>40</sup> *What Visas Will My Immediate Family Members Receive?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-visas-will-my-immediate-family-members-receive> (last visited Dec. 28, 2015), archived at <https://perma.cc/B93U-GVYW>.

<sup>41</sup> DIBP, Form 842: Application for an Offshore Humanitarian Visa (Refugee and Humanitarian (Class XB) Visa) (2015), <https://www.border.gov.au/Forms/Documents/842.pdf>, archived at <https://perma.cc/N4T6-NSPH>.

<sup>42</sup> DIBP, Form 681: Refugee and Special Humanitarian Proposal (2015), <https://www.border.gov.au/Forms/Documents/681.pdf>, archived at <https://perma.cc/E75V-TCT7>.

<sup>43</sup> DIBP, Form 1417: Proposal for Refugee and Special Humanitarian Entrants by Approved Proposing Organisation (2015), <https://www.border.gov.au/Forms/Documents/1417.pdf>, archived at <https://perma.cc/83QA-3DYU>.

Applicants must provide the required documentation, including certified copies of travel or identity documents (or a statement explaining why the person does not have these); visa or resident permits; and marriage certificates, relationship registrations, and birth certificates of children included in the application. In addition, in terms of providing evidence of a person's status as a refugee, the applicant can provide "[e]vidence of registration with any international organisation dealing with refugees, for example, the United Nations High Commissioner for Refugees (UNHCR)" and a written statement explaining why he or she left the country, or a full copy of his or her UNHCR Resettlement Registration Form.<sup>44</sup> For the in-country visa subclass, applicants must provide a detailed written statement about why they fear remaining in their home country.<sup>45</sup>

The DIPB summarizes the process after an application is made as including the following steps:<sup>46</sup>

- Initial assessment: some applications are refused at this stage.
- Interview: all applicants referred for further processing are interviewed by an Australian immigration officer, who may travel to refugee camps to conduct interviews.
- Assessment against health and character requirements: in addition to being assessed against the relevant criteria for the different visa subclasses, as outlined above, all Australian permanent residence visas (as well as provisional visas and some temporary visas) have health<sup>47</sup> and character requirements,<sup>48</sup> as specified in public interest criteria 4001 and 4007 of the Migration Regulations 1994 (Cth). These requirements are discussed further below.

Other applicable public interest criteria include 4003 (foreign policy considerations), 4004 (debts to the Australia government), 4009 (intention to live in Australia permanently), and 4019 (if eighteen years of age or older, the applicant must sign an Australian "values statement").

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<sup>44</sup> See *Refugee Visa (Subclass 200)*, *supra* note 30 (Visa applicants tab; Document checklist).

<sup>45</sup> *In-country Special Humanitarian Visa (Subclass 201)*, *supra* note 31 (Visa applicants tab; Document checklist).

<sup>46</sup> *After an Application Is Lodged*, DIPB, <https://www.border.gov.au/Trav/Refu/Offs/After-an-application-is-lodged> (last visited Dec. 28, 2015), archived at <https://perma.cc/GG73-VVMW>.

<sup>47</sup> *Immigration Health Requirements*, DIPB, <https://www.border.gov.au/Trav/Visa/Heal> (last visited Jan. 5, 2016), archived at <https://perma.cc/GB87-EWCZ>; *Fact Sheet – Health Requirement*, DIPB, <https://www.border.gov.au/about/corporate/information/fact-sheets/22health> (last visited Jan. 5, 2016), archived at <https://perma.cc/PA5X-5EQQ>.

<sup>48</sup> *Character and Police Certificate Requirements*, DIPB, <https://www.border.gov.au/Trav/Visa/Char> (last visited Jan. 5, 2016), archived at <https://perma.cc/N6JC-Q9GA>; *Fact Sheet – The Character Requirement*, DIPB, <https://www.border.gov.au/about/corporate/information/fact-sheets/79character> (last visited Jan. 5, 2016), archived at <https://perma.cc/HFX5-NPKU>.



## 2. Health Requirement

The health requirement is met if a person is free from a disease or condition that is

- considered to be a threat to public health or a danger to the Australian community
- likely to result in significant health care and community service costs to the Australian community
- likely to require health care and community services that would limit the access of Australian citizens and permanent residents to those services as they are already in short supply<sup>49</sup>

Applicants for class XB visas will have medical and x-ray examinations and may undergo medical treatment before being granted a visa. A waiver of the need to meet the health requirement “is possible if compassionate and compelling circumstances exist.”<sup>50</sup> A person may need to sign a Health Undertaking if he or she is found to have specific health issues that need follow-up and monitoring in Australia.<sup>51</sup> Those granted a class XB visa will also undertake a health check within seventy-two hours of their departure for Australia.<sup>52</sup>

## 3. Character Test and Security Assessment

The “character test” is set out in section 501 of the Migration Act 1958 (Cth). An applicant will fail the test if, for example, he or she has a substantial criminal record; he or is or has been a member of a group or organization suspected to be involved in criminal conduct; there is a risk that he or she would engage in criminal conduct in Australia, or would represent a danger to the Australian community or a segment of that community; or he or she “has been assessed by the Australian Security Intelligence Organisation [ASIO] to be directly or indirectly a risk to security.”<sup>53</sup>

All class XB visa applicants must also meet public interest criterion 4003, which also relates to security assessments by ASIO.<sup>54</sup> In 2014–15, ASIO completed 1,316 security assessments of offshore refugee visa applicants, compared to 2,310 in 2013–14. ASIO noted that, in 2014–15, it “undertook a major revision of its visa security assessment model in order to focus resources on

<sup>49</sup> *Overview of the Health Requirement*, DIBP, <https://www.border.gov.au/Trav/Visa/Heal/overview-of-the-health-requirement> (last visited Jan. 5, 2016), archived at <https://perma.cc/VG5T-KNKC>.

<sup>50</sup> *Refugee Visa (Subclass 200)*, *supra* note 30 (Visa applicants tab; Who could get this visa). See also *Visas That Have a Health Waiver Provision*, DIBP, <https://www.border.gov.au/Trav/Visa/Heal/overview-of-the-health-requirement/visas-that-have-a-health-waiver-provision> (last visited Jan. 5, 2016), archived at <https://perma.cc/HRY7-N4D6>.

<sup>51</sup> *Health Undertakings*, DIBP, <https://www.border.gov.au/Trav/Visa/Heal/meeting-the-health-requirement/health-undertakings> (last visited Dec. 29, 2015), archived at <https://perma.cc/S3SN-8FPE>.

<sup>52</sup> *Fact Sheet – Departure Health Check*, DIBP, <https://www.border.gov.au/about/corporate/information/fact-sheets/67a-dhc> (last visited Jan. 5, 2016), archived at <https://perma.cc/N8AJ-JZZD>.

<sup>53</sup> Migration Act 1958 (Cth) s 501(6)(g).

<sup>54</sup> Migration Regulations 1994 (Cth) sch 4 pt 1 criterion 4003. See generally AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION (ASIO), ASIO’S SECURITY ASSESSMENT FUNCTION (Jan. 29, 2013), <https://www.asio.gov.au/img/files/Security-Assessment-Function.pdf>, archived at <https://perma.cc/CD4Z-74DB>.

the cases of greatest complexity and potential highest threat. As a result, the number of DIBP referrals requiring ASIO assessment declined.”<sup>55</sup>

#### 4. *Processing Times*

The DIBP notes that it is “difficult to provide useful estimates of average processing times” for offshore resettlement visas, as such timeframes may be affected by multiple factors.<sup>56</sup> The Department’s service standards information states that it expects to finalize 75% of offshore humanitarian visa applications within twelve months, but also that, currently, “high numbers of applications and a limited number of Special Humanitarian Programme places mean that it may take several years for ‘split family’ applications to be decided.”<sup>57</sup>

### D. Assistance to Refugees

#### 1. *Visa and Travel Costs*

Those who apply for a Refugee category visa do not face any costs. If a visa is granted, the Australian government pays for travel costs to Australia and for costs prior to travel, such as those related to medical examinations and cultural orientation.<sup>58</sup>

Applications lodged under the Community Proposal Pilot are subject to an application charge and, as noted above, the proposing organizations are also responsible for other costs; visa holders cannot be asked to pay back any of the costs.<sup>59</sup>

While there is no charge for applying for a Global Special Humanitarian Visa (subclass 202), the Australian government does not pay for travel costs if a visa is approved. Such costs must be paid by the applicant or the proposer; however, financial assistance may be available through the International Organization for Migration No-Interest Loan Scheme.<sup>60</sup>

<sup>55</sup> ASIO, ASIO REPORT TO PARLIAMENT 2014–2015, at 23 (2015), <http://www.asio.gov.au/img/files/ASIOsReportToParliament2014-15.pdf>, archived at <https://perma.cc/GA2V-E6KF>.

<sup>56</sup> *Offshore Resettlement: After an Application Is Lodged*, DIBP, <https://www.border.gov.au/Trav/Refu/Offs/After-an-application-is-lodged> (last visited Jan. 5, 2016), archived at <https://perma.cc/9LYH-KF6C>.

<sup>57</sup> *Refugee or Humanitarian Programme Visa Processing Times*, DIBP, <https://www.border.gov.au/about/access-accountability/service-standards/refugee-or-humanitarian-program-visa-processing-times> (last visited Dec. 28, 2015), archived at <https://perma.cc/XT9V-YW6E>.

<sup>58</sup> See *Refugee Visa (Subclass 200)*, *supra* note 30 (About this visa tab; Cost).

<sup>59</sup> *Id.* (Community pilot tab).

<sup>60</sup> *Global Special Humanitarian Visa (Subclass 202)*, *supra* note 34 (About this visa tab; Cost).



## 2. Australian Cultural Orientation Program

The Australian Cultural Orientation (AUSCO) Program is provided to class XB visa holders aged five years and older while they are still overseas and preparing to travel to Australia.<sup>61</sup> The five-day course is currently delivered by the International Organization for Migration on behalf of DIBP. It is designed to prepare visa holders for travel to Australia; help them settle in Australia; help visa holders be realistic about what they can expect of life in Australia; provide information about Australian laws, values, and lifestyle; and introduce visa holders to other people who will also travel to Australia.<sup>62</sup>

## 3. Humanitarian Settlement Services Program and Related Programs

The Humanitarian Settlement Service (HSS) program helps class XB visa holders to settle in Australia for up to a year after their arrival.<sup>63</sup> HSS is a voluntary program delivered by nongovernment service providers in twenty-three regions throughout Australia.<sup>64</sup> The organizations assess the person's needs and provide tailored support, including the following:

- arrival reception and assistance
- help to find accommodation (short-term and long-term)
- property induction
- an initial food package and start-up pack of household goods
- orientation information and training
- help to register with Medicare, health services, Centrelink [for social welfare payments], banks and schools
- help to link with community and recreational programs<sup>65</sup>

The DIBP states that when HSS support ends, individuals will be able to, for example, find government and other services, make appointments, use public transport, resolve tenancy issues,

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<sup>61</sup> *Is There Any Support for Refugee and Humanitarian Visa Holders?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/is-there-any-support-for-refugee-and-humanitarian-visa-holders> (last visited Jan. 5, 2016), archived at <https://perma.cc/4TKW-BJ4K>.

<sup>62</sup> *What Is the Australian Cultural Orientation Program?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-the-australian-cultural-orientation-program>, archived at <https://perma.cc/PSV7-4V7S>; *The Australian Cultural Orientation (AUSCO) Programme*, DSS, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/a-multicultural-australia/the-australian-cultural-orientation-ausco-programme> (last updated July 29, 2015), archived at <https://perma.cc/8HL3-XZRZ>.

<sup>63</sup> *Is There Any Support to Help Me Settle into Life in Australia?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/is-there-any-support-to-help-me-settle-into-life-in-australia> (last visited Jan. 5, 2016), archived at <https://perma.cc/X75D-BSCQ>.

<sup>64</sup> *See Humanitarian Settlement Services Locator*, DSS, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/settlement-services/settlement-services-locator> (last updated July 1, 2015), archived at <https://perma.cc/4JU2-G6UZ>; *How Do I Find Humanitarian Settlement Services Support?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/how-do-i-find-humanitarian-settlement-services-support> (last visited Jan. 5, 2016), archived at <https://perma.cc/TP5C-DMP2>.

<sup>65</sup> *What Services Will I Receive?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-services-will-i-receive> (last visited Jan. 5, 2016), archived at <https://perma.cc/9S8D-ZBQF>.

know how to find work, know how to find education and training, and have a basic understanding of Australian law.<sup>66</sup>

An online Humanitarian Entrants Management System helps the DIBP, Department of Social Services, and contracted HSS providers settle holders of refugee and humanitarian visas in Australia.<sup>67</sup>

In addition to HSS, a Complex Case Support program “delivers specialised, and intensive case management services to eligible humanitarian entrants with exceptional needs which extend beyond the scope of other settlement services.”<sup>68</sup> Clients of this program have “intense and critical” needs that require multiple services, such as torture and trauma services, disability services, counseling, special services for children or youth, and support to manage financial or legal issues.<sup>69</sup>

Settlement grants are also available to organizations to help refugees and humanitarian entrants settle in Australia.<sup>70</sup>

#### 4. *Adult Migrant English Program*

Refugees entering Australia are eligible for the Adult Migrant English Program (AMEP), which provides up to 510 hours of free English language training. AMEP is overseen by the Department of Education and Training and is delivered by service providers at around 250 locations throughout Australia.<sup>71</sup>

The Department of Social Services also provides a free interpreting service to assist community organizations and service providers communicate with Australian citizens and permanent residents who do not speak English.<sup>72</sup> A free translation service is also provided to eligible

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<sup>66</sup> *What Will I Be Able to Do When My Humanitarian Settlement Services Support Ends?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-will-i-be-able-to-do-when-my-humanitarian-settlement-services-support-ends> (last visited Jan. 5, 2016), archived at <https://perma.cc/58GL-3XBL>.

<sup>67</sup> *Humanitarian Entrants Management System*, DSS, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/settlement-services/humanitarian-entrants-management-system> (last updated May 27, 2015), archived at <https://perma.cc/9TCE-SRW2>.

<sup>68</sup> *Complex Case Support Programme*, DSS, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/settlement-services/complex-case-support-programme> (last updated Dec. 7, 2015), archived at [perma.cc/ZWR9-U8GB](https://perma.cc/ZWR9-U8GB).

<sup>69</sup> *Id.*

<sup>70</sup> *About Settlement Grants*, DSS, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/settlement-services/settlement-grants/what-is-settlement-grants/about-settlement-grants> (last updated July 1, 2015), archived at <https://perma.cc/YDE2-WX4D>.

<sup>71</sup> *Adult Migrant English Program*, DEPARTMENT OF EDUCATION AND TRAINING, <http://www.education.gov.au/adult-migrant-english-program-0> (last modified Dec. 11, 2015), archived at <https://perma.cc/9W4V-G8YU>.

<sup>72</sup> *Free Interpreting Service*, DSS, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/settle-in-australia/help-with-english/free-interpreting-service> (last updated July 10, 2015), archived at <https://perma.cc/9HZS-LWKB>.

permanent residents and citizens so that they can have up to ten non-visa-related personal documents translated during their first two years in Australia.<sup>73</sup>

### 5. *Unaccompanied Humanitarian Minors Programme*

#### The Unaccompanied Humanitarian Minors Programme

facilitates the provision of relevant care, supervision and support services to minors on certain visas in Australia without a parent or legal guardian, who fall under the auspices of the Immigration (Guardianship of Children) Act 1946 (IGOC Act), and for whom the Minister for Immigration and Border Protection is the legal guardian.<sup>74</sup>

Services, which are provided by contracted providers and/or in partnership with state or territory child welfare agencies, include torture and trauma services, medical services, English language classes, access to education, and mentoring services.<sup>75</sup>

### 6. *Social Welfare and Health Care Eligibility*

There are no dedicated social welfare payments or special payment rates for refugees.<sup>76</sup> As permanent residents, refugees are able to apply for various government payments and access Australia's national health care system, Medicare.<sup>77</sup> This system "provides free or subsidised treatment by some health professionals and free treatment and accommodation as a public patient in a public hospital."<sup>78</sup> Refugees and humanitarian entrants are also eligible for a detailed health assessment.<sup>79</sup>

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<sup>73</sup> *Free Translating Service*, DSS, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/settle-in-australia/help-with-english/free-translating-service> (last updated Aug. 27, 2015), archived at <https://perma.cc/8ASJ-UEKH>.

<sup>74</sup> *Unaccompanied Humanitarian Minors Programme*, DIBP, <https://www.border.gov.au/about/corporate/information/fact-sheets/uhm-programme> (last visited Dec. 29, 2015), archived at <https://perma.cc/D9RY-B8XY>.

<sup>75</sup> *Id.*

<sup>76</sup> Luke Buckmaster & Jonathon Guppy, *Australian Government Assistance to Refugees: Fact Versus Fiction*, AUSTRALIAN PARLIAMENTARY LIBRARY (Nov. 11, 2014), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/AustGovAssist-refugees](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/AustGovAssist-refugees), archived at <https://perma.cc/LP6Q-WEKL>.

<sup>77</sup> *Payments for Visa Holders*, DSS, <http://www.humanservices.gov.au/customer/subjects/payments-for-visa-holders> (last updated Aug. 5, 2015), archived at <https://perma.cc/D6EY-PTMB>.

<sup>78</sup> *Health Care*, DEPARTMENT OF HUMAN SERVICES, <http://www.humanservices.gov.au/customer/subjects/health-care> (last updated Nov. 25, 2015), archived at <https://perma.cc/N9HM-L7GW>.

<sup>79</sup> *Health Assessment for Refugees and Other Humanitarian Entrants into Australia: Questions and Answers*, DEPARTMENT OF HEALTH, [http://www.health.gov.au/internet/main/publishing.nsf/Content/mbsprimarycare\\_mbsitem\\_refugees\\_qanda](http://www.health.gov.au/internet/main/publishing.nsf/Content/mbsprimarycare_mbsitem_refugees_qanda) (last updated Apr. 17, 2014), archived at <https://perma.cc/HKC6-V58K>.

Holders of refugee and humanitarian visas are not subject to the normal waiting period that applies to other newly-arrived residents for many payments.<sup>80</sup> In addition, a one-time Crisis Payment is available to people “experiencing difficult or extreme circumstances,” including those who arrive in Australia for the first time on a refugee or humanitarian visa.<sup>81</sup> The amount of the payment is equal to one week’s payment at a person’s existing income support rate.

## E. Path to Naturalization

Holders of class XB visas who are aged eighteen years and over can apply for Australian citizenship once they have lived in the country for four years. During that time, applicants must not have been out of the country for a total of more than one year, and must have been in Australia for at least nine months in the year immediately preceding their application.<sup>82</sup> Applicants must also satisfy character requirements and pass a citizenship test.<sup>83</sup> The same requirements apply to holders of other permanent residence visas.<sup>84</sup>

## III. Onshore Component of the Refugee and Humanitarian Programme

### A. Visa Subclasses

There are three visa classes, each with one subclass, within the Refugee and Humanitarian Programme that are available to people who are in Australia and wish to apply for asylum (i.e., “protection”):<sup>85</sup>

- Permanent protection visa (class XA, subclass 866): a permanent residence visa available to people who are in Australia and who are found to “engage Australia’s protection obligations” due to being a refugee or meeting the “complementary protection” criteria in the Migration Act 1958 (Cth).<sup>86</sup>

<sup>80</sup> *Newly Arrived Resident’s Waiting Period*, DEPARTMENT OF HUMAN SERVICES, <http://www.humanservices.gov.au/customer/enablers/newly-arrived-residents-waiting-period> (last updated Nov. 18, 2015), archived at <https://perma.cc/JN88-Z9MW>.

<sup>81</sup> *Crisis Payment*, DEPARTMENT OF HUMAN SERVICES, <http://www.humanservices.gov.au/customer/services/centrelink/crisis-payment> (last updated Dec. 15, 2015), archived at <https://perma.cc/2UZG-P66Q>.

<sup>82</sup> *Applying for Citizenship: How to Apply – Refugee and Humanitarian Entrants*, DIBP, <https://www.border.gov.au/Trav/Citi/Apply/How-to-apply/Refugee-and-humanitarian-entrants> (last visited Dec. 29, 2015), archived at <https://perma.cc/W9PJ-VFHJ>.

<sup>83</sup> *Id.*

<sup>84</sup> *Application Process for Australian Citizenship*, DIBP, <https://www.border.gov.au/Trav/Citi/Apply/How-to-apply/Application-process-for-Australian-citizenship> (last visited Dec. 29, 2015), archived at <https://perma.cc/8BHD-PQQC>; Australian Citizenship Act 2007 (Cth) ss 21–24, <https://www.comlaw.gov.au/Details/C2015C00221>, archived at <https://perma.cc/5K42-SVB8>.

<sup>85</sup> Migration Act 1958 (Cth) s 35A; *Onshore – Protection*, DIBP, <https://www.border.gov.au/Trav/Refu/Onsh> (last visited Jan. 5, 2016), archived at <https://perma.cc/HW5Q-NJ5A>.

<sup>86</sup> *Protection Visa (Subclass 866)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/866> (last visited Jan. 5, 2016), archived at <https://perma.cc/VKA4-45T6>; Migration Regulations 1994 (Cth) r 1401.

- Temporary protection visa (class XD, subclass 785): a temporary visa that allows holders to live and work in Australia for up to three years. People must be in Australia and invited to apply for this visa, and must engage Australia's protection obligations in order to be granted a visa. Holders can only apply for another temporary visa in order to remain in Australia longer than three years.<sup>87</sup>
- Safe haven enterprise visa (class XE, subclass 790): a temporary visa that allows holders to live and work in Australia for five years. Applicants must be invited to apply and engage Australia's protection obligations. Holders can apply for other substantive visas if they spend a minimum amount of time employed or studying in regional Australia.<sup>88</sup>

To engage Australia's protection obligations, a person must either be determined to be a refugee or a person "in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm."<sup>89</sup> "Significant harm" is further defined in the Migration Act 1958 (Cth), with the different elements arising from Australia's complementary protection obligations under the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>90</sup>

The criteria for all of the above visas, set out in section 36 of the Migration Act 1958 (Cth), also include that the applicant is "not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security."<sup>91</sup> In addition, the immigration minister must not consider, on reasonable grounds, that the person is a danger to Australia's security, or that he or she is a danger to the Australian community by virtue of being convicted of a particularly serious crime.<sup>92</sup> The health requirements must also be met.

## B. Permanent Protection Visa for Lawful Arrivals

As noted in the introduction to this report, the permanent protection visa is now only available to people who arrive in Australia legally (i.e., with a valid visa). Those who arrived illegally before January 1, 2014, and have not previously been granted a visa can only apply for a temporary

<sup>87</sup> *Temporary Protection Visa (Subclass 785)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/785-> (last visited Jan. 5, 2016), archived at <https://perma.cc/FU82-4RVP>; Migration Regulations 1994 (Cth) r 1403.

<sup>88</sup> *Safe Haven Enterprise Visa (Subclass 790)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/790-> (last visited Jan. 5, 2016), archived at <https://perma.cc/X6FK-TQ47>; Migration Regulations 1994 (Cth), r 1404.

<sup>89</sup> Migration Act 1958 (Cth) s 36(2)(aa).

<sup>90</sup> See *Protection Visa (Subclass 866)*, *supra* note 86 (Visa applicants tab; Who could get this visa).

<sup>91</sup> Migration Act 1958 (Cth) s 36(1B).

<sup>92</sup> *Id.* s 36(1C).

protection visa or safe haven enterprise visa.<sup>93</sup> Those who attempt to enter Australia illegally after that date will not have their claims processed in Australia and will not be settled there.

As with class XB visas, an applicant for a permanent protection visa can include eligible family members in their application, as long as those relatives are also in Australia at the time the application is made.<sup>94</sup> Visa holders can also sponsor family members for permanent residence under the family migration stream, and in some cases for a protection visa.<sup>95</sup>

An applicant who arrived lawfully by air and who is currently in immigration detention due to visa expiration or cancellation, or who is in the community and suffering from financial hardships and other disadvantages, can get help preparing and lodging an application under the Immigration Advice and Application Assistance Scheme.<sup>96</sup> Any person who is in immigration detention is not required to pay the application charge for the protection visa, which is otherwise AU\$35.<sup>97</sup>

Once a person has applied for a protection visa, he or she may be able to receive financial assistance, health care, and help with visa-related costs through the Asylum Seeker Assistance Scheme.<sup>98</sup>

People who are granted a protection visa, including while in immigration detention, are eligible for support through the Humanitarian Settlement Services program. However, those who were granted a protection visa after August 30, 2013, and who were illegal/unauthorized maritime arrivals and lived in the community on a “bridging visa” (see Part III(D)(2), below) or in community detention, or were non-IMAs who had similarly been living in the community, are not eligible for such support.<sup>99</sup>

Protection visa holders, due to having permanent residence status, may access the public health care system and social welfare payments.

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<sup>93</sup> *Applying for Protection in Australia If You Arrived Illegally*, DIBP, <https://www.border.gov.au/Trav/Refu/protection-application-information-and-guides-paig/applying-for-protection-in-Australia-if-you-arrived-illegally> (last visited Dec. 30, 2015), archived at <https://perma.cc/UQJ4-EFQF>.

<sup>94</sup> *Protection Visa (Subclass 866)*, *supra* note 86 (Visa applicants tab; Including family in your application).

<sup>95</sup> *Id.* (Visa holders tab; What this visa lets you do).

<sup>96</sup> *Id.* (Visa applicants tab; Help to prepare your application); *Fact Sheet – Immigration Advice and Application Assistance Scheme (IAAAS)*, DIBP, <https://www.border.gov.au/about/corporate/information/fact-sheets/63advice> (last visited Jan. 5, 2016), archived at <https://perma.cc/VYK9-KEX6>.

<sup>97</sup> *Fees and Charges for Visas*, DIBP, <https://www.border.gov.au/Trav/Visa/Fees> (Other tab; Protection visa applications) (last visited Jan. 5, 2016), archived at <https://perma.cc/ZA3Y-3UCT>.

<sup>98</sup> *Protection Visa (Subclass 866)*, *supra* note 86 (Visa applicants tab; Applying for assistance after you lodge your application).

<sup>99</sup> *Am I Eligible for Humanitarian Settlement Services Support?*, DIBP, <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/am-i-eligible-for-humanitarian-settlement-services-support>, archived at <https://perma.cc/Q4NV-MCR3>.



Since June 3, 2013, a condition (condition 8559) has been applied to protection visas prohibiting a visa holder from traveling to his or her home country, or another country from which they sought protection. If such travel takes place, a person's visa can be canceled.<sup>100</sup>

As permanent residents, protection visa holders have the same ability, and must meet the same requirements, to apply for citizenship as outlined above.

### C. Temporary Visas for Illegal/Unauthorized Arrivals

#### 1. Immigration Detention

All noncitizens, including asylum seekers, who enter Australia without a valid visa, or who remain in Australia after their visa has expired or is canceled, are classified by law as “unlawful non-citizens.”<sup>101</sup> However, “the term ‘unlawful’ does not mean that asylum seekers have committed a criminal offence. There is no offence under Australian law that criminalises the act of arriving in Australia or the seeking of asylum without a valid visa.”<sup>102</sup>

Unlawful noncitizens are subject to mandatory immigration detention, during which detention they can apply for a visa.<sup>103</sup> A person may be held in detention until her or she is granted a visa or is deported.<sup>104</sup> There is no limit to the length of time that a person may be held in immigration detention.<sup>105</sup>

#### 2. Bridging Visas

Since November 2011, illegal/unauthorized maritime arrivals have been able to apply for a “bridging visa” (subclass 050-051, bridging visa E or BVE) in order to be released from detention and live in the community while awaiting resolution of their asylum claims.<sup>106</sup> BVE holders may or may not be able to work, depending on the terms of their visa. Those who leave

<sup>100</sup> *Protection Visa (Subclass 866)*, *supra* note 86 (Visa holders tab).

<sup>101</sup> Migration Act 1958 (Cth) s 14.

<sup>102</sup> Janet Phillips, *Asylum Seekers and Refugees: What Are the Facts?*, *supra* note 5.

<sup>103</sup> Migration Act 1958 (Cth) pt 2 div 7. *See generally* JOINT SELECT COMMITTEE ON AUSTRALIA'S IMMIGRATION DETENTION NETWORK, FINAL REPORT (Mar. 2012), [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/immigrationdetention/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/immigrationdetention/report/index), archived at <https://perma.cc/W4GE-3WMG>; *About Immigration Detention*, DIBP, <https://www.border.gov.au/Busi/Comp/Immigration-detention> (last visited Jan. 5, 2016), archived at <https://perma.cc/F734-EG76>.

<sup>104</sup> Migration Act 1958 (Cth) s 196.

<sup>105</sup> *Asylum Seekers and Refugees Guide*, AUSTRALIAN HUMAN RIGHTS COMMISSION, <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/asylum-seekers-and-refugees-guide> (last updated Aug. 14, 2015), archived at <https://perma.cc/M3ZP-78Y3>.

<sup>106</sup> *Fact Sheet – Bridging Visas for Illegal Maritime Arrivals*, DIBP, <https://www.border.gov.au/about/corporate/information/fact-sheets/65onshore-processing-illegal-maritime-arrivals> (last visited Jan. 4, 2016), archived at <https://perma.cc/2P3P-X6YM>; Migration Act 1958 (Cth) pt 2 div 3 subdiv AF.

Australia may not reenter.<sup>107</sup> Some BVE holders are eligible to receive Status Resolution Support Services, which could include financial assistance, housing, case worker support, access to English lessons, and access to schooling for school-aged children.<sup>108</sup>

Since December 2013, all adult applicants for a BVE must sign a Code of Behaviour. As part of this Code, the person agrees to cooperate with Australian government agencies, which includes applying for a visa when invited to do so. Once a person has been invited to apply for a temporary visa, as discussed below, he or she is granted a new BVE that will be valid until the application has been decided. Such people have permission to work and to access Medicare and other services.<sup>109</sup>

### 3. Fast-Track Assessment Process

There are currently about 30,500 people in Australia, either in detention or on bridging visas, who arrived illegally before January 1, 2014.<sup>110</sup> Since April 2015, a new “Fast Track Assessment Process” has applied to temporary visa applications from people who arrived on or after August 13, 2012, and before January 1, 2014, and who were never taken to a Regional Processing Centre. The commencement of this process lifted a stay on processing asylum claims from such people.<sup>111</sup> Applicants must be invited by the immigration minister to make a valid temporary visa application.<sup>112</sup> Invitations are being sent in the order in which people arrived in the country, although priority is being given to those in immigration detention.<sup>113</sup>

Under the fast-track process, a DIBP officer conducts an initial assessment of the application, which includes interviewing the applicant. If a visa is refused, the DIBP automatically refers the case to a new body within the Administrative Appeals Tribunal (AAT) called the Immigration Assessment Authority, which undertakes a limited form of review.<sup>114</sup> Full administrative review by the Migration and Refugee Division of the AAT is precluded under the fast-track process.

<sup>107</sup> *Bridging Visa E – BVE (Subclass 050-051)*, DIBP, <https://www.border.gov.au/Trav/Visa-1/051-> (last visited Dec. 30, 2015), archived at <https://perma.cc/3GZ9-PWH7>.

<sup>108</sup> *SRSS Programme*, DIBP, <http://www.border.gov.au/Trav/Refu/Illegal-maritime-arrivals/status-resolution-support-services-programme-srss> (last visited Dec. 30, 2015), archived at <https://perma.cc/7RLC-77MG>.

<sup>109</sup> *Illegal Maritime Arrivals: Waiting in the Community*, DIBP, <http://www.ima.border.gov.au/Waiting-in-the-community> (last visited Dec. 30, 2015), archived at <https://perma.cc/M8RA-KW9Y>.

<sup>110</sup> *Illegal Maritime Arrivals: Illegal Maritime Arrivals (IMAs)*, DIBP, <http://www.ima.border.gov.au/> (last visited Dec. 30, 2015), archived at <https://perma.cc/A326-TE9S>.

<sup>111</sup> Paul Farrell, *Asylum Seeker Fast-Track Processing to Begin with Temporary Protection Visas*, THE GUARDIAN (May 28, 2015), <http://www.theguardian.com/australia-news/2015/may/28/asylum-seeker-fast-track-processing-to-begin-with-temporary-protection-visas>, archived at <https://perma.cc/W8EQ-W6G3>.

<sup>112</sup> *Illegal Maritime Arrivals: Fast Track Assessment Process*, DIBP, <http://www.ima.border.gov.au/en/Applying-for-a-protection-visa/Fast-Track-Assessment-process> (last visited Jan. 5, 2016), archived at <https://perma.cc/N8K3-8PE9>.

<sup>113</sup> *Illegal Maritime Arrivals: When Will My Claims for Asylum Be Considered?*, DIBP, <http://www.ima.border.gov.au/Waiting-in-the-community/When-will-my-claims-for-asylum-be-considered> (last visited Dec. 30, 2015), archived at <https://perma.cc/9AP6-EWY4>.

<sup>114</sup> *Illegal Maritime Arrivals: Fast Track Assessment Process*, *supra* note 112.



Some people may also be assessed by DIBP to be an “excluded fast track review applicant” and not have any review rights. This can occur in situations where the applicant

- ha[s] access to a safe third country that [he or she] can seek protection from, or [is] a national of two or more countries
- ha[s] previously entered Australia and, while in Australia, made an application for a protection visa which was either refused or withdrawn
- ha[s] been refused protection in another country, including with the United Nations High Commissioner for Refugees (UNHCR)
- ha[s] made manifestly unfounded claims for protection (that is, [his or her] claims have no substance)
- ha[s] given [DIBP] a bogus document as part of [his or her] protection visa application and do[es] not have a reasonable explanation for doing so.<sup>115</sup>

The two visas for which invited applicants may apply are the temporary protection visa and the safe haven enterprise visa.

#### 4. *Temporary Protection Visa*

In December 2014, Parliament passed changes to the Migration Act 1958 (Cth) that reintroduced the temporary protection visa (TPV), as well introducing the fast-track process.<sup>116</sup> The TPV was previously a feature of Australia’s immigration law from 1999 until 2008. During that time, 11,206 people were granted TPVs, with 95% eventually given permanent protection visas.<sup>117</sup> As noted above, under the current rules, a TPV holder can apply for a new temporary visa to remain in Australia, but cannot apply for a permanent visa unless ministerial approval is granted.

In addition to processing applications received under the invitation and fast-track process outlined above, “any valid application for a permanent Protection visa lodged by a person who arrived in Australia illegally that was not finalised by 16 December 2014 has been converted into a TPV application.”<sup>118</sup> The same form, Form 866, is used for the permanent protection visa and TPV.<sup>119</sup> There is an application charge of AU\$35 for a TPV, unless the applicant is in

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<sup>115</sup> *Id.*

<sup>116</sup> Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014, <https://www.comlaw.gov.au/Details/C2015C00219>, archived at <https://perma.cc/SDJ3-5CAL>.

<sup>117</sup> *Temporary Protection Visas*, ASYLUM SEEKER RESOURCE CENTRE, <http://www.asrc.org.au/resources/fact-sheet/temporary-protection-visas/> (last visited Dec. 31, 2015), archived at <https://perma.cc/E8ST-82HL>; Harriet Spinks, *A Return to Temporary Protection Visas?*, FLAGPOST (Oct. 18, 2013), [http://www.aph.gov.au/About/Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2013/November/A\\_return\\_to\\_Temporary\\_Protection\\_Visas](http://www.aph.gov.au/About/Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2013/November/A_return_to_Temporary_Protection_Visas), archived at <https://perma.cc/Y5A3-ZAZZ>; *Temporary Protection Visas*, KALDOR CENTRE FOR INTERNATIONAL REFUGEE LAW (Apr. 1, 2015), <http://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas>, archived at <https://perma.cc/9BP4-H4Y7>.

<sup>118</sup> *Illegal Maritime Arrivals: Temporary Protection Visas*, DIBP, <http://www.ima.border.gov.au/en/Applying-for-a-protection-visa/Temporary-Protection-visas> (last visited Jan. 5, 2016), archived at <https://perma.cc/6AFZ-MR4Q>.

<sup>119</sup> *The Protection Visa Application Forms*, DIBP, <https://www.border.gov.au/Trav/Refu/protection-application-information-and-guides-paig/protection-visa-application-forms> (last visited Jan. 6, 2016), <https://perma.cc/PXC2-Z59U>.

immigration detention.<sup>120</sup> The “most vulnerable illegal arrivals” will be notified of their eligibility for assistance with preparing their applications, which is provided through the Primary Applicant Information Services program.<sup>121</sup>

TPV holders can enroll in Australia’s public healthcare system and are eligible for some social security benefits. They can receive job-matching assistance and “short-term counselling for torture and trauma where required.”<sup>122</sup> Children can attend school and adults can access the government’s Adult Migrant English Programme.<sup>123</sup> TPV holders are not entitled to settlement support services, although the immigration minister may grant access.<sup>124</sup>

TPV applicants can include their family members who are also in Australia on their application.<sup>125</sup> However, TPV holders cannot sponsor overseas family members for a visa.<sup>126</sup> As temporary residents, they do not have a pathway to gaining citizenship.

Those granted a TPV after December 16, 2014, must obtain approval to travel to another country. Such travel will be approved only if the person demonstrates “compassionate or compelling circumstances that justify the travel.”<sup>127</sup> If a person travels without approval, his or her visa could be canceled. A person must also not travel to his or her home country.<sup>128</sup>

Persons who were granted a TPV before December 16, 2014, under the old provisions, cannot get permission to travel outside the country.<sup>129</sup> If such a person leaves Australia his or her visa may be canceled.

### 5. Safe Haven Enterprise Visa

The December 2014 amendments also saw the introduction of the safe haven enterprise visa (SHEV). The purpose of this visa “is both to provide protection and to encourage enterprise through earning and learning while strengthening regional Australia.”<sup>130</sup> An unauthorized maritime arrival who is granted a SHEV and meets certain conditions may apply for an onshore substantive visa, although not a permanent protection visa. Therefore, SHEV may provide a

<sup>120</sup> *Fees and Charges for Visas*, *supra* note 97.

<sup>121</sup> *Temporary Protection Visa (Subclass 785)*, *supra* note 87 (Visa applicants tab; Help to prepare your application).

<sup>122</sup> *Illegal Maritime Arrivals: Temporary Protection Visas*, *supra* note 118.

<sup>123</sup> *Id.*

<sup>124</sup> *Temporary Protection Visas*, KALDOR CENTRE FOR INTERNATIONAL REFUGEE LAW, *supra* note 117.

<sup>125</sup> *Temporary Protection Visa (Subclass 785)*, *supra* note 87 (Visa applicants tab; Including family in your application).

<sup>126</sup> *Illegal Maritime Arrivals: Temporary Protection Visas*, *supra* note 118.

<sup>127</sup> *Id.*

<sup>128</sup> *Illegal Maritime Arrivals: Travel Condition 8570*, DIBP, <http://www.ima.border.gov.au/After-your-application-is-decided/Travel-condition-8570> (last visited Jan. 5, 2016), archived at <https://perma.cc/W324-FX2V>.

<sup>129</sup> *Id.*

<sup>130</sup> Migration Act 1958 (Cth) s 35A(3B).

“ ‘pathway’ to eventually obtaining permanent residency.”<sup>131</sup> The pathway conditions are met if a SHEV holder has, for at least three and a half years while on the visa, been employed in regional Australia and not received certain social security benefits, or has enrolled and physically attended full-time study in regional Australia, or a combination of both.<sup>132</sup>

People that do not meet the pathway requirements can apply for another SHEV or a TPV, at which time there will be another assessment regarding whether they engage Australia’s protection obligations. If granted another SHEV, a person’s period of work and/or study during both SHEVs will count towards meeting the SHEV pathway requirements.<sup>133</sup>

SHEV holders who wish to study are not eligible for funding for higher education and so are charged international student rates. They are also not eligible for social security benefits for students. School-aged children are able to attend and complete elementary and high school level schooling.<sup>134</sup>

SHEV holders can access Medicare as well as employment services available to job seekers, including referrals for jobs and assistance with looking for work, writing a resume, and preparing for interviews. Social and health-related payments and services that are available to Australian workers can be accessed by SHEV holders if they meet the eligibility criteria.<sup>135</sup>

The same restrictions on travel and sponsoring family members apply to SHEV holders as apply to TPV holders.

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<sup>131</sup> ADMINISTRATIVE APPEALS TRIBUNAL, MIGRATION AND REFUGEE DIVISION, GUIDE TO REFUGEE LAW 1–3 (Dec. 2015), <http://www.mrt-rrt.gov.au/CMSPages/GetFile.aspx?guid=91addcd2-35ac-47c3-a97a-07953552f9c5>, archived at <https://perma.cc/5S5V-N8RL>.

<sup>132</sup> *Illegal Maritime Arrivals: Information for Safe Haven Enterprise Visa Holders*, DIBP, <http://www.ima.border.gov.au/After-your-application-is-decided/Information-for-Safe-Haven-Enterprise-visa-holders> (last visited Jan. 5, 2016), archived at <https://perma.cc/F2WL-V7VD>.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

# Brazil

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**SUMMARY** In Brazil, a constitutional principle provides for the granting of asylum to aliens, while a federal law regulates immigration issues in general, including asylum. A national council subordinate to the Ministry of Labor, which is in charge of coordinating immigration activities in the country, has issued regulations establishing the requirements for obtaining refugee or asylum status.

A federal law from 1997 defined the mechanisms for implementing the Refugee Status Act of 1951 in the country and created a national committee under the Ministry of Justice to deal with the refugee matters. Under this authority, the committee issued a normative resolution detailing the procedures for the request and processing of refugee applications.

Permanent residency and citizenship are available to holders of asylum and refugee status, provided that certain requirements are met. However, Brazilian legislation does not provide any specific provision for the integration of immigrants into the society. State and local authorities play no role in immigration matters, and the enforcement of immigration laws falls under the jurisdiction of the Department of Federal Police.

## I. Asylum Policies and Procedures

### A. Constitutional Principle

In Brazil, the granting of asylum is a principle identified in the Constitution. Article 4 of the Brazilian Constitution states that the international relations of Brazil are governed by, *inter alia*, the principles of the “prevalence” of human rights, cooperation among peoples for the progress of humanity, and the granting of political asylum.<sup>1</sup>

### B. Enforcement of Immigration Laws

The Department of Federal Police, which is subordinate to the Ministry of Justice,<sup>2</sup> is the competent agency to enforce legislation dealing with nationality, immigration, and aliens.<sup>3</sup>

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<sup>1</sup> CONSTITUIÇÃO FEDERAL [C.F.], art. 4(II), (IX), (X), [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm), archived at <https://perma.cc/FH8R-Z4Y6>.

<sup>2</sup> Lei No. 10.683 de 28 de Maio de 2003, art. 27(XIV)(d)(g), [http://www.planalto.gov.br/ccivil\\_03/leis/2003/L10.683.htm](http://www.planalto.gov.br/ccivil_03/leis/2003/L10.683.htm), archived at <https://perma.cc/4C92-7JH7>.

<sup>3</sup> Decreto No. 73.332 de 19 de Dezembro de 1973, art. 1(IV)(h), [http://www.planalto.gov.br/ccivil\\_03/decreto/antigos/d73332.htm](http://www.planalto.gov.br/ccivil_03/decreto/antigos/d73332.htm), archived at <https://perma.cc/9WG5-Q73G>.

### C. Legal Situation of Aliens in Brazil

Law No. 6,815 of August 19, 1980, the Alien's Statute (*Estatuto do Estrangeiro*), defines the legal situation of aliens in Brazil and created the National Council of Immigration (Conselho Nacional de Imigração, CNIg).<sup>4</sup>

Article 28 of Law No. 6,815 determines that a foreign national admitted to Brazilian territory as a political asylee must comply with all duties imposed on him/her by international law, along with the current domestic laws and all additional duties established by the Brazilian government.<sup>5</sup> The asylee may not leave the country without the express authorization of the Brazilian government; an asylee who does so renounces his/her status as an asylee and is not allowed to reenter the country.<sup>6</sup>

Decree No. 86,715 of December 10, 1981, regulates Law No. 6,815. Article 56 of the Decree determines that once asylum is granted to a person, the Federal Department of Justice must put in writing the terms for the person's stay in Brazil, including the period of stay and, if applicable, additional conditions imposed by international and domestic law currently in force.<sup>7</sup> The record must be forwarded to the Department of Federal Police for registration purposes.<sup>8</sup> An asylee who wishes to leave the country and reenter it without renouncing his/her asylee status must obtain prior authorization from the Minister of Justice, through the Federal Department of Justice.<sup>9</sup>

An alien admitted to the country permanently, temporarily, or as an asylee is required to register with the Department of Federal Police within thirty days of entering the country or being granted asylum, be fingerprinted,<sup>10</sup> and comply with the provisions of Decree No. 86,715.

During the registration process, an alien must present a travel document that identifies him/her and a copy of the Brazilian consular visa application form or, where a visa is being changed, a consular certificate of the country of nationality.<sup>11</sup>

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<sup>4</sup> Estatuto do Estrangeiro, Lei No. 6.815, de 19 de Agosto de 1980, [http://www.planalto.gov.br/ccivil\\_03/Leis/L6815compilado.htm](http://www.planalto.gov.br/ccivil_03/Leis/L6815compilado.htm), archived at <https://perma.cc/N7NS-FMM6>.

<sup>5</sup> *Id.* art. 28.

<sup>6</sup> *Id.* art. 29.

<sup>7</sup> Decreto No. 86.715, de 10 de Dezembro de 1981, art. 56, [http://www.planalto.gov.br/ccivil\\_03/decreto/Antigos/D86715.htm](http://www.planalto.gov.br/ccivil_03/decreto/Antigos/D86715.htm), archived at <https://perma.cc/4M92-WPSY>.

<sup>8</sup> *Id.* art. 56(sole para.).

<sup>9</sup> *Id.* art. 57.

<sup>10</sup> *Id.* art. 58.

<sup>11</sup> *Id.* art. 58(§1).

The following information must be recorded in the alien's registration:

- name and filiation
- city and country of birth
- nationality
- date of birth
- sex
- marital status
- occupation and education level
- place and date of entry into Brazil
- type and number of travel document
- number and classification of consular visa, and date and place of its issue
- means of transportation used to enter the country
- data relating to accompanying minors' places of residence, work, and study<sup>12</sup>

The registration will be valid only after it has been verified that the alien legally entered the country, after the respective consular visa was issued.<sup>13</sup> When the documentation submitted omits any data regarding the alien's civil status, the person must present a birth or marriage certificate, consular certificate, or judicial order.<sup>14</sup>

#### **D. Conventions on Political, Diplomatic, and Territorial Asylum**

Brazil is a signatory of the Organization of American States' conventions on political, diplomatic, and territorial asylum.<sup>15</sup> Decree No. 1,570 of April 13, 1937, promulgated the Convention on Political Asylum;<sup>16</sup> Decree No. 42,628 of November 13, 1957, promulgated the Convention on Diplomatic Asylum;<sup>17</sup> and Decree No. 55,929 of April 14, 1965, promulgated the Convention on Territorial Asylum in the country.<sup>18</sup>

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<sup>12</sup> *Id.* art. 58(§2).

<sup>13</sup> *Id.* art. 58(§3).

<sup>14</sup> *Id.* art. 58(§4).

<sup>15</sup> Convention on Political Asylum, Dec. 26, 1933, O.A.S.T.S. 34, <http://www.oas.org/juridico/english/treaties/a-37.html>, archived at <https://perma.cc/C2RF-5ZA4>; Convention on Diplomatic Asylum, Mar. 28, 1954, O.A.S.T.S. 18, <http://www.oas.org/juridico/english/treaties/a-46.html>, archived at <https://perma.cc/AQG5-TN34>; Convention on Territorial Asylum, Mar. 28, 1954, O.A.S.T.S. 19, <http://www.oas.org/juridico/english/treaties/a-47.html>, archived at <https://perma.cc/DU5V-X8UC>.

<sup>16</sup> Decreto No. 1.570, de 13 de Abril de 1937, [http://www.planalto.gov.br/ccivil\\_03/decreto/1930-1949/D1570.htm](http://www.planalto.gov.br/ccivil_03/decreto/1930-1949/D1570.htm), archived at <https://perma.cc/VD6G-6ALF>.

<sup>17</sup> Decreto No. 42.628, de 13 de Novembro de 1957, <http://www2.camara.leg.br/legin/fed/decret/1950-1959/decreto-42628-13-novembro-1957-381360-publicacaooriginal-1-pe.html>, archived at <https://perma.cc/F839-J694>.

<sup>18</sup> Decreto No. 55.929, de 19 de Abril de 1965, [http://www.planalto.gov.br/ccivil\\_03/decreto/1950-1969/D55929.htm](http://www.planalto.gov.br/ccivil_03/decreto/1950-1969/D55929.htm), archived at <https://perma.cc/964E-RFSV>.

The Convention on Political Asylum asserts the following:

**Article 3.**

Political asylum, as an institution of humanitarian character, is not subject to reciprocity. Any man may resort to its protection, whatever his nationality, without prejudice to the obligations accepted by the State to which he belongs; however, the States that do not recognize political asylum, except with limitations and peculiarities, can exercise it in foreign countries only in the manner and within the limits recognized by said countries.

**Article 4.**

When the withdrawal of a diplomatic agent is requested because of the discussions that may have arisen in some case of political asylum, the diplomatic agent shall be replaced by his government, and his withdrawal shall not determine a breach of diplomatic relations between the two States.<sup>19</sup>

The Convention on Diplomatic Asylum states as follows:

Article II

Every State has the right to grant asylum; but it is not obligated to do so or to state its reasons for refusing it.

Article III

It is not lawful to grant asylum to persons who, at the time of their request for asylum, are under indictment or on trial for common offenses or have been convicted by competent regular courts and have not served the respective sentence, nor to deserters from land, sea, and air forces, except when the acts giving rise to the request for asylum, whatever the case may be, are clearly of a political nature.

....

Article V

Asylum may not be granted except in urgent cases and for the period of time strictly necessary for the asylee to depart from the country with the guarantees granted by the Government of the territorial State, with the objective that his life, liberty, or personal integrity may not be endangered, or that the asylee's safety is ensured in some other way.

Article VI

Urgent cases are those, among others, in which the individual is being sought by persons or criminals/gangs/organized crime groups over whom the authorities have lost control, or by the authorities themselves, and is in danger of being deprived of his life or liberty because of political persecution and cannot, without risk, ensure his safety in any other way.

Article VII

If a case of urgency is involved, it shall rest with the State granting asylum to determine the degree of urgency of the case.<sup>20</sup>

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<sup>19</sup> Convention on Political Asylum, *supra* note 15, arts. 3–4.

<sup>20</sup> Convention on Diplomatic Asylum, *supra* note 15, arts. II, III, V, VII.

Pertinent provisions of the Convention on Territorial Asylum are as follows:

**Article I**

Every State has the right to admit foreign persons into its territory, as it deems advisable, as long as the exercise of this rights does not give rise to a complaint on the part of any other State.

.....

**Article III**

No State is under the obligation to surrender to another State, or to expel from its own territory, persons persecuted for political reasons or offenses.

.....

**Article VI**

No State is under the obligation to establish any distinction in its legislation or in its alien-related regulations or administrative acts, solely because these are political asylees or refugees.

.....

**Article VIII**

No State has the right to request another State to restrict the freedom of assembly or association for political asylees or refugees when the latter State's internal legislation grants this freedom to all aliens within its territory, unless the purpose of such assembly or association is to foment the use of force or violence against the government of the soliciting State.

**Article IX**

At the request of an interested State, the State that grants refuge or asylum shall take steps to keep watch over, or to intern at a reasonable distance from its border, those political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it.

Determination of the reasonable distance from the border, for the purpose of internment, shall depend upon the judgment of the authorities of the State of refuge.

All expenses incurred as a result of the internment of political asylees and refugees shall be charged to the State making the request.<sup>21</sup>

## **II. Refugee Policies and Procedures**

### **A. Refugee Status Act**

In 1960, Brazil enacted legislation approving the 1951 Geneva Convention Relating to the Status of Refugees, which Brazil had signed on July 15, 1952; in 1972, Brazil enacted legislation approving the 1967 Protocol Relating to the Status of Refugees.<sup>22</sup> On July 22, 1997, Brazil

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<sup>21</sup> Convention on Territorial Asylum, *supra* note 15, arts. I, III, VI, VIII, IX.

<sup>22</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2aa10>.



promulgated Law No. 9,474, which defined the mechanisms for implementing the Convention and Protocol, created the National Committee for Refugees (Comitê Nacional para os Refugiados, CONARE), and defined the Committee's competence and functional structure.<sup>23</sup>

According to Law No. 9,474, the interpretation of its precepts must be in harmony with the Universal Declaration of Human Rights, the Convention and Protocol, and every international instrument to which the Brazilian government is a signatory.<sup>24</sup>

### *1. Definition of Refugee*

Law No. 9,474 defines the term “refugee” as an individual who,

I - owing to well-founded fear of persecution for reasons of race, religion, nationality, social group or political opinion finds himself outside his country of nationality and cannot or is unwilling to take shelter in that country;

II - not having the nationality and being outside the country where once he had his habitual residence, is unable or unwilling to return to it, under the circumstances described in the preceding item;

III - owing to serious and widespread violations of human rights, is obligated to leave his country of nationality to seek refuge in another country.<sup>25</sup>

### *2. Refugee Status of Family Members*

Law No. 9,474 also provides that the effects of refugee status are extended to the spouse, the ascendants and descendants, and other members of the family group that are economically dependent on the refugee, provided that they are in the country.<sup>26</sup>

### *3. Individuals Who Cannot Benefit from Refugee Status*

Categories of persons who cannot benefit from refugee status include those who already enjoy protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR); are resident in the national territory and have rights and obligations related to the status of Brazilian national; have committed a crime against peace, a war crime, a crime against humanity, or a heinous crime, or participated in

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<http://www2.camara.leg.br/legin/fed/decleg/1960-1969/decretolegislativo-11-7-julho-1960-349947-publicacaooriginal-1-pl.html>, archived at <https://perma.cc/V86S-GU6S>; Decreto Legislativo No. 11, de 1960, <http://www2.camara.leg.br/legin/fed/decleg/1960-1969/decretolegislativo-11-7-julho-1960-349947-publicacaooriginal-1-pl.html>, archived at <https://perma.cc/WG2S-5HUA>; Decreto No. 70.946, de 7 de Agosto de 1972, <http://www2.camara.leg.br/legin/fed/decret/1970-1979/decreto-70946-7-agosto-1972-419532-publicacaooriginal-1-pe.html>, archived at <https://perma.cc/H9R9-VMYX>.

<sup>23</sup> Lei No. 9.474, de 22 de Julho de 1997, [https://www.planalto.gov.br/ccivil\\_03/leis/19474.htm](https://www.planalto.gov.br/ccivil_03/leis/19474.htm), archived at <https://perma.ccj/FDS5-XNNB>.

<sup>24</sup> *Id.* art. 48.

<sup>25</sup> *Id.* art. 1. (This and all translations below are by the author.)

<sup>26</sup> *Id.* art. 2.

terrorist acts or drug trafficking; or are guilty of acts contrary to the United Nations purposes and principles.<sup>27</sup>

#### 4. *Legal Status of Refugees*

Recognition of refugee status subjects its beneficiary to Law No. 9,474 without prejudice to international instruments to which the Brazilian government is a party or comes to join in the future.<sup>28</sup> A refugee enjoys the rights and is subject to the duties of aliens in Brazil, the provisions of Law No. 9,474, the Geneva Convention and its Protocol; he/she is also responsible for complying with the laws, regulations, and provisions for maintaining public order.<sup>29</sup> Under the Convention, a refugee is entitled to an identity card evidencing his/her legal status, a work permit (*carteira de trabalho*), and a travel document.<sup>30</sup>

#### 5. *Procedures for Requesting Refugee Status*

An alien who reaches the national territory can express his/her desire to apply for recognition as a refugee to a migratory authority at the border; the migratory authority then provides the alien with the necessary information about the recognition procedure. Under no circumstance can an alien be deported to the border of a territory where his/her life or freedom would be threatened on account of race, religion, nationality, social group, or political opinion. This benefit, however, may not be invoked by a refugee considered dangerous to the security of Brazil.<sup>31</sup>

Irregular entry into the national territory is no impediment to an alien requesting refugee status before the competent authorities,<sup>32</sup> who must hear the applicant and prepare a statement detailing the circumstances of the applicant's entry into Brazil and the reasons that made the applicant leave his/her country of origin.<sup>33</sup> The request for refugee status suspends any administrative or criminal proceedings for illegal entry that have been started against the petitioner and family members accompanying him.<sup>34</sup>

#### 6. *Refugee Process*

To apply for recognition as a refugee, an alien must present him/herself to the competent authority and express his/her willingness to be recognized as a refugee.<sup>35</sup> The competent authority must instruct the applicant to make a statement, which serves as the opening date of the refugee

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<sup>27</sup> *Id.* art. 3.

<sup>28</sup> *Id.* art. 4.

<sup>29</sup> *Id.* art. 5.

<sup>30</sup> *Id.* art. 6.

<sup>31</sup> *Id.* art. 7.

<sup>32</sup> *Id.* art. 8.

<sup>33</sup> *Id.* art. 9.

<sup>34</sup> *Id.* art. 10.

<sup>35</sup> *Id.* art. 17.

process.<sup>36</sup> The competent authority must inform the UNHCR that the refugee process has been initiated and provide the UNHCR with the opportunity to offer suggestions to facilitate the process.<sup>37</sup>

In addition to the statement provided, with the assistance of an interpreter if necessary, the alien must fill out a request for recognition as a refugee, which must contain his/her full name, professional qualifications, educational background, educational background of accompanying family members, and a statement revealing the circumstances and facts that support his/her request for refugee status, along with relevant evidence.<sup>38</sup>

The recording of the alien's declaration of his willingness to be recognized as a refugee and the supervision of his completion of the refugee request form must be carried out by qualified employees and in conditions that guarantee the confidentiality of the information.<sup>39</sup> The process of recognizing refugee status is free of charge and considered an urgent matter.<sup>40</sup>

### *7. Authorization for Provisional Residence*

Upon receipt of the request for refugee status, the Department of Federal Police must issue a protocol authorizing the applicant and his family group's presence in the national territory until the final decision of the refugee process is reached.<sup>41</sup> All minors under the age of fourteen must be listed on the protocol.<sup>42</sup> The protocol enables the Ministry of Labor to issue a provisional work permit allowing them to be employed for compensation.<sup>43</sup> As long as the request for refugee status is pending, the requester is subject to the provisions of Law No. 9,474.<sup>44</sup>

### *8. Inquiry and Report*

The competent authority must carry out any inquiry required by CONARE and ascertain all the facts deemed appropriate for a fair and quick decision, while respecting the principle of confidentiality.<sup>45</sup> Once the inquiry period is finished, the competent authority must immediately prepare a report to be sent to the Secretary of CONARE for inclusion on the agenda of the next meeting of that joint committee.<sup>46</sup> The participants in the proceedings concerning the refugee

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<sup>36</sup> *Id.* art. 18.

<sup>37</sup> *Id.* art. 18(sole para.).

<sup>38</sup> *Id.* art. 19.

<sup>39</sup> *Id.* art. 20.

<sup>40</sup> *Id.* art. 47.

<sup>41</sup> *Id.* art. 21.

<sup>42</sup> *Id.* art. 21(§2).

<sup>43</sup> *Id.* art. 21(§1).

<sup>44</sup> *Id.* art. 22.

<sup>45</sup> *Id.* art. 23.

<sup>46</sup> *Id.* art. 24.

request must keep confidential any information to which they gain access in the exercise of their functions.<sup>47</sup>

### 9. *Decision, Communication, Registration, and Appeal*

The decision for recognition of refugee status is considered a declaratory act and must be duly supported by facts and evidence.<sup>48</sup> Once a decision has been reached, CONARE must notify the applicant and the Department of Federal Police to institute the appropriate administrative measures.<sup>49</sup> Following a positive decision, the refugee must be registered with the Department of Federal Police, sign a statement of responsibility, and ask for the appropriate identity card.<sup>50</sup>

Following a negative decision, the notification to the applicant must contain the elements that support the decision. The applicant can appeal to the Minister of Justice within fifteen days from the receipt of the notification.<sup>51</sup> During the appeal process, the requester and his family members are allowed to remain in the country and work in accordance with article 21 of Law No. 9,474.<sup>52</sup> The decision of the Minister of Justice is not subject to appeal and must be conveyed to CONARE, the applicant, and the Department of Federal Police for appropriate action.<sup>53</sup> In the case of a final refusal to the request for refuge, the applicant becomes subject to the Alien's Statute (*Estatuto do Estrangeiro*). Nevertheless, the applicant must not be transferred to his/her country of nationality or habitual residence as long as circumstances endangering his/her life, physical integrity, and freedom exist, except in cases where the applicant participated in terrorism, engaged in drug trafficking, or committed a crime against humanity, a war crime, or other heinous crime.<sup>54</sup>

### 10. *Situations Where Refugee Status May Cease or Be Lost*

According to article 38 of Law No. 9,474, refugee status ceases in cases where the alien

- I - reavails himself of the protection of the country of his nationality;
- II - voluntarily recovers the nationality once lost;
- III - acquires a new nationality and enjoys the protection of that country;
- IV - establishes himself again, voluntarily, in the country which he left, or remained outside for fear of persecution;
- V - can no longer continue to refuse the protection of the country of nationality because the circumstances in which he was recognized as a refugee no longer exist;

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<sup>47</sup> *Id.* art. 25.

<sup>48</sup> *Id.* art. 26.

<sup>49</sup> *Id.* art. 27.

<sup>50</sup> *Id.* art. 28.

<sup>51</sup> *Id.* arts. 29, 40.

<sup>52</sup> *Id.* art. 30.

<sup>53</sup> *Id.* arts. 31, 41.

<sup>54</sup> *Id.* arts. 3(§§ III, IV), 32.

VI - being a stateless person, is able to return to the country of his former habitual residence, as the circumstances in which he was recognized as a refugee have ceased to exist.<sup>55</sup>

Pursuant to article 39, loss of refugee status occurs

I – with renunciation;

II – with proof of the falsity of the pleas for recognition of refugee status or the existence of facts that, had they been known at the time of recognition, would have caused a negative decision;

III – with the exercise of activities contrary to national security or public order;

IV – when the alien leaves the national territory without prior authorization from the Brazilian Government.<sup>56</sup>

A refugee who loses refugee status on the basis of sections I and IV of article 39 is subject to the general regime applying to aliens in the country; a refugee who loses refugee status on the basis of sections II and III is subject to compulsory measures provided for in Law No. 6,815 of August 19, 1980, which provides for deportation.<sup>57</sup>

### *11. Local Integration of Refugees*

The Law provides that Brazilian authorities should consider the atypical nature of the refugees' situation when refugees are required to present documents issued by their countries of origin or its diplomatic and consular representations.<sup>58</sup> In such circumstances, the authorities should take the unfavorable situation of the refugees into account and facilitate the recognition of certificates and diplomas for refugees seeking to obtain resident status and admission in academic institutions at all levels.<sup>59</sup>

### *12. Resettlement of Refugees*

The Law provides for the resettlement of refugees in other countries should be voluntary, whenever possible.<sup>60</sup> The resettlement of refugees in Brazil must be accomplished in a planned manner and with the coordinated participation of state bodies and nongovernmental organizations, where possible, identifying areas of cooperation and determining areas of responsibility.<sup>61</sup>

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<sup>55</sup> *Id.* art. 38.

<sup>56</sup> *Id.* art. 39.

<sup>57</sup> *Id.* art. 39(sole para.). Article 58 of Law No. 6,815 of August 19, 1980, determines that “deportation” means the compulsory exit of an alien.

<sup>58</sup> *Id.* art. 43.

<sup>59</sup> *Id.* art. 44.

<sup>60</sup> *Id.* art. 45.

<sup>61</sup> *Id.* art. 46.

### 13. CONARE

Law No. 9,474 created CONARE, a collective decision-making body under the Ministry of Justice<sup>62</sup> that, in accordance with the 1951 Convention Relating to the Status of Refugees, the 1967 Relating to the Status of Refugees, and other sources of international refugee law, is responsible for

- I - examining the application and declaring the recognition, in the first instance, of refugee status;
- II – deciding on the cessation, in the first instance, ex officio or at the request of the competent authorities, of refugee status;
- III - determining the loss, in the first instance, of refugee status;
- IV - guiding and coordinating the actions needed for the effective protection, assistance and legal support to refugees;
- V - approving normative instructions clarifying the implementation of Law No. 9,474.<sup>63</sup>

On April 30, 2014, CONARE issued Normative Resolution No. 18, which detailed the procedures for requesting and processing refugee applications.<sup>64</sup> Article 1 of Normative Resolution No. 18 determines that a foreigner who is in the country and wants to ask the Brazilian government for refuge must go, in person or through his/her attorney or legal representative, to any unit of the Federal Police, and present a completed Refuge Request Form (Termo de Solicitação de Refúgio).

After the Refuge Request Form is turned in and the applicant's biometric data (or its equivalent) is collected, the Federal Police must immediately issue a Refuge Protocol, regardless of any hearing that may have been scheduled for a later date.<sup>65</sup>

The Refuge Protocol is sufficient evidence of the refugee status of the requester and serves as the identity card of the alien, granting him/her the rights guaranteed by Law No. 9,474, the Constitution, international conventions relating to refugees, and the same inherent rights as those possessed by aliens lawfully present in the country, until the final judgment on the application has been reached.<sup>66</sup>

The Refuge Protocol gives the refugee the right to obtain an Internal Revenue Service Card (Cadastro de Pessoas Físicas, CPF) and a work permit (Carteira de Trabalho e Previdência Social),

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<sup>62</sup> *Id.* art. 11.

<sup>63</sup> *Id.* art. 12.

<sup>64</sup> Resolução Normativa CONARE No. 18, de 30 de Abril de 2014, <http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/anexos/resolucao-18-dou-pdf.pdf>, archived at <https://perma.cc/YS5Y-BKPA>. The Termo de Solicitação de Refúgio can be accessed at <http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/formulario-de-solicitacao-de-refugio-portugues.pdf>, archived at <https://perma.cc/BSG9-TQZA>.

<sup>65</sup> *Id.* art. 2. A sample of the Refuge Protocol is available on the website of the Ministry of Justice at <http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/anexos/protocolo-de-refugio.pdf>, archived at <https://perma.cc/RRU3-MW8Y>.

<sup>66</sup> Resolução Normativa CONARE art. 2(§ 2).

which is valid for as long as the Refuge Protocol is valid.<sup>67</sup> When the refuge request is for a family group, the Protocol must be issued to each family member individually.<sup>68</sup> The Refuge Protocol is valid for one year, renewable for equal periods, until a final decision is reached.<sup>69</sup>

Normative Resolution No. 18 further details the procedures to be followed after the request for refugee status is received by the Federal Police,<sup>70</sup> provides the situations that may cancel the application,<sup>71</sup> indicates the appellate procedures in case of a negative decision,<sup>72</sup> details the procedures to request authorization to travel,<sup>73</sup> and sets forth the procedures for cases involving the loss of refugee status.<sup>74</sup>

## B. Permanent Visa

Pursuant to article 1 of Decree No. 840 of June 22, 1993, CNIg, which is subordinate to the Ministry of Labor, is responsible, *inter alia*, for the coordination of immigration activities in Brazil.<sup>75</sup> According to Decree No. 840, the deliberations of CNIg must be issued through resolutions.<sup>76</sup>

### 1. CNIg Resolution No. 6 of August 21, 1997

On August 21, 1997, CNIg issued Resolution No. 6, which determines that the Ministry of Justice, in order to safeguard the national interests, may grant a permanent visa to an alien who is the holder of refugee or asylum status, provided that the person

- has resided in Brazil for at least four years in refugee or asylum status;
- is qualified and employed by an institution installed in the country;
- is a qualified professional recognized by the relevant body in the area; or
- is established in a business resulting from an equity investment that meets the objectives of a Normative Resolution issued by the CNIg for the granting of a visa to a foreign investor.<sup>77</sup>

<sup>67</sup> *Id.* art. 2(§3).

<sup>68</sup> *Id.* art. 2(§4).

<sup>69</sup> *Id.* art. 2(§5).

<sup>70</sup> *Id.* arts. 3, 4, 7, 8, 12.

<sup>71</sup> *Id.* art. 6.

<sup>72</sup> *Id.* arts. 9, 10.

<sup>73</sup> *Id.* art. 13.

<sup>74</sup> *Id.* art. 14.

<sup>75</sup> Decreto No. 840, de 22 de Junho de 1993, art. 1, [http://www.planalto.gov.br/ccivil\\_03/decreto/D0840.htm](http://www.planalto.gov.br/ccivil_03/decreto/D0840.htm), archived at <https://perma.cc/N8U3-RTYX>.

<sup>76</sup> *Id.* art. 4.

<sup>77</sup> Resolução Normativa CNIg No. 6, de 21 de Agosto de 1997, *as amended by* Resolução Normativa CNIg No. 91, de 10 de Novembro de 2010, art. 1, <http://acesso.mte.gov.br/data/files/8A7C816A2E7311D1012F2C60997101FE/Resolu%C3%A7%C3%A3o%20Normativa%20N%C2%BA%2006%20-%20ALTERADA.pdf>, archived at <https://perma.cc/5BB6-A6CW>.

Before permanent residency is granted, the Ministry of Justice must run a background check on the alien and ascertain if he/she has been convicted of any criminal offenses.<sup>78</sup>

2. Decree No. 86,715 of December 10, 1981

Decree No. 86,715 determines that a permanent visa may be granted to an alien who intends to establish permanent residency in the country.<sup>79</sup> To obtain a permanent visa, an alien must meet the special requirements provided for in the rules for the selection of immigrants established by the CNIg, and present the following documentation:

- I - passport or equivalent document;
- II - international certificate of immunization when necessary;
- ....
- IV- police certificate or equivalent document, at the discretion of the consular authority;
- V - proof of residence;
- VI - birth or marriage certificate; and
- VII - an employment contract stamped by the Secretariat of Immigration of the Ministry of Labor, if applicable.<sup>80</sup>

Except in cases of *force majeure*, a permanent visa can be obtained only in the consular jurisdiction where the applicant has maintained residence for a minimum of one year immediately preceding the application for a permanent visa.<sup>81</sup>

The granting of a permanent visa may be conditional, for a period not exceeding five years, on performing certain activities and settling in a particular region of Brazil. The consular officer must make a note in the margin of the visa indicating the activity required to be performed by the alien and the region where he/she is required to settle.<sup>82</sup>

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<sup>78</sup> *Id.* art. 1(sole para.).

<sup>79</sup> Decreto No. 86.715, art. 26.

<sup>80</sup> *Id.* art. 27.

<sup>81</sup> *Id.* art. 27(§1).

<sup>82</sup> *Id.* art. 28.



### III. Acquisition of Citizenship

In order to apply for Brazilian citizenship, an alien must satisfy certain conditions. The alien

I - must have civil capacity according to Brazilian law;<sup>[83]</sup>

II - must be registered as a permanent alien in Brazil;

III - must be in continuous residence in Brazilian territory for at least four years immediately before applying for citizenship;

IV - must read and write the Portuguese language, evaluated on the basis of the social and intellectual situation of the applicant;<sup>[84]</sup>

V - must practice a profession or have enough possessions to guarantee his and his family's maintenance;

VI - must have good behavior;

VII - cannot have been indicted or convicted in Brazil or abroad for a felony; [and]

VIII - must be in good health.<sup>85</sup>

The four-year residence requirement may be reduced to three years if the alien possesses real estate or an enterprise in Brazil; two years because of the alien's professional, scientific, or artistic abilities; and one year if the alien has a Brazilian spouse, child, or parent, or has performed a relevant service to Brazil.<sup>86</sup>

The residency requirement is dispensed with in cases where the alien spouse has been married to an active Brazilian diplomat for more than five years, or the alien has been employed by a Brazilian diplomatic mission or Brazilian consulate for more than ten continuous years. In these cases, the only requirement is a thirty-day stay in Brazil.<sup>87</sup>

The application for naturalization is filed with the local agency of the Department of Federal Police,<sup>88</sup> and must indicate whether the applicant intends to have his/her name translated or

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<sup>83</sup> Article 5 of the Brazilian Civil Code (CÓDIGO CIVIL, Lei No. 10.406, de 10 de Janeiro de 2002, [http://www.planalto.gov.br/ccivil\\_03/LEIS/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406.htm), archived at <https://perma.cc/4XFW-2MVC>) determines that minority ceases at the completion of eighteen years of age, when the person is then fully capable of practicing all acts of civil life. Paragraph 1 of article 5 further establishes that a minor's incapacity may also cease by the concession of the parents, or one of them in the absence of the other; by a public instrument; or independently of the judicial sanction or judicial decision of a sixteen-year-old minor (*id.* art. 5(§1)(I)); by marriage (*id.* at II); by effective exercise of public employment (*id.* at III); by graduation from an institution of higher education (*id.* at IV); or by commercial or civil establishment, or the existence of an employment relationship that provides a sixteen-year-old minor with economic support (*id.* at V).

<sup>84</sup> The knowledge of the Portuguese language is measured by asking the alien applicant to read excerpts of the Constitution. Decreto No. 86.715, art. 129(I).

<sup>85</sup> Lei No. 6.815, art. 112.

<sup>86</sup> *Id.* art. 113.

<sup>87</sup> *Id.* art. 114.

<sup>88</sup> Decreto No. 86.715, art. 125.

adapted to the Portuguese language. The application must also include the documents listed in article 119 of Decree Law No. 86,715 of December 10, 1981.<sup>89</sup>

An alien who is admitted to Brazil by the age of five and permanently lives in the country may, within two years after reaching adulthood, apply for naturalization.<sup>90</sup>

An alien admitted to Brazil during the first five years of his/her life and who permanently lives in the country may, while still a minor, require through his/her legal representative the issuance of a provisional certificate of naturalization.<sup>91</sup> An alien who is the holder of such a provisional certificate of naturalization and wants to confirm his/her intention to continue to be a Brazilian citizen must manifest such intention to the Minister of Justice within two years after reaching majority.<sup>92</sup>

An alien who comes to reside in Brazil before reaching the age of majority and has obtained a degree from a national institution of higher education may, within one year after graduation, apply for naturalization.<sup>93</sup>

#### **IV. Services for Immigrants**

Brazilian law does not contain any specific provisions concerning services or integration of immigrants into the society, or free medical treatment. However, pursuant to the Constitution, it is the competence of the federal government, the states, the Federal District, and the municipalities to take care of public health and public assistance.<sup>94</sup>

According to this constitutional mandate, federal, state, and municipal administrations have enacted laws concerning emergency medical treatment and medical treatment of indigent people, as well as social assistance to the poor, the elderly, children, and the disabled. In these cases, depending on the situation, a person can be treated for free at a federal, state, or municipal hospital.

#### **V. Role of State and Local Authorities**

The law does not make any reference to the role of state and local authorities in regard to immigrants as a whole or, more specifically, to refugees or asylees.

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<sup>89</sup> *Id.* art. 119; *see also* arts. 120–134.

<sup>90</sup> *Id.* art. 120.

<sup>91</sup> *Id.* art. 121.

<sup>92</sup> *Id.* art. 122.

<sup>93</sup> *Id.* art. 123.

<sup>94</sup> C.F. art. 23(II).

## VI. Free Movement in the Country

Apparently, refugees are allowed to move freely in the country and select their place of residence, as long as they are not subject to any restriction imposed on them in connection with their proximity to the country's border, as provided in the Convention on Territorial Asylum.

## VII. New Legislation

Brazil is in the process of changing its immigration legislation, which was enacted in 1980 and designed to align with Brazil's national security needs at that time. Today, human rights are being emphasized in proposed legislation under consideration in the Chamber of Deputies and the Federal Senate.

A bill in the Chamber of Deputies would provide for the entry, stay, exit, and naturalization of aliens in the country, as well as compulsory actions they are to perform. In addition, the bill would revamp the National Council of Immigration on National Council of Migration, and define offenses and other matters.<sup>95</sup>

A bill in the Federal Senate seeks to provide for the rights and duties of migrants and regulate the entry and stay of foreigners in Brazil; revoke, in part, the Alien's Statute; regulate the types of visas required for aliens entering the country; establish repatriation, deportation, and expulsion procedures; provide for the naturalization process, its conditions and types, and cases of loss of nationality; "address the situation of Brazilian emigrants abroad"; criminalize international trafficking in persons; establish administrative offenses related to illegal entry in the country; and amend the Brazilian Social Security Law (Previdência Social, Lei No. 8.213, de 24 de Julho de 1991) to facilitate contributions to Brazilian social security by Brazilian nationals who worked for a period of time in a foreign country.<sup>96</sup>

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<sup>95</sup> Câmara dos Deputados, PL 5.655/2009, <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=443102>, archived at <https://perma.cc/B3F5-D4T6>.

<sup>96</sup> Senado Federal, Projeto de Lei do Senado No. 288, de 2013, <http://www25.senado.leg.br/web/atividade/materias/-/materia/113700>, archived at <https://perma.cc/9X8X-EAFN>; Lei No. 8.213, de 24 de Julho de 1991, [http://www.planalto.gov.br/ccivil\\_03/LEIS/L8213cons.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L8213cons.htm), archived at <https://perma.cc/7PSP-W9VB>.

# Canada

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**SUMMARY** Canada’s refugee system is regulated mainly by the Immigration and Refugee Protection Act and consists of the Refugee and Humanitarian Resettlement Program, for refugees seeking protection from outside of Canada, and the In-Canada Asylum Program for person who make their claims from inside the country. Most quotas or allocations of refugees are supported by the Government Assisted Refugee program where either the Government of Canada or Province of Quebec provide the initial support and assistance to refugees being resettled in Canada. In addition, Canada allows private organizations or persons to identify and sponsor individuals who meet the admissibility and eligibility requirements under Canadian law. Canada works closely with the UNHCR along with private sponsors to identify refugees for resettlement.

According to the Canada-US Safe Third Country Agreement, which came into effect on December 29, 2004, unless certain exceptions apply, a person is ineligible to make a refugee claim at the Canada-United States border because the US is considered a “Safe Third Country.”

Canada describes the refugee screening process or procedure as “thorough,” rigorous, and multi-staged. It includes requirements for criminal, security, and medical screening.

## I. General Background

Canada is a party to the United Nations 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>1</sup> Its refugee system is regulated mainly by the Immigration and Refugee Protection Act,<sup>2</sup> which implements the Convention. The refugee resettlement program is administered by Citizenship and Immigration Canada (CIC), which manages both the processing of applications and resettlement assistance.<sup>3</sup> On December 15, 2012, major changes were introduced to Canada’s refugee status determination system as a result of the Balanced Refugee

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<sup>1</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2aa10.html>, archived at <http://perma.cc/V86S-GU6S>.

<sup>2</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27, <http://laws.justice.gc.ca/eng/acts/i-2.5/FullText.html>, archived at <https://perma.cc/RPX6-7646>.

<sup>3</sup> The Oxford Handbook of Refugee and Forced Migration Studies 679 (Elena Fiddian-Qasmiyeh et al. eds., 2014).

Reform Act<sup>4</sup> and the Protecting Canada's Immigration System Act,<sup>5</sup> “the latter of which amends both the Immigration and Refugee Protection Act and the Balanced Refugee Reform Act.”<sup>6</sup>

Section 3(2) of the Immigration and Refugee Protection Act stipulates the following objectives of the Act in respect to refugees:

- (a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;
- (b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;
- (c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;
- (d) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;
- (e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;
- (f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;
- (g) to protect the health and safety of Canadians and to maintain the security of Canadian society; and
- (h) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.<sup>7</sup>

Section 12(3) of the Act stipulates that a foreign national, inside or outside Canada, may be selected as a “Convention refugee” or “a person in similar circumstances” eligible for permanent residence.<sup>8</sup>

Canada's refugee system primarily consists of two programs: the Refugee and Humanitarian Resettlement Program for people seeking protection from outside Canada, and the In-Canada Asylum Program for people making refugee protection claims from within Canada.<sup>9</sup>

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<sup>4</sup> Balanced Refugee Reform Act, S.C. 2010, c. 8, [http://laws-lois.justice.gc.ca/eng/annualstatutes/2010\\_8/page-1.html](http://laws-lois.justice.gc.ca/eng/annualstatutes/2010_8/page-1.html), archived at <https://perma.cc/WUC4-8SS5>.

<sup>5</sup> Protecting Canada's Immigration System Act, S.C. 2012, c. 17, [http://laws-lois.justice.gc.ca/eng/annualstatutes/2012\\_17/page-1.html](http://laws-lois.justice.gc.ca/eng/annualstatutes/2012_17/page-1.html), archived at <https://perma.cc/S9Y7-E8XU>.

<sup>6</sup> Edward C. Corrigan, *Understanding the New Refugee Determination System in Canada*, RABBLE.CA (Jan. 30, 2013), available at <http://rabble.ca/news/2013/01/understanding-new-refugee-determination-system-canada>, archived at <https://perma.cc/YWG8-XE6>.

<sup>7</sup> Immigration and Refugee Protection Act § 3(2)(a)–(h).

<sup>8</sup> *Id.* § 12(3).

<sup>9</sup> Corrigan, *supra* note 6.

Canada considers applications for refugee resettlement from persons outside of Canada under the following categories:

- A Government-Assisted Refugee (GAR) referred by the United Nations High Commissioner for Refugees (UNHCR) or another designated referral organization. GARs receive government funding for their first year in Canada;
- A Privately-Sponsored Refugee (PSR), who are sponsored by an organization or private persons during their first year; or
- A person sponsored under a Joint-Assistance Sponsorship Program (JAS), where both the government and a private sponsor share responsibility for the refugee.<sup>10</sup>

According to the Government of Canada, countries with refugee resettlement programs take in around 100,000 refugees from abroad each year. Of that number, Canada annually takes in roughly one out of every ten refugees through its refugee programs.<sup>11</sup> In 2008 and 2009, Canada was “the second and third highest destination country for refugee claimants among the group of 44 industrialized countries.”<sup>12</sup> In 2010, the Government committed “to increase the number of refugees resettled each year from abroad by 20% (2,500 people).”<sup>13</sup> In 2011, Canada was among the world’s top ten refugee destinations, receiving 25,000 asylum applications.<sup>14</sup> In 2012, this trend began to change when Canada “resettled 26% fewer refugees than in 2011.”<sup>15</sup>

Refugee claimants declined nearly half from almost 20,500 in 2012 to 10,380 in 2013.<sup>16</sup> In 2013, Canada dropped to sixteenth place as a destination for refugee claimants.<sup>17</sup> In 2014, Canada registered 13,500 new applications, about one-third more than in 2013,<sup>18</sup> and moved to fifteenth place.<sup>19</sup> The UNHCR has noted that Canada was one of the countries that “featured

<sup>10</sup> UNHCR RESETTLEMENT HANDBOOK: CANADA (2014), <http://www.unhcr.org/3c5e55594.pdf>, archived at <https://perma.cc/32BJ-SRY5>.

<sup>11</sup> *The Refugee System in Canada*, GOVERNMENT OF CANADA, <http://www.cic.gc.ca/english/refugees/canada.asp> (last updated Nov. 10, 2015), archived at <https://perma.cc/66TA-X5HT>.

<sup>12</sup> ISS OF BC, REFUGEE NEWCOMERS IN METRO VANCOUVER: CHANGING FACES AND NEIGHBOURHOODS 2010–2013 (May 2014), <http://issbc.org/system/cms/files/1712/files/original/iss-2014-gar-metro-v4.7-web.pdf>, archived at <https://perma.cc/7VAD-RHSC>.

<sup>13</sup> Sandra Elgersma, Library of Parliament, Economics, Resources and International Affairs Division, Resettling Refugees: Canada’s Humanitarian Commitments, No. 2015-11-E (Apr. 2015), <http://www.parl.gc.ca/Content/LOP/ResearchPublications/2015-11-e.html#a6>, archived at <https://perma.cc/NH9V-KMW3>.

<sup>14</sup> *Canada Among Top 10 Global Refugee Destinations*, CTVNEWS (June 18, 2012), <http://www.ctvnews.ca/world/canada-among-top-10-global-refugee-destinations-1.842523>, archived at <https://perma.cc/4BBX-GSD8>.

<sup>15</sup> ISS OF BC, *supra* note 12, at 10.

<sup>16</sup> UNHCR, ASYLUM TRENDS 2013: LEVELS AND TRENDS IN INDUSTRIALIZED COUNTRIES 3 (Mar. 2014), <http://www.unhcr.org/5329b15a9.html>, archived at <https://perma.cc/A7QF-DSZP>.

<sup>17</sup> *Id.* at 22.

<sup>18</sup> UNHCR, ASYLUM TRENDS 2014: LEVELS AND TRENDS IN INDUSTRIALIZED COUNTRIES 3 (Mar. 2015), <http://www.unhcr.org/551128679.pdf>, archived at <https://perma.cc/L89J-ZTBL>.

<sup>19</sup> *Id.* at 20.

among the top-10 recipient countries a few years ago but have registered significantly lower numbers of asylum-seekers in recent years. This can potentially be the result of reforms of law and asylum policies.”<sup>20</sup>

For 2015, the government has agreed to accept up to “14,500 resettled refugees, out of a total of 285,000 new immigrants.”<sup>21</sup> Canada works closely with the UNHCR along with private sponsors to identify refugees for resettlement.<sup>22</sup>

## II. Canada’s Refugee System

### A. Refugee and Humanitarian Resettlement Program

Canada’s Refugee and Humanitarian Resettlement Program is for refugees requiring protection who are outside their home country and also outside of Canada.<sup>23</sup> According to Section 99(2) of the Immigration and Refugee Protection Act, “[a] claim for refugee protection made by a person outside Canada must be made by making an application for a visa as a Convention refugee or a person in similar circumstances.”<sup>24</sup> This section refers to two classes of eligible refugees who can be resettled from outside of Canada: (1) the “Convention Refugee Abroad Class,”<sup>25</sup> comprising those who meet the definition of “refugee” in the 1951 Refugee Convention, or (2) the “Country of Asylum Class,” which “covers those who are outside their home country or the country where they normally live and have been, and continue to be, seriously and personally affected by civil war or armed conflict, or have suffered massive violations of human rights.”<sup>26</sup>

#### 1. *Convention Refugee Abroad Class*

Persons in the Convention Refugee Abroad Class must be

- . . . outside [their] home country; and
- cannot return there due to a well-founded fear of persecution based on:
  - race,
  - religion,
  - political opinion,
  - nationality, or

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<sup>20</sup> *Id.* at 13.

<sup>21</sup> ELGERSMA, *supra* note 13.

<sup>22</sup> Corrigan, *supra* note 6.

<sup>23</sup> *Id.*

<sup>24</sup> Immigration and Refugee Protection Act, §99(2).

<sup>25</sup> A “Convention refugee” is defined in the Immigration and Refugee Protection Act under section §96. For more guidance on the definition of a Convention refugee. See *Guidance on Interpreting the Definition of a Convention Refugee*, CITIZENSHIP AND IMMIGRATION CANADA (CIC), <http://www.cic.gc.ca/english/resources/tools/refugees/resettlement/eligibility/definitions.asp> (last updated Feb. 25, 2013), archived at <https://perma.cc/K7MZ-FPCT>.

<sup>26</sup> The Oxford Handbook of Refugee and Forced Migration Studies, *supra* note 3, at 679.

- membership in a particular social group, such as women or people with a particular sexual orientation.<sup>27</sup>

The definition of “Convention refugee” is “forward-looking” and therefore, the fear of persecution is reviewed at the time of the examination of the refugee application.<sup>28</sup> The office must determine if the applicant has a “well-founded fear of persecution” after assessing the reasons provided by the applicant. A decision is made based on whether the applicant was persecuted or has a well-founded fear of persecution.<sup>29</sup> The applicant must establish that the fear is reasonable<sup>30</sup> and, if the applicant provides more than one ground of persecution, “it is the duty of the officer, not the applicant, to identify the reasons for the persecution.”<sup>31</sup> These are also the criteria established under the Refugee Convention.

To be eligible for resettlement applicants must also have “no reasonable prospect, within a reasonable period, of another durable solution,” such as

- voluntary repatriation or resettlement in their country of nationality or habitual residence;
- resettlement in their country of asylum; or
- resettlement to a third country.<sup>32</sup>

Under this class a person must also be referred by the UNHCR or another referral organization, or be sponsored by a private sponsorship group. In terms of funding, a person must also be selected as either a government-assisted or privately sponsored refugee,<sup>33</sup> or have the funds needed to support him/herself and any dependents after arrival in Canada.<sup>34</sup>

## 2. *Country of Asylum Class*

Persons in the Country of Asylum Class have left their home because they are seriously or personally affected by civil war, armed conflict, or massive human rights violations. A person falling within the Country of Asylum Class is statutorily referred to as “a person in similar

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<sup>27</sup> *Resettlement from Outside Canada*, GOVERNMENT OF CANADA, <http://www.cic.gc.ca/english/refugees/outside/> (last updated Nov. 10, 2015), archived at <https://perma.cc/2DAY-8WZJ>.

<sup>28</sup> *Convention Refugee Abroad Class: Eligibility Criteria*, CIC, <http://www.cic.gc.ca/english/resources/tools/refugees/resettlement/eligibility/convention-abroad.asp> (last updated Feb. 24, 2014), archived at <https://perma.cc/P965-LJG5>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* According to the CIC, “[a]ctual persecution need not have taken place. The officer must determine that there is a serious possibility or reasonable chance that the applicant has a well-founded fear of persecution.” *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Sponsor a Refugee*, GOVERNMENT OF CANADA, <http://www.cic.gc.ca/english/refugees/sponsor/index.asp>. (last updated June 22, 2015), archived at <https://perma.cc/S58V-WETG>.

<sup>34</sup> *Resettlement from Outside Canada*, *supra* note 27.



circumstances” to a Convention refugee.<sup>35</sup> Section 147 of the Immigration and Refugee Protection Regulations stipulates that

[a] foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

- (a) they are outside all of their countries of nationality and habitual residence; and
- (b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.<sup>36</sup>

They must also be referred by the UNHCR or another referral organization.<sup>37</sup> This class is not eligible for government-funded resettlement; they must be either privately sponsored or demonstrate that they have the funds needed to support themselves and any dependents after they have arrived in Canada.<sup>38</sup> They can also qualify for Joint Assistance Sponsorship (JAS) under the definition of “special needs.”<sup>39</sup>

According to the CIC, an officer must determine whether a person is “[s]eriously and personally affected,” meaning that “the applicant has been, and continues to be, personally subjected to sustained and effective denial of a basic human right,”<sup>40</sup> by an armed conflict, civil war, or a massive violation of human rights. They must also determine “whether an armed conflict, civil war, or massive violation of human rights has taken place using human rights reports or country condition information sources.”<sup>41</sup>

Both eligibility and admissibility requirements must be met before an application can be accepted.

## **B. Government-Assisted Refugees (GAR) Program**

Government-assisted refugees are Convention Refugees Abroad whose initial resettlement in Canada is entirely supported by the Government of Canada or the Province of Quebec. Canada allocates a target each year for the resettlement of Convention refugees who are eligible to

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<sup>35</sup> Immigration and Refugee Protection Act, *See* §95(1)(a); *see also* Immigration and Refugee Protection Regulations, SOR/2002-227, § 146(1), <http://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/FullText.html>, archived at <https://perma.cc/YN63-L8WX>.

<sup>36</sup> Immigration and Refugee Protection Regulations § 147.

<sup>37</sup> *Resettlement from Outside Canada*, *supra* note 27. It appears the Government of Canada has not yet designated other referral organizations.

<sup>38</sup> The Oxford Handbook of Refugee and Forced Migration Studies, *supra* note 3, at 679.

<sup>39</sup> *Country of Asylum Class: Eligibility Criteria*, CIC, <http://www.cic.gc.ca/english/resources/tools/refugees/resettlement/eligibility/asylum.asp> (last updated Feb. 24, 2014), archived at <https://perma.cc/VG3H-98S8>.

<sup>40</sup> *Id.* According to the CIC, “[h]uman rights are defined in the *Universal Declaration of Human Rights* and in the *International Covenant on Civil and Political Rights* (ICCPR). . . . What constitutes a basic human right is determined by the international community, not by a specific country. However, when making a determination as to whether a fundamental violation of a human right has taken place, it is acceptable to consider Canadian law.” *Id.*

<sup>41</sup> *Id.*

receive financial assistance from the Government of Canada.<sup>42</sup> The number of refugees to be allowed into Canada annually is determined by the Minister of Immigration, Refugees and Citizenship.<sup>43</sup>

Under the Government-Assisted Refugees (GAR) Program, refugees are referred to Canada for resettlement by the UNHCR or another referral organization. Individuals cannot apply directly. A person must register for refugee status with the UNHCR or state authorities to be considered by a referral organization.<sup>44</sup>

A GAR's initial resettlement in Canada "is entirely supported by the Government of Canada or the province of Quebec."<sup>45</sup> This support is provided by nongovernmental agencies called "service provider organizations," which are funded by the CIC.<sup>46</sup>

### C. Urgent Protection Program (UPP)

The Urgent Protection Program (UPP)<sup>47</sup> was established to respond to urgent requests to help government-assisted refugees (or those identified as JAS cases) that face threats of being "returned home, of expulsion or of facing direct threats to their lives."<sup>48</sup> One hundred places are allocated under the UPP annually.

UPP cases may have needs that require specialized assistance in Canada and therefore procedures for processing these types of cases may be slightly different.<sup>49</sup>

### D. Private Sponsorship of Refugees Program

Private organizations or persons can identify and sponsor individuals who meet the admissibility and eligibility requirements under Canadian law. According to the CIC, "[t]he Government of Canada encourages involvement of the Canadian public in the resettlement from abroad of

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<sup>42</sup> UNHCR Resettlement Handbook: Canada, *supra* note 10.

<sup>43</sup> CIC, EVALUATION OF GOVERNMENT ASSISTED REFUGEES (GAR) AND RESETTLEMENT ASSISTANCE PROGRAM (RAP) (Mar. 2011), [http://publications.gc.ca/collections/collection\\_2012/cic/Ci4-69-2011-eng.pdf](http://publications.gc.ca/collections/collection_2012/cic/Ci4-69-2011-eng.pdf), archived at <https://perma.cc/K4LY-3K3P>.

<sup>44</sup> *Government-Assisted Refugees Program*, GOVERNMENT OF CANADA, <http://www.cic.gc.ca/english/refugees/outside/gar/index.asp> (last updated Nov. 10, 2015), archived at <https://perma.cc/E6D5-EXSE>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See CIC, PRIVATE SPONSORSHIP OF REFUGEES PROGRAM ch. 3.3 (2011), <http://hamiltondiocese.com/uploads/links/279-Private%20Sponsorships%20of%20Refugees%20Program.pdf>, archived at [perma.cc/WNW5-B3Z5](https://perma.cc/WNW5-B3Z5).

<sup>48</sup> *Government-Assisted Refugee Program*, CIC, <http://www.cic.gc.ca/english/refugees/outside/resettle-gov.asp> (last updated Sept. 22, 2015), archived at <https://perma.cc/ZR9S-2VCG>.

<sup>49</sup> *Procedures For Processing Urgent Protection Cases: Financial and Other Support*, CIC, <http://www.cic.gc.ca/english/resources/tools/refugees/resettlement/processing/urgent/support.asp> (last updated Feb. 25, 2013), archived at <https://perma.cc/7FYT-WX6X>.

Convention refugees and members of the Humanitarian Protected Persons Abroad Class.”<sup>50</sup> Private sponsors can be

- incorporated groups with an on-going agreement with CIC to sponsor refugees (Sponsorship Agreement Holders);
- five Canadians or permanent residents (Groups of Five); and
- community sponsors.<sup>51</sup>

Around two-thirds of private sponsorships are provided by “organizations that hold agreements with the government for this purpose, termed sponsorship agreement holders (SAHs).”<sup>52</sup> Overall, sponsors can consist of faith-based organizations, nongovernmental organizations (NGOs), community organizations, or groups of individuals.<sup>53</sup> Private sponsors can identify or “name” a refugee they wish to assist themselves or may ask to be matched with a refugee put forward for resettlement by the UNHCR or recommended by a Canadian visa office.<sup>54</sup>

Sponsoring groups agree to provide the refugees with care, lodging, settlement assistance, and support for the duration of the sponsorship period.<sup>55</sup> According to the Canadian Council of Refugees,

private sponsorship is additional to government assisted refugees. Each year the government makes its commitment, on behalf of Canadians, to resettle a certain number of refugees. Anything that Canadians do through private sponsorship is on top of that commitment. This means that it allows Canadians to offer protection and a permanent home to extra refugees, who would not otherwise have the opportunity.<sup>56</sup>

Before accepting a person as a refugee, the CIC makes sure that person does not have another resettlement option, cannot go home, or cannot stay in the country where they initially sought

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<sup>50</sup> UNHCR Resettlement Handbook: Canada, *supra* note 10, at 10.

<sup>51</sup> ELGERSMA, *supra* note 13 (footnotes in original omitted).

<sup>52</sup> Judith Kumin, Migration Policy Institute, Welcoming Engagement: How Private Sponsorship Can Strengthen Refugee Resettlement in the European Union 31(EU Asylum: Towards 2020 Project, Dec. 2015), <http://www.migrationpolicy.org/sites/default/files/publications/Asylum-PrivateSponsorship-Kumin-FINAL.pdf>, archived at <https://perma.cc/RC5U-9M8F>.

<sup>53</sup> Sponsorship Agreement Holders (SAH) and their Constituent Groups (CG), Group of Five individuals (G5), and Community Sponsors (CS) can be applicants for private sponsorship. For more information on private sponsorship applications, see *Application for Refugee Sponsorship*, CIC, <http://www.cic.gc.ca/english/information/applications/private.asp> (last updated Nov. 30, 2015), archived at <https://perma.cc/CVP5-LXY5>.

<sup>54</sup> UNHCR Resettlement Handbook: Canada, *supra* note 10, at 10.

<sup>55</sup> Ch. 2, *Private Sponsorship of Refugees Program*, CIC, GUIDE TO THE PRIVATE SPONSORSHIP OF REFUGEES PROGRAM, <http://www.cic.gc.ca/English/resources/publications/ref-sponsor/section-2.asp> (last updated Nov. 13, 2015), <https://perma.cc/BTW7-ESK6>, report table of contents at <http://www.cic.gc.ca/english/resources/publications/ref-sponsor/>, archived at <https://perma.cc/FNN3-8BTL>.

<sup>56</sup> *Important Changes in Canada’s Private Sponsorship of Refugees Program*, CANADIAN COUNCIL OF REFUGEES (Jan. 2013), <http://ccrweb.ca/en/changes-private-sponsorship-refugees>, archived at <https://perma.cc/4R9L-NFUW>.

asylum. Once selected, individuals undergo medical, security, and criminal background screenings.<sup>57</sup>

## E. Other Programs

The CIC sometimes partners with organizations to resettle refugees with special needs. As noted above, this program is called the Joint Assistance Sponsorship (JAS) Program.<sup>58</sup>

Another program, called the Blended Visa Office-Referred Refugees (BVORs) Program, introduced in 2013, refers refugees identified by the UNHCR and matches them with a private sponsor organization.

## F. In-Canada Asylum Program

Persons can also submit their claims for refugee status from inside Canada.<sup>59</sup> This asylum program works to provide refugee protection to people already in Canada who have a well-founded fear of persecution or are at risk of torture, or cruel or unusual punishment, in their home countries. In other words, statutorily, the protection is provided if the Immigration and Refugee Board determines that a person is a “Convention refugee” or “a person in need of protection.”<sup>60</sup> Section 97(1) of the Act stipulates that a person in need of protection is

. . . a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.<sup>61</sup>

<sup>57</sup> *Backgrounder – Refugees and Canada’s Refugee System*, CIC, <http://www.cic.gc.ca/english/departments/media/backgrounders/2007/2007-06-20.asp>, archived at <https://perma.cc/T6M5-TPJ4>.

<sup>58</sup> *Joint Assistance Program – Sponsoring Refugees with Special Needs*, CIC, <http://www.cic.gc.ca/english/refugees/sponsor/jas.asp> (last updated May 20, 2015), archived at <https://perma.cc/DYL9-2J5D>.

<sup>59</sup> *Claim Refugee Protection from Inside Canada*, CIC, <http://www.cic.gc.ca/english/refugees/inside/index.asp> (last updated June 30, 2015), archived at <https://perma.cc/E9ES-RXYR>.

<sup>60</sup> See Immigration and Refugee Protection Act § 95(1)(b).

<sup>61</sup> *Id.* § 97(1).

Not everyone is eligible to seek asylum. For example, people convicted of serious criminal offenses or who have had previous refugee claims denied by Canada are not eligible to make a claim.<sup>62</sup>

A person can apply for refugee status at any port of entry, such as an airport, seaport, or land border, or inside Canada at designated CIC offices. At ports of entry a Canadian Border Services Agency (CBSA) officer determines a person's eligibility for a refugee hearing with the Refugee Protection Division (RPD) at the Immigration and Refugee Board (IRB). At CIC offices CIC officers determine eligibility. Once a person is found eligible to make a refugee claim, a date for hearing the claim is provided.<sup>63</sup>

Members of the RPD assess and determine a person's claim for refugee protection. The Act mandates that RPD members must "decide whether they believe the claimant's evidence and how much weight to give to that evidence. In determining this, members must assess the credibility of the claimant, other witnesses and the documentary evidence."<sup>64</sup> Generally, refugee claims are heard by the IRB within sixty days unless the applicant is from a designated country of origin, in which case the claim could be processed faster.<sup>65</sup>

## G. Refugees Selected by the Province of Quebec

The *Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens* grants the Quebec provincial government exclusive responsibility for selecting immigrants and refugees from abroad.<sup>66</sup> Pursuant to the agreement, the Quebec Government selects refugees<sup>67</sup> and persons in similar circumstances "from the pool of CIC approved cases for resettlement and administers its own private sponsorship program."<sup>68</sup> Persons who are selected by the province

<sup>62</sup> The Refugee System in Canada, *supra* note 11.

<sup>63</sup> Warren Creates & Jacqueline Bonisteel, *Making a Refugee Claim in Canada: What You Need to Know*, PERLEY-ROBERTSON, HILL & MCDUGALL (Feb. 15, 2013), <http://www.perlaw.ca/en/newsroom/publications/2013/2/15/making-a-refugee-claim-in-canada-what-you-need-to>, archived at <https://perma.cc/SAC3-UTEB>.

<sup>64</sup> *Assessment of Credibility in Claims for Refugee Protection*, IMMIGRATION AND REFUGEE BOARD OF CANADA, <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx>, archived at <https://perma.cc/E989-S4R4>.

<sup>65</sup> *Apply – Refugee Status from Inside Canada*, CIC, <http://www.cic.gc.ca/english/refugees/inside/apply-how.asp> (last updated Nov. 24, 2015), archived at <https://perma.cc/H2J2-NYPG>.

<sup>66</sup> Canada–Québec Accord Relating to Immigration and Temporary Admission of Aliens, February 5, 1991, §§ 17–20, <http://www.cic.gc.ca/english/departement/laws-policy/agreements/quebec/can-que.asp>, archived at <https://perma.cc/2JTK-HYKV>.

<sup>67</sup> *Being Selected by Québec*, GOVERNMENT OF QUÉBEC, <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/refugees-other/refugee-selected/selection.html> (last updated May 15, 2014), archived at <https://perma.cc/NDX7-U9F6>.

<sup>68</sup> Sandra Elgersma, *supra* note 13.

are granted a Certificat de sélection du Québec (CSQ).<sup>69</sup> According to the CIC, “[w]hen issuing a CSQ, Quebec considers its own criteria, including criteria related to settlement potential.”<sup>70</sup>

### III. Refugee Restrictions at the US Border

The United States is designated as a safe third country under the Immigration and Refugee Protection Act. According to the Canada-US Safe Third Country Agreement, which came into effect on December 29, 2004, a person is ineligible to make a refugee claim at the Canada-United States border since the US is considered a “Safe Third Country.” However, there are four types of exceptions to this rule, including

- family member exceptions,
- unaccompanied minor exceptions,
- document holder exceptions, and
- public interest exceptions.<sup>71</sup>

Even if a claimant qualifies for one of these exceptions, he/she must still meet all other eligibility criteria or requirements of Canada’s immigration legislation.

### IV. Post-Referral Steps (Including Screening Process)

If an applicant for refugee status is a UNHCR referral the process begins in the “registration stage,” where the UNHCR identifies “legitimate” refugees who undergo initial and subsequent interviews and questioning regarding “their past or current military activities or affiliations, and their future plans.”<sup>72</sup> This process may include using biometric checks and antifraud measures, such as iris scanning.

Once a referral is made by the UNHCR, Canadian visa officers in the host country review an applicant’s supporting documents, review conditions in the country from which the individual fled and where they currently live, and conduct a one-on-one interview with the applicant to confirm their story and make sure it is consistent with the account provided in the UNHCR

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<sup>69</sup> *Quebec Cases*, CIC, <http://www.cic.gc.ca/english/resources/tools/refugees/quebec.asp> (last updated Feb 25, 2013), archived at <https://perma.cc/EB3C-VALN>.

<sup>70</sup> *Id.*

<sup>71</sup> *Canada-U.S. Safe Third Country Agreement*, CIC, <http://www.cic.gc.ca/english/departement/laws-policy/menu-safethird.asp> (last updated July 24, 2015), archived at <https://perma.cc/WG8Z-748N>; *Canada-U.S. Safe Third Country Agreement*, CANADA BORDER SERVICES AGENCY, <http://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html> (last updated July 23, 2009), archived at <https://perma.cc/7PUU-UG7C>; Legal Aid Ontario, *Restrictions on Claims at the United States Border*, LAWFACTS, <http://lawfacts.ca/refugee/claim/usa> (last visited Jan. 13, 2016), archived at <https://perma.cc/WR9G-Y5H9>.

<sup>72</sup> Catherine Solyom, *Refugees Screened and Re-screened Before Entry to Canada*, MONTREAL GAZETTE (Nov. 17, 2015), <http://montrealgazette.com/news/local-news/refugees-screened-and-re-screened-before-entry-to-canada>, archived at <https://perma.cc/J7XL-V3P9>.



referral file. The visa officer assesses whether a person fits the legal definition of a refugee.<sup>73</sup> If so, individuals are then screened for “admissibility.” Formal security checks are administered by the Canadian Security and Intelligence Service (CSIS)<sup>74</sup> and involve the names of applicants being run through databases of the Canadian Border Services Agency, Canadian Security Intelligence Service, RCMP, and other international databases.<sup>75</sup> Criminal background checks and medical screenings are also required as a part of the admissibility assessment.

The visa officer then reviews the material from the CSIS and, if the agency has recommended that the applicant be admitted and the visa officer approves, the refugee is then granted permanent residence status.<sup>76</sup>

Once a final decision is made and refugee status is granted, an organization funded by the CIC can help the person get the paperwork they need to leave the country in which they are residing and travel to Canada.<sup>77</sup>

## V. Assistance for Resettled Refugees

### A. Specific Assistance to Refugees

Preliminary assistance for resettled refugees is provided by the federal government, the Province of Quebec, or private sponsors.<sup>78</sup> Refugees selected under the Government-Assisted Refugees (GAR) program “are provided with immediate and essential services as well as income support under the Resettlement Assistance Program (RAP) to support their initial settlement in Canada.”<sup>79</sup>

<sup>73</sup> Laura Best, Op-ed, *Why Canada Can Safely Meet Its Refugee Commitments*, THE TYEE (last updated Nov. 18, 2015), <http://thetyee.ca/Opinion/2015/11/18/Canada-Can-Meet-Syrian-Refugee-Commitments/>, archived at <https://perma.cc/C89E-GRU5>.

<sup>74</sup> *The Security Screening Program*, CANADIAN SECURITY INTELLIGENCE SERVICE, <https://www.csis-scrs.gc.ca/scrtscrng/index-en.php> (last updated Dec. 22, 2015), archived at <https://perma.cc/LTW3-EVDC>.

<sup>75</sup> ‘Thorough’ Refugee Screening Puts Canada at Low Security Risk, Says Former Refugee Official, CBCRADIO (Nov. 16, 2015), <http://www.cbc.ca/radio/asithappens/as-it-happens-monday-edition-1.3321310/thorough-refugee-screening-puts-canada-at-low-security-risk-says-former-refugee-official-1.3321326>, archived at <https://perma.cc/G9HR-2Y9T>; Marina Jimenez, *Syrian Refugees Will Face Three Levels of Intense Screening*, THESTAR.COM (Nov. 18, 2015), <http://www.thestar.com/news/canada/2015/11/18/syrian-refugees-will-face-three-levels-of-intense-screening.html>, archived at <https://perma.cc/AB9Z-PUA7>.

<sup>76</sup> Monique Muise, *Here’s How Refugees Are Screened Before Arriving in Canada*, GLOBAL NEWS (Nov. 19, 2015), <http://globalnews.ca/news/2349421/heres-how-refugees-are-screened-before-arriving-in-canada/>, archived at <https://perma.cc/H2BD-SYJ2>.

<sup>77</sup> *After Your Case Has Been Referred: Get Next Steps*, CIC, <http://www.cic.gc.ca/english/refugees/outside/gar/referred-after.asp> (last updated Nov. 10, 2015), <http://globalnews.ca/news/2349421/heres-how-refugees-are-screened-before-arriving-in-canada/>, archived at <https://perma.cc/2AYD-3QC9>.

<sup>78</sup> The Refugee System in Canada, *supra* note 11.

<sup>79</sup> *Financial Support for Government-Assisted Refugees*, CIC, <http://www.cic.gc.ca/english/helpcentre/results-by-topic.asp?st=11.2>, archived at <https://perma.cc/K5GW-RSQY>.

Resettlement assistance under the RAP is provided to Convention Refugees Abroad and in some circumstances “to members of the Country of Asylum Class who have been identified as refugees with special needs and who have been admitted to Canada as government-assisted refugees.”<sup>80</sup>

Income support under RAP is usually provided “for up to one year or until the client becomes self-sufficient, whichever comes first.”<sup>81</sup> Canada provides RAP income support to eligible clients who cannot pay for their own basic needs. The level of monthly income support “for shelter, food and incidentals are guided by the prevailing provincial or territorial basic social assistance rates in the client’s province or territory of residence.”<sup>82</sup>

RAP funds provide “immediate and essential services,” typically delivered during the first four to six weeks following a client’s arrival in Canada, which include

- port of entry and reception services;
- temporary accommodation;
- help to find permanent accommodation;
- needs assessments;
- information and orientation; and
- links to other federal and provincial programs, as well as to other settlement services.<sup>83</sup>

Most private sponsorships last for one year, but some refugees may be eligible for assistance from their sponsors for up to three years.<sup>84</sup> Private sponsors must provide financial and emotional support for the length of the sponsorship period, or “until the refugee becomes financially independent if this should occur during the sponsorship period.”<sup>85</sup> Assistance includes support for housing, clothing, and food.<sup>86</sup> These supports are in addition to settlement services funded by the CIC to help all newcomers, including refugees, settle and integrate into their new communities.

Loans are also available under the Immigration Loans Program (ILP) for government-assisted and privately sponsored refugees within the Convention Refugees Abroad and Country of Asylum classes. The ILP covers

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<sup>80</sup> *Financial Assistance – Refugees*, CIC, <http://www.cic.gc.ca/english/refugees/outside/resettle-assist.asp> (last updated Sept. 29, 2015), archived at <https://perma.cc/6W93-3H3K>.

<sup>81</sup> *Id.*

<sup>82</sup> *The Refugee System in Canada*, *supra* note 11.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> According to the CIC, “[b]lended visa office-referred refugees receive six months of RAP income support, while private sponsors provide up to six months of financial support and up to a year of social and emotional support.” *Id.*



- costs of medical examinations abroad;
- travel documents; and
- transportation to Canada.<sup>87</sup>

## **B. Assistance for All Newcomers, Including Refugees**

The CIC also funds a settlement program that helps newcomers settle and adapt to life in Canada. The CIC works with provinces and territories, service-provider organizations, and a range of other partners and stakeholders in delivering these services, which include

- needs assessment and referral services to increase newcomers' awareness of their settlement needs and link newcomers to CIC-funded and community settlement services;
- information and orientation services to better understand life in Canada and make informed decisions about the settlement experience. This includes Canadian Orientation Abroad program, delivered pre-arrival by the International Organization for Migration, which provides general information on settlement, in person;
- language training in English and French, so newcomers have the language skills to function in Canada;
- employment services that help newcomers search for, gain and retain employment in regulated and non-regulated professions;
- community connections services that enable newcomers to receive assistance in public institutions, build networks with long-time Canadians and established immigrants with opportunities to fully participate in Canada society; and
- support services which help newcomers access settlement services, such as childcare, transportation assistance, translation and interpretation services, provisions for persons with a disability, as well as short-term/crisis counselling to deal with settlement issues.<sup>88</sup>

## **VI. Monitoring and Freedom of Movement**

The CIC's Matching Centre determines a final destination for refugees within Canada, taking into account the special needs of the resettled refugee. The Matching Centre determines which city "will best suit each refugee's needs," based the following:

- the language they speak;
- where family and friends live in Canada;
- ethnic, cultural and religious communities in the area;

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<sup>87</sup> Financial Assistance – Refugees, *supra* note

80. <sup>88</sup> The Refugee System in Canada, *supra* note

- medical needs; [and]
- availability of settlement services.<sup>89</sup>

If an applicant has relatives or close friends who are already in Canada and they wish to live near them, they can let the UNHCR know who they are and where they live, and the Government of Canada will “try to resettle refugees in a community where they will have the support of people they know.”<sup>90</sup> According to the CIC Operating Procedure on Overseas Selection and Processing of Convention Refugees Abroad Class,

Although government-assisted refugees are under no obligation to remain in a particular location, the officer must inform them that any unilateral decision on their part to refuse to continue to their selected city of destination or to move to another city or province from the selected city of destination may result in a reduction of, or ineligibility for, certain RAP benefits.<sup>91</sup>

## VII. Recent Changes to Address the Current Refugee Crisis

Canada’s new Liberal government announced a plan for the rapid resettlement of 25,000 Syrian refugees by the end of 2015. The plan was to be implemented in five phases.<sup>92</sup> There was some public resistance to this plan following the Paris terrorist attacks of November 2015, and the Government cited security and operational challenges as reasons for the delayed implementation of the plan.<sup>93</sup> At the end of November, the Government announced that it would resettle 10,000 Syrian refugees by the end of 2015 and another 15,000 by the end of February 2016. On February 29, 2016, the Government announced this target had been met.<sup>94</sup>

Canada worked with the UNHCR to identify people in Jordan and Lebanon (a similar process is implemented in Turkey where the state registers refugees) who are a low security risk and particularly vulnerable, such as women at risk and complete families, and those from the LGBT

<sup>89</sup> *The Matching Centre*, CIC, <http://www.cic.gc.ca/english/refugees/centre.asp>, archived at <https://perma.cc/FB7F-PSWG>.

<sup>90</sup> *Refugee Resettlement in Canada Information Bulletin No. 3*, CIC, <http://www.cic.gc.ca/english/resources/publications/bhutanese3.asp> (last updated July 21, 2010), archived at <https://perma.cc/3W7F-F77W>.

<sup>91</sup> CIC, OP 5 Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-protected Persons Abroad Classes para. 15.1 (Aug. 13, 2009), <http://www.cic.gc.ca/EnGLish/resources/manuals/op/op05-eng.pdf>, archived at <https://perma.cc/UH6T-KX6K>.

<sup>92</sup> *#WelcomeRefugees: How It Will Work*, CIC, <http://www.cic.gc.ca/english/refugees/welcome/overview.asp> (last updated Dec. 9, 2015), archived at <https://perma.cc/N72A-WJN7>.

<sup>93</sup> Rob Gillies, *Canada to Resettle 25,000 Syrian Refugees by End of February*, YAHOO! NEWS (Nov. 24, 2015), <http://news.yahoo.com/canada-announce-plan-resettle-25-000-refugees-tuesday-050535289.html>, archived at <https://perma.cc/523F-58JM>.

<sup>94</sup> Press Release, Government of Canada, Canada Welcomes 25,000 Syrian Refugees (Feb. 29, 2016), <http://news.gc.ca/web/article-en.do?mthd=advSrch&crtr.mnthndVI=&crtr.mnthStrtVI=&crtr.page=3&nid=1036919&crtr.yrndVI=&crtr.kw=Syrian+refugees&crtr.yrStrtVI=&crtr.dyStrtVI=&crtr.dyndVI>, archived at <https://perma.cc/6PDN-66TL>.

community.<sup>95</sup> According to reports, single, unaccompanied men were to be excluded from the government resettlement program for the time being. However, government officials stated that “those individuals can still apply to come to Canada through private sponsorship programs or could possibly be resettled through a government.”<sup>96</sup>

The Canadian government describes the refugee screening process for Syrians as robust and multi-layered.<sup>97</sup> Robert Vineberg, a senior fellow at the Canada West Foundation, has summarized the expedited process for Syrian refugees, stating that

[t]he revised Liberal plan involved sending large processing teams to refugee camps in Turkey, Jordan and Lebanon. The Canadian Armed Forces would establish the processing centres and provide Medical Corps staff to conduct physical examinations of the refugees. Immigration officers, agents from the Canadian Security Intelligence Service and officers from the Royal Canadian Mounted Police worked hand in hand in the camps to process the refugees... In all, over 600 military and public service personnel were deployed to the Middle East to carry out the operation and they were supported by thousands more in Canada.<sup>98</sup>

## VIII. Path to Naturalization

According to the CIC, in order to be eligible for Canadian citizenship through naturalization, a person must meet certain requirements related to (1) age, (2) permanent resident status, (3) residence in Canada (an applicant must be “physically present in Canada as a permanent resident for at least 1,460 days during the six years immediately before the date of [his/her] application”<sup>99</sup>) (4) language abilities, (5) criminal history, and (6) knowledge of Canada.<sup>100</sup> Refugees who are granted permanent resident status who fulfill these requirements are eligible to acquire Canadian citizenship through naturalization.

<sup>95</sup> #WelcomeRefugees: Phase 1 – Identifying Syrian Refugees to Come to Canada, CIC, <http://www.cic.gc.ca/english/refugees/welcome/phase1.asp> (last updated Dec. 2, 2015), archived at <https://perma.cc/J7MP-Q3DV>.

<sup>96</sup> Paula Newton, *Canada: We’ll Resettle 25,000 Syrian Refugees*, CNN (Nov. 24, 2015), <http://www.cnn.com/2015/11/24/americas/canada-syrian-refugees/>, archived at <https://perma.cc/UW45-H7BF>.

<sup>97</sup> #WelcomeRefugees: How It Will Work, *supra* note 92.

<sup>98</sup> Robert Vineberg, *25,000 Syrian Refugees in Four Months: How Did Canada Do It?* THE INTERPRETER (Mar. 9, 2016), <http://www.lowyinterpreter.org/post/2016/03/09/25000-Syrian-refugees-in-four-months-How-did-Canada-do-it.aspx>, archived at <https://perma.cc/K4UQ-E5QA>.

<sup>99</sup> *Determine Your Eligibility – Citizenship*, CIC, <http://www.cic.gc.ca/english/citizenship/become-eligibility.asp> (last updated June 13, 2015), archived at <https://perma.cc/FW53-6QW5>.

<sup>100</sup> *Id.*

# People's Republic of China

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**SUMMARY** China acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol in September 1982. Despite its accession to the treaties, the domestic law on refugees and asylum is still under development. Currently, the only relevant legal provisions are article 32 of the Constitution and article 46 of the Exit and Entry Law. The former provides the general principle on asylum, declaring that the country may grant asylum to foreigners who request it for political reasons. The latter provides that refugees and asylum seekers in China may obtain ID cards. A comprehensive refugee law that would cover a wide range of issues relating to refugees and asylum is under consideration.

The UNHCR Beijing Office conducts refugee registration and refugee status determinations in China. Recognized refugees are permitted to remain temporarily in China while the UNHCR is seeking a durable solution, which most of the time involves resettlement in a third country. Non-Indochinese refugees are generally treated as aliens who have no right to employment. They are supported by the UNHCR in terms of food, accommodation, health care, and children's education.

In addition to article 46 specifically on refugees, refugees and asylum seekers in China are subject to other provisions of the Exit and Entry Law governing foreigners and stateless persons, as well as other relevant Chinese laws. For example, foreigners who are sixteen years old or older must carry their documentation for examination by public security organs. Foreigners must also submit their residence permits to the local public security organs wherever they reside. Hotels must report information concerning foreign guests to the local public security organs.

## I. General Background

### A. Indochinese Refugees

Although not a traditionally popular destination for refugees and asylum seekers, the People's Republic of China (PRC or China)<sup>1</sup> was one of the top ten refugee-hosting countries recognized by the United Nations High Commissioner for Refugees (UNHCR) until it was recently replaced by Sudan in mid-2015, largely due to the fact that it accepted and still hosts a large number of Indochinese refugees.<sup>2</sup> In the late 1970s, China accepted about 260,000 refugees who fled from Vietnam to China. They were provided refugee status and settled in southern China. Most of the

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<sup>1</sup> This report does not cover the laws in effect in Hong Kong, Macao, and Taiwan.

<sup>2</sup> UNHCR MID-YEAR TRENDS 2015 at 6 (2015), <http://www.unhcr.org/56701b969.html>, archived at <https://perma.cc/S4P9-F558>.

Indochinese refugees were ethnic Chinese.<sup>3</sup> According to the UNHCR, the Indochinese refugees and their children are well integrated and receive protection from the Chinese government.<sup>4</sup>

## B. Non-Indochinese Refugees

Other than the Indochinese refugees, China attracted few refugees and asylum seekers before the mid-1990s.<sup>5</sup> In the past two decades, the number of refugees and asylum seekers coming to China has gradually increased, and the country “is becoming a transit and destination country for mixed migration as a result of its geographical and economic importance.”<sup>6</sup>

According to data provided by the UNHCR, as of June 2015, there were 301,057 refugees, among whom 300,000 were Indochinese refugees, and 564 asylum seekers in China.<sup>7</sup> Top countries of origin for the non-Indochinese refugees and asylum seekers in China are Somalia, Nigeria, Iraq, and Liberia.<sup>8</sup>

## C. Inflows of Displaced Foreigners from Neighboring Countries

There have also been large-scale inflows of displaced foreigners from neighboring countries, such as North Korea and Burma (Myanmar), whom the Chinese government generally does not recognize as refugees.<sup>9</sup> Undocumented North Koreans who have crossed into China since the mid-1990s are generally treated as illegal economic migrants.<sup>10</sup> For the more than 30,000 ethnic Kokangs displaced by armed conflicts in Burma who flooded into China in 2009, the Chinese government promptly opened camps to host them and provided other humanitarian assistance, although the authorities did not refer to them as refugees.<sup>11</sup>

<sup>3</sup> *UNHCR Regional Representation in China*, UNHCR, [http://www.unhcr.org/hk/unhcr/en/about\\_us/China\\_Office.html](http://www.unhcr.org/hk/unhcr/en/about_us/China_Office.html) (last visited Dec. 30, 2015), archived at <https://perma.cc/C573-RSBZ>. According to the Chinese government, China accepted a total of 283,000 Indochinese refugees from 1978 onward “in the spirit of humanitarianism.” *China’s Relationship with United Nations High Commissioner for Refugees (UNHCR)*, PERMANENT MISSION OF THE PEOPLE’S REPUBLIC OF CHINA TO THE UNITED NATIONS OFFICE AT GENEVA AND OTHER INTERNATIONAL ORGANIZATIONS IN SWITZERLAND (Apr. 16, 2004), <http://www.fmprc.gov.cn/ce/cegv/eng/rqrd/jblc/t85094.htm>, archived at <https://perma.cc/8TTS-9CFG>.

<sup>4</sup> *2015 UNHCR Subregional Operations Profile – East Asia and the Pacific*, UNHCR, <http://www.unhcr.org/pages/49e487cd6.html#> (last visited Dec. 30, 2015), archived at <https://perma.cc/MB9S-8MKA>.

<sup>5</sup> Lili Song, *Refugee Protection in China: Recent Legal and Policy Developments*, RIGHTS IN EXILE (Sept. 1, 2014), <http://rightsixinexile.tumblr.com/post/96365498957/refugee-protection-in-china-recent-legal-and>, archived at <https://perma.cc/9LEE-JJ98>.

<sup>6</sup> *Id.*; *2015 UNHCR Subregional Operations Profile*, *supra* note 4.

<sup>7</sup> UNHCR MID-YEAR TRENDS 2015, *supra* note 2, at 16.

<sup>8</sup> *The People’s Republic of China Fact Sheet*, UNHCR (Aug. 2015), <http://www.unhcr.org/5000187d9.pdf>, archived at <https://perma.cc/E366-DQPK>.

<sup>9</sup> Song, *supra* note 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; LIU GUOFU, ZHONGGUO NANMIN FA [CHINESE REFUGEE LAW] 214–216 (2015).

## II. Legislation

China acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in September 1982.<sup>12</sup> Despite its early accession to these treaties, the domestic law on refugees and asylum is still under development. Currently, the only legal provisions relevant to refugees are one article in the Constitution providing the general principle on asylum, and one article in the Exit and Entry Law that gives legal status to refugees and asylum seekers. A comprehensive refugee law that would cover a wider range of refugee issues is under consideration.

### A. Constitution

Article 32 of the Constitution declares that China “may grant asylum to foreigners who request it for political reasons.”<sup>13</sup>

### B. 2012 Exit and Entry Law

In 2012, the PRC Law on the Administration of Exit and Entry (Exit and Entry Law) was promulgated, which replaced two former exit and entry laws governing Chinese citizens and foreigners, respectively.<sup>14</sup> Effective July 1, 2013, the new Exit and Entry Law contains a provision that, for the first time, allows refugees and asylum seekers to obtain ID cards in China.

According to article 46 of the Exit and Entry Law, foreigners who apply for refugee status in China may, during the screening process, stay in China with temporary identity certificates issued by public security organs. Foreigners who are recognized as refugees may stay or reside in China with the refugee identity certificates issued by public security organs.<sup>15</sup>

Article 46 is deemed a positive first step in providing a legal ground for refugees to live in China. Recognizing that refugees and asylum seekers are entitled to ID cards, the law “lays a foundation for future enhancement of refugees’ rights in China, such as the right to work and the right to education.”<sup>16</sup>

### C. Draft Refugee Law

Efforts to forge a comprehensive refugee law were reportedly initiated in the 1990s, but so far no draft laws have been released. In 2012, the draft Regulations on Determination of Status and Administration of Refugees was prepared by Central Government authorities. If passed, the Regulations would address the definition of refugees, competent authorities in charge of refugee

<sup>12</sup> *UNHCR Regional Representation in China*, *supra* note 3.

<sup>13</sup> XIANFA [CONSTITUTION] art. 32, § 2 (1982), 2004 FAGUI HUIBIAN 4–28.

<sup>14</sup> Chujing Rujing Guanli Fa [Exit and Entry Administration Law] (Exit and Entry Law) (promulgated by the Standing Committee of the National People’s Congress (NPC), June 30, 2012, effective July 1, 2013), 2012 FAGUI HUIBIAN 283–301, English translation available at <http://cs.mfa.gov.cn/wgrlh/lhqz/lhqzjjs/t1120988.shtml>, archived at <https://perma.cc/5XS7-BPTE>.

<sup>15</sup> Exit and Entry Law art. 46.

<sup>16</sup> Song, *supra* note 5.

affairs, refugee status determinations, temporary stays and repatriation of refugees, and loss and removal of refugee status.<sup>17</sup>

### III. Refugee and Asylum Issues

Although there is only one article in the Exit and Entry Law specifically governing refugees, refugees and asylum seekers in China are subject to other provisions of that Law governing foreigners and stateless persons, as well as other relevant Chinese laws.

#### A. Admission of Refugees and Handling Refugee Claims

Other than article 46 of the Exit and Entry Law, there are no legal provisions specifically regulating the admission of refugees and handling refugee claims under Chinese law. Nor is there an explicit, competent authority in charge of refugee affairs. The Ministry of Public Security should be responsible for matters relevant to refugee status recognition and repatriation of refugees and the Ministry of Civil Affairs should attend to refugee resettlement, but no law explicitly authorizes them as the competent authorities.<sup>18</sup>

In practice, refugee registration and refugee status determinations for non-Indochinese refugees are generally conducted by the UNHCR Beijing Office.<sup>19</sup> According to the Office, it generally has access to asylum seekers who are in Beijing and conducts refugee status determinations. Recognized refugees are permitted to remain temporarily in China while the UNHCR is seeking a durable solution, which most of the time involves resettlement in a third country.<sup>20</sup>

#### B. Refugees Arriving at the Border

Article 20 of the Exit and Entry Law allows any foreigners who “need to enter China urgently for humanitarian reasons” to apply for visas to enter China before the visa-issuing authorities at their port of entry. The Law, however, also requires that such foreigners possess supporting materials proving that relevant Chinese authorities have preapproved their application for a visa at a port of entry.<sup>21</sup>

According to a UNHCR officer, refugees in China normally enter the country with valid visas, mostly student visas and some tourist visas, due to strict border control.<sup>22</sup>

<sup>17</sup> LIU, *supra* note 11, at 47; Song, *supra* note 5.

<sup>18</sup> ZhaoYinan, *Legal Status for Seekers of Asylum*, CHINA DAILY (July 2, 2012), [http://usa.chinadaily.com.cn/china/2012-07/02/content\\_15540683.htm](http://usa.chinadaily.com.cn/china/2012-07/02/content_15540683.htm), archived at <https://perma.cc/FH74-HUJM>.

<sup>19</sup> LIU, *supra* note 11, at 225; *UNHCR Regional Representation in China*, *supra* note 3.

<sup>20</sup> *UNHCR Regional Representation in China*, *supra* note 3.

<sup>21</sup> Exit and Entry Law art. 20.

<sup>22</sup> Fang Shuchen, *Waiguo Nanmin Huozai Zhongguo* [Foreign Refugees Living in China], 19 VISTA KAN TIANXIA (July 18, 2014), available at GUANCHANG (July 27, 2014), [http://m.guancha.cn/society/2014\\_07\\_27\\_250606.shtml](http://m.guancha.cn/society/2014_07_27_250606.shtml), archived at <https://perma.cc/6XLV-Y6UL>.



### **C. Recent Adjustments**

China does not appear to have made adjustments or amendments to its refugee law in response to the current refugee crisis.

### **D. Refugee Status Determination**

The refugee status determination is generally conducted by the UNHCR Beijing Office and Chinese authorities have not substantially engaged themselves in the UNHCR process, according to the UNHCR Beijing Office. Refugees are recognized under the UNHCR's mandate.<sup>23</sup>

### **E. Accommodations and Assistance Provided to Refugees**

Non-Indochinese refugees in China are generally treated as aliens who have no right to employment. They are supported by the UNHCR in terms of food, accommodation, health care, and children's education.<sup>24</sup>

In November 2013, the UNHCR reported that refugee children in five Chinese provinces were allowed to attend public schools at the primary level under the same conditions as local children.<sup>25</sup>

### **F. Accepting Refugees for Resettlement**

In 1981 and 1982, China provided resettlement opportunities for some 2,500 Laotian and a small number of Cambodian refugees from camps in Thailand. While most of them voluntarily repatriated, some chose to stay in China.<sup>26</sup>

### **G. Path to Naturalization**

In general, as provided by China's Nationality Law, a foreign national or stateless person who is willing to abide by China's Constitution and laws may be naturalized as a Chinese citizen upon approval of the application, as long as he or she (1) is a close relative of a Chinese national, (2) has settled in China, or (3) has other legitimate reasons.<sup>27</sup> In practice, naturalization may be rare other than through marriage or a great contribution to the country.<sup>28</sup>

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<sup>23</sup> UNHCR Regional Representation in China, *supra* note 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Chinese Schools Offer Primary Education for Urban Refugees*, UNHCR (Nov. 22, 2013), <http://www.unhcr.org/528f66086.html>, archived at <https://perma.cc/8SSB-AS67>.

<sup>26</sup> UNHCR Regional Representation in China, *supra* note 3.

<sup>27</sup> Guoji Fa [Law on Nationality] (promulgated by the NPC, Sept. 10, 1980) art. 7, 1980 FAGUI HUIBIAN 3–5, English translation available on National People's Congress website, at [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384056.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384056.htm), archived at <https://perma.cc/H4D4-AP5B>.

<sup>28</sup> LANEY ZHANG, LAW LIBRARY OF CONGRESS, CITIZENSHIP PATHWAYS AND BORDER PROTECTION: CHINA (Mar. 2013), <http://www.loc.gov/law/help/citizenship-pathways/china.php>, archived at <https://perma.cc/5LOF-7JWU>.



A foreigner who has entered the country holding a temporary stay visa may be granted a residence permit, according to the Exit and Entry Law, if he or she has a special talent or is an investor as stipulated by the state, or based on humanitarian reasons.<sup>29</sup> The Law also provides that a foreigner who has made “remarkable contributions to China’s economic and social development” or meets other conditions may be granted permanent residence in China.<sup>30</sup>

## **H. Stay and Residence**

The Exit and Entry Law requires all foreigners in China aged sixteen or above to carry their passports, other international travel documents, or foreigner stay or residence permits for examination by public security organs.<sup>31</sup>

Furthermore, foreigners who reside in China must submit their residence permits to the local public security organs of any place they reside for examination.<sup>32</sup> For those who temporarily stay in hotels, the hotels are required by law to register foreigners’ information and report their information to the local public security organs. For those who stay or reside in domiciles other than hotels, the foreigners themselves or persons who accommodate them must register the foreigners with the local public security organs within twenty-four hours of their arrival.<sup>33</sup>

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<sup>29</sup> Exit and Entry Law art. 31.

<sup>30</sup> *Id.* art. 47.

<sup>31</sup> *Id.* art. 38 § 1.

<sup>32</sup> *Id.* art. 38 § 2.

<sup>33</sup> *Id.* art. 39.

# Denmark

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**SUMMARY** Denmark is a signatory to the Refugee Convention and grants asylum for refugees and persons seeking subsidiary protection. Refugees are received both through the United Nations High Commissioner for Refugees relocation program (quota refugees) and through application from persons arriving at the border. Applicants are vetted by the Danish Immigration Service and by the police. The Danish government has made a number of changes to its asylum laws and policies following the asylum crisis of 2015. Changes include reducing the amount of monetary assistance to asylum seekers, delaying family reunification, and proposing confiscation of assets to pay for the housing and support of the asylum seeker.

## I. General Background

Denmark is a country of 5.64 million people.<sup>1</sup> It borders Germany and is connected with Sweden through the Oresund Bridge. Ferries from Denmark travel to Norway and Sweden. In 2013 Denmark was seventh on the list of asylum seekers received per capita among the countries of the Organisation for Economic Co-operation and Development (OECD).<sup>2</sup>

During the first eleven months of 2015 Denmark received 18,000 applications for asylum.<sup>3</sup> Of these, 1,700 were unaccompanied minors.<sup>4</sup> Approximately 9,000 applications were approved during the same period.<sup>5</sup> The greatest number of asylum seekers during the first eleven months of 2015 came from Syria, Iran, Eritrea, and Afghanistan.<sup>6</sup> Among unaccompanied minors, Afghans and Syrians were the two largest groups of nationalities. In addition, Denmark had received 14,000 applications for family reunification during the first eleven months of 2015,<sup>7</sup> making the total number of asylum seekers more than 32,000.

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<sup>1</sup> Denmark, WORLD BANK, <http://data.worldbank.org/country/denmark> (last visited Jan. 19, 2016), archived at <https://perma.cc/HD6U-RUKE>.

<sup>2</sup> George Arnett, *Sweden – The OECD’s Highest Per Capita Recipient of Asylum Seekers*, THE GUARDIAN (Dec. 2, 2014), <http://www.theguardian.com/news/datablog/2014/dec/02/sweden-oecd-higher-per-capita-asylum-seekers-syria>, archived at <https://perma.cc/YT3H-BFU9>.

<sup>3</sup> See statistics at Tal & statistik, NYIDANMARK, <https://www.nyidanmark.dk/da-dk/Statistik/Search/Statistics.htm?searchtype=statistics> (last visited Jan. 15, 2016), archived at <https://perma.cc/TAH4-PZS4>.

<sup>4</sup> UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET, TAL PÅ UDLÆNDINGEOMRÅDET PR. 30.11.2015, at 6 (Nov. 30, 2015), [https://www.nyidanmark.dk/NR/rdonlyres/E3C50EA0-BD36-4DDD-9C8D-7AAF44DE1F12/0/seneste\\_tal\\_udlaendingeomraadet.pdf](https://www.nyidanmark.dk/NR/rdonlyres/E3C50EA0-BD36-4DDD-9C8D-7AAF44DE1F12/0/seneste_tal_udlaendingeomraadet.pdf), archived at <https://perma.cc/T3Y4-MM9E>.

<sup>5</sup> Tal & statistik, NYIDANMARK, *supra* note 3.

<sup>6</sup> UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET, *supra* note 4, at 5.

<sup>7</sup> *Id.* at 10.

## II. Recognition of Right of Asylum

Danish laws and regulations govern asylum.<sup>8</sup> Denmark does not have a list of safe countries applicants from which are automatically deemed not entitled to asylum; rather, each application is reviewed on its own merits. Denmark has an agreement with Afghanistan regarding the return of asylum seekers whose applications are denied.<sup>9</sup>

### A. Refugee (Convention) Status

Denmark was the first signatory to the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>10</sup> Ratification was made through the Danish Aliens Act.<sup>11</sup> Asylum is given to those who qualify as refugees under the Convention,<sup>12</sup> which defines as a refugee a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>13</sup>

### B. Protection Status

Asylum seekers who do not qualify as refugees may receive protection status (also known as subsidiary protection) “if returning to their home country would mean they face capital punishment, torture or inhumane or degrading treatment or punishment.”<sup>14</sup>

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<sup>8</sup> UDLÆNDINGELOVEN (LOVBKENDTGØRELSE [LBK] nr 1021 af 19/09/2014) [DANISH ALIENS ACT], <https://www.retsinformation.dk/Forms/R0710.aspx?id=164258>, archived at <https://perma.cc/4334-LQ69>, and Udlændingebekendtgørelsen (BEKENDTGØRELSE [BEK] nr 375 af 20/03/2015) [Aliens Regulation], <https://www.retsinformation.dk/Forms/R0710.aspx?id=169278>, archived at <https://perma.cc/6WSS-WLLY>.

<sup>9</sup> Bekendtgørelse af trepartsaf tale af 18. oktober 2004 med Afghanistan og UNHCR om hjemtagelse af afghanske statsborgere der ikke kan opnå asyl i Danmark (BKI nr 24 af 18/09/2012 (20-09-2012)), <https://www.retsinformation.dk/Forms/R0710.aspx?id=142646>, archived at <https://perma.cc/797K-NPCH>.

<sup>10</sup> *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, UNHCR, <http://www.unhcr.org/3b73b0d63.html> (last visited Feb. 9, 2016), archived at <https://perma.cc/VK7F-QW2W>.

<sup>11</sup> DANISH ALIENS ACT, <https://www.retsinformation.dk/Forms/R0710.aspx?id=164258>, archived at <https://perma.cc/4334-LQ69>.

<sup>12</sup> *Id.* 7 §.

<sup>13</sup> Convention and Protocol Relating to the Status of Refugees art. 1, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2a10.html>, archived at <https://perma.cc/X7Y7-V9SR>.

<sup>14</sup> *Id.*; see also *Asylum*, NEWTO DENMARK (Oct. 16, 2015), [https://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/asylum.htm](https://www.nyidanmark.dk/en-us/coming_to_dk/asylum/asylum.htm), archived at <https://perma.cc/B4D5-4CYJ>.

### C. Temporary Protection Status

Denmark also grants temporary protection status “to individuals who face capital punishment, torture or inhumane or degrading treatment or punishment due to severe instability and indiscriminate violence against civilians in their home country.”<sup>15</sup>

### D. Humanitarian Protection

In rare cases, such as when an asylum seeker is suffering severe illness, asylum seekers may receive humanitarian protection.<sup>16</sup> This protection is temporary and only lasts as long as the humanitarian grounds for protection, e.g., the illness, persists.<sup>17</sup>

## III. Application Process

### A. Quota Refugees

Denmark receives refugees through the United Nations High Commissioner for Refugees (UNHCR) relocation program.<sup>18</sup> The Danish Parliament annually decides how many refugees to accept through this program.<sup>19</sup> The Danish government has approved the acceptance of 1,500 quota refugees over a three-year period.<sup>20</sup> In 2015 Denmark accepted 356 quota refugees.<sup>21</sup> Quota refugees receive renewable five-year residency permits.<sup>22</sup> This is proposed to change in 2016.<sup>23</sup> Under the new proposal, residency will be given for three years instead of five.<sup>24</sup> In addition, changes to the selection procedures are proposed, adding a requirement that the selection of quota refugees should be based on the refugee’s potential for integration.<sup>25</sup>

<sup>15</sup> *Id.*

<sup>16</sup> 9 § DANISH ALIENS ACT; see also *Humanitær opholdstilladelse*, NYIDANMARK (Sept. 23, 2015), [https://www.nyidanmark.dk/da-dk/Ophold/humanitaert\\_ophold/humanitaer\\_opholdstilladelse.htm](https://www.nyidanmark.dk/da-dk/Ophold/humanitaert_ophold/humanitaer_opholdstilladelse.htm), archived at <https://perma.cc/NQP3-88U5>.

<sup>17</sup> *Id.*

<sup>18</sup> 8 § DANISH ALIENS ACT; see also *Kvoteflygtninge*, NYIDANMARK (Sept. 23, 2015), <https://www.nyidanmark.dk/da-dk/Ophold/asyl/kvoteflygtninge/kvoteflygtninge.htm>, archived at <https://perma.cc/NF4B-2QDF>.

<sup>19</sup> *Kvoteflygtninge*, NYIDANMARK, *supra* note 18.

<sup>20</sup> *Id.*

<sup>21</sup> For the period January 1, 2015, to Nov. 30, 2015, UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET, *supra* note 4, at 4.

<sup>22</sup> *Asyl*, NYIDANMARK (Oct. 16, 2015), <https://www.nyidanmark.dk/da-dk/Ophold/asyl/>, archived at <https://perma.cc/9HR6-Y5JS>.

<sup>23</sup> *Asylpakke*, STATSMINISTERIET, [http://www.stm.dk/publikationer/Asylpakke\\_15/index.html](http://www.stm.dk/publikationer/Asylpakke_15/index.html) (last visited Jan. 15, 2016), archived at <https://perma.cc/YH2E-KLDU>.

<sup>24</sup> *Ændringer Af Vilkår På Asylområdet*, REGERINGEN (Nov. 13, 2015), [http://www.stm.dk/publikationer/Asylpakke\\_15/Ændringer%20af%20vilkår%20på%20asylområdet.pdf](http://www.stm.dk/publikationer/Asylpakke_15/Ændringer%20af%20vilkår%20på%20asylområdet.pdf), archived at <https://perma.cc/YN46-N726>.

<sup>25</sup> L 87 – Forslag til lov om ændring af udlændingeloven, FOLKETINGET (last visited Jan. 19, 2016), <http://www.ft.dk/samling/20151/lovforslag/L87/index.htm>, archived at <https://perma.cc/KZ52-X98H>, available in full text at Lovforslag 87 Forslag til lov om ændring af udlændingeloven, FOLKETINGET (Dec. 10, 2015),

Quota refugees are screened by the UNHCR as well as the Danish Immigration Service.<sup>26</sup> After the UNHCR makes an initial screening and a suggestion of which refugees should be relocated to Denmark, the Danish Immigration Service conducts interviews with the refugees before they are relocated to Denmark.<sup>27</sup> Municipalities and the Dansk Flygtningehjælp (Danish Refugee Council) are also allowed to participate in these interviews.<sup>28</sup>

## B. At the Border

In addition to receiving quota refugees Denmark also accepts asylum applications by individuals who arrive at the Danish border.<sup>29</sup> Application is then made at either a local police station or at the reception center in Sandholm.<sup>30</sup> In 2015 approximately 18,000 persons sought asylum in Denmark in this manner.<sup>31</sup> Denmark does not allow for asylum applications at Danish embassies or consulates.

Asylum seekers arriving at the border must report to the police.<sup>32</sup> As part of their application they provide fingerprints.<sup>33</sup> These fingerprints are entered into the Eurodac system.<sup>34</sup>

## C. Unaccompanied Minors

Denmark received approximately 1,700 unaccompanied minors in 2015.<sup>35</sup> Unaccompanied minors have the right to special representation (through a guardian) and receive temporary residence permits ranging from one to five years that are renewable.<sup>36</sup>

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<http://www.ft.dk/samling/20151/lovforslag/l87/bilag/1/1578594.pdf>, archived at <https://perma.cc/SB83-HUXK>; see also *Betænkning afgivet af Udlændinge-, Integrations- og Boligudvalget den 19. januar 2016*, UDLÆNDINGE-, INTEGRATIONS- OG BOLIGUDVALGET (Jan. 19, 2016), [http://www.ft.dk/R1pdf/samling/20151/lovforslag/L87/20151\\_L87\\_betaenkning.pdf](http://www.ft.dk/R1pdf/samling/20151/lovforslag/L87/20151_L87_betaenkning.pdf), archived at <https://perma.cc/3F9F-2DKC>.

<sup>26</sup> *Kvote flygtninge*, NYIDANMARK, *supra* note 18.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Ansøgning om asyl*, NYIDANMARK (Aug. 7, 2015), [https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylprocessen/ansoegning\\_om\\_asyl.htm](https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylprocessen/ansoegning_om_asyl.htm), archived at <https://perma.cc/C535-B9UV>.

<sup>30</sup> *Id.*

<sup>31</sup> UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET, *supra* note 4.

<sup>32</sup> *Ansøgning om asyl*, NYIDANMARK, *supra* note 29.

<sup>33</sup> *Id.*

<sup>34</sup> *Rettigheder i Eurodac*, DATATILSYNET (updated May 6, 2015), <http://www.datatilsynet.dk/borger/eurodac/>, archived at <https://perma.cc/Q9A7-ZQ49>.

<sup>35</sup> This is the number received during the first eleven months. UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET, *supra* note 4.

<sup>36</sup> See *Uledsagede mindreårige asylansøgere*, NYIDANMARK (Nov. 16, 2015), [https://www.nyidanmark.dk/da-dk/Ophold/asyl/uledsagede\\_boern.htm](https://www.nyidanmark.dk/da-dk/Ophold/asyl/uledsagede_boern.htm), archived at <https://perma.cc/6T8E-E3M4>.

## D. Family Reunification

Denmark allows for family reunification.<sup>37</sup> During 2015 more than 14,000 persons sought family reunification in Denmark.<sup>38</sup> The Danish government has proposed changes to the Danish family reunification regulations, which would mean that individuals granted temporary protection status (see above, Part II(C)) would have to wait three years until family reunification could be sought.<sup>39</sup>

## IV. Benefits

### A. Housing

Asylum seekers are housed in asylum centers or tents.<sup>40</sup> After six months of applying for asylum, asylum seekers are allowed to find their own housing until their application has been processed.<sup>41</sup> They may not buy real property, however.<sup>42</sup> Moreover, unlike asylum-center housing, which is financed by the state, an asylum seeker must finance his own housing and does not receive extra monetary benefits to cover his or her expenses in such housing.<sup>43</sup> If an asylum seeker finances his own housing he or she must contract with the Danish Immigration Service and promise to leave the country if he or she is denied asylum.<sup>44</sup>

### B. Monetary Benefits

Asylum seekers receive cash benefits while their applications are pending if they cannot support themselves.<sup>45</sup> The cash benefit in 2015 was DKK 54.04 (about US\$7.89) per day for a single person living rent-free at an asylum center where meals were not included.<sup>46</sup> Spouses who share

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<sup>37</sup> 9 § DANISH ALIENS ACT.

<sup>38</sup> UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET, *supra* note 4, at 10.

<sup>39</sup> Forslag til lov om ændring af udlændingeloven, FOLKETINGET, *supra* note 25; *see also* Theis Lange Olsen, *Asylpakke: Regeringen vil begrænse familiesammenføringer yderligere*, DR (Nov. 13, 2015), <http://www.dr.dk/nyheder/politik/asylpakke-regeringen-vil-begraense-familiesammenfoeringer-yderligere>, archived at <https://perma.cc/GXF2-47QW>.

<sup>40</sup> *Indkvartering af asylansøgere*, BEREDSKABSTYRELSEN (Jan. 14, 2016), <http://brs.dk/beredskab/idsk/Pages/8dec-kort-over-indkvartering-over-asylansoegere.aspx>, archived at <https://perma.cc/7ECH-5JND>.

<sup>41</sup> 42k, 42l §§ DANISH ALIENS ACT; *see also* *Egenfinansieret bolig*, NYIDANMARK (Jan. 4, 2016), [https://www.nyidanmark.dk/da-dk/Ophold/asyl/hvor\\_kan\\_asylansoegerne\\_bo/egenfinansieret\\_bolig.htm](https://www.nyidanmark.dk/da-dk/Ophold/asyl/hvor_kan_asylansoegerne_bo/egenfinansieret_bolig.htm), archived at <https://perma.cc/QL84-B2SX>.

<sup>42</sup> *Egenfinansieret bolig*, NYIDANMARK, *supra* note 41.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 42a § DANISH ALIENS ACT; *see also* *Bekendtgørelse om udlevering af naturalieydelse til asylansøgere m.fl.* (BEK nr 1358 af 15/12/2005), <https://www.retsinformation.dk/Forms/R0710.aspx?id=29015>, archived at <https://perma.cc/4M3G-CX72>.

<sup>46</sup> *Cash Allowance*, NEWTODENMARK (Oct. 19, 2015), [https://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/conditions\\_for\\_asylum\\_applicants/cash\\_allowances.htm](https://www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/cash_allowances.htm), archived at <https://perma.cc/M8FP-JEWH>; *see*

accommodations receive DKK 42.79 (about US\$6.24) each if they live in an asylum center where meals are not included.<sup>47</sup> In addition asylum seekers receive between DKK 9.02 (about US\$1.32) and DKK 31.54 (about US\$4.60) per day depending on what stage of the process the application is in.<sup>48</sup>

Caregivers of children also receive an additional DKK 63.06 (about US\$9.20) or DKK 85.57 (about US\$12.49) per child per day depending on whether the Danish authorities have found that Denmark is the country where asylum should be sought or not.<sup>49</sup> Caregivers of children receive a smaller allowance for their third and fourth child of DKK 45.05 (about US\$6.57) per child per day.<sup>50</sup>

Asylum seekers may in addition receive other benefits/assistance from the government such as hygiene products or baby-care products.<sup>51</sup>

### C. Health Care

Asylum seekers have the right to urgent health care.<sup>52</sup> Asylum seekers under the age of eighteen have the same right to health care as Danish children.<sup>53</sup>

### D. Schooling

Asylum seekers aged seven to sixteen have the right to attend school free of charge either at the asylum center, remotely, or at local schools.<sup>54</sup>

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also *Kontante ydelser*, NYIDANMARK (Jan. 7, 2015), [https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylansoegernes\\_vilkaar/kontante\\_ydelser.htm](https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylansoegernes_vilkaar/kontante_ydelser.htm), archived at <https://perma.cc/TGQ7-XXRW>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Bekendtgørelse om udlevering af naturalieydelser til asylansøgere m.fl (Bekendtgørelse [BEK] nr 1358 af 15/12/2005), <https://www.retsinformation.dk/Forms/R0710.aspx?id=29015>, archived at <https://perma.cc/Z66L-9479>.

<sup>52</sup> 80 § SUNDHEDSLOVEN [HEALTH CARE ACT] LBK nr 1202 af 14/11/2014, <https://www.retsinformation.dk/Forms/R0710.aspx?id=152710#Afs2>, archived at <https://perma.cc/42GY-E7XJ>.

<sup>53</sup> *Sundhedsbehandling*, NYIDANMARK (May 2, 2013), [https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylansoegernes\\_vilkaar/sundhedsbehandling.htm](https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylansoegernes_vilkaar/sundhedsbehandling.htm), archived at <https://perma.cc/RDC4-YSMM>.

<sup>54</sup> *Undervisning og aktivering*, NYIDANMARK (May 2, 2013), [https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylansoegernes\\_vilkaar/undervisning\\_og\\_aktivering.htm](https://www.nyidanmark.dk/da-dk/Ophold/asyl/asylansoegernes_vilkaar/undervisning_og_aktivering.htm), archived at <https://perma.cc/VR4S-Q2ZG>.



## V. Path to Citizenship

Danish Citizenship is acquired through law,<sup>55</sup> meaning a law is adopted by Parliament listing the names of the individuals who will receive Danish Citizenship through naturalization.<sup>56</sup> To become a citizen through naturalization a person must be a permanent resident of Denmark.<sup>57</sup> Special rules allow refugees to receive citizenship after eight years of continuous residence,<sup>58</sup> compared to nine years for other foreigners.<sup>59</sup>

In addition to meeting the permanent residence requirement a person seeking to become a citizen of Denmark must pass a language test as well as history and civics tests.<sup>60</sup> The person must also swear allegiance to Denmark, not have a criminal record, and meet self-sufficiency requirements.<sup>61</sup>

## VI. Monitoring by Security Police

The role of the Danish Security and Intelligence Service (Politiets Efterretningstjenestes, PET), is regulated in law.<sup>62</sup> The Danish Immigration Service can forward information about a foreigner without the foreigner's prior consent to the PET for analysis.<sup>63</sup> The Justice Minister can deport a person with reference to national security.<sup>64</sup> A person who cannot be deported from Denmark receives a *tålt ophold*, which means that he or she will have to reside in a special place and report to the police.<sup>65</sup>

<sup>55</sup> § 44 DANMARKS RIGES GRUNDLOV (GRUNDLOVEN) (LOV nr 169 af 05/06/1953) [CONSTITUTION], <https://www.retsinformation.dk/Forms/R0710.aspx?id=45902>, archived at <https://perma.cc/TD9S-WY5D>.

<sup>56</sup> *Udenlandske statsborgere*, UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET (Dec. 14, 2015), <http://uibm.dk/statsborgerskab/udenlandske-statsborgere-1>, archived at <https://perma.cc/4YBB-NB8A>.

<sup>57</sup> 5 § Cirkulæreskrivelse om naturalization (Cirkulæreskrivelse [CIS] nr 10873 af 13/10/2015) [Circulation Letter on Naturalization], <https://www.retsinformation.dk/Forms/R0710.aspx?id=174789>, archived at <https://perma.cc/4NTD-NGMV>; Bekendtgørelse af lov om dansk indfødsret LBK nr 422 af 07/06/2004 Gældende (Indfødsretsloven), <https://www.retsinformation.dk/Forms/R0710.aspx?id=28974>, archived at <https://perma.cc/TZ5J-LBXG>.

<sup>58</sup> 7 § Circulation Letter on Naturalization, *supra* note 57.

<sup>59</sup> *Id.*

<sup>60</sup> *See id.* § 1.

<sup>61</sup> *Id.*

<sup>62</sup> PET-LOVEN (LBK nr 1600 af 19/12/2014) [ACT ON THE DANISH SECURITY AND INTELLIGENCE SERVICE], <https://www.retsinformation.dk/forms/r0710.aspx?id=165838>, archived at <https://perma.cc/DB2A-N8UR>.

<sup>63</sup> *Udlændinge-sager*, PET, <https://www.pet.dk/Juridiske%20forhold/Udlaendingesager.aspx> (last visited Jan. 15, 2016), archived at <https://perma.cc/T63J-DFA8>.

<sup>64</sup> *Id.*; see also 45b § DANISH ALIENS ACT.

<sup>65</sup> *Udlændinge-sager*, PET, *supra* note 63; see also *Det danske samfunds indsats og beredskab mod terror*, STATSMINISTERIET, <http://www.stm.dk/publikationer/terror/Kap4.htm> (last visited Jan. 19, 2016), archived at <https://perma.cc/LR92-KN46>.



## VII. Travel Restrictions

Person who have been granted asylum in Denmark cannot travel to the country from which they sought asylum.<sup>66</sup> This ban is in place for at least ten years. Persons who have not received permanent residence in Denmark will always lose their residency permit if they travel to their home country, even if they received a temporary permit more than ten years ago.<sup>67</sup> Once a person receives permanent residency the time spent in Denmark in temporary status counts toward the ten-year requirement.<sup>68</sup>

In December 2015 the government proposed changes to the travel restrictions requirements which would provide that even for permanent residence holders a visit to the country from which they sought refuge would create a presumption that they no longer needed asylum in Denmark and thus allow their residence permits to be revoked.<sup>69</sup>

## VIII. The Role of Municipalities

The independence of municipalities is regulated in law and listed in the Constitution.<sup>70</sup> The relocation of persons who have received asylum from the asylum centers to the municipalities is determined by the Danish Immigration Service in conjunction with the municipalities.<sup>71</sup> The number of asylum recipients sent to each municipality is meant to reflect the population of the municipality.<sup>72</sup> Municipalities are responsible for the costs of health care for their inhabitants.<sup>73</sup>

## IX. Response to Refugee Crisis

### A. Legislative Changes and Proposals

The Danish government and coalition parties have presented a thirty-four item list of proposed measures intended to stem the influx of asylum seekers to Denmark by making Denmark a less

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<sup>66</sup> *Pas til udlændinge*, NYIDANMARK (Nov. 30, 2015), [https://www.nyidanmark.dk/da-dk/Ophold/asyl/ansoegning\\_om\\_pas.htm](https://www.nyidanmark.dk/da-dk/Ophold/asyl/ansoegning_om_pas.htm), archived at <https://perma.cc/P5NX-LSJM>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Lovforslag 87 Forslag til lov om ændring af udlændingeloven, FOLKETINGET, *supra* note 25, at 23–26.

<sup>70</sup> 82 § DANISH CONSTITUTION, <https://www.retsinformation.dk/Forms/R0710.aspx?id=45902>, archived at <https://perma.cc/TD9S-WY5D>.

<sup>71</sup> *Visitering af flygtninge til kommunerne*, NYIDANMARK (Nov. 6, 2015), [https://www.nyidanmark.dk/da-dk/for\\_samarbejdspartnere/visitering\\_flygtninge\\_kommunerne/Visitering+af+flygtninge+til+kommunerne.htm](https://www.nyidanmark.dk/da-dk/for_samarbejdspartnere/visitering_flygtninge_kommunerne/Visitering+af+flygtninge+til+kommunerne.htm), archived at <https://perma.cc/U8HL-BMY6>; Bekendtgørelse om boligplacering af flygtninge (BEK nr 50 af 18/01/2008) [Regulation on the Housing Placement of Refugees], <https://www.retsinformation.dk/forms/R0710.aspx?id=114417>, archived at <https://perma.cc/HH25-R357>.

<sup>72</sup> Bekendtgørelse om boligplacering af flygtninge (BEK nr 50 af 18/01/2008).

<sup>73</sup> 118 § HEALTH CARE ACT.

attractive destination for asylum seekers.<sup>74</sup> Measures include shorter residency permits and more restrictive family reunification policies.<sup>75</sup> Of these thirty-four measures, eleven have been implemented by Parliament.<sup>76</sup>

One controversial measure is the seizing of valuables from asylum seekers.<sup>77</sup> The Ministry of Immigration, Integration and Housing has explained the measure by noting that the Danish welfare state is intended to help people who do not have the financial capacity to help themselves, not those who can, and that this principle includes asylum seekers.<sup>78</sup> The measure now means that the police can seize valuables worth DKK 10,000 (about US\$1,459) or more. Certain items such as wedding and engagement rings are excluded. In the initial proposal the value threshold was DKK 3,000 (about US\$438).<sup>79</sup> The new rules also apply to asylum seekers already in the country.<sup>80</sup>

Most of the new rules entered into force on February 4, 2016.<sup>81</sup>

## B. Border Controls

On January 4, 2016 (when Sweden started requiring ID checks on all public transportation going into Sweden), Denmark initiated a temporary border control along its German border.<sup>82</sup> The border control was coupled with an amendment to the Aliens Act that prescribes ID controls of passengers traveling by bus, train, and boat, and requires that the operators conduct these ID checks before allowing passengers to travel into Denmark.<sup>83</sup> Unlike the Swedish border control

<sup>74</sup> *Ny asylopakke*, UDLÆNDINGE-, INTEGRATIONS- OG BOLIGMINISTERIET (Nov. 13, 2015), <http://uibm.dk/nyheder/2015-11/ny-asylopakke>, archived at <https://perma.cc/54QH-4QB8>.

<sup>75</sup> *Id.*

<sup>76</sup> LOV OM ÆNDRING AF UDLÆNDINGELOVEN (LOVTIDENDE [LOV] nr 102 af 03/02/2016) [ACT ON CHANGES TO THE ALIENS ACT], <https://www.retsinformation.dk/Forms/R0710.aspx?id=177348>, archived at <https://perma.cc/XF5T-W32B>; Elin Hofverberg, *Denmark: Law to Stem Asylum-Based Immigration*, GLOBAL LEGAL MONITOR (Feb. 1, 2016), <http://www.loc.gov/law/foreign-news/article/denmark-law-to-stem-asylum-based-immigration/>, archived at <https://perma.cc/PHC2-VX4N>; see also L 87 – Forslag til lov om ændring af udlændingeloven, FOLKETINGET, *supra* note 25.

<sup>77</sup> Press Release, Udlændinge-, Integrations- og Boligministeriet, New Bill Presented Before the Danish Parliament (Jan. 13, 2016), <http://uibm.dk/nyheder/2016-01/new-bill-presented-before-the-danish-parliament>, archived at <https://perma.cc/2FRA-6V3N>.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Press Release, Udlændinge-, Integrations- og Boligministeriet, Regeringen indfører midlertidig grænsekontrol (Jan. 4, 2016), <http://uibm.dk/nyheder/2016-01/regeringen-indforer-midlertidig-graensekontrol>, archived at <https://perma.cc/MKC7-RWC2>; see also *Det betyder grænsekontrollen for rejsende*, POLITI (Jan. 4, 2016), <https://www.politi.dk/da/aktuelt/nyheder/Det+betyder+grænsekontrollen+for+rejsende.htm>, archived at <https://perma.cc/2CJ9-9RHH>.

<sup>83</sup> L 74 Forslag til lov om ændring af udlændingeloven, FOLKETINGET, <http://www.ft.dk/samling/20151/lovforslag/L74/index.htm>, archived at <https://perma.cc/SAE6-5NKK>; text of amendment available at LOV OM

this Danish law prescribes fines for transporters who do not also check whether the person traveling into Denmark has valid travel documentation (i.e., a visa) that allows travel to Denmark.<sup>84</sup> As of January 14, the border control was not a complete border control but a control with random samplings.<sup>85</sup> The border controls are expected to stay in force until the Swedish ID-controls are abandoned, i.e., for at least six months.<sup>86</sup> According to news reports, the number of asylum seekers has sharply decreased following the implementation of border controls; on January 13 only eleven persons sought asylum in Denmark, down sharply from previous numbers.<sup>87</sup> An expected 25,000 persons are expected to apply for asylum in Denmark in 2016.<sup>88</sup>

The Danish Police has estimated that, at a minimum, 92,000 foreign asylum seekers crossed the country's borders between January 2015 and January 2016.<sup>89</sup> Many are thought to have continued on to Sweden and Norway.<sup>90</sup>

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ÆNDRING AF UDLÆNDINGELOVEN (LOV nr 1499 af 11/12/2015) [ACT ON AMENDMENTS TO THE DANISH ALIENS ACT], <https://www.retsinformation.dk/Forms/R0710.aspx?id=176355>, archived at <https://perma.cc/H7AD-25XU>.

<sup>84</sup> L 74 Forslag til lov om ændring af udlændingeloven, *supra* note 88.

<sup>85</sup> *Resultat af den midlertidige stikprøvevise grænsekontrol ved den dansk-tyske grænse*, POLITI (Jan. 17, 2016), [https://www.politi.dk/da/aktuelt/nyheder/resultat\\_af\\_den\\_midlertidige\\_stikprøvevise\\_grænsekontrol\\_ved\\_den\\_dansk\\_tyske\\_grænse.htm](https://www.politi.dk/da/aktuelt/nyheder/resultat_af_den_midlertidige_stikprøvevise_grænsekontrol_ved_den_dansk_tyske_grænse.htm), archived at <https://perma.cc/MY5L-39AK>.

<sup>86</sup> *See Frågor och svar: Lag och förordning om identitetskontroller vid allvarlig fara för den allmänna ordningen eller den inre säkerheten i landet*, REGERINGSKANSLIET (Dec. 18, 2015; updated Feb. 4, 2016), <http://www.regeringen.se/artiklar/2015/12/fragor-och-svar-lag-och-forordning-om-identitetskontroller-vid-allvarlig-fara-for-den-allmanna-ordningen-eller-den-inre-sakerheten-i-landet/>.

<sup>87</sup> *11 personer soegte asyl onsdag*, DR (Jan. 14, 2016), <http://www.dr.dk/nyheder/politik/11-personer-soegte-asyl-onsdag>, archived at <https://perma.cc/F7ZU-EDS6>.

<sup>88</sup> *Id.*

<sup>89</sup> *Skønsmæssig vurdering af indrejste udlændinge*, POLITI (Jan. 11, 2016), [https://www.politi.dk/da/aktuelt/nyheder/skoensmaessig\\_vurdering\\_af\\_indrejste\\_udlaendinge.htm](https://www.politi.dk/da/aktuelt/nyheder/skoensmaessig_vurdering_af_indrejste_udlaendinge.htm), archived at <https://perma.cc/MHW6-TTX8>.

<sup>90</sup> *Id.*

# Egypt

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**SUMMARY** Egypt acceded to the UN Convention Relating to the Status of Refugees in May 1981. According to a report by the United Nations High Commissioner for Refugees (UNHCR), However, the Egyptian government has no comprehensive legal instrument to deal with refugees—various fragmentary domestic legislative initiatives regulate their legal status.

Egypt hosts approximately 228,200 refugees. Individuals who want to obtain refugee status must be interviewed by a UNHCR representative. Refugees who pass the Refugee Status Determination Interview are provided with a UNHCR refugee yellow card. Social benefits are provided to the refugees by the UNHCR office in Egypt.

Refugees may be subject to security restrictions imposed by the Egyptian authorities and may also face arrest and detention. Many refugees have reported a lack of police protection and even police harassment. There is a high unemployment rate among refugees. Refugees who decide to leave Egypt irregularly also risk being targeted and attacked by human traffickers.

## I. General Background

Egypt acceded to the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention) and to its 1967 Protocol in May 1981, but made reservations to five provisions, namely article 12(1) (personal status), article 20 (rationing), article 22(1) (access to primary education), article 23 (public relief and assistance), and article 24 (labor legislation and social security).<sup>1</sup>

According to a report issued by the United Nations High Commissioner for Refugees (UNHCR), Egypt hosts Syrian, Sudanese, Ethiopian, Somali, Eritrean, Palestinian, and Iraqi refugees. UNHCR planning figures for December 2015 place the number of refugees in Egypt at around 228,200 (asylum seekers make up an additional 22,370).<sup>2</sup> There are approximately 300,000

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<sup>1</sup> Convention Relating to the Status of Refugees, Declarations and Reservations, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&lang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en) (scroll down to Egypt), archived at <https://perma.cc/EM5B-A4DF>.

<sup>2</sup> 2015 UNHCR Country Operations Profile: Egypt, UNHCR, <http://www.unhcr.org/pages/49e486356.html> (last visited Dec 31, 2015), archived at <http://perma.cc/9MVN-5D88>.

Syrian refugees in Egypt, including 134,000 who are registered with the UNHCR.<sup>3</sup> Egypt continues to be a transit country for many refugees hoping to reach Europe.<sup>4</sup>

## II. Steps Taken to Determine Whether a Person is Entitled to Refugee Status

Individuals who want to obtain refugee status must have a Refugee Status Determination Interview with a representative of the UNHCR. The principal applicant and all of his or her family members must go through separate interviews at the UNHCR local office, presenting their UNHCR asylum-seeker registration cards, original identification documents (such as a passport or an ID card), and other documents that might be relevant to their refugee claim. Applicants are entitled to have a legal representative to assist them during their interview. At the end of the interview, applicants are issued an appointment slip by the interviewer indicating the date when they can start checking for their interview result, which is usually approximately eight weeks from the date of the interview.<sup>5</sup>

According to UNHCR Egypt, individuals who are granted refugee status are those who are able to prove that they have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group. They must also show that they have left the country of their nationality because of such fear and are unable or unwilling to avail themselves of the protection of that country.<sup>6</sup>

If the applicant is denied refugee status after the first interview, the local office of the UNHCR provides him or her with a negative decision letter that contains the reasons for denying the application. The denied applicant has the right to lodge an appeal to have the negative decision reconsidered.<sup>7</sup>

## III. Rules Applicable to Admitted Refugees

Refugees who pass the Refugee Status Determination Interview are provided with a UNHCR yellow refugee card, which is stamped by the Ministry of Foreign Affairs and the Refugee Affairs section of the Ministry of Interior's Department of Migration and Citizenship. According to the Ministry of Interior's Decree No. 8180 of 1996, refugees generally receive a three-year temporary residency permit. This Decree is not being implemented, however, because of a

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<sup>3</sup> Jihad Abaza, *Employment, Detention, and Registration: On Syrian Refugees in Egypt*, DAILY NEWS: EGYPT (Apr. 7, 2015), <http://www.dailynewsegypt.com/2015/04/07/employment-detention-and-registration-on-syrian-refugees-in-egypt>, archived at <https://perma.cc/3KZJ-ZX5W>.

<sup>4</sup> Ola Noureldin, *Syrian Refugees in Egypt Despair at Dire Conditions and See Europe as Their Only Hope*, INTERNATIONAL BUSINESS TIMES (Sept. 15, 2015), <http://www.ibtimes.co.uk/syrian-refugees-egypt-despair-fellow-arabs-make-europe-their-only-hope-1520699>, archived at <http://perma.cc/X5TE-XKAX>.

<sup>5</sup> UNHCR Egypt – *Refugees Status Determination Information*, UNHCR, <http://rsd.unhcregypt.org/RefugeeInfo.aspx> (last visited Dec. 31, 2015), archived at <http://perma.cc/CE7U-LZLD>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

ministerial decision allowing them only six-month renewable residency permits. Such permits are renewable as long as the refugee “remains of concern to UNHCR.”<sup>8</sup>

#### IV. Assistance Offered to Refugees

Most refugees in Egypt, including those from Syria, are scattered in urban neighborhoods, where they rent and share accommodations. The Egyptian government provides no social benefits to refugees, other than permitting them access to education in public schools and health care in public hospitals. Any social benefits they receive are provided by Egypt’s UNHCR office. Although Egypt made a reservation to article 22, section 1 of the Refugee Convention, thereby denying refugees the right to be admitted to public schools, the Egyptian Minister of Education issued Ministerial Decree No. 24 in 1992, allowing the children of recognized refugees, which includes Syrians, to attend public schools.<sup>9</sup> However, the UN Children’s Fund, UNICEF, has stated that only 53% percent of Syrian children that are eligible to enroll in schools attend, due to the lack of sufficient kindergartens and the inability of other schools to absorb more students.<sup>10</sup>

The Egyptian Red Crescent, in cooperation with the UNHCR, provides Syrian families with cash assistance grants.<sup>11</sup> According to the UNHCR, in 2015, 15,500 refugees received such grants, including twelve thousand Syrian refugees.<sup>12</sup> These families were scored as severely vulnerable through the UNHCR’s ongoing socioeconomic/vulnerability assessment framework. Refugee families that are not currently receiving food or cash assistance and are large-sized, single-headed households or households with members suffering from a medical condition are the main recipients of those cash assistance grants.<sup>13</sup>

#### V. Security Restrictions and Hardships

Egyptian authorities have imposed some security restrictions on refugees. For instance, in July 2013, the Egyptian government required Syrians to acquire entry visas, residency documents, and work permits before entering the country.<sup>14</sup> The Ministry of Foreign Affairs announced that this decision was related to “current and temporary” security conditions.<sup>15</sup> African refugees are

<sup>8</sup> LIALA HILAL & SHAHIRA SAMI, IMMIGRATION AND ASYLUM IN THE MASHRIK 72 (Euro-Mediterranean Human Rights Network Dec. 2008), <https://ec.europa.eu/migrant-integration/index.cfm?action=media.download&uuiid=2A9339E1-E12B-E824-A57C5AEF9CF4F31D>, archived at <https://perma.cc/VWL5-AEYJ>.

<sup>9</sup> Ministerial Resolution No. 24-1992, AL-JARIDAH AL-RASMIYAH, vol. 54, 22 Jan. 1992.

<sup>10</sup> Souzan Mansour, *Egypt’s Syrian Refugees Challenged at Every Step*, THE NEW ARAB/AL-ARABY AL-JADEED (Mar. 31, 2015), <http://www.alaraby.co.uk/english/features/2015/4/1/egypts-syrian-refugees-challenged-at-every-step#sthash.dMQ2m0a2.dpuf>, archived at <http://perma.cc/P4NF-HUY9>.

<sup>11</sup> UNHCR, EGYPT: INTER-AGENCY OPERATIONAL UPDATE – SYRIAN REFUGEES IN EGYPT 3 (Apr. 2015), <https://data.unhcr.org/syrianrefugees/download.php?id=8983>, archived at <http://perma.cc/3TJ6-GYN5>.

<sup>12</sup> UNHCR GLOBAL APPEAL 2015 UPDATE: EGYPT 4 (Nov. 2014), <http://www.unhcr.org/5461e605b.html>, archived at <http://perma.cc/5R6S-X6PN>.

<sup>13</sup> UNHCR, *supra* note 11, at 3.

<sup>14</sup> Mansour, *supra* note 10.

<sup>15</sup> Hend Kortam, *New Requirements for Entry of Syrians*, DAILY NEWS: EGYPT, (July 10, 2013), <http://www.dailynewsegypt.com/2013/07/10/new-requirements-for-entry-of-syrians>, archived at <https://perma.cc/BLG5-VGG2>.



also reportedly sometimes subject to police harassment and security restrictions. In November 2015, the Center for Refugee Solidarity issued a statement condemning the targeting and violent mistreatment of Sudanese refugees by the Egyptian security agencies. In its statement, the Center urged the Egyptian authorities to refrain from random checks and arrests of African refugees and to give Sudanese nationals freedom of movement and residence, and the right to work and own property.<sup>16</sup>

Refugees also face arrest and detention by security agencies. The UNHCR reported that 3,058 had been arrested by the authorities for attempting to depart irregularly by sea between January and September 2015. Moreover, seventy-five female refugees from Ethiopia, Eritrea, Rwanda, Somalia, Sudan, and Syria are being held in detention at Al-Qanatir women's prison for allegedly possessing forged passports, being undocumented, and attempting to enter or depart irregularly from Egypt.<sup>17</sup> Additionally, African refugees who try to be smuggled into Israel face threats to their lives at the Egyptian-Israeli border. For example, in November 2015, at least fifteen Sudanese refugees were shot dead by the Egyptian security forces and eight more were injured in Egypt's Sinai region as they reportedly attempted to enter Israel.<sup>18</sup>

Many refugees reported a lack of police protection. According to a report issued by Refugee Council USA, Syrian and African refugees face regular sexual harassment and exploitation and receive no police protection, as demonstrated by the number of female refugees who are robbed, beaten, and harassed in the streets. The report also claims that when refugees attempt to report crimes to the police, they are treated with contempt and given no assistance.<sup>19</sup>

In addition to the security restrictions and poor police protection, some Syrian refugees suffer other hardships during their stay in Egypt. Many can find no other place to live except small apartments in the poor neighborhoods of Cairo, which are full of drug addicts. Landlords also reportedly charge them extortionate rents, and their children are bullied at local schools because of their Syrian accent.<sup>20</sup> Whereas Syrians refugees had initially been allowed into the country without visas, hundreds of them have been detained and deported since July 2013 for allegedly not having the proper residency paperwork to remain in Egypt.<sup>21</sup>

There is a high unemployment rate among refugees. Despite Egypt not making a reservation against articles 17 and 18 of the Refugee Convention, which protect refugees' rights to

<sup>16</sup> *Egypt: Stop Violations of Sudanese Nationals*, CENTER FOR REFUGEE SOLIDARITY (Nov. 11, 2015), <http://www.refugeesolidarity.org/news/egypt-stop-violations-of-sudanese-nationals>, archived at <http://perma.cc/X4TT-J4NW>.

<sup>17</sup> UNHCR OPERATIONAL UPDATE: EGYPT 2 (Sept. 2015), <http://www.unhcr.org/5548c50f9.html>, archived at <http://perma.cc/369W-FW4F>.

<sup>18</sup> Patrick Strickland, *Sudanese Refugees Shot Dead on Egypt-Israel Border*, AL-JAZEERA (Nov. 15, 2015), <http://www.aljazeera.com/news/2015/11/sudanese-refugees-shot-dead-egypt-israel-border-151115141929932.html>, archived at <http://perma.cc/7NLU-7V7Y>.

<sup>19</sup> REFUGEE COUNCIL USA, AT THE BREAKING POINT: REFUGEES IN JORDAN AND EGYPT 21 (2015), <http://www.rcusa.org/uploads/pdfs/At%20the%20Breaking%20Point%20-%20RCUSA%20Report%20on%20Refugees%20in%20Jordan%20and%20Egypt.pdf>, archived at <http://perma.cc/G8UC-PW6D>.

<sup>20</sup> Noureldin, *supra* note 4.

<sup>21</sup> Abaza, *supra* note 3.

employment, refugees find it difficult to obtain Egyptian work permits. Article 11 of the Ministry of Labor's Ministerial Resolution No. 390 of 1982 requires employers to prove that no Egyptian national is available to do a job before a work permit is issued to a refugee,<sup>22</sup> a legal stipulation that has created a high refugee unemployment rate. A number of refugees report spending many months looking for low-paying jobs that no Egyptian is willing to take. The high unemployment rate of Sudanese refugees from Darfur, who were transferred from the refugee camp of Al-Salloum to Cairo, is among the array of difficulties that lead them to attempt to reach Europe by sea with the help of smugglers.<sup>23</sup>

Refugees who decide to leave Egypt irregularly also risk being targeted and attacked by human traffickers. For example, Reem S., a twenty-nine-year-old Syrian refugee, stated that in August 2014, human traffickers kidnapped a refugee group in Alexandria and tortured them. According to Reem, they raped the women in the group, stole the refugees' money, and did not provide them with places on their boats as promised. The refugees did not report the traffickers to security authorities out of fear.<sup>24</sup> Likewise, human traffickers operating in the Sinai Peninsula have tortured and killed African refugees, mostly from Eritrea, who want to cross the Egyptian/Israeli border illegally.<sup>25</sup>

## VI. Legal Provisions Governing Refugees

There is no comprehensive legal instrument to deal with refugees or asylum seekers in Egypt. The Egyptian authorities have adopted a number of fragmentary domestic legislative initiatives to regulate the legal status of refugees and asylum seekers:

- The Egyptian Constitution of 2014 provides protection to refugees and asylum seekers; for instance, article 91 prohibits the extradition of political refugees.<sup>26</sup>
- Law No. 154 of 2004, amending Law No. 26 of 1975 on nationality, prohibits the children of foreigners who are born on Egyptian soil from acquiring citizenship, as Egyptian nationality is granted only on the basis of descent.<sup>27</sup>
- Law No. 104 of 1985 prevents foreign persons and companies from owning agricultural property, fertile land, or desert land in Egypt.<sup>28</sup>

<sup>22</sup> Ministerial Resolution No. 390-1982, AL-JARĪDAH AL-RASMĪYAH, 13 June 1982.

<sup>23</sup> Tom Rollins, *Suffering in Silence, Sudanese Refugees Now Migrating from Egypt*, AL-MONITOR (Aug. 2, 2015), <http://www.al-monitor.com/pulse/originals/2015/07/egypt-cairo-sudanese-refugees-sea-unhcr.html#>, archived at <http://perma.cc/8MR3-QWT4>.

<sup>24</sup> Mohamed Abdel Salam, *Egypt's Responsibility in the Mediterranean Refugee Crisis*, ATLANTIC COUNCIL (May 1, 2015), <http://www.atlanticcouncil.org/blogs/egyptsource/egypt-s-responsibility-in-the-mediterranean-refugee-crisis>, archived at <http://perma.cc/CAJ4-75YS>.

<sup>25</sup> *Egypt/Sudan: Traffickers Who Torture*, HUMAN RIGHTS WATCH (Feb. 11, 2014), <https://www.hrw.org/news/2014/02/11/egypt/sudan-traffickers-who-torture>, archived at <https://perma.cc/DL3P-D5FU>.

<sup>26</sup> EGYPTIAN CONSTITUTION OF 2012, AL-JARĪDAH AL-RASMĪYAH, 25 Dec. 2012, p. 2.

<sup>27</sup> Law No. 154-2004, AL-JARĪDAH AL-RASMĪYAH, 14 July 2004, p. 11.

<sup>28</sup> Law No. 28-2004, AL-JARĪDAH AL-RASMĪYAH, 14 July 2004, p. 2.



- Presidential Decree No. 331 of 1980 adopted the Refugee Convention as domestic law.<sup>29</sup>
- Presidential Decree No. 89 of 1960 on the Residency and Entry of Foreigners bans foreigners who do not have valid travel documents from entering the country.<sup>30</sup>
- Law No. 124 of 1958 prevents foreigners from owning agricultural land in Egyptian territory for security reasons.<sup>31</sup> However, Law No. 15 of 1963 makes Palestinian refugees an exception to the provisions of Law No. 124.

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<sup>29</sup> Presidential Decree No. 331-1980, AL-JARĪDAH AL-RASMĪYAH, 28 May 1981.

<sup>30</sup> Presidential Decree No. 89 of 1960, AL-JARĪDAH AL-RASMĪYAH, 18 Mar. 1960, available at <http://muqtafi.birzeit.edu/InterDocs/images/164.pdf>, archived at <https://perma.cc/5BKQ-9JBV>.

<sup>31</sup> Presidential Decree No. 124-1958, AL-JARĪDAH AL-RASMĪYAH, 24 Aug. 1958.

# European Union

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**SUMMARY** During the period of 2011–2014, the European Union (EU) reformed its legislation on asylum in order to achieve its overarching objective to establish a Common European Asylum System (CEAS). The refugee crisis has impeded further development of the CEAS. The Schengen system of passport-free travel throughout Europe is on the verge of collapse because of temporary border controls reinstated by a number of EU Member States. The Member States, especially countries of first entry like Greece and Italy, have faced extraordinary pressure in this crisis, severely testing their asylum systems.

The migrants who enter the EU are a mixed group composed of asylum seekers and economic migrants. Under CEAS, international protection is granted to those migrants who qualify as refugees due to a well-founded fear of persecution. Subsidiary protection status is granted to those who would face a real risk of suffering serious harm if returned to his/her country of origin. Member States are required to return illegal economic migrants to their country of origin; however, implementation of returns is difficult due to a lack of travel documents, a lack of detention facilities, and other factors.

At the core of CEAS is the right to asylum and the prohibition of *refoulement*, as guaranteed by the Charter of Fundamental Rights and the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. Both instruments bind EU Members, who must also comply with the case law of the Court of Justice of the European Union and the European Court of Human Rights (ECHR). The ECHR has held against several Member States for violating the EU's legal regime on refugees on issues of detention, status of reception facilities, and lack of legal remedies. Greece, in particular, was found by the ECHR to have “serious deficiencies” in its asylum system and Member States are prohibited from sending refugees back to Greece, as the first country of entry, in compliance with the Dublin Regulation. The Dublin system has been identified as the key structural problem of CEAS because it places an undue burden on countries of first entry.

The CEAS is composed of a number of directives and regulations that require action by the EU Member States or are directly applicable within their national legal systems. The European Commission follows closely the full and correct implementation of CEAS and has adopted many decisions related to the application of asylum rules.

During 2015, the EU sought to ensure a coordinated European response to the refugee crisis. Various EU agencies provided assistance, financing, training, and experts to the Member States to implement CEAS. The Commission also allocated over €10 billion to address the refugee crisis and assist Member States, particularly those most impacted. To ensure better security of its external borders, the EU proposed the creation of a European Border and Coast Guard with new powers and shared responsibility for the EU borders with Member States. In November 2015, the Commission signed an Action Plan with Turkey designed to reduce the migration flow entering EU through Greece.

## I. Introduction

During the period of 2011–2014 the European Union (EU) reformed the Common European Asylum System (CEAS) that was initiated in 1999. The EU was prompted to do so by a number of factors, such as an increased influx of migrants arriving at the borders; harsh conditions in reception facilities in some EU countries; a lack of uniform standards for assessing asylum applications; and vague rules contained in the Dublin Regulation<sup>1</sup> as to which EU Member is responsible for handling asylum applications. The migratory crisis threatened the very existence of the Schengen area, an area of open internal borders, with free movement of persons guaranteed to EU citizens and those legally present.<sup>2</sup> A common set of rules, as contained in the Schengen Borders Code, apply to persons at crossing points of the external borders of the EU.<sup>3</sup>

CEAS is composed of several directives and regulations, which have been recast.<sup>4</sup> It guarantees a set of common standards and requires stronger cooperation by EU Members to ensure that asylum seekers are treated fairly and equally wherever they apply.<sup>5</sup>

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<sup>1</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person (recast), 2013 O.J. (L 180) 31, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>, archived at <https://perma.cc/96R5-L8SL>.

<sup>2</sup> The Schengen area is composed of the twenty-eight EU Members, except Ireland and the United Kingdom. Bulgaria, Croatia, Romania, and Cyprus, although in the EU, are not yet full-fledged members of Schengen. In addition, four non-EU countries, Iceland, Liechtenstein, Norway, and Switzerland, also participate in the Schengen area. *Schengen Area*, EUROPEAN COMMISSION, MIGRATION AND HOME AFFAIRS, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm) (last updated Jan. 29, 2016), archived at <https://perma.cc/LE59-EMYJ>. The United Kingdom, Ireland, and Denmark have opted out of almost all EU instruments on asylum and immigration. Denmark participates in Schengen; however, it has the right to decide within six months on a proposal that constitutes a development of the Schengen acquis (Schengen existing legislation) whether it will implement the new measure into national law. Protocol No. 22 on the Position of Denmark art. 4, attached to the Treaty on the Functioning of the European Union, Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), 2012 O.J. (C 326) 47, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en>, archived at <https://perma.cc/EUD9-LUZC>.

<sup>3</sup> Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code), as amended, 2006 O.J. (L 105) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF>, archived at <https://perma.cc/LX5K-LJTD>.

<sup>4</sup> Recasting is a single new act that consolidates the previous legislative act and all the amendments made to it. The new act passes through the full legislative process and repeals all the acts being recast. *Recasting*, EUROPEAN COMMISSION, LEGAL SERVICE, [http://ec.europa.eu/dgs/legal\\_service/recasting\\_en.htm](http://ec.europa.eu/dgs/legal_service/recasting_en.htm) (last visited Feb. 29, 2016), archived at <https://perma.cc/E5EH-XK3K>.

<sup>5</sup> A 2014 report on immigration and asylum prepared by the European Migration Network highlights the changes made by the EU Member States to comply with the recast asylum legislation. EUROPEAN MIGRATION NETWORK, EMN ANNUAL REPORT ON IMMIGRATION AND ASYLUM 2014: A SYNTHESIS OF ANNUAL POLICY REPORTS 2014 SUBMITTED BY EU MEMBER STATES AND NORWAY (June 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/annual-policy/2014/00.emn\\_annual\\_report\\_on\\_immigration\\_and\\_asylum\\_synthesis\\_report.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/annual-policy/2014/00.emn_annual_report_on_immigration_and_asylum_synthesis_report.pdf), archived at <https://perma.cc/6HZD-DHSV>.

Several EU agencies, such as the European Asylum Support Office (EASO),<sup>6</sup> Europol, and Eurojust, assist the EU Members—especially those which, due to their geographic location are disproportionately affected—in handling asylum requests through various funds,<sup>7</sup> materials, and experts. In addition, the European Agency for the Management of Operational Cooperation at the External Borders, commonly known as FRONTEX, which was created in 2004 to support the EU Members through joint operations on land, air, and sea,<sup>8</sup> was recently the subject of a Commission proposal<sup>9</sup> to replace FRONTEX with a new European Border and Coast Guard Agency (EBCGA), which would have increased powers, including the right to intervene in Member States' border control functions, a monitoring and risk analysis center, and a European Return Office, in addition to increased funding and staff.<sup>10</sup>

## II. General Principles of CEAS

CEAS is based on the Geneva Convention Relating to the Status of Refugees of 1951, as amended by the New York Protocol of January 1967 Relating to the Status of Refugees.<sup>11</sup> CEAS affirms the principle of nonrefoulement, enshrined in article 33 of the Geneva Convention, under which states are prohibited from returning refugees or asylum seekers back to countries where

<sup>6</sup> Press Release, European Commission, Memo/11/415, Frequently Asked Questions: The European Asylum Support Office (EASO) (June 17, 2011), [http://europa.eu/rapid/press-release\\_MEMO-11-415\\_en.htm?locale=fr](http://europa.eu/rapid/press-release_MEMO-11-415_en.htm?locale=fr), archived at <https://perma.cc/HEG5-WMHX>.

<sup>7</sup> The Asylum, Migration and Integration Fund (AMIF) was established for the period 2014–2020, with a total of €3.137 billion (about US\$3.414 billion) for the seven years to ensure full implementation of the EU asylum system by the Member States, to assist them in their efforts to integrate third-country nationals legally staying in the EU and return illegal migrants to their countries of origin. Regulation (EU) No. 516/2014 of the European Parliament and of the Council of 16 April 2014 Establishing the Asylum, Migration and Integration Fund, Amending Council Decision 2008/381/EC and Repealing Decisions No. 573/2007/EC and No. 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, 2014 (L 150) 168, [http://ec.europa.eu/dgs/home-affairs/financing/fundings/pdf/overview/regulation\\_eu\\_no\\_5162014\\_of\\_the\\_european\\_parliament\\_and\\_of\\_the\\_council\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/financing/fundings/pdf/overview/regulation_eu_no_5162014_of_the_european_parliament_and_of_the_council_en.pdf), archived at <https://perma.cc/HS6G-DJ6J>.

<sup>8</sup> Council Regulation (EC) No. 2007/2004 of 26 October 2004 Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 2004 O.J. (L 349) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R2007&from=EN>, archived at <https://perma.cc/LD5S-LX8Z>, as amended by Regulation (EU) No. 1168/2011 of the European Parliament and of the Council of 25 October 2011 Amending Council Regulation (EC) No. 2007/2004, 2011 O.J. (L 304) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1168&from=EN>, archived at <https://perma.cc/3LYN-QXCD>.

<sup>9</sup> Commission Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and Repealing Regulation (EC) No. 2007/2004, Regulation (EC) No. 863/2007 and Council Decision 2005/267/EC, COM (2015) 671 final (Dec. 15, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation\\_on\\_the\\_european\\_border\\_and\\_coast\\_guard\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf), archived at <https://perma.cc/KW9Z-LF2W>.

<sup>10</sup> See Part XI(G), below.

<sup>11</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, 150, <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf>, archived at <https://perma.cc/A6MN-JB7K>; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, <https://treaties.un.org/doc/Publication/UNTS/Volume%20606/v606.pdf>, archived at <https://perma.cc/594H-T6U6>.

they face persecution due to race, religion, nationality, membership in a particular social group, or political opinion.<sup>12</sup>

Article 18 of the Charter of Fundamental Rights of the European Union guarantees a right to asylum based on the Geneva Convention, and article 19 contains a ban on returning a person to a country where he/she has a well-founded fear of being persecuted or faces a real risk of being tortured or subjected to inhuman or degrading treatment.<sup>13</sup>

The Court of Justice of the European Union (CJEU) ensures the correct interpretation and application of asylum law through the adoption of preliminary rulings, infringement proceedings against Member States who fail to comply with obligations laid down in EU asylum law, or actions for annulment when the legality of a provision of EU legislation is challenged. In particular, the CJEU is required to ensure the application of the Charter of Fundamental Rights of the EU, which establishes the right to asylum (art. 18) and provides for the prohibition of torture and inhuman or degrading treatment or punishment (art. 4); the right to protection in the event of removal, expulsion, or extradition (art. 19); rights of the child (art. 24); the right to good administration (art. 41); and the right to an effective remedy and a fair trial (art. 47).

Furthermore, the EU Members, as members of the Council of Europe, are also bound by Council of Europe treaties, the case law of the European Court of Human Rights (ECHR), and other ratified international agreements that may apply, such as the Convention on the Rights of the Child in the case of minors. The ECHR is competent to judge human rights violations committed by state parties of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention), including provisions such as the prohibition of inhuman or degrading treatment (art. 3), prohibition of collective expulsions (art. 4 of Protocol 4), right to liberty and security (art. 5), right to respect of family and private life (art. 8), and right to an effective remedy (art. 13). These rights remain closely related to asylum—in particular, the principle of nonrefoulement and reception/detention conditions.

### III. Arrival at the Border

#### A. Procedural Aspects

Third-country nationals who reach the EU borders, including territorial waters and transit zones,<sup>14</sup> and who wish to apply for international protection are subject to national legislation, which must comply with EU asylum legislation. Member States must guarantee the right to effectively make a claim for international protection without obstructions or undue

<sup>12</sup> The nonrefoulement principle is incorporated into EU primary law in article 78, which provides for a Common European Asylum System of the Treaty on the Functioning of the European Union. TFEU, *supra* note 2, art. 78.

<sup>13</sup> Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326) 391, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>, archived at <https://perma.cc/SU9H-GRDL>.

<sup>14</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (recast) art. 3, para. 1, 2013 O.J. (L 180) 60, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&rid=1>, archived at <https://perma.cc/3HBT-LCUG>.

delay. EU Members are allowed to adopt or retain more favorable standards as to who qualifies as a person in need of international protection and on reception conditions, as long as such rules and standards are, in general, compatible with EU rules.<sup>15</sup>

### 1. Registration

Directive 2013/32/EU on Common Procedures for Granting and Withdrawing International Protection<sup>16</sup> (the Common Procedures Directive) applies to all applications for international protection made in the EU territory, including its borders, territorial waters, or transit zones of the Member States.<sup>17</sup> It also applies to the withdrawal of international protection.

Registration of applications for international protection must be made within three days after they are filed.<sup>18</sup> The three-day deadline may be extended to an additional three days if the application is made to authorities who have no competence to effect registration. If faced with a large number of applicants who need to file for international protection, the registration deadline can be extended to ten days.<sup>19</sup> Member States must ensure that applicants are able to file their applications with the appropriate authorities.<sup>20</sup>

<sup>15</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted art. 3, 2011 O.J. ( L 337) 9, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>, archived at <https://perma.cc/EX3D-62JJ>. See also Directive 2013/32/EU, *supra* note 14, art. 5.

<sup>16</sup> Directive 2013/32/EU, *supra* note 14, art. 5.

<sup>17</sup> Sea and rescue operations involve individuals in boats seeking to enter the territorial waters of the EU Members. The maritime national authorities often engage in rescue operations for vessels in distress or push them back in other countries. In addition to international law of the sea agreements applicable in such cases, the EU Members are also bound by the nonrefoulement principle in rescue operations. The European Court of Human Rights (ECHR) has held that individuals in boats may fall within the jurisdiction of a Member State of the Council of Europe, when that Member State exercises control over them on the high seas. A case on point is *Hirsi Jamaa and Others v. Italy*, in which the Italian Coast Guard intercepted a boat with two hundred people on the high seas, but within Malta's search and rescue area. Based on a bilateral agreement between Italy and Libya the migrants were returned to Libya without having an opportunity to apply for asylum. The Court found against Italy for returning them to Libya and exposing them to ill and degrading treatment in Libya. In addition Libya did not provide adequate guarantees that these people would not be sent back to their countries of origin in Somalia and Eritrea. The ECHR reaffirmed that the fact that the applicants did not ask for asylum or mention the dangers they faced in Libya due to the lack of an asylum process did not free Italy from its obligations under article 3 of the European Convention on Human Rights and Fundamental Freedoms. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, HANDBOOK ON EUROPEAN LAW RELATING TO ASYLUM, BORDERS AND IMMIGRATION 38 (2014), [http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded\\_en.pdf](http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded_en.pdf), archived at <https://perma.cc/R3ZP-U473>. See also EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, FUNDAMENTAL RIGHTS AT EUROPE'S SOUTHERN SEA BORDERS § 2.2 (2013), [http://fra.europa.eu/sites/default/files/fundamental-rights-europes-southern-sea-borders-jul-13\\_en.pdf](http://fra.europa.eu/sites/default/files/fundamental-rights-europes-southern-sea-borders-jul-13_en.pdf), archived at <https://perma.cc/4Q5A-JEPK>.

<sup>18</sup> Directive 2013/32/EU, *supra* note 14, art. 6, para. 1.

<sup>19</sup> *Id.* art. 6, para. 5.

<sup>20</sup> *Id.* art. 6, para. 2.

“International protection” is defined as a request made by a third-country national or a stateless person who seeks refugee status or subsidiary protection.<sup>21</sup>

The Common Procedures Directive requires EU Member States to designate personnel who are well-equipped to handle all incoming requests.<sup>22</sup> In addition, staff must be well-trained under the guidelines and training developed of the European Asylum Support Office (EASO); for example, they must be aware that interviewees may have difficulty speaking about their case due to torture.<sup>23</sup> Member States must ensure that the examination procedure is concluded within a six-month deadline from the time the application was submitted.<sup>24</sup>

Member States may designate another national authority to be responsible for processing a case, based on the Dublin Regulation, or for granting or refusing permission to enter.<sup>25</sup>

## 2. Fingerprinting

The EURODAC Regulation, which became applicable July 20, 2015, established a computerized, encrypted, and centralized fingerprint database for asylum seekers and irregular border crossers known as EURODAC (for “European Dactyloscopy”), which consists of a Central Unit and a communications infrastructure between the Central System and Member States.<sup>26</sup> Designated authorities, such as the law enforcement authorities of the Member States who are responsible for the prevention, detection, or investigation of terrorist offenses or other serious criminal offenses, are authorized to request comparison of fingerprinting through EURODAC.

Pursuant to the EURODAC Regulation, Member States are required to take the fingerprints of all fingers of every applicant for international protection who is at least fourteen years of age. The competent national authorities must, as soon as possible and no later than seventy-two hours after the lodging of an application for international protection, forward the fingerprints together with certain specified data to the Central System.<sup>27</sup> In the event that the seventy-two-hour deadline has passed, Member States are still required to submit the fingerprints of applicants.

<sup>21</sup> *Id.* art. 2(i); Directive 2011/95/EU, *supra* note 15, art. 2(a).

<sup>22</sup> Directive 2013/32/EU, *supra* note 14, art. 4, para. 1.

<sup>23</sup> *Id.* art. 4, para. 3.

<sup>24</sup> *Id.* art. 31, para. 3.

<sup>25</sup> *Id.* art. 4, para. 2.

<sup>26</sup> Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the Establishment of ‘Eurodac’ for the Comparison of Fingerprints for the Effective Application of Regulation (EU) No. 604/2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person and on Requests for the Comparison with Eurodac Data by Member States’ Law Enforcement Authorities and Europol for Law Enforcement Purposes, and Amending Regulation (EU) No. 1077/2011 Establishing a European Agency for the Operational Management of Large-scale IT Systems in the Area of Freedom, Security and Justice (EURODAC Regulation), 2013 O.J. (L 180) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0603&from=EN>, archived at <https://perma.cc/UJK5-VKF9>.

<sup>27</sup> *Id.* art. 9, para. 1.



In addition, Member States are required to take the fingerprints of all fingers of every third-country national or stateless person who is at least fourteen years of age who is apprehended by border patrol authorities in connection with an irregular crossing by land, sea, or air of the border of that Member State.<sup>28</sup>

In addition to fingerprinting, other information added to EURODAC includes Member State of origin and information on any application for international protection.<sup>29</sup>

The EURODAC system is used by the competent authorities of the Member States to verify whether a third-country national or a stateless person who is illegally within its territory has filed an application for international protection in another Member State.<sup>30</sup> For this purpose, a Member State may transmit to the Central System any fingerprint data and, through a reasoned electronic request, ask for a comparison with fingerprints already in the system.<sup>31</sup>

### *3. Allocation of Responsibility for Asylum Claim: The Dublin Regulation*

Pursuant to article 3(1) of the Dublin Regulation 604/2013 (recast) (Dublin Regulation) the EU Member States must examine any application for international protection lodged by a third-country national or a stateless person and such application must be examined by one single Member State. The Dublin Regulation is binding on Member States and Norway, Iceland, Liechtenstein, and Switzerland.<sup>32</sup>

The Dublin Regulation covers applications for international protection lodged as of January 1, 2014, and all requests to take back applicants for international protection or take charge in case a Member State wishes to review an application irrespective of criteria after January 1, 2014. An amended Dublin Implementing Regulation was adopted by the Commission on January 2014 and took effect in February 2014.<sup>33</sup>

The Dublin Regulation lays down the criteria and ways to determine which Member State of the European Union is responsible for reviewing an application for international protection.<sup>34</sup> The

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<sup>28</sup> *Id.* art. 14, para. 1.

<sup>29</sup> *Id.* art. 11.

<sup>30</sup> *Id.* art. 17, para. 1.

<sup>31</sup> *Id.* arts. 17, 19.

<sup>32</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person (recast), 2013 O.J. (L 180) 31, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>, archived at <https://perma.cc/96R5-L8SL>.

<sup>33</sup> Commission Implementing Regulation (EU) No. 118/2014 of 30 January 2014 Amending Regulation (EC) No. 1560/2003 Laying Down Detailed Rules for the Application of Council Regulation (EC) No. 343/2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-country National, 2014 O.J. (L 39) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:039:0001:0043:EN:PDF>, archived at <https://perma.cc/J7ZP-BW3P>.

<sup>34</sup> Regulation (EU) No. 604/2013, *supra* note 32, arts. 7, 8, 12 & 13.



criteria that are to be applied, in hierarchical order, are (a) the existence of a family in a Member State; (b) having a visa or residence permit in a Member State; and (c) entry into a Member State, whether illegally or not.<sup>35</sup> They are designed to prevent the circumstance of one individual abusing the system by filing applications in more than one Member State, and to avoid having people sent from one Member State to another by national authorities.

The application must be examined by a single Member State which, based on the criteria established, is the Member State responsible. If, based on the criteria listed above, no Member State can be designated as responsible, then, by default, the first Member State in which the application for international protection was lodged must take responsibility for examining it.<sup>36</sup>

Based on a discretionary clause in the Dublin Regulation, each Member State is permitted to examine an application for international protection, even if the criteria for determining responsibility have not been met. In such a case, that Member State must notify the Member States concerned through the DubliNet electronic communications network.<sup>37</sup>

The Dublin Regulation established an Early Warning Mechanism to prevent pressure on the asylum systems of Member States which encounter problems due to a large number of incoming migrants.<sup>38</sup> In such a case, the Commission in order to avert a danger to the application of the Dublin Regulation, in cooperation with the EASO will prepare a preventive action plan for the Member State facing difficulties in its asylum system.<sup>39</sup> The Member State concerned must report back to the Commission on actions taken on the basis of the action plan.

There are specific provisions in the Dublin regulation and in other instruments of the CEAS concerning unaccompanied minors entering the EU. Family reunification and the best interests of the child are the primary concerns. The Commission was prompted to amend the rules of the 2013 Dublin Regulation because of a large number of unaccompanied minors entering the EU beginning in 2014 and continuing in 2015, and in order to comply with a relevant decision of the European Court of Justice issued in 2013.<sup>40</sup> The Court ruled that when an accompanied minor has filed an asylum application in more than one state, the Member State responsible for reviewing the asylum application is the one where the minor is located and has filed an

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* art. 3, paras. 1 & 2.

<sup>37</sup> *Id.* art. 17.

<sup>38</sup> *Id.* art. 33.

<sup>39</sup> *Id.*

<sup>40</sup> Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EU) No. 604/2013 as regards Determining the Member State Responsible for Examining the Application for International Protection of Unaccompanied Minors with No Family Member, Sibling or Relative Legally Present in a Member State, COM (2014) 382 final, <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-382-EN-F1-1.Pdf>, archived at <https://perma.cc/PK35-M5HK>.

application. For this to apply, no member of the minor's family may be legally present in another Member State.<sup>41</sup>

#### 4. *Personal Interview*

An applicant is subject to a personal interview by a person who is competent under national law to conduct interviews.<sup>42</sup> In the case a large influx of migrants applying at the same time, Member States may designate personnel from another national authority to temporarily conduct interviews.<sup>43</sup> Interviews are to be conducted in conditions that ensure confidentiality and without the presence of family members.<sup>44</sup> The authority that conducts the interview on the substance of an application for international protection must provide the applicant with sufficient time to present evidence to substantiate his/her application.<sup>45</sup>

#### 5. *Medical Examination*

A medical examination can be ordered, with the applicant's consent and paid by public funds, if the determining authority deems the examination necessary to confirm past persecution or serious harm.<sup>46</sup>

### **B. Substantive Rights**

#### 1. *Access to Legal Information*

During the first-instance procedure, Member States are required to provide legal and procedural information in a language that a person understands, free of charge. In the event of a negative decision, national authorities also provide information regarding the right of appeal.<sup>47</sup>

Member States must ensure that applicants have the opportunity to seek legal assistance at their own cost on issues related to their application, including in the case of a negative decision.

EU Members must ensure that applicants for international protection enjoy the following guarantees: (a) be informed in a language they understand of their rights and obligations during the procedure and receive the services of an interpreter, if necessary; (b) be given an opportunity to communicate with the United Nations High Commissioner for Refugees or other organization

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<sup>41</sup> Press Release No. 71/13, Court of Justice of the European Union, Case C-648/11 MA, BT, DA v. Secretary of State for the Home Department (June 6, 2013), <http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130071en.pdf>, archived at <https://perma.cc/675M-V4LA>.

<sup>42</sup> Directive 2013/32/EU, *supra* note 14, art. 14, para. 1.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* art. 15, paras. 1 & 2.

<sup>45</sup> *Id.* art. 16.

<sup>46</sup> *Id.* art. 18, para. 1.

<sup>47</sup> Regulation (EU) No. 604/2013, *supra* note 32, art. 2, paras. 1 & 2.

that provides legal assistance; and (c) be given notice of the decision of the determining authority within a reasonable time and the results of the decision.

## *2. Right to an Effective Remedy*

Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy to everyone. According to article 46 of the Common Asylum Procedures Directive, European Union law requires that asylum seekers must have the right to request a review of a negative asylum decision before a court or tribunal in the case of (a) an unfounded negative decision on the applicant's application for international protection; (b) a decision that the application is inadmissible; (c) a decision to withdraw international protection; and (d) a decision taken at the borders or in a transit zone.<sup>48</sup>

## *3. Right to Remain in the Member State*

Applicants have the right to remain in the Member State where they applied until the competent authority decides on the case. However, the right to remain does not entitle the applicant to a residence permit.<sup>49</sup>

## *4. Freedom of Movement*

Member States must allow applicants to move freely within their territory, or within an area assigned to them, and give them permission to leave the assigned area.<sup>50</sup>

## *5. Material Reception and Health Care*

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 requires EU Members to provide “material reception conditions” (i.e., housing, food, clothing) and health care to ensure an adequate standard of living and to guarantee the physical and mental welfare of applicants for international protection.<sup>51</sup> The health care provided must include at a minimum emergency care and treatment of sickness and serious mental disorders.<sup>52</sup> Member States must ensure that applicants receive necessary health care, which must include at a minimum emergency care and the essential treatment of illnesses and serious mental disorders.

EU Members have the discretion to make the availability of material reception conditions and health care conditional on the lack of sufficient means by the applicants to secure for themselves an adequate standard of living.<sup>53</sup> The material reception conditions may be provided in kind, in

<sup>48</sup> Directive 2013/32/EU, *supra* note 14, art. 3, para. 1.

<sup>49</sup> *Id.* art. 9, para. 1.

<sup>50</sup> *Id.* art. 7, para. 1.

<sup>51</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection, 2013 O.J. (L 180) 96, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>, archived at <https://perma.cc/H6EY-BE5B>.

<sup>52</sup> *Id.* art. 19.

<sup>53</sup> *Id.* art. 17, paras. 1–3.

the form of vouchers, or via financial allowances, or by a combination of the three, including a daily expenses allowance.<sup>54</sup> They also have the freedom to require that applicants cover or contribute to the material conditions and health care costs, if applicants are financially able to do so.<sup>55</sup> Where housing is provided, it could be in the form of accommodation centers or premises used for the examination of applicants during border procedures, or even apartments, houses, or hotels converted to house applicants.<sup>56</sup> When housing applicants, Member States must take into consideration applicants' age and gender, and the needs of vulnerable people.<sup>57</sup>

## 6. *Schooling and Education for Minors*

Member States are obliged to give the minor children of applicants and applicants who are minors access to the state educational system under similar conditions as their own nationals within three months from the date the application was made.<sup>58</sup> National authorities must provide preparatory classes, including language classes, to minors where necessary to facilitate their participation in education.<sup>59</sup>

## 7. *Employment and Vocational Training*

Member States are required to provide applicants access to the labor market no later than nine months from the date when the application for international protection was made.<sup>60</sup> The conditions for access must be in compliance with national law. Applicants must also have access to vocational training irrespective of whether they have access to the labor market.<sup>61</sup>

## 8. *Guarantees for Detained Applicants*

In general, the detention of applicants seeking international protection is not allowed; Member States must consider alternatives to detention, where possible, in accordance with national law. However, such applicants may be detained on the following specific grounds: (a) to verify the applicant's nationality or identity; (b) to determine aspects on which the application for international protection was based; (c) to review whether the applicant has the right to enter the territory of a Member State; (d) where the applicant is subject to a return procedure; or (e) to protect national security or public order.<sup>62</sup> The detention of applicants must be ordered in writing by the appropriate judicial or administrative authorities, stating the grounds for detention,

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<sup>54</sup> *Id.* art. 2(g).

<sup>55</sup> *Id.* art. 17, para. 4.

<sup>56</sup> *Id.* art. 18, para. 1.

<sup>57</sup> *Id.* art. 18, para. 3.

<sup>58</sup> *Id.* art. 14.

<sup>59</sup> *Id.* art. 14, paras. 1 & 2.

<sup>60</sup> *Id.* art. 15.

<sup>61</sup> *Id.* art. 16.

<sup>62</sup> *Id.* art. 8.

and must be as short as possible.<sup>63</sup> When detention is ordered by administrative authorities, it is subject to judicial review.<sup>64</sup> Regardless of the authority that ordered it, the detention decision is subject to judicial review at reasonable intervals, either at the request of the applicant or *ex officio*.<sup>65</sup> Moreover, applicants must have free access to legal representation and legal assistance.<sup>66</sup> Member States may make such free access conditional on the lack of financial resources of the detained applicant and, with regard to legal services, may limit it to legal services designated for that purpose under national law.<sup>67</sup>

## IV. Qualifications for International Protection

### A. Requirements

Applications for international protection submitted by third-country nationals or stateless persons are governed by Directive 2011/95/EU, which establishes common standards to grant international protection to those who qualify.<sup>68</sup> Applicants must provide all documentation available and any statements made to the appropriate authorities, including information as to whether the applicant has been subjected, or may be subjected, to persecution or harm.<sup>69</sup> The Directive allows for the possibility that an applicant may claim that he or she has a well-founded fear of being persecuted or a real risk of suffering serious harm for events that occurred after the applicant left the country of origin.<sup>70</sup>

The authorities must assess on a case-by-case basis whether an applicant for international protection is a refugee within the meaning of article 1(a) of the Geneva Convention or a person eligible for subsidiary protection.

Pursuant to the Directive, persecution can be committed by the state, parties or organizations controlling the state, or parties or organizations having under their control a substantial part of the territory. It may also include non-state actors if they cannot or are unwilling to protect victims of persecution.<sup>71</sup>

The principle of nonrefoulement is not absolute. Under certain circumstances, a person, whether formally recognized or not, may be removed from the EU territory, if he/she poses a threat to the

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<sup>63</sup> *Id.* art. 9, paras. 1 & 2.

<sup>64</sup> *Id.* art. 9, para. 3.

<sup>65</sup> *Id.* art. 9, para. 5.

<sup>66</sup> *Id.* art. 9, para. 6.

<sup>67</sup> *Id.* art. 9, para. 7(a) & (b).

<sup>68</sup> Directive 2011/95/EU, *supra* note 15 (applicable as of Dec. 21, 2013).

<sup>69</sup> *Id.* art. 4, paras. 1 & 3(b).

<sup>70</sup> *Id.* art. 5, paras. 3–5.

<sup>71</sup> *Id.* art. 6.

security of an EU Member State, or if he/she is deemed a threat to the host country after the commission of a crime.<sup>72</sup>

### *1. Refugee Status*

To be granted refugee status, an applicant must meet the following criteria:

- Face a well-founded fear of persecution.
- The grounds for persecution must be related to the applicant's race, religion, nationality, or membership in a particular social group.
- A causal link must exist between the well-founded fear of persecution on the grounds of one's race, religion, nationality, political opinion, or membership in a particular social group and the acts of persecution.<sup>73</sup>
- The acts of persecution may take a variety of forms, such as physical or mental violence, including sexual violence, and in the case of a minor may also include acts of a gender-specific or child-specific nature.<sup>74</sup>

### *2. Subsidiary Protection Status*

In order to grant subsidiary protection status, there must be substantial grounds to believe that an applicant who does not otherwise qualify for refugee status would face a real risk of suffering serious harm if returned to his/her country of origin. The qualification for subsidiary protection from a "real risk of suffering serious harm" includes the death penalty or execution, torture or other inhuman or degrading treatment or punishment, or a serious and individualized threat to the minor due to violence in the case of internal armed conflict.<sup>75</sup>

The applicant must provide information pertaining to his/her age, background, country of origin, relatives, travel documents (if any), and reasons for applying for international protection.<sup>76</sup> Each application is examined individually.

## **B. Rights Granted to Refugees and to Persons Given Subsidiary Protection Status**

Applicants, after being granted refugee status or subsidiary protection, must be given information about their rights and obligations arising from obtaining a new status. Member States are obliged to retain family unity.<sup>77</sup> Member States are required to provide the following entitlements to those who are given refugee status or subsidiary protection:

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<sup>72</sup> *Id.* arts. 17 & 21.

<sup>73</sup> *Id.* art. 9, para. 3.

<sup>74</sup> *Id.* art. 9(a) & (c).

<sup>75</sup> *Id.* art. 15.

<sup>76</sup> *Id.* art. 4, para. 2.

<sup>77</sup> *Id.* art. 23.

### *1. Residence Permit*

Those who are accorded refugee status must be given a residence permit valid for three years, which can be renewed.<sup>78</sup> Those accorded subsidiary protection receive a renewable residence permit valid for one year.<sup>79</sup>

### *2. Travel Documents*

Travel documents are given to refugees to enable them to travel outside the territory of the host country, unless there are security reasons or public order concerns that require otherwise.<sup>80</sup> Those who are granted subsidiary protection status and who are unable to obtain a national passport are given documents for the purpose of traveling outside the country.<sup>81</sup>

### *3. Access to Employment*

Member States must authorize refugees and those with subsidiary protection status access to be employed or self-employed, subject to rules generally applicable to the profession and to public service, immediately after they are granted refugee status.<sup>82</sup> Refugees must be paid in accordance with the applicable laws on remuneration and have access to social security systems relating to employed or self-employed activities and other conditions of employment.<sup>83</sup>

### *4. Education*

All minors who have been given international protection must have full access to the education system, under the same conditions as nationals.<sup>84</sup> Adults must be given access to the general education system, training, or retraining, under the same conditions as third-country nationals who are legal residents.<sup>85</sup>

### *5. Social Welfare and Health Care*

Individuals who are granted international protection must receive in the Member State that has granted such protection necessary social assistance comparable to that received by nationals of the Member State.<sup>86</sup> Member States are free to limit the social assistance granted to core

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<sup>78</sup> *Id.* art. 24, para. 1.

<sup>79</sup> *Id.* art. 24, para. 2.

<sup>80</sup> *Id.* art. 25, para. 1.

<sup>81</sup> *Id.* art. 25, para. 2.

<sup>82</sup> *Id.* art. 26, para. 1.

<sup>83</sup> *Id.* art. 26, para. 4.

<sup>84</sup> *Id.* art. 27, para. 1.

<sup>85</sup> *Id.* art. 27, para. 2.

<sup>86</sup> *Id.* art. 29, para. 1.

benefits, which will then be provided at the same level and under the same eligibility conditions as apply to nationals.<sup>87</sup>

Such individuals must also have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted protection.<sup>88</sup>

## V. Long-Term Status Granted to Refugees

Directive 2011/51/EU allows refugees and beneficiaries of international protection to be able to acquire long-term resident status on a similar basis as other third-country nationals legally living in the EU for more than five years.<sup>89</sup> Member States had to comply by 2013. The UK, Ireland, and Denmark did not take part in the application of this Directive and they are not bound by it. After five years, those accorded long-term status will be able to enjoy freedom of movement within the EU and the right to become a resident in another Member State. Under certain conditions, they will also enjoy equality of treatment with citizens of the EU Member State in which they reside in a wide range of economic and social matters. These include education, access to the labor market, and social security benefits.

## VI. Temporary Protection in the Case of a Mass Influx of Displaced Persons

Council Directive 2001/55/EC establishes minimum standards for temporary protection to be applied in the case of a large influx of displaced persons from third countries who cannot return to their countries of origin.<sup>90</sup> The Directive is designed to come into play in grave situations of unrest in a particular country—for instance, when due to armed conflict or endemic violence people are at serious risk of, or have been the victims of, “systematic or generalised violations of their human rights.”<sup>91</sup>

Immediate and temporary protection is given to avoid overburdening the asylum system of countries and to ensure the smooth operation of such systems during a crisis.<sup>92</sup> The duration of temporary protection is one year, with the possibility of extending it to a maximum of an additional year.<sup>93</sup> EU Members are required to provide medical and other support for people

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<sup>87</sup> *Id.* art. 29, para. 2.

<sup>88</sup> *Id.* art. 30.

<sup>89</sup> Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 Amending Council Directive 2003/109/EC to Extend Its Scope to Beneficiaries of International Protection Text with EEA Relevance, 2011 O.J. (L 132) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0051>, archived at <https://perma.cc/FV7F-AMJR>.

<sup>90</sup> Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 2001 O.J. (L 212) 12, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=en>, archived at <https://perma.cc/8M28-9BNH>.

<sup>91</sup> *Id.* art. 2(c).

<sup>92</sup> *Id.* art. 2(a).

<sup>93</sup> *Id.* art. 4(1).



with special needs, such as minors or those who have been subjected to rape, torture, or other physical or psychological abuse.<sup>94</sup> Minors under the age of eighteen must also have access to the education system of the host country.<sup>95</sup> Persons under temporary protection must have access to apply for asylum at any time.<sup>96</sup> After temporary protection has ended, the national laws on aliens of the EU Members becomes applicable.<sup>97</sup> The individual EU Members are responsible for taking measures to ensure the voluntary return of persons.<sup>98</sup>

## VII. Court Cases

Even though there is no right to asylum as such under the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention on Human Rights), which binds all EU Members, the European Court of Human Rights has dealt with a large number of cases involving asylum seekers whose human rights have been violated—for example, for maltreatment while being kept in detention centers or in reception facilities. The Court has also examined whether national authorities, by sending back individuals seeking asylum, put those asylum seekers at risk of being tortured or subjected to inhuman or degrading treatment or punishment, which is contrary to article 3 of the Convention on Human Rights. In such cases, national authorities can be found guilty for violating the human rights of the asylum seekers. This particular issue was dealt with favorably for the asylum seekers in the case of *Hirsi Jamaa and Others v. Italy*, which involved persons intercepted in international waters.<sup>99</sup>

Another illustrative case, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, involved the two-month detention at a Brussels airport transit center intended for adults of a five-year-old child traveling unaccompanied to join her mother, who had obtained refugee status in Canada. No one was assigned to represent or counsel the child. The ECHR found a violation of article 3, which prohibits inhuman and degrading treatment under the Convention on Human Rights. The Court took into account the fact that the child was in great distress because of her very tender age, that she was alone in a foreign land, and that the Belgian authorities ignored their obligation to take care of her, and determined that any measures taken by Belgian authorities were inadequate.<sup>100</sup>

The case of *M.S.S. v. Belgium and Greece* involved living conditions in reception centers in Greece. An Afghan national entered the EU through Greece and then went to Belgium, where he applied for asylum. On the basis of the Dublin Regulation he was sent back to Greece as the first

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<sup>94</sup> *Id.* art. 13(4).

<sup>95</sup> *Id.* art. 14(1).

<sup>96</sup> *Id.* art. 17(1).

<sup>97</sup> *Id.* art. 20.

<sup>98</sup> *Id.* art. 21(1).

<sup>99</sup> HANDBOOK ON EUROPEAN LAW RELATING TO ASYLUM, BORDERS AND IMMIGRATION, *supra* note 17, at 38 (discussing *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09 (ECHR Feb. 23, 2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231>, archived at <https://perma.cc/5FXC-C6T2>). See also case discussion, *supra* note 17.

<sup>100</sup> Case of *Mubilanzila Mayeka & Kaniki Mitunga v. Belgium*, App. No. 13178/03 (ECHR Oct. 12, 2006), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-77447>, archived at <https://perma.cc/7XAE-DTDL>.

country of entry into the EU. There he was kept in detention in a small room with twenty other detainees with limited access to restroom facilities. The Grand Chamber of the ECHR in 2011 found that Greece violated article 3 of the Convention on Human Rights, as well as article 13, on the right to an effective remedy, because of flaws in Greece's asylum procedures. It found that Belgium violated article 3, because the applicant's transfer to Greece exposed him to harsh living conditions and to flawed Greek asylum procedures.<sup>101</sup>

The case of *Conka v. Belgium*<sup>102</sup> involved four applicants, a couple and their two minor children of Roma origin who had fled their country of origin, Slovakia, because of violence and threats directed at them by skinheads, from whom the police refused to protect them. Their subsequent application for asylum in Belgium was declared inadmissible for lack of sufficient evidence to qualify them as refugees, and the family was ordered to leave the country within five days. Before the ECHR, the applicants asserted a violation of Protocol 4, article 4, of the Convention on Human Rights, which prohibits the collective expulsion of aliens.<sup>103</sup> The ECHR reviewed the applicable domestic law, including a guidance document on immigration policy approved by the government in the aftermath of a large number of asylum seekers from Slovakia. The Note contained the following statement:

A plan for collective repatriation is currently under review, both to send a signal to the Slovakian authorities and to deport this large number of illegal immigrants whose presence can no longer be tolerated.<sup>104</sup>

The ECHR reaffirmed the definition of collective expulsion as including any measure that orders aliens as a group to leave a country, without "reasonable and objective examination of the particular case of each individual alien of the group."<sup>105</sup> The Court found that authorities had announced that deportations would take place and had given instructions and orders to that effect, and that the applicants were deprived of the opportunity to contact a lawyer.<sup>106</sup> Based on these grounds, the ECHR found a violation of Protocol 4, article 4.<sup>107</sup>

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<sup>101</sup> Grand Chamber Decision, Case of *M.S.S. v. Belgium and Greece*, App. No. 30696/09 (ECHR Jan. 21, 2011), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>, archived at <https://perma.cc/P9GT-HTBU>.

<sup>102</sup> Case of *Čonka v. Belgium*, App. No. 51564/99 (ECHR final judgment, May 5, 2002), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60026>, archived at <https://perma.cc/Q59T-F3TU>.

<sup>103</sup> Protocol No. 4 to the European Convention on Human Rights, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), archived at <https://perma.cc/XGA9-FACR>.

<sup>104</sup> Case of *Čonka v. Belgium* para. 31.

<sup>105</sup> *Id.* para. 59.

<sup>106</sup> *Id.* para. 62.

<sup>107</sup> *Id.* para. 63.

## VIII. Return Proceedings

### A. Returns Directive

All migrants who are illegally present in the EU and who are not in the process of obtaining an authorization to stay must be deported. Under the Returns Directive,<sup>108</sup> EU Members are obliged to regularize illegal migrants who meet the requirements or to issue a “return decision.”<sup>109</sup> Return decisions, which can be administrative or judicial, declare the stay in the EU illegal and order that the person concerned leave the EU. Return decisions must contain a period for voluntary departure of between seven and thirty days.<sup>110</sup> When an illegally present third-country national overstays the period for voluntary return, or when no such period was set, an administrative or judicial order can be issued to effect a removal.<sup>111</sup>

Return decisions are not automatic, since the Directive provides a number of exceptions to the rule. For instance, Member States may not issue a return decision under bilateral agreements to accept the return of third-country nationals.<sup>112</sup> In addition, EU Members may issue an autonomous residence permit or other authorization to a third-country national who stays illegally in their territory based on compassionate or humanitarian reasons, or for other reasons.<sup>113</sup>

Return decisions must be accompanied by an entry ban in two instances: (a) if no period for voluntary departure has been granted, or (b) if the obligation to return has not been complied with. In other cases return decisions may be accompanied by an entry ban.<sup>114</sup> In October 2015, the CJEU determined that Directive 2008/115/EC does not preclude a Member State from imposing criminal sanctions on illegal migrants who re-enter its territory, following a deportation order and a prohibition on their re-entry.<sup>115</sup>

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<sup>108</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals, 2008 O.J. (L 348) 98, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0115>, archived at <https://perma.cc/UL6R-AC9R>.

<sup>109</sup> *Id.* art. 6, para. 1.

<sup>110</sup> *Id.* art. 7, para. 1.

<sup>111</sup> *Id.* art. 8.

<sup>112</sup> *Id.* art. 6, para. 3.

<sup>113</sup> *Id.* art. 6, para. 4.

<sup>114</sup> *Id.* art. 11, para. 1.

<sup>115</sup> Case of C-290/14, para. 33 (Eur. Ct. J., Oct. 1, 2015), <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d5872e494c631a42ad8665de6bd433cfc6.e34KaxiLc3eQc40LaxqMbN4Och8Re0?text=&docid=168941&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=841053>, archived at <https://perma.cc/VS3F-Z8W6>.

## B. Readmission Agreements

Even though, under international law, third countries are required to readmit their nationals, the EU experiences difficulties in implementing its return policy. There are a number of readmission agreements between the Member States and the EU that become operational when a return decision has been issued by national authorities.<sup>116</sup> These agreements set forth the reciprocal obligations of the parties involved to take back their own nationals or third-country nationals who transit through their respective territories.<sup>117</sup> So far, the EU has concluded seventeen readmission agreements with third countries, and others are being negotiated.<sup>118</sup>

Currently, the EU focuses on certain third countries that have a low level of admitting their nationals and with whom negotiations to conclude readmission agreements progress very slowly. The EU has identified Algeria and Morocco in this category. On the other hand, the readmission agreement with Pakistan has not been properly implemented, due to lack of cooperation by Pakistani authorities.<sup>119</sup>

## IX. Resettlement

Resettlement is deemed an integral part of CEAS. In June 2015, the Commission came up with a Recommendation to resettle 22,504 persons who are in third countries and need international protection.<sup>120</sup> Implementation will begin after the High Commissioner for Refugees makes a referral and will extend for a period of two years. The following EU Members have made pledges to resettle refugees: Belgium (123), Czech Republic (16), Ireland (163), Italy (96), the Netherlands (220), the United Kingdom (1,000), Liechtenstein (20), and Switzerland (387).<sup>121</sup> The Commission intends to propose an EU-wide resettlement initiative by April 2016.<sup>122</sup>

As noted below, the Asylum, Migration and Integration Fund provides some financial support to Member States to assist them with resettlement of refugees.

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<sup>116</sup> *Return and Readmission, Common Rules for Managing the Return of Irregular Migrants*, EUROPEAN COMMISSION, MIGRATION & HOME AFFAIRS, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission/index_en.htm) (last updated May 6, 2015), archived at <http://perma.cc/B28F-F6VL>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions Under the European Agenda on Migration*, COM (2016) 85 final (Feb. 10, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf), archived at <https://perma.cc/S577-U2HM>.

<sup>120</sup> *Commission Recommendation of 8.6.2015 on a European Resettlement Scheme*, COM (2015) 3560 final (June 8, 2015), [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/recommendation\\_on\\_a\\_european\\_resettlement\\_scheme\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/recommendation_on_a_european_resettlement_scheme_en.pdf), archived at <https://perma.cc/Y86W-V574>.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

## X. Financial Instruments

A number of EU financial programs provide assistance to EU Members in dealing with asylum procedures and the reintegration or return of minors to their country of origin:

- The European Fund for the Integration of Third-Country Nationals provides for the integration of third-country nationals who reside legally in the EU with the objective to achieve economic and social cohesion.<sup>123</sup>
- The EU provides assistance to the EU Members to return illegal migrants to their country of origin through the European Return Fund (ERF). During the period of 2008–2013, the ERF provided more than €600 million (about US\$802 million). The ERF covers specific expenditures connected with the return of unaccompanied minors, such as the cost of travel and food for returnees, information on return, family reunification in the country of origin, and other matters. The ERF can also be used to implement the Returns Directive.<sup>124</sup>
- The Asylum, Migration and Integration Fund (AMIF), adopted on April 16, 2014, runs until 2020 and replaces three funds—the ERF, the European Fund for the Integration of third-country nationals, and the European Return Fund. With a current budget of €3.137 billion, AMIF provides support such as material aid, education, training, special assistance for vulnerable persons, health and psychological care, assistance with judicial matters, and assistance with national resettlement programs. For the period between 2014 and 2020 the AMIF will spend a total of €3.137 billion on asylum, migration, and integration of third-country nationals in the EU. The European Parliament intends to request that the Court of Auditors oversee the expenditure of funds by the Member States.
- The assistance provided by the EU to littoral states, such as Greece, Italy and Malta, who receive the majority of illegal migrants due to their geographic proximity to the sea and based on the Dublin Regulation as the first countries of entry, has been criticized as inadequate relative to the amount spent by those countries.<sup>125</sup>

## XI. Measures to Respond to Refugee Crisis

On September 9, 2015, the European Commission adopted a Communication that contains short- and long-term measures to address the current migrant crisis, to assist countries of entry through the creation of “hotspots,” and to address the root causes of irregular migration. The concrete operational, budgetary, and legal proposals are annexed to the Commission’s Communication

<sup>123</sup> Council Decision 2007/435/EC of 25 June 2007 Establishing the European Fund for the Integration of Third-country Nationals for the Period 2007 to 2013 as Part of the General Program ‘Solidarity and Management of Migration Flows,’ 2007 O.J. (L 168) 18, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0435&rid=2>, archived at <https://perma.cc/3WKS-MXJH>.

<sup>124</sup> *Return Fund*, EUROPEAN COMMISSION, MIGRATION & HOME AFFAIRS, [http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/return-fund/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/return-fund/index_en.htm) (last updated June 20, 2014), archived at <https://perma.cc/MDU8-6SUM>.

<sup>125</sup> See, e.g., *Europe’s Huddled Masses: Rich Countries Must Take on More of the Migration Burden*, THE ECONOMIST (Aug. 16, 2014), <http://www.economist.com/news/leaders/21612152-rich-countries-must-take-more-migration-burden-europes-huddled-masses> (registration required).

and were published on the same date.<sup>126</sup> On February 10, 2016, the Commission followed up on the status of implementation with the adoption of a Communication on the State of Play of Implementation of the Priority Actions Under the European Agenda on Migration.<sup>127</sup> The most significant measures contained in these Communications are highlighted below.

### A. Creation of “Hot Spot” Areas

The Commission recommended that Greece and Italy, because of the extraordinary pressure on their borders from migratory inflows, create “hotspot” areas, to be able to expand reception capacities for proper registration and fingerprinting of refugees. The Commission cited as examples the areas of Sicily and Lampedusa in Italy and the islands of Lesbos and Kos in Greece. These hotspots are where most migrants have been entering the EU during the current crisis.<sup>128</sup> The Commission also recommended that the EU provide operational support to Italy and Greece through the EU Agencies FRONTEX, the European Asylum Support Office, and Europol, to ensure that migrants are registered and to prevent them from moving to other Member States without registration. As the Commission pointed out in its 2016 Communication, only three hotspots are fully operational—one in Greece and two in Italy.<sup>129</sup> The Greek government promised to render the other hotspot areas fully operational as soon as possible.<sup>130</sup>

### B. Temporary Relocation Plan

On September 22, 2015, the EU Justice and Home Affairs Council adopted a relocation plan in order to improve the situation of those EU Member States, such as Greece and Italy, that have been most affected.<sup>131</sup> The plan to relocate 120,000 people was strongly opposed by the Czech Republic, Hungary, and Slovakia. Poland initially was against it, but finally endorsed the decision. In the initial proposal, the Commission had also included Hungary as a third country to benefit from the relocation proposal by relocating 54,000 people in need of international protection; however, Hungary refused to participate.<sup>132</sup>

<sup>126</sup> *Communication to the European Parliament, the European Council and the Council, Managing the Refugee Crisis: Immediate Operational, Budgetary and Legal Measures Under the European Agenda on Migration*, COM (2015) 490 final (Sept. 9, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication\\_on\\_managing\\_the\\_refugee\\_crisis\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_on_managing_the_refugee_crisis_en.pdf), archived at <https://perma.cc/2WD4-LX7Q>.

<sup>127</sup> *Communication on the State of Play*, COM (2016) 85 final, *supra* note 119, at 8.

<sup>128</sup> *Id.*, Annex II: Migration Management Support Teams Working in ‘Hotspot’ Areas (Sept. 23, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication\\_on\\_managing\\_the\\_refugee\\_crisis\\_annex\\_2\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_on_managing_the_refugee_crisis_annex_2_en.pdf), archived at <https://perma.cc/CY5T-7LZE>.

<sup>129</sup> *Communication on the State of Play*, COM (2016) 85 final, *supra* note 119, at 8.

<sup>130</sup> *Id.* at 9.

<sup>131</sup> Council Decision (EU) 2015/1601 of 22 September 2015 Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece, 2015 O.J. (L 248) 80, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN>, archived at <https://perma.cc/Z3HA-YH6M>.

<sup>132</sup> Eszter Zalan, *Hungary Rejects EU Offer to Take Refugees*, EU OBSERVER (Sept. 11, 2015), <https://euobserver.com/migration/130217>, archived at <https://perma.cc/K9ET-3P57>.



The 120,000 persons who would be relocated are in addition to the 40,000 for whom relocation was already proposed in May 2015, for a total number of 160,000. The decision provides that 66,000 persons will be relocated from Italy and Greece (15,600 from Italy and 50,400 from Greece). The remaining 54,000 persons will be relocated from Italy and Greece in the same proportion one year after the entry into force of the decision.<sup>133</sup> The relocation would be carried out pursuant to a mandatory distribution scheme based on the following proportional criteria: 40% on the size of the jurisdiction's population, 40% on GDP, 10% on past acceptance of asylum applications, and 10% on the unemployment rate.<sup>134</sup>

Slovakia and Hungary filed court proceedings against the EU plan. On December 2, 2015, Slovakia initiated legal action before the CJEU.<sup>135</sup> The Prime Minister of Slovakia, Robert Fico, said he wanted the CJEU to declare the EU's mandatory quota invalid, characterizing the plan as "nonsensical and technically impossible."<sup>136</sup> Hungary filed a similar lawsuit.<sup>137</sup>

The Commission noted that implementation of relocation moves very slowly. As of February 8, 2016, only 218 people had been relocated from Greece, and 279 from Italy. Five Member States have not yet made any places available for relocation.<sup>138</sup>

### C. Creation of a Permanent Relocation Mechanism for All EU Member States

The Commission has proposed a crisis relocation mechanism designed to apply in emergency situations when a Member State encounters a migration crisis. The Commission will define when a particular situation meets the criteria for activation of the mechanism, based on the number of asylum applications any Member State has received during the past six months and on the number of irregular crossings of refugees into national territory during the same period. The mechanism will take under consideration the needs of asylum seekers, their family situation, and their skills.<sup>139</sup>

<sup>133</sup> *Id.*

<sup>134</sup> For a chart indicating the commitments of EU Members to accept refugees from Greece and Italy, see the Annex to the *Communication on the State of Play*, COM (2016) 85 final, *supra* note 119.

<sup>135</sup> Case C-643/15, Slovak Republic v. Council of the European Union (Eur. Ct. J., Dec. 2, 2015), <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d5bfe9bd2434cc41a2bccaf8e2e6e72e1f.e34KaxiLc3eQc40LaxqMbN4OchaKe0?text=&docid=173998&pageIndex=0&doclang=en&mode=doc&dir=&occ=first&cid=955203>, archived at <https://perma.cc/FAT5-P4HJ>.

<sup>136</sup> Hans von der Burchard & Jacopo Barigazzi, *Slovakia Files Lawsuit Against EU's Refugee Relocation*, POLITICO (Dec. 2, 2015), <http://www.politico.eu/article/slovakia-files-lawsuit-against-eus-refugee-relocation-september>, archived at <https://perma.cc/4VDA-HBPV>.

<sup>137</sup> Case C-647/15, Hungary v. Council of the European Union (Eur. Ct. J., Dec. 3, 2015), <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d5bfe9bd2434cc41a2bccaf8e2e6e72e1f.e34KaxiLc3eQc40LaxqMbN4OchaKe0?text=&docid=174029&pageIndex=0&doclang=en&mode=doc&dir=&occ=first&cid=955203>, archived at <https://perma.cc/8ENF-Z9LM>.

<sup>138</sup> *Communication on the State of Play*, COM (2016) 85 final, *supra* note 119, at 11.

<sup>139</sup> *Proposal for a Regulation of the European Parliament and of the Council, Establishing a Crisis Relocation Mechanism and Amending Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third Country National or a*

## D. Adoption of a Common European List of Safe Countries of Origin

The Commission plans to introduce a regulation on a common list of safe countries of origin to enable a faster application process for requests for asylum that originate from such countries.<sup>140</sup> The safe countries of origin concept means that asylum seekers from such countries will be subject to accelerated border procedures and their asylum requests will be denied. The criteria for establishing a country as “safe” include ratification of major human rights treaties; conformity with the Copenhagen political criteria, such as being a democracy and in compliance with the rule of law; noninvolvement in armed conflict; and nonapplication of torture or degrading treatment as forms of punishment. The Commission has recognized the countries of Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia, and Turkey as safe countries.<sup>141</sup>

Currently, EU law does not contain an EU common list of safe countries of origin. Many of the Member States have established their own list of countries considered to be safe.<sup>142</sup>

## E. Formulation of a Return Policy

The current EU system concerning the return of migrants who illegally stay in the EU to their countries of origin has been described by the European Commission as ineffective. The Commission estimates that in 2014, less than 40% of the total number of return decisions issued by Member States was enforced. In September 2015, the Commission presented an EU Action Plan on Return in an effort to address the underlying reasons for this, including ways to increase the acceptance of the standard travel document for the expulsion of third-country nationals.<sup>143</sup> The Commission has found that the lack of valid travel documents issued by the country of destination of the returnee is the main barrier to successful return. Currently, a substitute travel document (*laissez passer*) for return purposes is being used by the Member States; however, it is

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*Stateless Person*, COM (2015) 450 final (Sept. 9, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal\\_for\\_regulation\\_of\\_ep\\_and\\_council\\_establishing\\_a\\_crisis\\_relocation\\_mechanism\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_ep_and_council_establishing_a_crisis_relocation_mechanism_en.pdf), archived at <https://perma.cc/2EUK-T7PV>.

<sup>140</sup> *Regulation of the European Parliament and of the Council, Establishing an EU Common List of Safe Countries of Origin for the Purposes of Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection, and Amending Directive 2013/32/EU*, COM (2015) 452 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0452:FIN>, archived at <https://perma.cc/M6X6-6NG3>.

<sup>141</sup> *An EU ‘Safe Countries of Origin’ List*, EUROPEAN COMMISSION, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2\\_eu\\_safe\\_countries\\_of\\_origin\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf) (last visited Feb. 29, 2016), archived at <https://perma.cc/7YJG-DEHK>.

<sup>142</sup> *Id.*

<sup>143</sup> *Communication from the European Commission to the European Parliament and to the Council, EU Action Plan on Return*, COM (2015) 453 final (Sept. 9, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication\\_from\\_the\\_ec\\_to\\_ep\\_and\\_council\\_-\\_eu\\_action\\_plan\\_on\\_return\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf), archived at <https://perma.cc/T2PL-ZKAD>.



not being accepted by destination countries, due to its unsatisfactory security features and standards.<sup>144</sup>

On December 15, 2015, the Commission, in order to facilitate the return of those illegally present in the EU, proposed a new Regulation on a European travel document to effectuate the return of third-country nationals who stay illegally in the EU.<sup>145</sup> The proposal aims to harmonize the format and technical specifications of a European travel document.<sup>146</sup> The travel document will be in the language of the issuing Member State and translated into English and French.<sup>147</sup>

The Commission recommends that any readmission agreement concluded between the EU and third countries or bilateral agreements between the Member States and third countries should include in their clauses the recognition of the European travel document for return.

The Commission has drafted a common Return Handbook,<sup>148</sup> which clarifies the procedures and standards that must be followed by national authorities responsible for return, such as the police, border guards, migration authorities, and staff of detention facilities and monitoring bodies.

## F. Agreement with Turkey

In November 2015, the European Union and Turkey agreed on an Action Plan to increase cooperation and coordinate of their actions on the refugee crisis, and to reduce the huge flow of immigrants who enter the EU through Turkey. The Action Plan contains short- and long-term measures to tackle the refugee crisis. Its twin objectives are to support the refugees and their host communities in Turkey and to boost cooperation to reduce migratory flows from Turkey.<sup>149</sup> The European Commission announced €3 billion in assistance would be provided Turkey to

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<sup>144</sup> *Id.* at 2.

<sup>145</sup> *Commission Proposal for a Regulation of the European Parliament and of the Council on a European Travel Document for the Return of Illegally Staying Third-country Nationals*, COM (2015) 668 final (Dec. 15, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/european\\_travel\\_document\\_for\\_the\\_return\\_of\\_illegally\\_staying\\_third-country\\_nationals\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/european_travel_document_for_the_return_of_illegally_staying_third-country_nationals_en.pdf), archived at <https://perma.cc/7X47-96V7>.

<sup>146</sup> *Id.* art. 3.

<sup>147</sup> *Id.*

<sup>148</sup> *Commission Recommendation Establishing a Common “Return Handbook” to be Used by Member States’ Competent Authorities When Carrying out Return Related Tasks*, COM (2015) 6250 final (Oct. 1, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/commission\\_recommendation\\_establishing\\_a\\_return\\_handbook\\_for\\_member\\_states\\_competent\\_authorities\\_to\\_deal\\_with\\_return\\_related\\_tasks\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/commission_recommendation_establishing_a_return_handbook_for_member_states_competent_authorities_to_deal_with_return_related_tasks_en.pdf), archived at <https://perma.cc/6F4F-5XMW>; Annex: Return Handbook, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return\\_handbook\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf), archived at <https://perma.cc/8YXX-VEWN>.

<sup>149</sup> *Communication on the State of Play*, COM (2016) 85 final, *supra* note 119, Annex 1, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_annex\\_01\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_01_en.pdf), archived at <https://perma.cc/ZXJ3-W6LG>.

deliver support to migrants in Turkey, and a legal framework, called the “Refugee Facility for Turkey,” would be established to coordinate and streamline the actions being financed.<sup>150</sup>

To date Turkey has provided a significant amount of humanitarian assistance, amounting to nearly €6.7 billion (about US\$7.65 billion), to refugees coming from Syria and Iraq. The number of asylum seekers who have reached Turkey is now about 2.58 million and Turkey has given them temporary status.<sup>151</sup> The EU continues to provide immediate assistance in Turkey. Since the beginning of the crisis, an overall amount of €365 million from the EU budget has been provided to directly support Syrian refugees and Turkish host communities.<sup>152</sup>

The EU has assumed a number of obligations, such as

- providing an additional €1 billion (about US\$1.14 billion) for the period 2015–2016 to help Turkey handle the challenges it faces, with certain activities being given high priority, such as humanitarian assistance; offers of legal, administrative, and psychological support; and measures related to the employment and education of refugees;
- providing Turkey additional funds from the EU Regional Trust Fund for Syria and Iraq;
- continuing assistance to Syrian refugees who are in Lebanon, Jordan, and Iraq, and to Syrians who are internally displaced, in order to eliminate the “push factors,” such as internal conflict, poverty, and civil war that force people to leave their countries; and
- supporting resettlement schemes and programs in the EU and its Member States, with the objective of assisting refugees located in Turkey to enter the EU in a regulated and efficient way.<sup>153</sup>

For its part, Turkey has assumed a number of responsibilities, such as

- implementing its laws on foreigners and those in need of international protection through the adoption of regulatory legislation;
- ensuring that migrants are registered and given appropriate documents;
- ensuring that asylum requests, once they are recognized, are completed within a short time; and

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<sup>150</sup> Press Release, European Commission, EU-Turkey Cooperation: A €3 Billion Refugee Facility for Turkey (Nov. 24, 2015), [http://europa.eu/rapid/press-release\\_IP-15-6162\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6162_en.htm), archived at <https://perma.cc/G877-3EPB>.

<sup>151</sup> For statistical data of asylum seekers reaching EU from Turkey, see Annex 1 to the *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration EU-Turkey Joint Action Plan – Implementation Report, EU-Turkey Joint Action Plan: Implementation Report, Period: 17 December 2015 to 31 January 2016*, COM (2016) 85 final (Feb. 10, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_annex\\_01\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_01_en.pdf), archived at <https://perma.cc/6V3N-PWRS>.

<sup>152</sup> *Id.* at 5.

<sup>153</sup> *Id.* at 8.

- implementing policies to assist refugees to integrate into society and to promptly identify and provide care for vulnerable people, such as children or victims of trafficking.<sup>154</sup>

The two parties have also agreed to apply measures towards a visa liberalization dialogue, and the readmission agreement between Turkey and the EU. The visa liberalization dialogue aims to work towards the elimination of the visa obligations currently imposed on Turkish citizens traveling to the Schengen area for short-term visits.<sup>155</sup> The visa-free regime with Turkey presupposes, *inter alia*, the full implementation of the readmission agreement, which entered into force on October 1, 2014, and provides for the return of each party's nationals who reside illegally in the EU or Turkey to their respective countries.

On February 3, 2016, the Member States agreed on how to finance the €3 billion EU refugee facility for Turkey, with €1 billion of this amount to be financed from the EU budget and the remaining €2 billion by contributions from the Member States according to their share in the EU gross national income (GNI).<sup>156</sup> This agreement puts into practice the November 2015 commitment to provide €3 billion additional resources to assist Turkey in addressing the immediate humanitarian and development needs of refugees and their host communities, including food, health services, and education.<sup>157</sup>

In March 2016, because the number of illegal migrants reaching Greece from Turkey has remained very high, the European Council and the Prime Minister of Turkey held discussions regarding the following proposals:

- The return of all new illegal migrants coming to the Greek islands from Turkey;
- For every Syrian readmitted by Turkey from the Greek islands, resettling another Syrian from Turkey to the EU Member States;
- Accelerating the implementation of the visa liberalization roadmap with all Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016;

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<sup>154</sup> *Id.* at 6.

<sup>155</sup> Press Release, Delegation of the European Commission to Turkey, Cecilia Malmström Signs the Readmission Agreement and Launches the Visa Liberalisation Dialogue with Turkey, <http://www.avrupa.info.tr/resource-centre/news-archive/news-single-view/article/cecilia-malmstroem-signs-the-readmission-agreement-and-launches-the-visa-liberalisation-dialogue-wit.html> (last visited Feb. 29, 2016), archived at <https://perma.cc/WX39-6VQ7>.

<sup>156</sup> Press Release, Council of the EU, Refugee Facility for Turkey: Member States Agree on Details of Financing (Feb. 3, 2016), <http://www.consilium.europa.eu/en/press/press-releases/2016/02/03-refugee-facility-for-turkey>, archived at <https://perma.cc/V47R-D97X>.

<sup>157</sup> *Id.*

- Facilitating earlier disbursement of the initially allocated 3 billion euros and decide on additional funding for the Refugee Facility for Syrians; and
- Opening new chapters in the accession negotiations as soon as possible.<sup>158</sup>

## **G. New European Border and Coast Guard**

### *1. Proposal for a Regulation to Establish a European Border and Coast Guard*

Since there is no EU Coast Guard, EU Members are in charge of managing their external borders, which also constitute the EU's borders based on the Schengen Borders Code. The EU provides financial support to such Member States. In 2004, FRONTEX was established to promote cooperation and coordination between the national border guard authorities through joint operations.

On December 15, 2015, the European Commission adopted a proposal for a Regulation to Establish a European Border and Coast Guard (EBCG), designed to ensure shared European management of the external borders of the European Union. The proposal must be approved by the European Parliament and the Council of the European Union. The proposal would establish a European Border and Coast Guard Agency (EBCGA), which would replace FRONTEX and have increased powers. The EBCGA would share responsibility with national authorities responsible for border management; the EBCGA and the national border authorities together would constitute the EBCG.<sup>159</sup> The Commission was prompted to take swift action due to the refugee crisis, which brought to the forefront the need to improve the security of the EU's external borders. The migrant crisis also demonstrated that FRONTEX, which had a limited mandate in supporting the Member States to secure their external borders, has inadequate staff and equipment and lacks the authority to conduct border management operations and search-and-rescue efforts.

The legal grounds for the proposal are article 77, paragraph 2(b) and (d), and article 79, paragraph 2(c), of the Treaty on the Functioning of the European Union. Article 77 grants competence to the EU to adopt legislation on a “gradual introduction of an integrated management system for external borders,” and article 79 authorizes the EU to enact legislation concerning the repatriation of third-country nationals residing illegally within the EU.<sup>160</sup>

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<sup>158</sup> *Statement of the EU Heads of State or Government, 07/03/2016*, EUROPEAN COUNCIL (Mar. 7, 2016), <http://www.consilium.europa.eu/en/meetings/international-summit/2016/03/07/>, archived at <https://perma.cc/VSP2-S39R>.

<sup>159</sup> *Commission Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and Repealing Regulation (EC) No. 2007/2004, Regulation (EC) No. 863/2007 and Council Decision 2005/267/EC*, COM (2015) 671 final (Dec. 15, 2015), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation\\_on\\_the\\_european\\_border\\_and\\_coast\\_guard\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf), archived at <https://perma.cc/YFE4-JWM9>.

<sup>160</sup> TFEU, *supra* note 2.

## 2. Powers of the Proposed EBCG

Under the proposal, the EU and the Member States would share responsibility in securing the external borders of the EU. The EBCG would unite the EBCGA and the Member States' authorities responsible for border management, including coast guards. National authorities would continue to exercise the day-to-day management of their respective external borders.

The EBCGA's enhanced features would include the following elements:

- The right to intervene. Member States would be able to request joint operations, rapid border interventions, and deployment of the EBCG Teams to support national authorities when a Member State experiences an influx of migrants that endangers the Schengen area. In such a case, especially when a Member State's action is not sufficient to handle the crisis, the Commission would have the authority to adopt an implementing decision on whether a situation at an external border requires urgent action at the EU level. Based on this decision, the EBCGA would be able to intervene and deploy EBCG Teams to undertake necessary measures.
- A Monitoring and Risk Analysis Center. The proposed Center would be authorized to carry out mandatory vulnerability assessments concerning the capacities of the Member States to face current or upcoming challenges at their external borders.
- A European Return Office. The proposed European Return Office would enable the deployment of European Return Intervention Teams composed of escorts, monitors, and return specialists to return illegally present third-country nationals. These nationals would be given a uniform European travel document for return. The Office would also establish and deploy EBCG Teams for joint operations and rapid border interventions, as needed.

## 3. Funding

To enable the EBCGA to complete its tasks, its budget would be gradually increased from the €143 million originally planned for FRONTEX in 2015 to €238 million in 2016, €281 million in 2017, and €322 million (about US\$350 million) by 2020. The Agency would gradually increase its staff members from 402 in 2016 to 1,000 by 2020.<sup>161</sup>

## 4. Member State Perspectives

The right to intervene is a point of contention between a number of EU Members and the Commission, especially those Members whose borders form the external borders of the EU, such as Cyprus, Greece, Hungary, Italy, and Poland. These countries want to ensure that intervention by the proposed EBCGA would be possible only with the consent of the affected Member

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<sup>161</sup> Press Release, European Commission, European Agenda on Migration: Securing Europe's External Borders (Dec. 15, 2015), [http://europa.eu/rapid/press-release\\_MEMO-15-6332\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-6332_en.htm), archived at <https://perma.cc/GA2J-QL4Z>.

States.<sup>162</sup> A Greek Minister stated that while Greece is supportive of a common European action and of changing FRONTEX's mandate, it wants the EBCGA to take complete charge of migration and refugee flows.<sup>163</sup> As the proposal goes through the legislative process, discussions are likely to be contentious.

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<sup>162</sup> Sarantis Michalopoulos, *Greek Minister: New EU Border Force Should Assume Full Control of Refugees*, EURACTIV.COM (Dec. 18, 2015), <http://www.euractiv.com/section/justice-home-affairs/interview/greek-minister-new-eu-border-force-should-assume-full-control-of-refugees/>, archived at <https://perma.cc/P8EC-36DX>.

<sup>163</sup> *Id.*

# Finland

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**SUMMARY** Finland accepts “quota refugees” through a relocation program administered by the UNHCR as well as asylum applications from individuals arriving at its borders. Persons who seek asylum status receive cash benefits, schooling, and health care provided by the government. Persons who are granted asylum receive social services from the local municipality where they live.

An asylum seeker can gain Finnish citizenship after four years as a continuous resident followed by five years as a permanent resident of Finland. Before attaining continuous residency an asylum seeker receives temporary residency of varying duration.

By the fall of 2015 the number of asylum seekers in Finland had increased nearly tenfold from 2014 levels, from 3,600 for all of 2014 to over 30,000 between January and November of 2015. Because the largest increase was seen among Iraqi citizens, the Finnish government was prompted to negotiate a repatriation agreement with Iraq.

## I. General Background

Asylum is regulated in Finland’s Aliens Act<sup>1</sup> and in special legislation that prescribes how asylum seekers should be treated while they await a decision.<sup>2</sup>

### A. Categories of Asylum Seekers

#### 1. Refugees

Finland has acceded to the 1951 Geneva Convention Relating to the Status of Refugees (and its protocol). The Convention defines a refugee as someone who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>3</sup> The country receives quota

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<sup>1</sup> UTLÄNNINGSLAG [ALIENS ACT], FINLANDS FÖRFATTNINGSSAMLING [FFS] 30.4.2004/301, <http://www.finlex.fi/sv/laki/ajantasa/2004/20040301>, archived at <https://perma.cc/WG4T-GCKB>.

<sup>2</sup> LAG OM MOTTAGANDE AV PERSONER SOM SÖKER INTERNATIONELLT SKYDD OCH OM IDENTIFIERING AV OCH HJÄLP TILL OFFER FÖR MÄNNISKOHANDEL [ACT ON THE RECEPTION OF PERSONS WHO SEEK INTERNATIONAL PROTECTION AND ON IDENTIFICATION OF AND HELP FOR VICTIMS OF HUMAN TRAFFICKING], FFS 17.6.2011/746, <http://www.finlex.fi/sv/laki/ajantasa/2011/20110746>, archived at <https://perma.cc/DKZ7-NDUA>.

<sup>3</sup> Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, <http://www.unhcr.org/3b66c2aa10.pdf>, archived at <http://perma.cc/K3X4-FA37>; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, <http://www.unhcr.org/4dac37d79.html>, archived at <https://perma.cc/6YUE->



refugees (a set number of refugees as decided by Parliament)<sup>4</sup> for relocation through the UN High Commissioner for Refugees (UNHCR) system.<sup>5</sup> Historically, Finland has accepted some 750 quota refugees per year through the UNHCR program.<sup>6</sup> In 2014 and 2015 Finland welcomed 1,050 quota refugees per year.<sup>7</sup> The Finnish Parliament decides how many quota refugees Finland will accept annually.<sup>8</sup> Quota refugees receive nonpermanent, so-called “continuous” resident permits of four years, which can be extended.<sup>9</sup> In addition to receiving quota refugees, the country provides for receiving persons requesting asylum upon arriving in Finland.<sup>10</sup>

## 2. *Persons in Need of Subsidiary Protection*

In addition to UNHCR refugees, Finland also grants asylum to persons seeking subsidiary protective status (alternative protection).<sup>11</sup> A person in need of subsidiary protective status is defined as a person who “is subject to a real risk of serious injury if he or she is sent back to his or her home country or country of permanent domicile, and he or she cannot or because of that risk does not want to avail him or herself of that country’s protection.”<sup>12</sup> “Serious injury” is defined as (1) the death penalty or execution, (2) torture or other treatment or punishment that is inhumane or degrades human life, or (3) serious or personal risk that stems from indiscriminate violence in connection with an international or internal armed conflict.<sup>13</sup>

An asylum seeker must be refused permanent residence under subsidiary protection if there is a well-founded reason to suspect that he or she has committed “[c]rimes against peace, war crimes or crimes against humanity as defined in international conventions; a serious crime; or an act that violates the purposes and principals of the United Nations.”<sup>14</sup>

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<sup>7</sup>NU8. However, Finland provides special most favorable treatment for Nordic Citizens. See Convention Relating to the Status of Refugees, *supra*, ch. 2, Declarations and Reservations: Finland, <http://www.unhcr.org/3d9abe177.html>, archived at [perma.cc/V7Q9-2KGU](https://perma.cc/V7Q9-2KGU).

<sup>4</sup> *Kvotflyktingar*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, [http://www.migri.fi/asyl\\_i\\_finland/kvotflyktingar](http://www.migri.fi/asyl_i_finland/kvotflyktingar) (last visited Dec. 15, 2015), archived at <https://perma.cc/R73A-CY5W>.

<sup>5</sup> 87 § ALIENS ACT.

<sup>6</sup> *Kvotflyktingar*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Schematisk bild – Valet av Kvotflyktingar*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET (Jan. 29, 2013), [http://www.migri.fi/download/15969\\_kiintopakolaiset\\_sve.pdf?bee50e0652b8d288](http://www.migri.fi/download/15969_kiintopakolaiset_sve.pdf?bee50e0652b8d288), archived at <https://perma.cc/QW4N-RECK>.

<sup>10</sup> See section II.A.2, *infra*.

<sup>11</sup> 88 § ALIENS ACT.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*



Persons may receive residence permits because of a need for subsidiary protection despite not meeting the criteria to be considered *bona fide* refugees.<sup>15</sup>

### 3. *Persons in Need of Humanitarian Protection*

Asylum seekers who do not qualify for asylum as refugees or persons in need of subsidiary protection may still receive asylum in Finland on the grounds of humanitarian protection.<sup>16</sup> Humanitarian protection is given to persons who do not qualify as refugees or persons in need of alternative protection, but who cannot return to their home country due to an environmental catastrophe, a violent conflict, or a serious situation threatening human rights.<sup>17</sup>

## B. Ground for Refusing Asylum

All asylum categories are subject to limitations. Asylum cannot be granted in any category to a person who has committed the following crimes:<sup>18</sup> war crimes, crimes against peace, and crimes against humanity or crimes that violate the purpose of the UN Conventions.<sup>19</sup> Finland also refuses refugee status to anyone who can be helped by a UN agency other than the UNHCR.<sup>20</sup>

In addition, a person who has a legal residence in a safe place will not be granted asylum, and an asylum seeker must seek refuge within his or her own country if that country has safe areas.<sup>21</sup> Finland does not have a pre-approved list of safe countries; each case is considered on its own. For example, areas of Afghanistan are now considered generally safe for people seeking alternative protection as of December 8, 2015.<sup>22</sup>

Although a person might not qualify for protective status because he or she has committed crimes in Finland, it may still be impossible to deport him or her.<sup>23</sup> In certain instances deportation violates the UN Convention, at other times Finnish law.<sup>24</sup> Regardless, such an individual only receives a residence permit, which is valid for one year at a time; refugee status

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* 88a §.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* 87, 88, 88a §§.

<sup>19</sup> *Id.* 88a §.

<sup>20</sup> *Id.* 87§.

<sup>21</sup> *Id.* 88e §.

<sup>22</sup> Press Release, Maahanmuuttovirasto/Migrationsverket, Alla personer från södra och östra Afghanistan beviljas inte längre alternativt skydd (Dec. 8, 2015), [http://www.migri.fi/for\\_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/alla\\_personer\\_fran\\_sodra\\_och\\_ostra\\_afghanistan\\_beviljas\\_inte\\_langre\\_alternativt\\_skydd\\_64227](http://www.migri.fi/for_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/alla_personer_fran_sodra_och_ostra_afghanistan_beviljas_inte_langre_alternativt_skydd_64227), archived at <https://perma.cc/M2EW-VENK>.

<sup>23</sup> Press Release, Maahanmuuttovirasto/Migrationsverket, Brottslingar avlägsnas alltid ur landet då lagen tillåter detta (Dec. 7, 2015), [http://www.migri.fi/for\\_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/brottslingar\\_avlagsnas\\_alltid\\_ur\\_landet\\_da\\_lagen\\_tillater\\_detta\\_64205](http://www.migri.fi/for_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/brottslingar_avlagsnas_alltid_ur_landet_da_lagen_tillater_detta_64205), archived at <https://perma.cc/S3VC-7BEQ>.

<sup>24</sup> *Id.*

can later be reexamined and the person deported when there is less of a risk associated with sending the person back to his or her country of origin.<sup>25</sup>

## II. Application Process

Asylum can only be sought in person in Finland or through the UNHCR quota refugee system.

### A. Screening Procedures

#### 1. Screening of Quota Refugees

The UNHCR screens and recommends refugees for relocation to Finland, Finland receives documentation, and the UNHCR allows Finnish representatives to interview the refugees at UNHCR refugee camps prior to accepting them.<sup>26</sup> The Finnish Security Police has a role in reviewing the documents and the identities of the intended refugees.<sup>27</sup> Emergency refugees who, as determined by the UNHCR, are in dire need of relocation are not interviewed prior to arriving in Finland.<sup>28</sup>

#### 2. Screening of Asylum Seekers at the Border

Asylum seekers arriving in Finland are interviewed by the police and have their fingerprints taken.<sup>29</sup> Thereafter an application is lodged and the asylum seeker can either find housing on his or her own,<sup>30</sup> or is assigned housing by the state.<sup>31</sup>

The Migration Agency first determines if Finland is the correct country to hear an asylum application from the individual by researching whether that person should be sent back to another European Union (EU) Member State under the Dublin Regulations or if the person has a legal residence in another safe country.<sup>32</sup> Once the Migration Agency determines that it should hear the application an interview takes place, after which an analysis of the totality of the circumstances is carried out and a decision made.<sup>33</sup> In early 2015 (before the current migration crisis) the average processing time for asylum applications was 157 days.<sup>34</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Schematisk bild – Valet av Kvotflyktingar*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, *supra* note 9.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Ansökan om asyl*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, [http://www.migri.fi/asyl\\_i\\_finland/ansokan\\_om\\_asyl](http://www.migri.fi/asyl_i_finland/ansokan_om_asyl) (last visited Dec. 15, 2015), archived at <https://perma.cc/R99A-F9XN>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Sökanden får en uppskattning av behandlingstiden för en asylansökan vid asylsamtalet*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET (May 5, 2015), <http://www.migri.fi/tjanster/behandlingstider/>

## B. Determining Whether a Person Is a *Bona Fide* Asylum Seeker

A bona fide asylum seeker is someone who meets the criteria of refugee under the Convention Relating to the Status of Refugees.<sup>35</sup> The UNHCR makes a determination concerning all refugees received under the UNHCR relocation program.<sup>36</sup> Government employees at the Finnish Immigration Service make the determination of refugee status for all other asylum seekers.

Finland carries out background checks on all asylum seekers.<sup>37</sup> It also analyses whether the asylum seeker could have sought refuge within his or her home country.<sup>38</sup>

Finland also carries out medical testing to determine the age of asylum seekers.<sup>39</sup> Consent is required but refusal of consent results in the person automatically being considered eighteen years of age or older.<sup>40</sup>

## C. Large Groups

Finnish law allows for special treatment of asylum seekers when a mass immigration is taking place.<sup>41</sup> This includes housing asylum seekers in special housing centers as well as allowing the government ministers to issue regulations directing where (in what municipalities) such housing should be set up.<sup>42</sup>

## D. Family Reunification

A person must have been granted asylum before he or she can apply for family reunification.<sup>43</sup> Family reunification is possible for legal guardians, spouses, and children under the age of

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[behandlingstider internationellt skydd/1/0/sokanden far en uppskattning av behandlingstiden for en asylansokan vid asylsamtale 54132](#), archived at <https://perma.cc/HQW3-U863>.

<sup>35</sup> Convention Relating to the Status of Refugees art. 1(A)(2), *supra* note 3.

<sup>36</sup> *Schematisk bild – Valet av Kvotflyktingar*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, *supra* note 9.

<sup>37</sup> *Information for Asylum Seekers*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET (last visited Jan. 7, 2015), [http://www.migri.fi/download/16435\\_tietoa\\_tphakijalle\\_eng.pdf?c52056de9bf5d288](http://www.migri.fi/download/16435_tietoa_tphakijalle_eng.pdf?c52056de9bf5d288), archived at <https://perma.cc/QBE3-ZY37>.

<sup>38</sup> Press Release, Maahanmuuttovirasto/Migrationsverket, *supra* note 22.

<sup>39</sup> 6 a§ ALIENS ACT.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* 133 §.

<sup>42</sup> 12 § ACT ON THE RECEPTION OF PERSONS WHO SEEK INTERNATIONAL PROTECTION AND ON IDENTIFICATION OF AND HELP FOR VICTIMS OF HUMAN TRAFFICKING, 17.6.2011/746, <http://www.finlex.fi/sv/laki/ajantasa/2011/20110746>, archived at <https://perma.cc/DKZ7-NDUA>.

<sup>43</sup> *Uppehållstillstånd för familjen kan ansökas först efter beslut om asylansökan*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET (Nov. 2, 2015), [http://www.migri.fi/tjanster/kundmeddelanden/1/0/uppehallstillstand\\_for\\_familjen\\_kan\\_ansokas\\_forst\\_etter\\_beslut\\_om\\_asylansokan\\_63407](http://www.migri.fi/tjanster/kundmeddelanden/1/0/uppehallstillstand_for_familjen_kan_ansokas_forst_etter_beslut_om_asylansokan_63407), archived at <https://perma.cc/CXA3-D3BQ>.

eighteen.<sup>44</sup> Family reunification is also possible in rare cases for other family members who are dependent on an asylum seeker who has been granted residence.<sup>45</sup> Proof of financial capacity to care for one's family members is not required for the reunification of immediate family members.<sup>46</sup>

Family members of quota refugees (see Part I(A)(1), above) receive compensation for the cost of travel to Finland associated with bringing the family member to Finland.<sup>47</sup> Family members of other groups who have received international protection in Finland do not receive any monetary help to facilitate family reunification.<sup>48</sup>

Family reunification can be refused in cases where there is reason to believe that a person has received legal status by providing false information to the authorities.<sup>49</sup>

### III. Benefits

#### A. Monetary Benefits

Asylum seekers arriving in Finland receive a monthly cash benefit.<sup>50</sup> The benefit is meant to cover such things as the cost of clothing, minor health care expenses, and personal expenses such as telephone service.<sup>51</sup> The amount is contingent on whether the asylum seeker receives free meals at the government-assigned housing.<sup>52</sup> The amount is adjusted for inflation to keep benefits at the same level as it was in the base year of 2010.<sup>53</sup> At that time singles received a monthly benefit of €85 if meals were received for free at their housing facility and €290 if no free meals were received;<sup>54</sup> spouses received €70 each if meals were included and €245 if they were not;<sup>55</sup> children received €55 if meals were included and €185 if they were not.<sup>56</sup> For 2016,

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<sup>44</sup> 37, 114 §§ ALIENS ACT.

<sup>45</sup> *Id.* 115 §.

<sup>46</sup> *Id.* 114 §.

<sup>47</sup> *Ersättning av resekostnader till en kvotflyktings familjemedlem*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, [http://www.migri.fi/att\\_flytta\\_till\\_en\\_familjemedlem\\_i\\_finland/fyll\\_i\\_ansokan/familjemedlem\\_till\\_en\\_person\\_som\\_beviljats\\_internationellt\\_skydd/ersattning\\_av\\_resekostnader\\_till\\_en\\_kvotflyktings\\_familjemedlem](http://www.migri.fi/att_flytta_till_en_familjemedlem_i_finland/fyll_i_ansokan/familjemedlem_till_en_person_som_beviljats_internationellt_skydd/ersattning_av_resekostnader_till_en_kvotflyktings_familjemedlem) (last visited Dec. 22, 2015), archived at <https://perma.cc/FTU7-A4FK>.

<sup>48</sup> *Id.*

<sup>49</sup> 36 § ALIENS ACT.

<sup>50</sup> 19 § ACT ON THE RECEPTION OF PERSONS WHO SEEK INTERNATIONAL PROTECTION AND ON IDENTIFICATION OF AND HELP FOR VICTIMS OF HUMAN TRAFFICKING, 17.6.2011/746, <http://www.finlex.fi/sv/laki/ajantasa/2011/20110746>, archived at <https://perma.cc/DKZ7-NDUA>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* 20 §.

<sup>53</sup> *Id.* 22 §.

<sup>54</sup> *Id.* 20 §.

<sup>55</sup> *Id.*

asylum seekers will receive €14.91 (about US\$340.31) or €2.30 (US\$100.70) respectively for singles, €66.04 (about US\$288.44) or €76.01 (US\$82.45) for asylum seekers who share households, and €200.89 (about US\$218.11) or €9.72 (US\$64.83) for children living with their families.<sup>57</sup>

In instances where the asylum seeker lives in a type of housing that provides for those things that the cash benefit is meant to cover (typically, special housing for unaccompanied minors) a smaller allowance is provided at a rate equivalent to US\$48.86 for sixteen- and seventeen-year-olds and US\$27.15 for unaccompanied minors under sixteen.<sup>58</sup> The 2010 index amount (see above) is €25 per month.<sup>59</sup>

## B. Social Services and Urgent Health Care

Asylum seekers are entitled to social services<sup>60</sup> and urgent health care.<sup>61</sup> “Urgent health care” is defined as “immediate evaluation or treatment that cannot be postponed without the illness being worsened or the injury exacerbated and that applies to an acute illness, personal injury, deterioration of long term illness or disability,” and includes “dental, health care, substance-abuse care and psycho-social support.”<sup>62</sup>

## C. Schooling

Children who permanently reside in Finland are mandated to attend school starting the year they turn seven years old.<sup>63</sup> Asylum-seeking children (both unaccompanied minors and minors arriving with their legal guardians) have a legal right to attend school free of charge.<sup>64</sup> Schooling for persons who do not permanently reside in Finland may be carried out remotely.<sup>65</sup>

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<sup>56</sup> *Id.* In 2010, the exchange rate was €1 to US\$0.697666. *Historic Lookup*, X-RATES.COM, <http://www.x-rates.com/historical/?from=USD&amount=1&date=2010-01-01>, archived at <https://perma.cc/D5JH-VGV2>.

<sup>57</sup> *Mottagningspenning*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, [http://www.migri.fi/asyl\\_i\\_finland/mottagningsverksamhet/mottagningspenning](http://www.migri.fi/asyl_i_finland/mottagningsverksamhet/mottagningspenning) (last visited Dec. 15, 2015), archived at <https://perma.cc/2XF8-8PJV>.

<sup>58</sup> *Id.*

<sup>59</sup> 21 § ACT ON THE RECEPTION OF PERSONS WHO SEEK INTERNATIONAL PROTECTION AND ON IDENTIFICATION OF AND HELP FOR VICTIMS OF HUMAN TRAFFICKING (equal to US\$17.44, using an exchange rate of €1=US\$0.697666).

<sup>60</sup> *Id.* 25 §.

<sup>61</sup> *Id.* 26 §.

<sup>62</sup> HÄSLO OCH SJUKVÅRDSLÄG [HEALTH CARE ACT] (FFS 30.12.2010/1326), <http://www.finlex.fi/sv/laki/ajantasa/2010/20101326>, archived at <https://perma.cc/7AU7-5XJX> (translation by author).

<sup>63</sup> 25 § LAG OM GRUNDLÄGGANDE UTBILDNING [ACT ON ELEMENTARY SCHOOLING] FFS 21.8.1998/628, <http://www.finlex.fi/sv/laki/ajantasa/1998/19980628#L8P46>, archived at [perma.cc/P48J-6ETG](https://perma.cc/P48J-6ETG).

<sup>64</sup> *Id.* 46 §.

<sup>65</sup> *Id.*

## IV. Path to Citizenship

### A. Residency Permits

Persons who are granted asylum receive either a temporary residence permit (one year for persons in need of humanitarian protection and four years for refugees and persons receiving subsidiary protection)<sup>66</sup> or a continuous residence permit.<sup>67</sup> Temporary residence permits for persons who seek international protection can be renewed if grounds for international protection still exist.<sup>68</sup> A temporary residence permit can turn into a continuous residence permit. Once the asylum seeker has lived for four years in Finland under a continuous residence permit, he or she can apply for a permanent residence permit.<sup>69</sup>

### B. Citizenship

Citizenship can be acquired after five years of uninterrupted permanent residence, or, if there is an interruption in residence, seven years of residence after the person is fifteen.<sup>70</sup> Applicants must be eighteen years of age, not have committed an offense or crime for which the penalty exceeds that of a disciplinary fine (*ordningsbot*), and reliably account for their income.<sup>71</sup>

Special rules require that refugees only need to have lived four years continuously (or six years in total after the age of fifteen of which the last two must have been continuous) in Finland as counted from the day of their asylum application to qualify for citizenship.<sup>72</sup>

In addition, applicants must speak Finnish or Swedish, or Swedish or Finnish sign language.<sup>73</sup> Language abilities are either tested or proven through successful completion of studies carried out in Finnish or Swedish.<sup>74</sup> Language tests are waived for persons who have received asylum and are more than sixty-five years old.<sup>75</sup>

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<sup>66</sup> 53 § ALIENS ACT.

<sup>67</sup> *Id.* 49, 112, 113 §§.

<sup>68</sup> *Id.* 54 §.

<sup>69</sup> *Id.* 56 §.

<sup>70</sup> 13 § MEDBORGARSKAPSLAG [FINNISH CITIZENSHIP ACT], <http://www.finlex.fi/sv/laki/ajantasa/2004/20030359>, archived at <https://perma.cc/EVP7-B3TP>, overview in English at MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, FACT SHEET: FINLAND'S NATIONALITY ACT (Dec. 2013), [http://www.migri.fi/download/16429\\_Suomen\\_kansalaisuus\\_eng.pdf?d367b8f351b8d288](http://www.migri.fi/download/16429_Suomen_kansalaisuus_eng.pdf?d367b8f351b8d288), archived at <https://perma.cc/UR3A-6WS3>.

<sup>71</sup> 13 § FINNISH CITIZENSHIP ACT.

<sup>72</sup> *Id.* 20 §.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* 17 §.

<sup>75</sup> 18b §.

Applications for Finnish citizenship increased by more than 30% in 2014.<sup>76</sup>

Children of parents who have both been granted asylum receive Finnish citizenship at birth.<sup>77</sup>

## V. Monitoring by Police and Restrictions on Travel

### A. Reporting Requirements and Police Access to Information

When asylum seekers arrive at the Finnish border they must first report their asylum-seeker status with the police or border control.<sup>78</sup> The police take asylum seekers' fingerprints and identification information and register them in their systems.<sup>79</sup> Thereafter the migration authorities assign asylum seekers temporary housing.<sup>80</sup> During the review of an asylum application the Finnish migration authority (Finnish Immigration Service) collects information about the applicant. The Finnish Security Police are allowed to participate in the final discussions of a case, if needed because of national security interests.<sup>81</sup> In all cases the police investigate the truthfulness of all assertions made by the applicants during the application process.<sup>82</sup>

The police, Finnish Immigration Service, and customs agencies have a right to receive classified information on asylum seekers who are unaccompanied minors.<sup>83</sup> Asylum seekers can be required to report to the police and the Finnish Immigration Service.<sup>84</sup> Asylum seekers may also be confined if needed to ascertain their identity.<sup>85</sup> The surveillance of asylum seekers is regulated by law and must be proportional to the purpose of the surveillance.<sup>86</sup>

An asylum seeker may receive an identification card that specifies that the holder has sought asylum in Finland.<sup>87</sup> Such identification cards include the asylum seeker's name, birthdate, and

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<sup>76</sup> *Fortsatt rusningstid för ansökningar om medborgarskap*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET (July 1, 2015), [http://www.migri.fi/tjanster/kundmeddelanden/meddelanden\\_medborgarskap/1/0/fortsatt\\_rusningstid\\_for\\_ansokningar\\_om\\_medborgarskap\\_60960](http://www.migri.fi/tjanster/kundmeddelanden/meddelanden_medborgarskap/1/0/fortsatt_rusningstid_for_ansokningar_om_medborgarskap_60960), archived at <https://perma.cc/CV7F-MZC9>.

<sup>77</sup> 9 § FINNISH CITIZENSHIP ACT.

<sup>78</sup> 95 § ALIENS ACT.

<sup>79</sup> *Applying for Asylum*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, [http://www.migri.fi/asylum\\_in\\_finland/applying\\_for\\_asylum](http://www.migri.fi/asylum_in_finland/applying_for_asylum) (last visited Jan. 5, 2016), archived at <https://perma.cc/6LBB-2PZQ>.

<sup>80</sup> *Id.*

<sup>81</sup> 97 § ALIENS ACT.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* 105 §.

<sup>84</sup> *Id.* 118 §.

<sup>85</sup> *Id.* 121 §.

<sup>86</sup> *Id.* 129a §.

<sup>87</sup> *Id.* 96 §.



citizenship, along with a picture and information regarding whether the asylum seeker has been able to prove his or her identity.<sup>88</sup>

## B. Travel Restrictions

An asylum seeker must surrender his or her travel documents to the Finnish Immigration Service before receiving travel documents indicating his or her status as a refugee.<sup>89</sup> Individuals who have been granted asylum are allowed to travel within the Schengen Area for a total of ninety days during a 180-day period.<sup>90</sup> They must carry their asylum documentation, however.<sup>91</sup> Persons with permanent residence permits are allowed to travel for a total of six months each year without losing their status as permanent residents.<sup>92</sup>

Finland keeps a registry of all aliens in the country, including asylum seekers and refugees, and tracks the travel of all aliens.<sup>93</sup>

## VI. Role of Municipalities

Finnish municipalities have a right to self-governance that is regulated in the Finnish Constitution.<sup>94</sup> Prior to the refugee crisis of 2015 the Finnish Immigration Service had to consult with the municipal leadership before placing an asylum center in a community. As of September 2015 such inquiries are only made if the asylum center is to be run by municipal agencies or in municipal facilities.<sup>95</sup> A municipality must still be notified before the housing of asylum seekers is initiated within the municipality.<sup>96</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.* 137 §.

<sup>90</sup> *Att resa när du har ett uppehållstillstånd*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, [http://www.migri.fi/asyl\\_i\\_finland/att\\_resa\\_nar\\_du\\_har\\_ett\\_uppehallstillstand](http://www.migri.fi/asyl_i_finland/att_resa_nar_du_har_ett_uppehallstillstand) (last visited Dec. 22, 2015), archived at <https://perma.cc/Q8VK-WN3A>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Register of Aliens*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET, [http://www.migri.fi/about\\_us/register\\_of\\_alien](http://www.migri.fi/about_us/register_of_alien) (last visited Jan. 6, 2015) archived at <https://perma.cc/H5WK-EBQL>.

<sup>94</sup> 121 § FINLANDS GRUNDLAG [FINNISH CONSTITUTION] (FFS 11.6.1999/731), <http://www.finlex.fi/sv/laki/ajantasa/1999/19990731>, archived at <https://perma.cc/EF77-762V>.

<sup>95</sup> Press Release, Maahanmuuttovirasto/Migrationsverket, I fortsättningen utreds kommunernas ståndpunkt endast om en planerad förläggning ska inrättas i kommunens lokaler eller drivas av kommunen (Sept. 7, 2015), [http://www.migri.fi/for\\_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/i\\_fortsattningen\\_utreds\\_kommunernas\\_standpunkt\\_endast\\_om\\_en\\_planerad\\_forlaggning\\_ska\\_inrattas\\_i\\_kommunens\\_lokaler\\_eller\\_drivas\\_av\\_kommunen\\_62314](http://www.migri.fi/for_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/i_fortsattningen_utreds_kommunernas_standpunkt_endast_om_en_planerad_forlaggning_ska_inrattas_i_kommunens_lokaler_eller_drivas_av_kommunen_62314), archived at <https://perma.cc/823E-V3YC>.

<sup>96</sup> *Id.*

Social services such as health care and financial support to citizens and persons with temporary or permanent residence in Finland are provided for and financed by the municipality in which the recipient lives.<sup>97</sup>

## VII. Response to Current Refugee Crisis

In the fall of 2015 Finland saw a steep increase in asylum seekers, primarily from Iraq. As of November 20, 2015, Finland had received 30,000 asylum applications for the year, of which 19,000 were from Iraqi citizens.<sup>98</sup> This compared 3,600 asylum applications in 2014,<sup>99</sup> of which 800 were Iraqi citizens.<sup>100</sup>

As a result of the increase in asylum applications, especially by Iraqi citizens, Finland has started negotiations for a return agreement with Iraq.<sup>101</sup> Such an agreement had previously not been in place. Moreover, Finland has revised its policies on Iraq under which connection to a certain region is no longer enough to qualify for asylum—each person must show a personal risk of persecution or violence.<sup>102</sup>

In addition Finland is revising its asylum provisions on humanitarian protection to better reflect EU standards.<sup>103</sup>

The Finnish Security Intelligence Service reports that extremism, including both extremist Islamist and anti-immigration hate crimes, has increased following the rapid influx of asylum seekers.<sup>104</sup>

<sup>97</sup> See LAG OM HEMKOMMUN [ACT ON HOME MUNICIPALITY] (FFS 11.3.1994/201), <http://www.finlex.fi/sv/laki/ajantasa/1994/19940201>, archived at <https://perma.cc/GF36-D4GB>; HEALTH CARE ACT (FFS 30.12.2010/1326), <http://www.finlex.fi/sv/laki/ajantasa/2010/20101326>, archived at <https://perma.cc/7AU7-5XJX>.

<sup>98</sup> *Asylsökanden 1.1-30.11.2015*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET (Dec. 8, 2015), [http://www.migri.fi/download/64264\\_SV\\_tp-hakijat\\_tammi\\_marras\\_2015.pdf?88ff00de8604d388](http://www.migri.fi/download/64264_SV_tp-hakijat_tammi_marras_2015.pdf?88ff00de8604d388), archived at <https://perma.cc/X65V-5YF6>.

<sup>99</sup> *Asylsökanden 1.1-31.12.2014*, MAAHANMUUTTOVIRASTO/MIGRATIONSVERKET (Jan. 12, 2015), [http://www.migri.fi/download/57240\\_RU\\_tp-hakijat\\_2014.pdf?27fe1fde8604d388](http://www.migri.fi/download/57240_RU_tp-hakijat_2014.pdf?27fe1fde8604d388), archived at <https://perma.cc/24QR-NNRL>.

<sup>100</sup> *Id.*

<sup>101</sup> Press Release, Ministry of the Interior, Drop in Number of Asylum Seekers – New Estimate for This Year (Oct. 15, 2015), [https://www.intermin.fi/en/current\\_issues/news/1/1/drop\\_in\\_number\\_of\\_asylum\\_seekers\\_-\\_new\\_estimate\\_for\\_this\\_year\\_63139](https://www.intermin.fi/en/current_issues/news/1/1/drop_in_number_of_asylum_seekers_-_new_estimate_for_this_year_63139), archived at <https://perma.cc/X569-V2Y8>.

<sup>102</sup> Press Release, Maahanmuuttovirasto/Migrationsverket, Den individuella situationen avgör då irakier söker asyl, inte ursprungsregionen (Oct. 20, 2015), [http://www.migri.fi/for\\_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/den\\_individuella\\_situationen\\_avgor\\_da\\_irakier\\_soker\\_asyl\\_inte\\_ursprungsregionen\\_63198](http://www.migri.fi/for_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/den_individuella_situationen_avgor_da_irakier_soker_asyl_inte_ursprungsregionen_63198), archived at <https://perma.cc/47DZ-3ULT>.

<sup>103</sup> Press Release, Ministry of the Interior, Finland to Review Migration Legislation to Comply with EU Provisions (Nov. 3, 2015), [https://www.intermin.fi/en/current\\_issues/news/1/1/finland\\_to\\_review\\_migration\\_legislation\\_to\\_comply\\_with\\_eu\\_provisions\\_63455](https://www.intermin.fi/en/current_issues/news/1/1/finland_to_review_migration_legislation_to_comply_with_eu_provisions_63455), archived at <https://perma.cc/VBN4-2SCT>.

<sup>104</sup> Press Release, SUPO, Asylsökande och den nationella säkerheten (Nov. 3, 2015), [http://www.poliisi.fi/instancedata/prime\\_product\\_julkaisu/intermin/embeds/poliisiwwwstructure/40823\\_20151103\\_Pressmeddelande\\_asylsokande\\_och\\_sakerhet.pdf?52ea2d34c015d388](http://www.poliisi.fi/instancedata/prime_product_julkaisu/intermin/embeds/poliisiwwwstructure/40823_20151103_Pressmeddelande_asylsokande_och_sakerhet.pdf?52ea2d34c015d388), archived at <https://perma.cc/L4GL-793P>.

# France

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**SUMMARY** France has a long tradition of offering asylum to foreign refugees, and the right of asylum has constitutional value under French law. French asylum law is heavily based on international and European law, but is largely codified in the Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA, Code of Entry and Residence of Foreigners and of the Right of Asylum).

There are two types of asylum protection in France: refugee protection and subsidiary protection. Asylum essentially rests on the serious possibility that the asylum seeker could be the victim of persecution or harm in his/her country of origin. Asylum may be denied or revoked for individuals who have committed crimes or whose presence would be a threat to society or national security.

Refugees and beneficiaries of subsidiary protection have the right to live and work in France, and to bring their spouse and children. Those granted refugee status can apply to be naturalized as French citizens immediately. Refugees and beneficiaries of subsidiary protection have the right to obtain travel documents from the French government. Refugees and beneficiaries of subsidiary protection are required to attend some civic training programs and, if necessary, language classes. Refugees and beneficiaries of subsidiary protection have similar rights to social benefits as French citizens do, but only have access to certain special aid programs during the time that their application for asylum is being processed.

An applicant for asylum must be either on French territory or at a French border crossing point to request asylum. Before coming, however, an asylum seeker may request a special visa for the purpose of asylum from a French embassy or consulate. A person with such a visa must follow the same procedure as other asylum seekers once in France, but is authorized to work while his/her application for asylum is being processed and evaluated, contrary to other applicants. Asylum seekers who request asylum at a border crossing point are kept in a "waiting zone" for a few days while the Ministry of the Interior decides whether they should be allowed inside the country or not. Once in France, asylum seekers must register at a local prefecture as the first step of the asylum application process. The prefecture's services verify whether France would be responsible for protecting the asylum seeker under European Union rules and, if it finds that it would, provides the applicant with an asylum application form and with information on the application process, the applicant's rights and obligations, assistance that he/she is entitled to, and any local organizations that help asylum seekers. The asylum seeker is then supposed to send his/her application form to the Office français de protection des réfugiés et apatrides (OFPRA, French Office for the Protection of Refugees and Stateless Persons), which determines who is eligible for refugee status or subsidiary protection. The OFPRA must reach a decision within six months, though time extensions are possible in certain situations. The OFPRA evaluates all relevant evidence, and usually conducts an interview of the applicant as part of its investigation. The OFPRA's decisions may be appealed to the Cour nationale du droit d'asile (National Court for Asylum Law).

## I. Introduction

France has a long tradition of offering asylum to foreign refugees. One of the constitutions drafted during the French revolution, the Constitution of 1793, provided that France should “give asylum to foreigners who have been banished from their homeland for the cause of liberty” and should “refuse [asylum] to tyrants.”<sup>1</sup> While the Constitution of 1793 was never actually implemented, the nineteenth century saw many exiles from European countries destabilized by nationalist, revolutionary, and counter-revolutionary movements (Italy, Poland, Spain, etc.) seek and obtain refuge in France.<sup>2</sup> Similar trends continued in the twentieth century, although that time period also saw the rise of countervailing tendencies towards restricting the influx of refugees.<sup>3</sup>

French asylum law today is founded on constitutional principles and heavily influenced by international and European law. The preamble to the French Constitution of 1946, which was incorporated by reference into the preamble of the Constitution of 1958 (the current French constitution),<sup>4</sup> declared that “[a]ny man persecuted in virtue of his actions in favor of liberty may claim the right of asylum upon the territories of the Republic.”<sup>5</sup> In a 1993 decision, the Constitutional Council (Conseil constitutionnel, the French high court with jurisdiction over questions of constitutionality) confirmed that, based on this constitutional provision, asylum is a constitutional right for persons who qualify for it.<sup>6</sup> Consequently, it ruled that asylum applicants have a general right to stay in France until their asylum request has been processed and decided upon, and that, barring any threat to public order, all persons who qualify for asylum must be allowed to stay in France.<sup>7</sup>

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<sup>1</sup> CONSTITUTION DU 24 JUIN 1793 [CONSTITUTION OF JUNE 24, 1793] art. 120, <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/constitution-du-24-juin-1793.5084.html>, archived at <https://perma.cc/NC3E-AUPF> (translation by author).

<sup>2</sup> GÉRARD NOIRIEL, LA TYRANNIE DU NATIONAL: LE DROIT D’ASILE EN EUROPE 1793–1993 [THE TYRANNY OF THE NATIONAL: ASYLUM RIGHTS IN EUROPE 1793–1993] at 37 (1991).

<sup>3</sup> *Id.* at 100–117.

<sup>4</sup> CONSTITUTION DU 4 OCTOBRE 1958 [CONSTITUTION OF OCTOBER 4, 1958], Preamble, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071194>, archived at <https://perma.cc/3Q9L-3BZB>, English translation available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html>, archived at <https://perma.cc/DE2Y-4MXA>.

<sup>5</sup> CONSTITUTION DU 27 OCTOBRE 1946 [CONSTITUTION OF OCTOBER 27, 1946], Preamble, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071193&dateTexte=&categorieLien=cid>, archived at <https://perma.cc/Y7SR-F66U>, English translation available at [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/cst3.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst3.pdf), archived at <https://perma.cc/NBV7-DGG9>.

<sup>6</sup> Décision No. 93-325 DC du 13 août 1993 [Decision No. 93-325 DC of August 13, 1993], CONSEIL CONSTITUTIONNEL [CONSTITUTIONAL COUNCIL], <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1993/93-325-dc/decision-n-93-325-dc-du-13-aout-1993.10495.html>, archived at <https://perma.cc/M9HG-J4B2>.

<sup>7</sup> *Id.*

In addition to this constitutional foundation, French asylum law rests heavily on international and European law.<sup>8</sup> Of particular importance are the 1951 Geneva Convention Relating to the Status of Refugees, and the European Union (EU) Regulation of June 26, 2013 (referred to as the “Dublin Regulation”).<sup>9</sup> On a practical level, however, French asylum law has mostly been codified in the Code de l’entrée et du séjour des étrangers et du droit d’asile (CESEDA, Code of Entry and Residence of Foreigners and of the Right of Asylum), including the application of the aforementioned international and European norms in French domestic law.<sup>10</sup> The present report, therefore, will principally refer to the CESEDA.

French asylum law has gone through many reforms and evolutions, big and small, over the past two centuries. There have been some significant recent changes, as France attempts to cope with the challenges posed by the refugee crisis currently affecting Europe. Specifically, French legislators enacted a law in July 2015 that reformed several aspects of asylum law.<sup>11</sup> The present report discusses French asylum law as it currently stands after implementation of this 2015 law.

## II. Refugee Status and Subsidiary Protection

There are two basic types of asylum protection in France: refugee status, and subsidiary protection.

### A. Refugee Status

Refugee status is defined as belonging to “any person persecuted for his/her action in favor of liberty” as well as any person over whom the United Nations High Commission for Refugees (UNHCR) has competence under articles 6 and 7 of its statute, and any person who is covered by article 1 of the 1951 Geneva Convention Relating to the Status of Refugees.<sup>12</sup> This includes

<sup>8</sup> *Les grands principes du droit d’asile* [The Main Principles of Asylum Law], MINISTÈRE DE L’INTÉRIEUR [MINISTRY OF THE INTERIOR] (Nov. 2, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Le-droit-d-asile/Les-grands-principes-du-droit-d-asile>, archived at <https://perma.cc/8KYT-TEMT>.

<sup>9</sup> *Id.*; Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, <http://www.unhcr.org/3b66c2aa10.html>, archived at <https://perma.cc/36LL-Z9PR>; Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person, 2013 O.J. (L 180) 31, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>, archived at <https://perma.cc/778B-TM4C>.

<sup>10</sup> *Les grands principes du droit d’asile*, *supra* note 8; CODE DE L’ENTRÉE ET DU SÉJOUR DES ÉTRANGERS ET DU DROIT D’ASILE [CESEDA, CODE OF ENTRY AND RESIDENCE OF FOREIGNERS AND OF THE RIGHT OF ASYLUM], <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20160105>, archived at <https://perma.cc/943H-E4JD>.

<sup>11</sup> Loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d’asile [Law No. 2015-925 of July 29, 2015, Regarding Reform of Asylum Law], <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030949483&categorieLien=id>, archived at <https://perma.cc/LDT7-4KLZ>.

<sup>12</sup> CESEDA art. L711-1, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006147794&cidTexte=LEGITEXT000006070158&dateTexte=20160105>, archived at <https://perma.cc/SUD6-DKN7>.

any person

who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.<sup>13</sup>

To the criteria of race, religion, nationality, or political opinion as the reason for persecution, French law adds gender and sexual orientation as factors to consider.<sup>14</sup> The persecution feared by the asylum seeker does not necessarily have to come from his/her country's government. The fear of persecution at the hands of non-state actors is also a valid cause to obtain refugee status, if the country's government is unable or unwilling to protect the asylum seeker from such persecution.<sup>15</sup>

A person may be denied refugee status, or such status may be revoked, if (a) there is serious reason to believe that his/her presence in France presents a grave threat to the security of the state; or (b) he/she was found guilty of an act of terrorism or of a crime punished by more than ten years of incarceration, and his/her presence in France presents a grave threat to society.<sup>16</sup>

## B. Subsidiary Protection

Subsidiary protection is given to any person who does not fulfill the conditions to be recognized as a refugee, but for whom there are serious and known reasons to believe that he/she is in real danger of suffering the following violations in his/her country: (a) execution, (b) torture or inhumane or degrading treatment, or (c) if the person is a civilian, a serious and individual threat to his/her life or person by reasons of indiscriminate violence in situations of international or internal armed conflict.<sup>17</sup> Subsidiary protection may be denied to a person when there are serious reasons to believe that (a) he/she has committed a crime against peace, a war crime, or a crime against humanity; (b) he/she has committed a serious crime; (c) he/she is guilty of acts contrary to the objectives and principles of the United Nations; or (d) his/her activity on French territory presents a grave threat to public order, public security, or the security of the state.<sup>18</sup> Furthermore, subsidiary protection may be denied to a person if there is serious reason to believe

<sup>13</sup> Statute of the Office of the United Nations High Commissioner for Refugees art. 6.B (Dec. 14, 1950), <http://www.unhcr.org/3b66c39e1.html>, archived at <https://perma.cc/3JYS-9DA3>.

<sup>14</sup> CESEDA art. L711-2, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006147795&cidTexte=LEGITEXT000006070158&dateTexte=20160105>, archived at <https://perma.cc/SUD6-DKN7>.

<sup>15</sup> *Les grands principes du droit d'asile*, *supra* note 8.

<sup>16</sup> CESEDA art. L711-6.

<sup>17</sup> *Id.* art. L712-1, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006147795&cidTexte=LEGITEXT000006070158&dateTexte=20160105>, archived at <https://perma.cc/4WRR-KNYE>.

<sup>18</sup> *Id.* art. L712-2.

that he/she has committed a crime that would be punishable by prison if it had been committed in France, and that he/she only left his/her country of origin to escape punishment for that crime.<sup>19</sup>

### III. Benefits of Asylum

#### A. Right to Stay

##### 1. Residency

The first, and perhaps most obvious, benefit of asylum is the legal right to reside in France. Refugees gain the right to a residency permit, which is valid for an initial term of ten years and can then be renewed for an indefinite term.<sup>20</sup> Beneficiaries of subsidiary protection gain the right to a temporary stay permit, valid for an initial term of one year and renewable for subsequent two-year terms.<sup>21</sup> Both the residency permit and the temporary stay permit authorize the holder to work in France.<sup>22</sup>

The spouse and children of a refugee or beneficiary of subsidiary protection may reside in France with him/her.<sup>23</sup> However, this right may be denied to a relative whose presence in France would present a threat to public order, or who is found to have participated in the persecutions that caused the asylum request, or if the applicant does not follow the basic principles of family life in France (such as monogamy, for example).<sup>24</sup>

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* art. L314-1, <http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000006335087&idSectionTA=LEGISCTA000006163232&cidTexte=LEGITEXT000006070158&dateTexte=20160106>, archived at <https://perma.cc/9HM3-ZJY7>, art. L314-11, [http://www.legifrance.gouv.fr/affichCode.do?sessionId=C2B4CE7D211A43A8E7194C1680E7FB3A.tpdila23v\\_3?idSectionTA=LEGISCTA000006180202&cidTexte=LEGITEXT000006070158&dateTexte=20160106](http://www.legifrance.gouv.fr/affichCode.do?sessionId=C2B4CE7D211A43A8E7194C1680E7FB3A.tpdila23v_3?idSectionTA=LEGISCTA000006180202&cidTexte=LEGITEXT000006070158&dateTexte=20160106), archived at <https://perma.cc/2FEA-XUD2>, art. L314-14, [http://www.legifrance.gouv.fr/affichCode.do?sessionId=C2B4CE7D211A43A8E7194C1680E7FB3A.tpdila23v\\_3?idSectionTA=LEGISCTA000006180204&cidTexte=LEGITEXT000006070158&dateTexte=20160106](http://www.legifrance.gouv.fr/affichCode.do?sessionId=C2B4CE7D211A43A8E7194C1680E7FB3A.tpdila23v_3?idSectionTA=LEGISCTA000006180204&cidTexte=LEGITEXT000006070158&dateTexte=20160106), archived at <https://perma.cc/U528-MK69>; *Les droits des bénéficiaires d'une protection: Le séjour en France* [The Rights of Beneficiaries of Protection: The Stay in France], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Les-droits-des-beneficiaires-d-une-protection/Le-sejour-en-France>, archived at <https://perma.cc/L6E3-QJXE>.

<sup>21</sup> CESEDA arts. L313-11, L313-13, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006180199&cidTexte=LEGITEXT000006070158&dateTexte=20160106>, archived at <https://perma.cc/QH7Z-V7SD>; *Les droits des bénéficiaires d'une protection: Le séjour en France* [The Rights of Beneficiaries of Protection: Staying in France], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Les-droits-des-beneficiaires-d-une-protection/Le-sejour-en-France>, archived at <https://perma.cc/L6E3-QJXE>; *Les droits des bénéficiaires d'une protection: Le séjour en France*, *supra* note 20.

<sup>22</sup> CESEDA arts. L313-13, L314-4.

<sup>23</sup> *Id.* art. L752-1, [http://www.legifrance.gouv.fr/affichCode.do?sessionId=0737EB5CB4A378C904939C36B4E8E2F2.tpdila23v\\_3?idSectionTA=LEGISCTA000030952584&cidTexte=LEGITEXT000006070158&dateTexte=20160106](http://www.legifrance.gouv.fr/affichCode.do?sessionId=0737EB5CB4A378C904939C36B4E8E2F2.tpdila23v_3?idSectionTA=LEGISCTA000030952584&cidTexte=LEGITEXT000006070158&dateTexte=20160106), archived at <https://perma.cc/H9JN-RPG5>.

<sup>24</sup> *Id.*



## 2. Obtaining French Citizenship

Furthermore, being a refugee greatly shortens the naturalization process, should the person wish to obtain French citizenship. Whereas the normal requirements for naturalization include (among other criteria) that the applicant have resided in France for at least the previous five years,<sup>25</sup> a person officially recognized as a refugee by the French government may apply for naturalization immediately.<sup>26</sup> All the other requirements (such as being of good moral conduct and character; having no criminal record; demonstrating that he/she is integrated into French society; and that he/she has sufficient knowledge of the French language, history, culture, and values)<sup>27</sup> appear to generally apply, however, except that a further simplification is provided for elderly refugees. Political refugees and stateless persons who are over seventy years of age and who have resided in France for at least fifteen years may be naturalized without having to demonstrate knowledge of the French language.<sup>28</sup> The normal rules of naturalization apply to beneficiaries of subsidiary protection, but unlike refugees, they are not exempt from the five-year residency requirement.

### B. Travel Documents

A refugee or beneficiary of subsidiary protection may obtain travel documents from the French government, unless there is a strong reason related to national security or public order for the government to withhold such travel documents.<sup>29</sup> These travel documents allow the person to travel outside of France (in a manner similar to a passport), and are valid for two years for a refugee, and one year for a beneficiary of subsidiary protection.<sup>30</sup> An important limitation to these travel documents is that they do not authorize a refugee or beneficiary of subsidiary protection to return to his/her country of origin or any other country where he/she may suffer the persecution or danger that justified asylum in France.<sup>31</sup> However, a refugee or beneficiary of subsidiary protection may request a three-month safe conduct pass to travel to his/her country of origin when it is justified by very rare circumstances such as the death or serious illness of a close relative.<sup>32</sup>

<sup>25</sup> CODE CIVIL [CIVIL CODE] art. 21-17, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=4F705C28A2651DCC02CD224A0A80E41B.tpdila19v\\_2?idSectionTA=LEGISCTA000006165459&cidTexte=LEGITEXT000006070721&dateTexte=20151123](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=4F705C28A2651DCC02CD224A0A80E41B.tpdila19v_2?idSectionTA=LEGISCTA000006165459&cidTexte=LEGITEXT000006070721&dateTexte=20151123), archived at <http://perma.cc/Y96C-MDRD>

<sup>26</sup> CODE CIVIL art. 21-19.

<sup>27</sup> *Id.* arts. 21-16, 21-23, 21-24.

<sup>28</sup> *Id.* art. 21-24-1.

<sup>29</sup> CESEDA arts. L753-1, L753-2, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=DBF30A363AEF2062FC87081386E633B1.tpdila11v\\_1?idSectionTA=LEGISCTA000030952616&cidTexte=LEGITEXT000006070158&dateTexte=20160107](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=DBF30A363AEF2062FC87081386E633B1.tpdila11v_1?idSectionTA=LEGISCTA000030952616&cidTexte=LEGITEXT000006070158&dateTexte=20160107), archived at <https://perma.cc/NP5N-Z3M7>; *Les droits des bénéficiaires d'une protection: Le voyage à l'étranger* [The Rights of Beneficiaries of Protection: Traveling Abroad], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Les-droits-des-beneficiaires-d-une-protection/Le-voyage-a-l-etranger>, archived at <https://perma.cc/EG9T-DTMF>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Les droits des bénéficiaires d'une protection: Le voyage à l'étranger*, *supra* note 29.

## C. Assimilation

Like other immigrants upon their first arrival in France, refugees and beneficiaries of subsidiary protection are required to sign an “accommodation and integration contract” (*contrat d’accueil et d’intégration*) with the French government, by which they commit to respect the fundamental values of the French Republic and to attend a civic training program, an information session on life in France, and, if necessary, language classes.<sup>33</sup> The civic training program is a one-day session about French political and administrative institutions as well as French social values such as gender equality, secularism, and compulsory and free access to education.<sup>34</sup> The information session about life in France is meant to “inform newly arrived migrants of the formalities of everyday life.”<sup>35</sup> This “contract” also gives access to individualized help to determine the person’s professional competencies and potential, and to develop a strategy to find employment.<sup>36</sup>

## D. Social Benefits

### 1. Refugees and Beneficiaries of Subsidiary Protection Eligible for the Same Social Benefits as French Citizens

Refugees and beneficiaries of subsidiary protection have similar rights to social benefits as French citizens.<sup>37</sup> They are covered by the French universal health insurance scheme, for example, and they may get various social welfare benefits (guaranteed minimum income, family subsidies, access to social housing, etc.) under the same conditions as French citizens.<sup>38</sup>

### 2. Special Programs for Asylum Seekers

#### a. Temporary Housing Assistance

Asylum seekers also benefit from certain welfare programs that target them specifically, in order to facilitate their settlement into French society. Specifically, asylum seekers may reside in

<sup>33</sup> CESEDA art. L311-9, <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070158&idArticle=LEGIARTI000006335043&dateTexte=&categorieLien=cid>, archived at <https://perma.cc/759G-Y5XE>; *Everything About the CAI: Presentation*, OFFICE FRANÇAIS DE L’IMMIGRATION ET DE L’INTÉGRATION [FRENCH OFFICE FOR IMMIGRATION AND ASSIMILATION], [http://www.ofii.fr/s\\_integrer\\_en\\_france\\_47/presentation\\_466.html](http://www.ofii.fr/s_integrer_en_france_47/presentation_466.html) (last visited Jan. 6, 2016), archived at <https://perma.cc/XAW8-523L>.

<sup>34</sup> *Everything About the CAI: Presentation*, *supra* note 33.

<sup>35</sup> *Id.*

<sup>36</sup> *Les droits des bénéficiaires d’une protection: L’intégration* [The Rights of Beneficiaries of Protection: Assimilation], MINISTÈRE DE L’INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Les-droits-des-beneficiaires-d-une-protection/L-integration>, archived at <https://perma.cc/M27D-87E2>.

<sup>37</sup> JEAN-MICHEL BELORGEY, *LE DROIT D’ASILE* [ASYLUM LAW] 132 (2013).

<sup>38</sup> *Id.*; *Les droits des bénéficiaires d’une protection: Les droits sociaux* [The Rights of Beneficiaries of Protection: Social Rights], MINISTÈRE DE L’INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Les-droits-des-beneficiaires-d-une-protection/Les-droits-sociaux>, archived at <https://perma.cc/2PSP-YDUF>.

special temporary housing facilities called *centres d'accueil pour demandeurs d'asile* (CADA, centers for the reception of asylum seekers) while their asylum applications are being processed.<sup>39</sup> These facilities are usually managed at the local level by nonprofit organizations or by semipublic companies (*sociétés d'économie mixte*).<sup>40</sup> If an asylum seeker's application is approved, thereby granting him/her the status of refugee or beneficiary of subsidiary protection, he/she may stay in his/her CADA for up to six months while he/she seeks a more permanent housing arrangement.<sup>41</sup> Like many other European countries, France has seen a surge in incoming refugees over the last couple of years, and this surge has resulted in a severe shortage in housing facilities for these new asylum applicants.<sup>42</sup> In response to this crisis, the French government has endeavored to create 11,000 new CADA and similar emergency housing facilities in 2016.<sup>43</sup>

## b. Temporary Financial Assistance

Additionally, asylum seekers in France are legally entitled to financial assistance called the *allocation pour demandeur d'asile* (ADA, Asylum Seeker Benefit) if their monthly income is under a certain threshold.<sup>44</sup> The amount of financial assistance depends on factors such as the applicant's financial resources, the type of housing that he/she resides in, and the number of dependents in his/her family.<sup>45</sup> Before any potential deduction or supplementation, the basic benefit is €6.80 (approximately US\$7.37) per day for a single person, to be paid at the end of

<sup>39</sup> CESEDA arts. L744-1 & L744-5, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=741E2ED4BE705ACA52845E299276A2D0.tpdila14v\\_2?idSectionTA=LEGISCTA000030952343&cidTexte=LEGITEXT000006070158&dateTexte=20160108](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=741E2ED4BE705ACA52845E299276A2D0.tpdila14v_2?idSectionTA=LEGISCTA000030952343&cidTexte=LEGITEXT000006070158&dateTexte=20160108), archived at <https://perma.cc/N5QH-KYKJ>; *Le parcours du demandeur d'asile: L'hébergement du demandeur d'asile* [The Asylum Seeker's Itinerary: Housing for the Asylum Seeker], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Le-parcours-du-demandeur-d-asile/L-hebergement-du-demandeur-d-asile>, archived at <https://perma.cc/M9UD-FU85>.

<sup>40</sup> *Le droit d'asile: Les acteurs de la politique d'asile* [Asylum Rights: The Actors of Asylum Policy], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (Nov. 2, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Le-droit-d-asile/Les-acteurs-de-la-politique-d-asile>, archived at <https://perma.cc/KS5S-7JK4>.

<sup>41</sup> *Le parcours du demandeur d'asile: L'hébergement du demandeur d'asile*, *supra* note 39.

<sup>42</sup> *Appel à projets concernant la création de 4000 places d'hébergement d'urgence pour demandeurs d'asile de type AT-SA* [Call for Projects Regarding the Creation of 4000 Urgent Housing Places for AT-SA Type Asylum Seekers], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (July 29, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Appel-a-projets-concernant-la-creation-de-4000-places-d-hebergement-d-urgence-pour-demandeurs-d-asile-de-type-AT-SA>, archived at <https://perma.cc/2DCN-2BG2>.

<sup>43</sup> *Id.*

<sup>44</sup> CESEDA arts. L744-9, L744-10, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=C21FD4C99B1D528BA98E1441CCE0F14C.tpdila14v\\_2?idSectionTA=LEGISCTA000030952365&cidTexte=LEGITEXT00006070158&dateTexte=20160108](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=C21FD4C99B1D528BA98E1441CCE0F14C.tpdila14v_2?idSectionTA=LEGISCTA000030952365&cidTexte=LEGITEXT00006070158&dateTexte=20160108), archived at <https://perma.cc/N8WL-TFVM>; *Les droits des demandeurs d'asile: L'allocation pour demandeur d'asile* [The Asylum Seeker's Rights: Asylum Seeker Benefits], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Les-droits-des-demandeurs-d-asile/L-allocation-pour-demandeur-d-asile-ADA>, archived at <https://perma.cc/D4WK-3JUB>.

<sup>45</sup> *Les droits des demandeurs d'asile: L'allocation pour demandeur d'asile*, *supra* note 44.

each month.<sup>46</sup> This is increased to €10.20 (US\$11.05) per day for a two-person family, €13.60 (US\$14.73) per day for a three-person family, and so forth.<sup>47</sup> If the asylum seeker and his/her family have not been given housing in a CADA or similar facility, an extra €4.20 (US\$4.55) per day is added to help them pay for lodging.<sup>48</sup>

This financial assistance ends when the government authorities have come to a final decision on the asylum seeker's application.<sup>49</sup> If the decision was positive (the asylum seeker was granted either refugee status or subsidiary protection), the person becomes eligible for the same welfare benefits as regular French citizens, as noted earlier. Furthermore, even while the asylum seeker's application is being considered by the government authorities, his/her ADA payments may be suspended for certain causes, such as if the asylum seeker left his/her place of residence without authorization, failed to show up at meetings with the authorities, or failed to respond to the authorities' requests for information.<sup>50</sup> The ADA payments may be ended entirely if the asylum seeker is found to have lied about his/her financial resources or family situation, or if he/she engaged in violent behavior or seriously breached the rules of his/her place of lodging.<sup>51</sup>

## IV. The Admission of Refugees

### A. Visas for the Purpose of Asylum

An applicant must be either on French territory or at a French border crossing to request asylum.<sup>52</sup> An application for asylum cannot be made from another country.<sup>53</sup> Before coming to France, however, an asylum seeker may request a special visa for the purpose of asylum from the French embassy or consulate closest to his/her place of residence.<sup>54</sup> This will allow the asylum seeker to enter France, and then submit an application for asylum from within France.<sup>55</sup> The principal advantage of entering France on such a visa rather than entering France illegally or on another type of visa (such as a tourist or student visa) is that applicants who came on the basis of a visa for the purpose of asylum are authorized to work while their asylum application is being

<sup>46</sup> *En quoi consiste l'allocation pour demandeur d'asile (Ada)?* [What Is the Asylum Seeker Benefit (ADA)?], SERVICE-PUBLIC.FR (information website of the French administration) (Nov. 1, 2015), <https://www.service-public.fr/particuliers/vosdroits/F33314>, archived at <https://perma.cc/KRU7-AMA6>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Les droits des demandeurs d'asile: L'allocation pour demandeur d'asile*, *supra* note 44.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Les grands principes du droit d'asile*, *supra* note 8.

<sup>53</sup> *La procédure de demande d'asile: Demander l'asile de l'étranger* [The Asylum Procedure: Requesting Asylum from Abroad], OFFICE FRANÇAIS DE PROTECTION DES RÉFUGIÉS ET APATRIDES [FRENCH OFFICE FOR THE PROTECTION OF REFUGEES AND STATELESS PERSONS], <https://www.ofpra.gouv.fr/fr/asile/la-procedure-de-demande-d-asile/demander-l-asile-de-l-etranger> (last visited Jan. 11, 2016), archived at <https://perma.cc/E8S9-7H86>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

processed.<sup>56</sup> By contrast, an asylum seeker who did not enter France on the basis of a visa for the purpose of asylum may not work until the competent French authorities come to a decision on his/her application for asylum (if, for reasons that are not of the applicant's doing, the authorities take more than nine months to come to a decision, the applicant may legally work nine months after the registration of his/her application for asylum).<sup>57</sup>

It is worth noting that there is no statutory foundation for visas for the purpose of asylum, but rather they are the product of executive instructions to France's consular stations.<sup>58</sup> These instructions require the consular authorities to protect the visa applicant's confidentiality, and the visa document does not actually mention anything about asylum.<sup>59</sup> This discretion is meant to avoid bringing the asylum seeker to the attention of potential persecutors while he/she is still in his/her country of origin.

It appears that approximately 791 visas were granted to Syrian nationals for the purpose of asylum during the year 2013 (155 were granted in Syria proper, and 636 were granted by French consulates in countries neighboring Syria), a significant increase compared to previous years.<sup>60</sup> However, these numbers appear very modest compared to the many thousands of refugees from that region who tried to enter Europe during that time period.<sup>61</sup> According to some estimates, approximately 5,000 Syrians, including 3,000 with refugee status, entered France between March 2011 and February 2014,<sup>62</sup> which would seem to indicate that most entered France without the benefit of a special visa for the purpose of asylum.

## B. The Principal Actors

The principal government body in charge of processing and evaluating asylum applications is the Office français de protection des réfugiés et apatrides (OFPRA, French Office for the Protection of Refugees and Stateless Persons).<sup>63</sup> Several other entities also play important roles, however, particularly the Cour nationale du droit d'asile (CNDA, National Court on Asylum Law), the

<sup>56</sup> *Id.*

<sup>57</sup> CESEDA art. L744-11, [http://www.legifrance.gouv.fr/affichCode.do?sessionId=614052FA51CA2199B43CE6A7091E6142.tpdila08v\\_3?idSectionTA=LEGISCTA000030952371&cidTexte=LEGITEXT000006070158&dateTexte=20160111](http://www.legifrance.gouv.fr/affichCode.do?sessionId=614052FA51CA2199B43CE6A7091E6142.tpdila08v_3?idSectionTA=LEGISCTA000030952371&cidTexte=LEGITEXT000006070158&dateTexte=20160111), archived at <https://perma.cc/V7S2-YHNG>.

<sup>58</sup> Question No. 23491 de M. Laurent Grandguillaume au Ministre de l'intérieur [Question No. 23491 of Mr. Laurent Grandguillaume to the Minister of the Interior], Question écrite [Written Question], ASSEMBLÉE NATIONALE [NATIONAL ASSEMBLY] (Dec. 17, 2013), <http://questions.assemblee-nationale.fr/q14/14-23491QE.htm>, archived at <https://perma.cc/DX8L-4VFZ>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Philippe Huguen, *Réfugiés syriens: leur nombre en constante augmentation en Occident* [Syrian Refugees: Their Numbers in Constant Increase in the West], RFI (Apr. 17, 2014), <http://www.rfi.fr/moyen-orient/20140321-refugies-syriens-leur-nombre-constante-augmentation-occident>, archived at <https://perma.cc/7QTP-5ZGG>.

<sup>62</sup> *Réfugiés syriens: la France fait un geste* [Syrian Refugees: A Gesture on the Part of France], LE POINT (Feb. 24, 2014), [http://www.lepoint.fr/monde/refugies-syriens-la-france-fait-un-geste-24-02-2014-1795304\\_24.php](http://www.lepoint.fr/monde/refugies-syriens-la-france-fait-un-geste-24-02-2014-1795304_24.php), archived at <https://perma.cc/999H-DCKM>.

<sup>63</sup> *Le droit d'asile: Les acteurs de la politique d'asile*, *supra* note 40.

Office français de l'immigration et de l'intégration (OFII, French Office for Immigration and Assimilation), and a number of specialized nonprofit organizations.<sup>64</sup>

The French asylum system appears to rely on nonprofit organizations to a very large degree. As mentioned earlier, many refugee housing facilities are managed by nonprofit organizations. In addition to that role, refugee-centered nonprofits are responsible for informing and guiding asylum seekers throughout the application process.<sup>65</sup>

The main point of contact between asylum applicants and the government authorities is the OFII, which coordinates the French asylum system and often acts as the intermediary between applicants and the OFPRA.<sup>66</sup> There are thirty-four OFII offices located within prefectures around the country.<sup>67</sup>

The CNDA is a specialized administrative court set up to hear asylum seekers' appeals against unfavorable decisions of the OFPRA.<sup>68</sup> Placed under the authority of a member of the Conseil d'Etat (Council of State, France's highest court in matters of administrative law), this court is divided into several judging sections, each composed of a judge and two assistants (*assesseurs*).<sup>69</sup> One of the two assistants in each judging section is nominated by the UNHCR.<sup>70</sup> While the standard hearing panel configuration is the three-member judging section, cases that are deemed particularly important may be heard by the court in "large formation" (*grande formation*), composed of three judges (including the president of the court) and six assistants, three of these assistants being UNHCR nominees.<sup>71</sup> Conversely, a judge may decide a case by him/herself when the convening of a regular three-member hearing formation would not be justified.<sup>72</sup> Examples of such cases include situations where an appeal does not bring up any

<sup>64</sup> *Id.*

<sup>65</sup> *Le parcours du demandeur d'asile: L'accompagnement du demandeur d'asile* [The Process for Asylum Seekers: The Support Program for Asylum Seeker], MINISTÈRE DE L'INTÉRIEUR [MINISTRY OF THE INTERIOR] (Oct. 30, 2015), <http://www.immigration.interieur.gouv.fr/Asile/Le-parcours-du-demandeur-d-asile/L-accompagnement-du-demandeur-d-asile>, archived at <https://perma.cc/F8PZ-Z7KW>.

<sup>66</sup> *Id.*; *Le droit d'asile: Les acteurs de la politique d'asile*, *supra* note 40.

<sup>67</sup> *Le parcours du demandeur d'asile: L'accompagnement du demandeur d'asile*, *supra* note 65.

<sup>68</sup> *Le droit d'asile: Les acteurs de la politique d'asile*, *supra* note 40; CESEDA arts. L731-1, L731-2, [http://www.legifrance.gouv.fr/affichCode.do?jsessionid=2F5CE8F2CE215E45362E5BE86554B40F.tpdila07v\\_1?idSectionTA=LEGISCTA000006147816&cidTexte=LEGITEXT000006070158&dateTexte=20160112](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=2F5CE8F2CE215E45362E5BE86554B40F.tpdila07v_1?idSectionTA=LEGISCTA000006147816&cidTexte=LEGITEXT000006070158&dateTexte=20160112), archived at <https://perma.cc/4FCU-3RVD>.

<sup>69</sup> *Le droit d'asile: Les acteurs de la politique d'asile*, *supra* note 40; CESEDA art. L732-1, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006147817&cidTexte=LEGITEXT000006070158&dateTexte=20160112>, archived at <https://perma.cc/JB6P-V3U4>.

<sup>70</sup> *Id.*

<sup>71</sup> *Formations de jugement de la C.N.D.A.* [Judgment Formations of the C.N.D.A.], COUR NATIONALE DU DROIT D'ASILE [NATIONAL COURT ON ASYLUM LAW], <http://www.cnda.fr/La-CNDA/Organisation-de-la-CNDA/Formations-de-jugement-de-la-CNDA> (last visited Jan. 12, 2016), archived at <https://perma.cc/M69S-6L4P>; CESEDA art. R732-5, [http://www.legifrance.gouv.fr/affichCode.do?jsessionid=FB3F85F0E323D105513EB10EB45C49D6.tpdila18v\\_2?idSectionTA=LEGISCTA000006147855&cidTexte=LEGITEXT000006070158&dateTexte=20160112](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=FB3F85F0E323D105513EB10EB45C49D6.tpdila18v_2?idSectionTA=LEGISCTA000006147855&cidTexte=LEGITEXT000006070158&dateTexte=20160112), archived at <https://perma.cc/2XQB-L64E>.

<sup>72</sup> *Formations de jugement de la C.N.D.A.*, *supra* note 71.



serious argument to reverse the OFPRA's decision, the appeal must be rejected as being procedurally defective, or the appeal must be rejected because it does not fall within the CNDA's jurisdiction.<sup>73</sup> Decisions of the CNDA are appealable to the Conseil d'Etat.<sup>74</sup>

### C. Procedure for Requesting Asylum at a French Border Crossing

If a person arrives at a French border crossing point (typically a port, an airport, or a major train station) without the proper documents to enter French territory, he/she may ask the border police for asylum.<sup>75</sup> The border police will give the asylum seeker (in a language that he/she can understand) information on the asylum procedure, his/her rights and obligations, and the assistance that he/she may be entitled to.<sup>76</sup> The asylum seeker will be kept in a "waiting zone" (*zone d'attente*, often an international transit zone) while French authorities do a preliminary assessment to decide whether he/she should be admitted into France.<sup>77</sup> Entry will be refused if the asylum seeker's case is found to be the responsibility of another country under the rules of the EU's Dublin Regulation,<sup>78</sup> the request for asylum is clearly improper or fraudulent, the request for asylum is inadmissible (for example, if asylum was already granted by another country), the request for asylum is clearly unfounded (for example, if it is incoherent or has no credibility), or the applicant would be a threat to public order.<sup>79</sup> This preliminary investigation is conducted by the OFPRA, but the decision to admit an applicant into France or not belongs to the Ministry of the Interior, after consulting the OFPRA.<sup>80</sup> The OFPRA usually renders its evaluation within four days, and in any case an applicant may not be held in the waiting zone for more than twenty days.<sup>81</sup>

<sup>73</sup> CESEDA art. R733-4, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006163307&cidTexte=LEGITEXT000006070158&dateTexte=20160112>, archived at <https://perma.cc/77RZ-ALGK>.

<sup>74</sup> *Id.* art. R733-35, [http://www.legifrance.gouv.fr/affichCode.do?jsessionid=3DEEC6F0EC6F707A7FFBE242D7E9F72C.tpdila18v\\_2?idSectionTA=LEGISCTA0000027849684&cidTexte=LEGITEXT000006070158&dateTexte=20160112](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=3DEEC6F0EC6F707A7FFBE242D7E9F72C.tpdila18v_2?idSectionTA=LEGISCTA0000027849684&cidTexte=LEGITEXT000006070158&dateTexte=20160112), archived at <https://perma.cc/6KWL-N367>.

<sup>75</sup> *La procédure de demande d'asile: Demander l'asile à la frontière* [Asylum Procedure: Requesting Asylum at the Border], OFFICE FRANÇAIS DE PROTECTION DES RÉFUGIÉS ET APATRIDES [FRENCH OFFICE FOR THE PROTECTION OF REFUGEES AND STATELESS PERSONS], <https://www.ofpra.gouv.fr/fr/asile/la-procedure-de-demande-d-asile/demander-l-asile-a-la-frontiere> (last visited Jan. 12, 2016), archived at <https://perma.cc/Y92C-VGS4>; *Première étape de la demande d'asile: l'enregistrement en préfecture* [First Steps of the Request for Asylum: Registering at the Prefecture] (click on *Depuis la frontière*), SERVICE-PUBLIC.FR (information website of the French administration) (Oct. 2, 2015), <https://www.service-public.fr/particuliers/vosdroits/F2232>, archived at <https://perma.cc/4HCR-PZY8>.

<sup>76</sup> *Première étape de la demande d'asile: l'enregistrement en préfecture* (click on *Depuis la frontière*).

<sup>77</sup> *Id.*; CESEDA art. L221-1, [http://www.legifrance.gouv.fr/affichCode.do?jsessionid=D199AE2484D531EFB029FBE89976DAA9.tpdila07v\\_1?idSectionTA=LEGISCTA000006147751&cidTexte=LEGITEXT000006070158&dateTexte=20160112](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=D199AE2484D531EFB029FBE89976DAA9.tpdila07v_1?idSectionTA=LEGISCTA000006147751&cidTexte=LEGITEXT000006070158&dateTexte=20160112), archived at <https://perma.cc/LJ6L-5L4M>.

<sup>78</sup> Regulation (EU) No. 604/2013, *supra* note 14.

<sup>79</sup> CESEDA arts. L221-1, L213-8-1, [http://www.legifrance.gouv.fr/affichCode.do?jsessionid=D199AE2484D531EFB029FBE89976DAA9.tpdila07v\\_1?idSectionTA=LEGISCTA000006147750&cidTexte=LEGITEXT000006070158&dateTexte=20160112](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=D199AE2484D531EFB029FBE89976DAA9.tpdila07v_1?idSectionTA=LEGISCTA000006147750&cidTexte=LEGITEXT000006070158&dateTexte=20160112), archived at <https://perma.cc/S4A2-4F64>; *Première étape de la demande d'asile: l'enregistrement en préfecture*, *supra* note 75 (click on *Depuis la frontière*).

<sup>80</sup> *La procédure de demande d'asile: Demander l'asile à la frontière*, *supra* note 75.

<sup>81</sup> *Id.*



An applicant who is denied entry into France has forty-eight hours to appeal the decision before an administrative judge.<sup>82</sup> The administrative judge then has seventy-two hours to either confirm or invalidate the denial of entry, and this decision is, in turn, appealable to an administrative court of appeals.<sup>83</sup> If the denial of entry is not reversed, the applicant is sent back to his/her country of origin (or the country from which he/she came to France) at the expense of the transport company that carried him/her to France.<sup>84</sup>

An applicant who is authorized to enter France for the purpose of seeking asylum is given a temporary visa, which is valid for eight days.<sup>85</sup> During that eight-day period, the asylum seeker must submit an application for asylum to a local prefecture, as described below.<sup>86</sup>

#### **D. Procedure for Requesting Asylum from Within France**

The following procedure applies for the asylum seeker who is already on French territory, either because he/she entered France illegally, because he/she was granted the temporary visa described above, or because he/she entered France on the basis of another visa or stay permit (student visa, tourist visa, etc.).

##### *1. Registration at a Local Prefecture*

The asylum seeker's first step is to register as an asylum seeker with the French authorities.<sup>87</sup> The competent authorities for this registration are the local prefectural services.<sup>88</sup> These services verify whether France is responsible for protecting the asylum seeker under the rules of the EU Dublin Regulation.<sup>89</sup> The prefectural services have up to three days to make this determination, except when they are faced with a high number of foreigners asking for asylum at the same time, in which case they may take up to ten days to make a determination.<sup>90</sup> If no other country is found to be responsible for protecting the asylum seeker under the Dublin Regulation, the

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<sup>82</sup> CESEDA art. L213-9.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* arts. L213-4 – L213-8.

<sup>85</sup> *Id.* arts. L213-8-1, L213-8-2.

<sup>86</sup> *Id.*; *La procédure de demande d'asile: Demander l'asile à la frontière*, *supra* note 75.

<sup>87</sup> CESEDA art. L741-1, [http://www.legifrance.gouv.fr/affichCode.do?sessionId=0968D875D95471B1BFEB2A96820D83BF.tpdila21v\\_3?idSectionTA=LEGISCTA000030957541&cidTexte=LEGITEXT000006070158&dateTexte=20160113](http://www.legifrance.gouv.fr/affichCode.do?sessionId=0968D875D95471B1BFEB2A96820D83BF.tpdila21v_3?idSectionTA=LEGISCTA000030957541&cidTexte=LEGITEXT000006070158&dateTexte=20160113), archived at <https://perma.cc/4XDV-59NB>; *Première étape de la demande d'asile: l'enregistrement en préfecture*, *supra* note 75 (click on both *Depuis la frontière* and *Sur le territoire français*).

<sup>88</sup> CESEDA art. R741-1, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031202369&cidTexte=LEGITEXT000006070158&dateTexte=20160113>, archived at <https://perma.cc/MRX6-TCVF>; *Première étape de la demande d'asile: l'enregistrement en préfecture*, *supra* note 75 (click on both *Depuis la frontière* and *Sur le territoire français*).

<sup>89</sup> CESEDA art. L741-1. Applicants who requested asylum at the border, as described in Part IV(C) of this report, have already gone through such a verification at this point, so this step would be redundant for them. Nonetheless, it is unclear whether the prefectural services skip this step or not in their cases.

<sup>90</sup> CESEDA art. L741-1.

prefectural services give the applicant a document certifying that he/she is registered as an asylum seeker.<sup>91</sup> This registration document does not authorize the applicant to travel within the European Union.<sup>92</sup> Furthermore, it may be denied or taken away in certain cases, including (a) when the OFPRA has found that the applicant already benefits from protection in another country; (b) when the asylum seeker retracts his/her application for asylum; (c) when the asylum seeker's file is closed because of his/her failure to file required forms in a timely manner or attend required meetings, or due to his/her refusal to provide important information; (d) when the asylum seeker requests a reconsideration of his/her application after a final denial; or (e) when the asylum seeker is the subject of a European arrest warrant, an arrest request from an international criminal court, or a decision to extradite him/her to a country other than his/her country of origin.<sup>93</sup>

In addition to the registration document mentioned above, the prefectural services give the asylum seeker an asylum application form, as well as information on the asylum application process, his/her rights and obligations during that process, assistance he/she is entitled to (lodging, financial assistance, etc.), and any local organizations that help asylum seekers.<sup>94</sup>

## 2. *The OFPRA's Investigation*

An asylum seeker must submit his/her application for asylum to the OFPRA within twenty-one days of receiving his/her registration document.<sup>95</sup> The OFPRA must then reach a decision within six months.<sup>96</sup> This time limit may be extended to a maximum of nine additional months in certain circumstances, such as when complex issues of fact and/or law are involved, when large numbers of asylum seekers apply for protection at the same time, or when the delay is clearly attributable to the applicant's failure to comply with his/her obligations.<sup>97</sup> If the OFPRA is unable to reach a decision within six months, it must notify the applicant of that fact at least fifteen days before the end of the six-month period.<sup>98</sup>

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<sup>91</sup> *Id.* arts. L741-1, R741-4.

<sup>92</sup> *Id.* art. R741-4.

<sup>93</sup> *Id.* art. L743-2.

<sup>94</sup> *Id.* art. R741-4.

<sup>95</sup> CESEDA art. R723-1, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=39FA4F3DFCF38424C8E02B2B004B164E.tpdila11v\\_2?idSectionTA=LEGISCTA000031197664&cidTexte=LEGITEXT000006070158&dateTexte=20160114](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=39FA4F3DFCF38424C8E02B2B004B164E.tpdila11v_2?idSectionTA=LEGISCTA000031197664&cidTexte=LEGITEXT000006070158&dateTexte=20160114), archived at <https://perma.cc/95JL-9LEU>.

<sup>96</sup> *Id.* art. R723-2, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031197668&cidTexte=LEGITEXT000006070158&dateTexte=20160114>, archived at <https://perma.cc/5LPG-LQ9D>; Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection art. 31, ¶ 3, 2013 O.J. (L 180) 60, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>, archived at <https://perma.cc/V4FE-AY2T>.

<sup>97</sup> *Id.*

<sup>98</sup> CESEDA art. R723-3.

The OFPRA must investigate applications under an “accelerated procedure” when the asylum seeker comes from a safe country.<sup>99</sup> The OFPRA may also, if it chooses, investigate under an accelerated procedure in cases where (a) the asylum seeker is found to have sought to mislead the OFPRA by providing fake documents, lying, or concealing information regarding his/her identity, nationality, and/or entry into France; (b) the asylum seeker is found to have submitted several applications for asylum under different identities; (c) the asylum seeker’s application only rests on elements that are irrelevant to asylum; (d) the asylum seeker’s statements to the OFPRA are clearly incoherent, contradictory, false, or very implausible; (e) the asylum seeker refuses to provide his/her fingerprints; (f) the asylum seeker, without legitimate reason, had stayed in France illegally for over 120 days before he/she submitted an application for asylum; or (g) the only purpose for the application for asylum is to delay deportation.<sup>100</sup> Under such an accelerated procedure, the OFPRA is supposed to reach a decision on the application within fifteen days.<sup>101</sup>

The OFPRA conducts an investigation to verify whether the applicant fulfills the criteria for refugee status or subsidiary protection.<sup>102</sup> The OFPRA evaluates all relevant evidence, including the applicant’s statements and any documentation concerning his/her identity, age, personal and family history, nationality, travel documents, past residences, past requests for asylum, itinerary, and the reasons for which he/she is seeking asylum.<sup>103</sup> The agency also takes into consideration the current situation in the country of origin, as well as any activity that the applicant has engaged in since leaving the country of origin that may expose him/her to persecution or harm if he/she were to return there.<sup>104</sup> It appears that special weight is given to evidence that the applicant has been the victim of past persecution, serious harm, or direct threats in the country of origin.<sup>105</sup>

The applicant is required to cooperate with the agency’s investigation, which generally includes an interview.<sup>106</sup> The applicant may be interviewed in the presence of an attorney or of a representative from an authorized nonprofit advocacy group.<sup>107</sup> The presence of an attorney or advocate is not required, however, and if present, the attorney or advocate may not speak until

<sup>99</sup> *Id.* art. L723-2, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=39FA4F3DFCF38424C8E02B2B004B164E.tpdila1lv\\_2?idSectionTA=LEGISCTA000030950918&cidTexte=LEGITEXT000006070158&dateTexte=20160114](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=39FA4F3DFCF38424C8E02B2B004B164E.tpdila1lv_2?idSectionTA=LEGISCTA000030950918&cidTexte=LEGITEXT000006070158&dateTexte=20160114), archived at <https://perma.cc/3J73-7ARJ>.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* art. R723-4.

<sup>102</sup> *Id.* art. L723-4.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* arts. L723-4, L723-6.

<sup>107</sup> *Id.* art. L723-6.

the end of the interview.<sup>108</sup> The OFPRA may also, as part of its investigation, request that the applicant submit to a medical examination.<sup>109</sup>

The OFPRA is held to a strict obligation of confidentiality. It is required to conduct its investigation without divulging the existence of a request for asylum to the alleged authors of persecution or harm.<sup>110</sup> The OFPRA must also conduct its investigation without divulging any information that might endanger anyone or that might jeopardize the agency's ability to conduct future investigations.<sup>111</sup>

### 3. *The OFPRA's Decision*

The OFPRA must provide a decision in writing to the applicant.<sup>112</sup> All decisions denying refugee status must include the grounds, both factual and legal, for the denial of protection.<sup>113</sup> Decisions awarding subsidiary protection must also be reasoned, inasmuch as such decisions are technically denials of refugee status.<sup>114</sup> The OFPRA must also communicate its decision, whether it is positive or negative, to the prefect of the asylum seeker's place of residence.<sup>115</sup>

As mentioned in Part II above, the status of refugee or subsidiary protection may be revoked. The OFPRA may revoke protection, either on its own initiative or upon the request of the Minister of the Interior or a local prefect, in the following situations: (a) in any of the circumstances described in sections C, D, E, and F of article 1 of the Geneva Convention of July 28, 1951; (b) if the decision to grant protection is found to have been the result of a fraud; (c) when there are serious reasons to believe that the person's presence in France would present a grave threat to the safety of the state; or (d) when the person was found guilty of an act of terrorism or a serious crime in France, and his/her continued presence in France would present a grave threat to society.<sup>116</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.* art. L723-5.

<sup>110</sup> *Id.* art. L723-10.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* art. L723-8.

<sup>113</sup> *Id.*

<sup>114</sup> *L'instruction des demandes de protection: La décision* [The Investigation of Requests for Protection: The Decision], OFFICE FRANÇAIS DE PROTECTION DES RÉFUGIÉS ET APATRIDES [FRENCH OFFICE FOR THE PROTECTION OF REFUGEES AND STATELESS PERSONS], <https://www.ofpra.gouv.fr/fr/asile/l-instruction-des-demandes-de/la-decision> (last visited Jan. 15, 2016), archived at <https://perma.cc/QY4Z-2F6L>.

<sup>115</sup> CESEDA art. R723-21, [http://www.legifrance.gouv.fr/affichCode.do?jsessionid=CDCFC1788D991C482442CDCF8E979940.tpdila13v\\_3?idSectionTA=LEGISCTA000031202340&cidTexte=LEGITEXT000006070158&dateTexte=20160115](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=CDCFC1788D991C482442CDCF8E979940.tpdila13v_3?idSectionTA=LEGISCTA000031202340&cidTexte=LEGITEXT000006070158&dateTexte=20160115), archived at <https://perma.cc/5P79-7R7A>.

<sup>116</sup> *Id.* arts. L711-4, L711-6, L712-2, L712-3, R711-1, <http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000031196875&idSectionTA=LEGISCTA000031202258&cidTexte=LEGITEXT000006070158&dateTexte=20160115>, archived at <https://perma.cc/KMF4-39S4>, & art. R712-1, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031202254&cidTexte=LEGITEXT000006070158&dateTexte=20160115>, archived at <https://perma.cc/6EV6-RY96>.

4. *Recourse Before the Cour nationale du droit d'asile (CNDA)*

Asylum seekers may appeal decisions of the OFPRA to the CNDA within one month of being notified.<sup>117</sup> The CNDA must judge a case within five months of the date of the appeal.<sup>118</sup> The CNDA may either (a) deny the applicant's appeal, (b) reverse the OFPRA's decision and grant asylum to the applicant, or (c) quash the OFPRA's decision and send the case back to it for further investigation.<sup>119</sup>

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<sup>117</sup> CESEDA art. L731-2.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* art. L733-5, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006147818&cidTexte=LEGITEXT000006070158&dateTexte=20160115>, archived at <https://perma.cc/3282-4WJ2>.

# Germany

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**SUMMARY** The right to asylum is a constitutional right in Germany and granted to everyone who flees political persecution. An asylum seeker is allowed to stay in Germany if he or she is granted political asylum, refugee status, or subsidiary protection, or if the agency declares a deportation prohibition. The Asylum Act and the Residence Act are the two most important immigration laws in Germany that provide rules for the admission and handling of refugee claims. There have been several amendments to these and other laws due to the current refugee crisis.

In order to determine whether a person is entitled to refugee status, an in-person interview is conducted and country-specific resources and experts consulted. Every applicant over the age of fourteen must submit to measures establishing his or her identity and provide fingerprints, which are cross-checked with national and European databases and the Visa Information System. Refugees are generally housed in reception facilities, which provide them with essential items like food, housing, heat, clothing, health care, and household items in kind or in the form of vouchers, whereas persons who are housed outside of reception facilities primarily receive cash allowances to purchase essential items.

While an asylum application is pending, applicants are not allowed to leave the area of the reception facility without permission. If a refugee has no independent means of subsistence, a residence permit may also be restricted territorially. A refugee can obtain citizenship after six years of legal residence, rather than eight, and naturalization of refugees has also been deemed presumptively in the public interest for purposes of discretionary naturalization.

## I. General Background

The right to asylum is codified in article 16a of the German Basic Law.<sup>1</sup> It is granted to everyone who flees political persecution. In general, only persecution that is perpetrated by the state is relevant.<sup>2</sup> Political persecution is defined as persecution that causes specific violations of individual rights and, due to its intensity, excludes the individual from the “general peace framework of the state unit.”<sup>3</sup> The constitutional right to asylum protects human dignity and reflects the view that no state has the right to persecute an individual for his or her political or

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<sup>1</sup> GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 1, art. 16a, unofficial English translation at [http://www.gesetze-im-internet.de/englisch\\_gg/basic\\_law\\_for\\_the\\_federal\\_republic\\_of\\_germany.pdf](http://www.gesetze-im-internet.de/englisch_gg/basic_law_for_the_federal_republic_of_germany.pdf), archived at <http://perma.cc/RW2X-HD46>.

<sup>2</sup> BUNDESVERFASSUNGSGERICHT [BVERFG] [FEDERAL CONSTITUTIONAL COURT], 80 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] [DECISIONS OF THE FEDERAL CONSTITUTIONAL COURT] 315, 334.

<sup>3</sup> *Id.* at 334 *et seq.*

religious beliefs or other personal characteristics that mark him or her as different.<sup>4</sup> Not every disadvantage or material hardship supports a right to asylum.<sup>5</sup>

In addition, Germany is a signatory to the Geneva Convention Relating to the Status of Refugees of 1951<sup>6</sup> and has implemented it into German law.<sup>7</sup> Article 1(A)(2) of the Refugee Convention states that a refugee is someone who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.” This definition has been incorporated into section 3 of the German Asylum Act.<sup>8</sup>

According to the monthly statistics of the Federal Office for Migration and Refugees, Germany has received 425,035 asylum applications between January and November 2015, with 57,816 in November alone.<sup>9</sup> The number of asylum applications has more than doubled since 2014—an increase of 134.2%.<sup>10</sup> Most of the applicants in November came from Syria (30,398 first-time applicants), Afghanistan (4,929), and Iraq (4,391).<sup>11</sup> In all of 2015, most applicants came from Syria, Albania, and Kosovo. The applications of Syrians were approved in 94.8% of the cases, whereas the success rates for Albanians and Kosovarians were 0.2% and 0.4%, respectively.<sup>12</sup> In general, 45.8% of the applications were approved in 2015.<sup>13</sup>

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<sup>4</sup> *Id.* at 333.

<sup>5</sup> *Id.* at 335.

<sup>6</sup> Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, <http://www.unhcr.org/3b66c2aa10.pdf>, archived at <http://perma.cc/K3X4-FA37>.

<sup>7</sup> Gesetz betreffend das Abkommen vom 28. Juli 1951 über die Rechtstellung der Flüchtlinge [Act on the Convention of July 28, 1951 Relating to the Status of Refugees], Sept. 1, 1953, BGBl. II at 559, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl253s0559.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl253s0559.pdf), archived at <http://perma.cc/JZJ8-CVKX>.

<sup>8</sup> Asylgesetz [AsylG] [Asylum Act], Sept. 2, 2008, BGBl.I at 1798, § 3, [http://www.gesetze-im-internet.de/bundesrecht/asylvfg\\_1992/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/asylvfg_1992/gesamt.pdf), archived at <http://perma.cc/5UGT-VNNE>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_asylvfg/englisch\\_asylvfg.pdf](http://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.pdf), archived at <http://perma.cc/E2YA-U7LK>. Please note that the English version is only current up to December 2014 and does not reflect the name change of the act to Asylum Act.

<sup>9</sup> BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE [FEDERAL OFFICE FOR MIGRATION AND REFUGEES], AKTUELLE ZAHLEN ZU ASYL [CURRENT ASYLUM NUMBERS], Nov. 2015, at 4, [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/statistik-anlage-teil-4-aktuelle-zahlen-zu-asyl.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/statistik-anlage-teil-4-aktuelle-zahlen-zu-asyl.pdf?__blob=publicationFile), archived at <http://perma.cc/9MUN-2ZL8>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 5.

<sup>12</sup> BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE [FEDERAL OFFICE FOR MIGRATION AND REFUGEES], ASYLGESCHÄFTSSTATISTIK FÜR DEN MONAT NOVEMBER 2015 at 2 (Dec. 2015), [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/201511-statistik-anlage-asyl-geschaeftsbericht.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/201511-statistik-anlage-asyl-geschaeftsbericht.pdf?__blob=publicationFile), archived at <http://perma.cc/D682-H288>.

<sup>13</sup> BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE, *supra* note 9, at 10.



## II. General Rules and Norms for Admission of Refugees and Handling Refugee Claims

The Asylum Act and the Residence Act<sup>14</sup> are the two most important immigration laws in Germany that provide rules for the admission of refugees and the handling of refugee claims. The Asylum Act codifies the process and consequences of granting and denying asylum, whereas the Residence Act provides rules concerning the entry, stay, exit, and employment of foreigners in general.

An asylum seeker is allowed to stay in Germany if he or she is seeking protection from political persecution or international protection, which includes refugee status and subsidiary protection, or if the agency declares a deportation prohibition. If the application is denied, the applicant has a duty to leave Germany or will be subject to deportation proceedings.

### A. Application Approved

The protection against political persecution is codified in article 16a of the Basic Law, as discussed above. If the applicant was the victim of political persecution, he or she may be granted political asylum under article 16a of the Basic Law. Refugee status under the Geneva Convention, codified in section 3, paragraph 1 of the Asylum Act, may be granted for humanitarian reasons. Those reasons include the criteria for political asylum and a broad range of other humanitarian reasons.<sup>15</sup>

Applicants who are awarded political asylum or refugee status receive a three-year residence permit (*Aufenthaltserlaubnis*).<sup>16</sup> After those initial three years, a settlement permit (*Niederlassungserlaubnis*) with no time limit is issued if the Federal Office for Migration and Refugees does not object.<sup>17</sup>

Subsidiary protection is codified in section 4, paragraph 1 of the Asylum Act and is awarded to applicants who can prove that they are threatened with serious harm in their country of origin. “Serious harm” is defined as the “imposition or application of capital punishment, torture or inhuman or degrading punishment or treatment, or a serious individual threat to the life or integrity of a civilian as a result of indiscriminate violence in an international or internal armed conflict.”<sup>18</sup> Applicants subject to subsidiary protection are initially granted a residence permit for one year, which can be extended for two additional years.<sup>19</sup>

<sup>14</sup> Aufenthaltsgesetz [AufenthG] [Residence Act], Feb. 25, 2008, BGBl. I at 162, as amended, § 45a, [http://www.gesetze-im-internet.de/bundesrecht/aufenthg\\_2004/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/aufenthg_2004/gesamt.pdf), archived at <http://perma.cc/2PK7-NQL8>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_aufenthg/residence\\_act.pdf](http://www.gesetze-im-internet.de/englisch_aufenthg/residence_act.pdf), archived at <http://perma.cc/P5Y3-V27S>. Please note that the English translation is only current up to September 2013.

<sup>15</sup> Examples of other humanitarian grounds are codified in articles 3a and 3b of the Asylum Act.

<sup>16</sup> Residence Act § 26, para. 1, sentence 2.

<sup>17</sup> *Id.* § 26, para. 3.

<sup>18</sup> Asylum Act § 4, para. 1, sentence 2.

<sup>19</sup> Residence Act § 26, para. 1, sentence 3.

In addition, the government agency may not deport the applicant if there is a prohibition against deportation according to section 60, paragraphs 5 or 7 of the Residence Act. Deportation is prohibited according to section 60, paragraph 5, if it is inadmissible under the terms of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR),<sup>20</sup> which entered into force for Germany in 1952.<sup>21</sup> An applicant may also not be deported to a country in which he or she faces a substantial and concrete danger to his or her life, limb, or liberty.<sup>22</sup> Asylum seekers often invoke this provision when there is a risk of a substantial deterioration of health after the return to their country of origin—for example, due to post-traumatic stress disorder.<sup>23</sup>

## B. Application Denied

If an application for asylum is rejected as either unfounded or manifestly unfounded and there is no prohibition against deportation, if the asylum application is inadmissible because another Member State of the European Union (EU) is responsible for processing the application (Dublin procedure), or if the application is withdrawn, a deportation order is issued and the applicant must leave Germany.<sup>24</sup> The period for departure is either thirty days if the application was rejected as without merit<sup>25</sup> or one week if it was rejected as manifestly without merit.<sup>26</sup>

## III. Processes for Handling Refugees Arriving at the Border

A refugee can either register as an asylum-seeker at the border or inside the country. The authorities then direct him or her to the closest reception facility. Staff at this reception facility issue a certificate of registration as an asylum seeker, which includes personal details and a photo.<sup>27</sup>

In a next step the authorities determine which German state is responsible for processing the asylum application. The distribution among the German states takes place according to the

<sup>20</sup> Convention for the Protection of Human Rights and Fundamental Freedoms [ECHR], Nov. 4, 1950, 213 U.N.T.S. 222, as amended, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), archived at <http://perma.cc/7RZX-DST2>.

<sup>21</sup> Gesetz über die Konvention zum Schutze der Menschenrechte und Grundfreiheiten [Act on the Convention for the Protection of Human Rights and Fundamental Freedoms], Aug. 7, 1952, BGBl. II at 685, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl252s0685.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl252s0685.pdf), archived at <http://perma.cc/ZTL8-KZ48>; AsylG, § 60, para. 5.

<sup>22</sup> Residence Act § 60, para. 7.

<sup>23</sup> FEDERAL OFFICE FOR MIGRATION AND REFUGEES, GERMANY'S ASYLUM PROCEDURE – IN DETAIL: RESPONSIBILITIES, PROCEDURES, STATISTICS, LEGAL CONSEQUENCES 28 *et seq.* (Nov. 2014), [http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/das-deutsche-asylverfahren.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/das-deutsche-asylverfahren.pdf?__blob=publicationFile), archived at <http://perma.cc/27SD-YPHZ>.

<sup>24</sup> Asylum Act §§ 34, 34a, 35.

<sup>25</sup> *Id.* § 38, para. 1.

<sup>26</sup> *Id.* § 36, para. 1.

<sup>27</sup> *Id.* § 63a.

EASY system.<sup>28</sup> The allocation to a reception facility depends on the capacity available, the home country of the asylum seeker, and a quota system.<sup>29</sup> Not all branch offices handle all countries. In addition, each German state only needs to accept a certain number of applicants based on a quota system called *Königsteiner Schlüssel*. The quota is calculated each year according to the tax receipts and population numbers of the German states.<sup>30</sup> If the reception center in which the asylum seeker registered is not the one that is responsible for handling his or her case, he or she has to travel to the responsible center.<sup>31</sup> The branch offices of the Federal Office for Migration and Refugees in which the asylum seeker must submit his or her application are usually close to the reception centers.

Asylum seekers who enter Germany from safe third countries have no right to asylum and are removed to the country they came from.<sup>32</sup> Safe third countries are the European Union (EU) countries, Norway, and Switzerland.<sup>33</sup>

Furthermore, at some airports that have the capacity,<sup>34</sup> asylum seekers who enter by air are subject to the “airport procedure.”<sup>35</sup> If the asylum seeker entered without or with false or expired papers or via a safe country of origin, the asylum procedure is carried out directly in the airport transit area. Safe countries of origin are all EU countries, Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal, and Serbia.<sup>36</sup> The Federal Office for Migration and Refugees must decide within two days whether the asylum application is justified.<sup>37</sup> If the application is denied, the applicant will be denied entry into Germany and threatened with deportation if he enters Germany illegally.<sup>38</sup> The applicant has the right to an attorney and can appeal the decision within three days.<sup>39</sup> A judge will issue a ruling in an emergency proceeding within fourteen days.<sup>40</sup> While the application is pending, the asylum seeker must stay in the airport transit area and cannot enter Germany.

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<sup>28</sup> EASY stands for *Erstverteilung von Asylbegehrenden* (“initial distribution of asylum seekers”).

<sup>29</sup> Asylum Act § 46, paras. 1, 2.

<sup>30</sup> *Id.* § 45, para. 1.

<sup>31</sup> *Id.* § 46.

<sup>32</sup> *Id.* §§ 26a, para. 1, 34a, para. 1.

<sup>33</sup> *Id.* § 26a, para. 2, annex I.

<sup>34</sup> Berlin-Schönefeld, Düsseldorf, Frankfurt am Main, Hamburg, and Munich airports.

<sup>35</sup> Asylum Act § 18a.

<sup>36</sup> *Id.* § 29a in conjunction with annex II.

<sup>37</sup> *Id.* § 18a, para. 6, no. 1.

<sup>38</sup> *Id.* § 18a, paras. 2, 3.

<sup>39</sup> *Id.* §§ 18a, para. 1, sentence 5, 18a, para. 4.

<sup>40</sup> *Id.* § 18a, paras. 4, 6, no. 3.

#### IV. Adjustments or Amendments to the Refugee Handling Procedure Due to the Current Refugee Crisis

Several amendments to current laws have been adopted in recent months due to the refugee crisis. On October 24, 2015, the Act on the Acceleration of Asylum Procedures entered into force.<sup>41</sup> The Act amended several laws in order to accelerate the asylum process; substitute in-kind benefits for cash benefits; reduce the financial burden on the German states and municipalities; reform integration policies for refugees; and designate Albania, Kosovo, and Montenegro as safe countries of origin.

On November 1, 2015, the Act to Improve the Housing, Care, and Treatment of Foreign Minors and Adolescents entered into force. Its goal is to improve the situation of young unaccompanied refugees and provide them with appropriate care.<sup>42</sup>

On August 1, 2015, the Act to Redefine the Right to Stay and the Termination of Residence entered into force.<sup>43</sup> It amended the Residence Act by ordering a ban on entry and residence for applicants from safe countries of residence and in case of repeat follow-up applications.<sup>44</sup> Furthermore, the Act grants a residence permit to persons who can prove that they are well-integrated after a period of eight years and to well-integrated minors after four years.<sup>45</sup>

Additionally, on February 3, 2016, the German government agreed on a set of stricter asylum measures (Asylum Package II), which will now be debated by the German Bundestag. The Asylum Package II would accelerate the asylum application process; suspend family reunification for refugees with subsidiary protection status for a period of two years; decrease asylees' monthly cash benefits; facilitate deportation; establish a new Federal Police unit to help procure replacement documents; improve the safety of refugee minors; and designate Algeria, Morocco, and Tunisia as safe countries of origin.<sup>46</sup>

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<sup>41</sup> Asylverfahrensbeschleunigungsgesetz [Act on the Acceleration of Asylum Procedures], Oct. 20, 2015, BGBl. I at 1722, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl115s1722.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl115s1722.pdf), archived at <http://perma.cc/K4YQ-VWNS>.

<sup>42</sup> Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Oct. 28, 2015, BGBl. I at 1802, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl115s1802.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl115s1802.pdf), archived at <http://perma.cc/M75M-U4Y5>.

<sup>43</sup> Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung [Act to Redefine the Right to Stay and the Termination of Residence], July 27, 2015, BGBl. I at 1386, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl115s1386.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl115s1386.pdf), archived at <http://perma.cc/6HSW-G3PM>.

<sup>44</sup> Residence Act § 11, para. 7.

<sup>45</sup> *Id.* §§ 25a, 25b.

<sup>46</sup> For more information, see Jenny Gesley, *Germany: Proposed Tightening of Asylum Rules*, GLOBAL LEGAL MONITOR (Feb. 8, 2016), <http://www.loc.gov/law/foreign-news/article/germany-proposed-tightening-of-asylum-rules/?locrl=eaglm>, archived at <http://perma.cc/T5WM-7F5B>.

## A. Act on the Acceleration of Asylum Procedures

### 1. *Substitution of Benefits in Kind for Cash Benefits*

Before the recent changes, asylum seekers in a reception facility received essential benefits in kind and an additional cash allowance (pocket money) for personal use. The pocket money totaled €140 per month for a single adult (about US\$154) or €126 per month for each of two adult recipients living in a common household. According to the amendment, refugees and asylum seekers in reception facilities now only receive essential items like food, housing, heat, clothing, health care, and household items in kind or in the form of vouchers. Items for personal use are also provided in kind, but states retain discretion to provide refugees and asylum seekers with cash if necessary.<sup>47</sup> Cash allowances cannot be disbursed more than one month in advance.<sup>48</sup>

Asylum seekers who are housed outside of reception facilities primarily receive cash allowances to purchase essential items. A single adult recipient receives €16 per month; two adult recipients with a common household each receive €194 per month; other adult beneficiaries without a household, €174 per month; adolescents between fifteen and eighteen years old, €198 per month; children between seven and fourteen years old, €157 per month; and children up to six years old, €133 per month.<sup>49</sup>

### 2. *Reduction of the Financial Burden of German States and Municipalities*

Currently, the municipalities that receive refugees and asylum seekers pay for their essential needs and are reimbursed by the German states. Starting in 2016, the federal government will pay the German states €670 per asylum seeker per month, until the asylum procedure has been concluded, in order to reduce the financial burden on the German states. The federal government will therefore allocate a provisional sum of approximately €2.8 billion (about US\$3.1 billion) to the states.<sup>50</sup> The sum is only an estimate and will be adjusted as needed at the end of 2016. The allocation is based on the assumption that there will be around 800,000 applicants for asylum, with an average processing time of five months, and around 400,000 denied applications, for which the states will receive another month's worth of compensation. The allocation also includes money to cover expenses for unaccompanied refugee minors.<sup>51</sup>

<sup>47</sup> Asylbewerberleistungsgesetz [AsylbLG] [Asylum Seeker Benefits Act], Aug. 5, 1997, BGBl. I at 2022, § 3, para. 1, <http://www.gesetze-im-internet.de/bundesrecht/asylbgl/gesamt.pdf>, archived at <http://perma.cc/S9WY-G6HM>.

<sup>48</sup> *Id.* § 3, para. 6.

<sup>49</sup> *Id.* § 3, para. 2.

<sup>50</sup> Finanzausgleichsgesetz [FAG] [Financial Compensation Act], Dec. 20, 2001, BGBl. I at 3955, 3956, as amended, § 1, sentence 5, [http://www.gesetze-im-internet.de/bundesrecht/finausglg\\_2005/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/finausglg_2005/gesamt.pdf), archived at <http://perma.cc/2DBB-QGC7>.

<sup>51</sup> DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 18/6185, p. 57.

### 3. Safe Countries of Origin

The Act on the Acceleration of Asylum Procedures designates Albania, Kosovo, and Montenegro as safe countries of origin and adds them to the list contained in appendix II of section 29a of the Asylum Act. The designation as a safe country of origin allows the accelerated processing of applications from asylum seekers from these countries, because there is a presumption that the application is manifestly without merit.<sup>52</sup> In such a case, the applicant has only one week to leave the country<sup>53</sup> instead of the usual thirty days.<sup>54</sup>

### 4. Integration Classes and Employment

The Federal Employment Agency assumes the costs for integration and language classes for asylum seekers whose applications are likely to be approved, in order to improve their chances in the job market and accelerate their integration into Germany.<sup>55</sup>

### 5. Housing for Refugees

The Act on the Acceleration of Asylum Procedures also dispensed with some building code and renewable energy law requirements, in order to facilitate and accelerate the building of new accommodations and the repurposing of existing facilities to provide housing for refugees.<sup>56</sup>

## B. Support for Unaccompanied Refugee Minors

Under current rules, the youth office in the district in which an unaccompanied minor arrives is obligated to take him or her into its care.<sup>57</sup> Some local communities in central arrival locations are therefore disproportionately affected. In order to distribute the burden evenly, the Act to Improve the Housing, Care, and Treatment of Foreign Minors and Adolescents created an obligation for all German states to receive unaccompanied refugee minors. Refugee minors will be distributed throughout Germany by the local youth office according to the quota system, *Königsteiner Schlüssel*.<sup>58</sup>

<sup>52</sup> Asylum Act § 29a, para. 1.

<sup>53</sup> *Id.* § 36, para. 1.

<sup>54</sup> *Id.* § 38, para. 1.

<sup>55</sup> Residence Act § 45a; SOZIALGESETZBUCH DRITTES BUCH [SGB III] [SOCIAL SECURITY CODE THIRD BOOK], Mar. 24, 1997, BGBl. I at 594, 595, as amended, §§ 131, 421, [http://www.gesetze-im-internet.de/bundesrecht/sgb\\_3/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/sgb_3/gesamt.pdf), archived at <http://perma.cc/UQ9T-MRDP>.

<sup>56</sup> BAUGESETZBUCH [BAUGB] [BUILDING CODE], Sept. 23, 2004, BGBl. I at 2414, as amended, § 246, <http://www.gesetze-im-internet.de/bundesrecht/bbaug/gesamt.pdf>, archived at <http://perma.cc/3984-ND8Z>; Act on the Acceleration of Asylum Procedures art. 6; Erneuerbare-Energien-Wärmegesetz [EEWärmeG] [Renewable Energy Heat Act], Aug. 7, 2008, BGBl. I at 1658, as amended, § 9a, [http://www.gesetze-im-internet.de/bundesrecht/eew\\_rmeg/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/eew_rmeg/gesamt.pdf), archived at <http://perma.cc/NU7N-ZAXW>.

<sup>57</sup> SOZIALGESETZBUCH ACHTES BUCH [SGB VIII] [SOCIAL SECURITY CODE EIGHTH BOOK], Sept. 11, 2012, BGBl. I at 2022, as amended, § 42, para. 1, sentence 1, no. 3, § 87, [http://www.gesetze-im-internet.de/bundesrecht/sgb\\_8/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/sgb_8/gesamt.pdf), archived at <http://perma.cc/8WA2-WUHP>.

<sup>58</sup> *Id.* §§ 42b, 42c.

In addition, the age of legal capacity to act in an asylum procedure was raised from sixteen to eighteen years. That means that every asylum seeker under the age of eighteen is provided with a legal guardian to act on his or her behalf and to handle the complex asylum procedure.<sup>59</sup>

## V. Steps to Determine Whether a Person Is Entitled to Refugee Status

After an application has been submitted, the person seeking asylum is invited to an in-person interview.<sup>60</sup> No in-person interview is necessary if the applicant is younger than six years of age.<sup>61</sup> The applicant is informed about his or her rights in a language he or she understands.<sup>62</sup> It is the duty of the applicant to provide information and proof of persecution or serious harm.<sup>63</sup> That includes information on former residences, travel routes, time spent in other countries, and whether a refugee or asylum application has already been initiated or completed in another country or in a different location in Germany.<sup>64</sup>

The case worker makes a decision on the basis of an overall assessment of all relevant findings, with an emphasis on the personal interview. In making the decision, the case worker may also consult the Federal Office's Asylum and Migration Information Centre and its Migration Info Logistics (MILO) database;<sup>65</sup> send individual queries to the German Foreign Office; and obtain language and text analyses, physical-technical document examinations, and medical or other expert advice.<sup>66</sup> The decision on the asylum application is given to the applicant in writing and details the reasoning and the legal options for appeal.<sup>67</sup>

## VI. Screening Procedure for Arriving Refugees Being Resettled in the Country

Every person over the age of fourteen who applies for asylum must submit to measures establishing his or her identity.<sup>68</sup> For that purpose, the government agency takes photographs of the individual and prints of all ten fingers. The asylum seeker is required to cooperate in

<sup>59</sup> Residence Act § 80; Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, REICHSGESETZBLATT [RGL.] [REICH LAW GAZETTE] I at 583, as amended, § 37, para. 1, <http://www.gesetze-im-internet.de/bundesrecht/rustag/gesamt.pdf>, archived at <http://perma.cc/4S9F-5T8F>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_rustag/nationality\\_act.pdf](http://www.gesetze-im-internet.de/englisch_rustag/nationality_act.pdf), archived at <http://perma.cc/9B2Z-N5PS>. Please note that the English version is only current up to November 2014.

<sup>60</sup> Asylum Act §§ 24, 25.

<sup>61</sup> *Id.* § 24, para. 1, sentence 6.

<sup>62</sup> *Id.* § 24, para. 1, sentence 2.

<sup>63</sup> *Id.* § 25, para. 1, sentence 1.

<sup>64</sup> *Id.* § 25, para. 1, sentence 2.

<sup>65</sup> The MILO database contains information on countries of origin, asylum and refugee protection, assisted returns, and immigration/migration. See *Easy Access to Important Documents*, FEDERAL OFFICE FOR MIGRATION AND REFUGEES, <http://www.bamf.de/EN/DasBAMF/IZAsylMigration/MILO/milo-node.html>, archived at <http://perma.cc/37NR-8TFW>.

<sup>66</sup> FEDERAL OFFICE FOR MIGRATION AND REFUGEES, *supra* note 23, at 17.

<sup>67</sup> Asylum Act § 31, para. 1.

<sup>68</sup> *Id.* § 16.



establishing the facts of the case by presenting passports or passport substitutes, as well as all necessary certificates and documents that might aid in establishing his or her identity and nationality.<sup>69</sup> Biometric data obtained from the passport may be compared with the fingerprints and photograph obtained from the applicant.<sup>70</sup>

Furthermore, if there is any doubt with regard to the applicant's country or region of origin, oral statements may be recorded on audio or data media.<sup>71</sup> The recording is then analyzed by a trained linguist.<sup>72</sup>

An authenticity check of the certificates and documents submitted in the asylum procedure is performed by the unit for physical technical documents (PTU) of the Federal Office for Migration and Refugees. Certificates are reviewed by certificate experts specially trained by the Federal Criminal Police Office.<sup>73</sup>

Fingerprints are cross-checked with the national database AFIS; with the European database Eurodac, which consists of a computerized central fingerprint database with a National Access Point for each EU country; and with the Visa Information System (VIS), which contains information about visa applications and the resulting decisions of all EU countries participating in the Schengen system. If an applicant has already applied for asylum in another EU Member State, it will result in a match in the Eurodac database and the person will be transferred to that Member State to conduct the asylum procedure.<sup>74</sup>

## VII. Accommodations and Assistance for Refugees

As discussed in Part IV, above, refugees and asylum seekers are generally housed in reception facilities that provide them with essential items like food, housing, heat, clothing, health care, and household items in kind or in the form of vouchers. Items for personal use are also provided in kind, but states retain discretion to provide refugees and asylum seekers with cash if necessary.<sup>75</sup> Asylum seekers who are housed outside of reception facilities primarily receive cash allowances to purchase essential items.<sup>76</sup>

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<sup>69</sup> *Id.* § 15.

<sup>70</sup> *Id.* § 16, para. 1a.

<sup>71</sup> *Id.* § 16, para. 1, sentence 3.

<sup>72</sup> FEDERAL OFFICE FOR MIGRATION AND REFUGEES, *supra* note 23, at 8.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 9 *et seq.*

<sup>75</sup> Asylum Seeker Benefits Act § 3, para. 1.

<sup>76</sup> *Id.* § 3, para. 2.

## VIII. Steps Applicants Must Undergo Before Arrival

Until recently, there was no specific legal basis for the resettlement of refugees. Resettlement was done on an *ad hoc* basis as a pilot project using the general norms of section 23 and section 22, sentence 2 of the Residence Act.<sup>77</sup> Section 23 applies to groups of foreigners, whereas section 22, sentence 2 applies to individuals and single families. All refugees considered for resettlement must have been registered and recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR). The Federal Office for Migration and Refugees conducts individual interviews with the persons selected by the UNHCR to determine if they qualify.<sup>78</sup>

According to section 23, a residence permit can be granted to foreigners from specific states or to certain groups of foreigners defined by other means, in accordance with international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. This decision is made by the Federal Ministry of the Interior in cooperation with the German states.<sup>79</sup>

According to section 22, sentence 2, a residence permit may be granted in accordance with international law or on urgent humanitarian grounds, or if the Federal Ministry of the Interior has declared that admission is necessary to uphold the political interests of the Federal Republic of Germany.

The Act to Redefine the Right to Stay and the Termination of Residence, which entered into force on August 1, 2015,<sup>80</sup> amended the Residence Act and codified a specific legal basis for the resettlement process.<sup>81</sup> According to that provision, the Federal Ministry of the Interior in cooperation with the agencies of the German states can order the Federal Office for Migration and Refugees to grant a residence permit to particularly vulnerable persons who have been designated as resettlement refugees.

## IX. Path to Naturalization

In Germany, there are two categories of naturalization: naturalization by entitlement<sup>82</sup> and discretionary naturalization.<sup>83</sup> In general, a foreigner must wait eight years before he or she is

<sup>77</sup> *Humanitarian Admission Programmes at Federal Level*, FEDERAL MINISTRY OF THE INTERIOR, [http://www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Humanitarian-admission-programmes/Humanitarian-admission-programmes\\_node.html](http://www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Humanitarian-admission-programmes/Humanitarian-admission-programmes_node.html), archived at <http://perma.cc/NFY2-XME9>.

<sup>78</sup> *Für ein neues Leben in Frieden [For a New Life in Peace]*, BUNDESMINISTERIUM DES INNEREN [FEDERAL MINISTRY OF THE INTERIOR] (Dec. 3, 2014), <https://www.bmi.bund.de/SharedDocs/Kurzmeldungen/DE/2014/12/ankunft-resettlement-fluechtlinge-syrien.html>, archived at <http://perma.cc/6S9A-TQN8>.

<sup>79</sup> Residence Act § 23, para. 1.

<sup>80</sup> Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung [Act to Redefine the Right to Stay and the Termination of Residence], July 27, 2015, BGBl. I at 1386, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl115s1386.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl115s1386.pdf), archived at <http://perma.cc/6HSW-G3PM>.

<sup>81</sup> Residence Act § 23, para. 4.

<sup>82</sup> Nationality Act § 10.

entitled to apply for citizenship.<sup>84</sup> The time spent to process an asylum application counts toward that waiting period.<sup>85</sup> In addition, if a refugee applies for discretionary naturalization, refugee status reduces the discretion of the agency and generally shortens the necessary period of legal residency to six years.<sup>86</sup>

## A. Naturalization by Entitlement

A foreigner has a legal right to be naturalized upon application if he or she fulfills the following requirements:

- Legal residence in Germany for a period of eight years
- Legal capacity pursuant to section 37, paragraph 1, sentence 1 of the Nationality Act
- Commitment to the free democratic constitutional order of the Basic Law of the Federal Republic of Germany
- Unrestricted right of residence at the time of naturalization
- Independent means of supporting him or herself and dependents without resorting to welfare payments and unemployment benefits
- Has lost or given up a former nationality
- No criminal convictions
- Adequate German-language skills
- Knowledge of the legal and social system as well as living conditions in Germany (naturalization test)<sup>87</sup>

If a foreigner has been granted asylum or international protection under Directive 2011/95/EU,<sup>88</sup> the time period during which the asylum application was pending counts toward the eight-year

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<sup>83</sup> *Id.* § 8.

<sup>84</sup> *Id.* § 10.

<sup>85</sup> Asylum Act § 55, para. 3.

<sup>86</sup> Bundesministerium des Inneren [Federal Ministry of the Interior], Vorläufige Anwendungshinweise des Bundesministeriums des Innern zum Staatsangehörigkeitsgesetz (StAG) in der Fassung des Zweiten Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes vom 13. November 2014 (BGBl. I S. 1714) [Preliminary Application Instructions from the Federal Ministry of the Interior on the Nationality Act (StAG) in the Version of the Second Act to Amend the Nationality Act Promulgated on November 13, 2014 (Federal Law Gazette I at 1714)] (June 1, 2015), p. 18, para. 8.1.3.1., [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Staatsangehoerigkeit/Anwendungshinweise\\_06\\_2015.pdf;jsessionid=799280883774D4F2769FF8F31C9ACC96.2\\_cid295?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Staatsangehoerigkeit/Anwendungshinweise_06_2015.pdf;jsessionid=799280883774D4F2769FF8F31C9ACC96.2_cid295?__blob=publicationFile), archived at <http://perma.cc/XZ9P-HW8T>.

<sup>87</sup> Nationality Act § 10.

<sup>88</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted, 2011 O.J. (L 337) 9, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&rid\\_](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&rid_), archived at <http://perma.cc/Y3RY-TSFG>.

period required to apply for naturalization.<sup>89</sup> If the asylum application was denied, the time period generally cannot be counted toward the eight-year period.<sup>90</sup>

## B. Discretionary Naturalization

If one of the requirements for naturalization is not fulfilled, a foreigner may still be granted citizenship if the government agency processing the application determines that certain minimum requirements have been met and naturalization is in the public interest.<sup>91</sup>

Article 34 of the 1951 Convention Relating to the Status of Refugees, which was implemented into German law,<sup>92</sup> mandates that Contracting States must “make every effort to expedite naturalization proceedings.” The Federal Ministry of the Interior has interpreted this provision to mean that a period of six years of legal residence in Germany is sufficient for recognized refugees.<sup>93</sup> Furthermore, the Federal Administrative Court has concluded that the existence of article 34 and the fact that the German Basic Law awards asylum seekers special protection<sup>94</sup> reduces the discretion of the agency and creates a presumption that naturalization is in the public interest.<sup>95</sup>

## X. Monitoring and Movement of Refugees While in the Country

While the asylum application is pending, the asylum seeker is required to stay in the initial reception center responsible for his application for a period of at least six weeks but no longer than six months and may not leave the area without permission.<sup>96</sup> The geographic restriction generally ends after three months or after the applicant is no longer required to stay in the initial reception facility.<sup>97</sup>

After a period of six months, the refugee will generally be housed in a collective living facility.<sup>98</sup> He or she might be granted the right to an apartment depending on public interest and personal

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<sup>89</sup> Asylum Act § 55, para. 3.

<sup>90</sup> BUNDESVERWALTUNGSGERICHT [BVerwG] [FEDERAL ADMINISTRATIVE COURT], 128 ENTSCHEIDUNGEN DES BUNDESVERWALTUNGSGERICHTS [BVerwGE] 254, 256, para. 10, <http://www.bverwg.de/entscheidungen/pdf/290307U5C8.06.0.pdf>, archived at <http://perma.cc/6M23-NSUE>.

<sup>91</sup> Nationality Act § 8.

<sup>92</sup> Gesetz betreffend das Abkommen vom 28. Juli 1951 über die Rechtstellung der Flüchtlinge [Act on the Convention of July 28, 1951 Relating to the Status of Refugees], Sept. 1, 1953, BGBl. II at 559, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl253s0559.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl253s0559.pdf), archived at <http://perma.cc/JZJ8-CVKX> (click “Uploaded page”).

<sup>93</sup> Bundesministerium des Inneren, *supra* note 86.

<sup>94</sup> BASIC LAW art. 16a.

<sup>95</sup> BVerwG, 49 BVerwGE 44, 47–48.

<sup>96</sup> Asylum Act §§ 47, para. 1; 56.

<sup>97</sup> *Id.* § 59a.

<sup>98</sup> *Id.* § 53.

reasons like family reunification.<sup>99</sup> The decision is in the discretion of the local government agency.

After an application for asylum has been approved and if the refugee is not able to secure his or her own means of subsistence, the government authority may restrict his or her residence permit to a specific German state and municipality.<sup>100</sup>

## **XI. Role of Subnational Governments**

The Alien Offices in the German states are responsible for all issues concerning residence law, such as accommodation, board, and other benefits.<sup>101</sup> The Federal Office of Migration and Refugees therefore must inform the local agencies if an application for asylum has been made or an asylum procedure has been concluded.<sup>102</sup>

If an asylum application has been denied, the applicant is obligated to leave Germany. The local agencies monitor the departure and will instigate deportation proceedings if the applicant does not leave voluntarily.<sup>103</sup>

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<sup>99</sup> *Id.* § 53, para.1, sentence 2.

<sup>100</sup> *Id.* § 60.

<sup>101</sup> Residence Act § 71, para. 1.

<sup>102</sup> Asylum Act § 24, para. 3.

<sup>103</sup> Residence Act § 71, para. 5.

# Greece

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**SUMMARY** Greece's legal system on asylum is based on the Geneva Convention of 1951 and its 1967 Protocol, and on European Union (EU) legislation on the Common European Asylum System. In 2011, the European Court of Human Rights and the Court of Justice of the EU found that Greece's asylum system suffers from "systemic deficiencies," including lack of reception centers, poor detention conditions, and the lack of an effective remedy. Greece adopted two action plans and legislation to address the problems. Significant gaps still remain, as exposed by the extraordinary migrant crisis of 2015 and as noted by the European Commission, which monitors closely Greece's compliance with EU asylum standards.

Greece has experienced the brunt of migratory flows during the refugee crisis due to its geographical location and as first country of entry pursuant to the Dublin Regulation. The crisis has also jeopardized the functioning of Schengen, a free area of movement and travel, as some EU countries have re-imposed border controls. Other Schengen Member States are considering reintroducing border controls if Greece fails to control the current migratory flow. Two relocation plans to transfer 66,000 refugees from Greece to other EU Member States are slowly being implemented. The European Commission has recommended a number of remedial measures for Greece, including efficient border management and implementation of the "hotspot" areas for the proper registration and fingerprinting of migrants.

## I. Introduction

Greece, as a state party to the Geneva Convention on Refugees of 1951 and its 1967 Protocol,<sup>1</sup> is bound to adhere to the fundamental asylum-law principle of nonrefoulement<sup>2</sup> and thus to provide asylum to those who meet the criteria.<sup>3</sup> In addition, as a Member State of the European Union (EU) and the Schengen area, Greece is required to comply with the directives and regulations that constitute the Common European Asylum System (CEAS) and the Schengen Borders Code,

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<sup>1</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf>, archived at <https://perma.cc/A6MN-JB7K>; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, archived at <https://perma.cc/594H-T6U6>.

<sup>2</sup> The nonrefoulement principle is incorporated into EU primary law in article 78 of the Treaty on the Functioning of the European Union, which provides for a Common European Asylum System. Consolidated Version of the Treaty on the Functioning of the European Union, 2012 O.J. (C 326) 47, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, archived at <https://perma.cc/Y5SN-JBT4>.

<sup>3</sup> Law No. 3989/1959, EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 1959, A:201, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/FZL7-A8LQ>. The 1967 Protocol was ratified by Compulsory Law No. 389/1968, E.K.E.D. 1968, A:125, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/MRR9-9BGD>.

which requires that the external borders be secured.<sup>4</sup> Greece is also obliged to respect the binding Charter of Fundamental Rights of the European Union, which recognizes the right to asylum.<sup>5</sup>

Following two critical decisions issued in 2011 by the European Court of Human Rights<sup>6</sup> and the Court of Justice of the European Union,<sup>7</sup> which concluded that Greece's asylum system suffers from "systemic deficiencies," Greece has made a concerted effort to comprehensively reform its asylum system, taking such steps as establishing new reception centers, improving poor reception conditions (including conditions for those in detention), fingerprinting irregular migrants and asylum applicants, ensuring appropriate treatment of unaccompanied minors, and ensuring access to an effective remedy against a negative decision.

Greece has always experienced a large number of migrants attempting to enter the EU illegally due to its geographic location<sup>8</sup> and because it is a first country of entry pursuant to Regulation (EU) No. 604/2013 (the Dublin Regulation).<sup>9</sup> The unprecedented migratory flow of 2015 combined with a shift in the migration route coming to Greece from Turkey dramatically tested Greece's already weakened asylum system and brought to the forefront Greece's incapacity to handle the dramatic increase of migrants, fingerprint and register them properly, and return to their country of origin economic migrants who crossed Greece's borders illegally. The EU adopted two decisions in 2015<sup>10</sup> to relocate at least 66,400 persons from Greece to other Member

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<sup>4</sup> Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code), as amended, 2006 O.J. (L 105) 1, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006R0562>, archived at <https://perma.cc/3EZC-X82W>.

<sup>5</sup> Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326) 391, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>, archived at <https://perma.cc/SU9H-GRDL>.

<sup>6</sup> M.S.S. v. Belgium and Greece, App. No. 30696/09 (Eur. Ct. H.R. Jan. 21, 2011), <http://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609> (scroll down and click PDF file), archived at <https://perma.cc/ELZ3-YG2U>.

<sup>7</sup> Joined Cases C-411/10 & C-493/10 (Ct. J. EU – Grand Chamber, Dec. 21, 2011), <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d543fe293820c7418e9d1c98ec1611a8d0.e34KaxiLc3eQc40LaxqMbN4OchaKe0?text=&docid=117187&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=342818>, archived at <https://perma.cc/JB8F-7YTH>.

<sup>8</sup> As of February 25, 2016, the International Organization for Migration (IOM) estimated that close to one million migrants had arrived in Greece since January 2015, and that of this number 120,369 migrants had reached Greece during the first two months of 2016. Press Release, IOM, Mediterranean Migrant Arrivals in 2016 Near 130,000; Deaths Reach 418 (Mar. 1, 2016), <https://www.iom.int/news/mediterranean-migrant-arrivals-2016-near-130000-deaths-reach-418>, archived at <https://perma.cc/5NHL-5JJ8>.

<sup>9</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person, as amended, 2013 O.J. (L 180) 31, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>, archived at <https://perma.cc/8AE2-7JNN>.

<sup>10</sup> Council Decision (EU) 2015/1601 of 22 September 2015 Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece, 2015 O.J. (L 248) 80, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.248.01.0080.01.ENG&toc=OJ:L:2015:248:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.248.01.0080.01.ENG&toc=OJ:L:2015:248:TOC), archived at <https://perma.cc/RJ8W-8WP8>.



States over a period of two years.<sup>11</sup> Implementation of the relocation plan is moving slowly, mainly due to resistance from other EU Member States.<sup>12</sup>

Greece's progress in raising its asylum regime up to EU and Council of Europe standards is being monitored by a number of institutions and bodies—first, by the European Commission, which, as the EU's enforcement body, has instituted several infringement proceedings against Greece for failing to transpose two directives,<sup>13</sup> for maintaining insufficient reception facilities; and for poor reception conditions, especially those for vulnerable groups including children.<sup>14</sup> The Commission also follows closely the implementation of its recommendations. In February 2016, the Commission adopted the Schengen Evaluation Report on Greece and suggested a number of recommendations to address deficiencies in external border management.<sup>15</sup> In addition, the Committee of Ministers of the Council of Europe, which supervises implementation of European Court of Human Rights (ECHR) decisions, monitors Greece's implementation of the decisions of the ECHR.<sup>16</sup> Finally the regional office of the United Nations High Commissioner for Refugees (UNHCR), in compliance with its mandate arising from the Geneva Convention, tracks the general implementation of obligations arising from the Convention.<sup>17</sup>

<sup>11</sup> Council Decision (EU) 2015/1523 of 14 September 2015 Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and of Greece, 2015 O.J. (L 239) 146, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.239.01.0146.01.ENG&toc=OJ:L:2015:239:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.239.01.0146.01.ENG&toc=OJ:L:2015:239:TOC), archived at <https://perma.cc/GC58-UTGD>.

<sup>12</sup> As of February 8, 2016, only 218 people had been relocated from Greece, and 279 from Italy. *Communication from the Commission to the European Parliament and the Council on the State of Implementation of the Priority Actions under the European Agenda on Migration*, at 11, COM(2016) 85 final (Feb. 10, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf), archived at <https://perma.cc/4K7B-CXG8>.

<sup>13</sup> Greece has not transposed the following two directives regarding asylum: Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (Recast), 2013 O.J. (L 180) 60, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032>, archived at <https://perma.cc/A7KQ-VNRQ>; and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection (Recast), 2013 O.J. (L 180) 96, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF>, archived at <https://perma.cc/P94U-FRRB>.

<sup>14</sup> *Commission Recommendation of 2/10/2016 Addressed to the Hellenic Republic on the Urgent Measures to Be Taken by Greece in View of the Resumption of Transfers Under Regulation 604/2013*, C(2016) 871 final (Feb. 10, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/commission\\_recommendation\\_addressed\\_to\\_the\\_hellenic\\_republic\\_20160210\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/commission_recommendation_addressed_to_the_hellenic_republic_20160210_en.pdf), archived at <https://perma.cc/L4ZG-3RAK>.

<sup>15</sup> Press Release IP/16/211, European Commission, Commission Adopts Schengen Evaluation Report on Greece and Proposes Recommendations to Address Deficiencies in External Border Management (Feb. 16, 2016), [http://europa.eu/rapid/press-release\\_IP-16-211\\_en.htm](http://europa.eu/rapid/press-release_IP-16-211_en.htm), archived at <https://perma.cc/BNB7-SCE9>.

<sup>16</sup> Council of Europe, Council of Ministers, 1243rd Meeting Item H46-8, *M.S.S. and Rahimi Groups v. Greece* (App. Nos. 30696/09, 8687/08), Supervision of the Execution of the Court's Judgments (Dec. 8–9, 2015), [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2015\)1243/H46-8&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEF&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2015)1243/H46-8&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEF&BackColorIntranet=FFCD4F&BackColorLogged=FFC679), archived at <https://perma.cc/6U2G-JYD8>.

<sup>17</sup> UNHCR, *Building on the Lessons Learned to Make the Relocation Schemes Work More Effectively: UNHCR's Recommendations* (Jan. 2016), <http://www.unhcr.org/569fad556.pdf>, archived at <https://perma.cc/3FFA-A9A3>. See

## II. Legal Framework and Government Actions

### A. Government Measures

The Greek Ministry of Public Order and Citizen Protection has submitted two plans to the European Commission and the Council of the EU as part of its efforts to tackle the issues related to asylum, including creating first-reception centers, establishing screening procedures, addressing detention conditions, and improving facilities for families with children and for vulnerable groups. The first Plan, submitted in 2010, failed to produce a successful outcome, except that it prompted the adoption of the Law 3907/2011, which led to the creation of much-needed services. That law created an Asylum Service, composed of a Central Office located in Athens and regional asylum offices, a First Reception Service, and an Appeals Authority.<sup>18</sup> A revised Action Plan on Asylum and Migration Management was presented to the European Commission in January 2013.<sup>19</sup> The revised plan was based on two salient components: (a) to effectively ensure access to international protection through the opening of new reception centers, and (b) to establish an effective system of border management and returns.

### B. 2013 Procedure for Granting International Protection

As of June 2013, applications for international protection fall within a new procedure established by Presidential Decree 113/2013.<sup>20</sup> Every foreigner or stateless person has the right to submit an application for international protection, provided that he or she meets the criteria of the Geneva Convention and applicable national law or qualifies for subsidiary protection.<sup>21</sup> The competent national authorities of first reception are obliged to inform the applicants of such rights.

Decisions are made by the Asylum Service on a case-by-case basis; the review is required to be an objective, unbiased, and nondiscriminatory review of the facts. When the application is filed

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also, UNHCR, “Greece as a Country of Asylum”: UNHCR’s Recommendations (Apr. 6, 2015), [http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/alddfiles/UNHCR\\_Greece\\_recommendations5524e72b4.pdf](http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/alddfiles/UNHCR_Greece_recommendations5524e72b4.pdf), archived at <https://perma.cc/5QZL-RUHD>. In its December 2014 report the UNHCR noted that the Greek asylum system still had deficiencies and recommended that other countries not send refugees to Greece for asylum registration. UNHCR, *Greece as a Country of Asylum: UNHCR Observations on the Current Asylum System in Greece* 37 (Dec. 2014), <http://www.refworld.org/docid/54cb3af34.html>, archived at <https://perma.cc/528U-8P59>.

<sup>18</sup> Law No. 3907/2011 on Establishing an Asylum Service, First Line Reception Office, and Harmonization with Directive 2008/115/EC on Common Standards and Procedures for the Return of Illegally Staying Third-Country Nationals and Other Provisions arts. 1, 6, 7, E.K.E.D., Jan. 26, 2011, A:7, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/QLT6-YLQR>.

<sup>19</sup> MINISTRY OF PUBLIC ORDER AND CITIZEN PROTECTION, GREEK ACTION PLAN ON ASYLUM AND MIGRATION MANAGEMENT, EXECUTIVE SUMMARY (Dec. 2012), [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/libe/dv/p4\\_exec\\_summary/p4\\_exec\\_summary\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/p4_exec_summary/p4_exec_summary_en.pdf), archived at <https://perma.cc/Z85E-89ZF>.

<sup>20</sup> Presidential Decree No. 113/2013 on the Establishment of a Common Procedure for Identifying the Refugee Status of Foreigners and Stateless Persons or Subsidiary Protection in Compliance with Directive 2005/85/EC and Other Provisions, E.K.E.D., June 13, 2013, A:146, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/4KH9-QUZV>.

<sup>21</sup> *Id.* art. 4.

by an unaccompanied minor, then the appropriate authorities must appoint a guardian, in accordance with Presidential Decree 220/2007.<sup>22</sup>

The Asylum Service is composed of the Central Asylum Service, whose role is to supervise and monitor the process of registration and overall progress, or the lack thereof, of applications for international protection, and by the regional asylum offices which are in charge of registering and fingerprinting applicants. There are eleven regional asylum offices in Greece (seven regional offices and four mobile asylum units).<sup>23</sup> The largest regional office, which started operations in June 2013, is in Attica. Other regional offices began operations in 2014 and 2015 to accommodate the ever-increasing number of refugees. In addition, a new asylum office was established on the Island of Samos.<sup>24</sup>

Applicants have the right to stay in Greece during the application process. Applicants may not be detained solely because they requested international protection. Detention of minors is generally not allowed, although minors who have been separated from their family or unaccompanied minors are kept in detention until their relatives are located, or until they are housed in appropriate facilities.<sup>25</sup> Legal aid is provided to those applicants who need it, in accordance with Law No. 3226/2004.<sup>26</sup> The decisions on granting or withdrawing international protection are forwarded to the local office of the United Nations High Commissioner for Refugees (UNHCR).<sup>27</sup> The local office has the right to request additional information. Greek authorities must provide to the UNHCR all statistical data requested on the condition of refugees and on implementation of the Geneva Convention, as well as all existing legislation on refugees, in compliance with article 35, paragraph 2 of the Convention.<sup>28</sup>

### 1. First Instance

Law 3907/2011 established the Asylum Service as the competent state authority to examine applications for international protection in the first instance. The Review Authorities examine the applications for international protection following either a regular or accelerated procedure. During the review, the applications of the following categories of persons have priority: (a) vulnerable persons, (b) those in detention or in transit, (c) persons whose applications are *prima facie* substantiated, (d) those whose applications are manifestly unfounded, and (e) persons who

<sup>22</sup> Presidential Decree No. 220/2007, art. 19, para. 1, E.K.E.D., Nov. 13, 2007, A:251, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/6H7V-XJ9F>.

<sup>23</sup> *Asylum Service*, MINISTRY OF INTERIOR AND ADMINISTRATIVE ORGANIZATION, [http://asylo.gov.gr/?page\\_id=25](http://asylo.gov.gr/?page_id=25) (in Greek; last visited Mar. 11, 2016), archived at <https://perma.cc/Z4QR-FKJ4>.

<sup>24</sup> *Commission Recommendation of 2/10/2016*, *supra* note 14, pmbl. para. 16.

<sup>25</sup> Presidential Decree No. 113/2013, art. 12.

<sup>26</sup> Law No. 3226/2004, E.K.E.D., Feb. 4, 2004, A:24, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/2RWM-MFCA>.

<sup>27</sup> Presidential Decree No. 113/2013, art. 14.

<sup>28</sup> Convention Relating to the Status of Refugees, *supra* note 1, art. 35(2).

are deemed by the police in substantiated decisions to be a danger to national security and public order.<sup>29</sup>

## 2. *Accelerated Procedures*

Accelerated procedures are applied to people who (a) come from a safe country of origin, (b) have submitted manifestly unfounded applications, (c) have presented false information or documents, or (d) made another asylum application in another Member State with different personal data.<sup>30</sup> Applications must be reviewed within six months.<sup>31</sup> Applicants are subject to personal interviews through interpreters by staff who have experience in such matters and who are expected to maintain confidentiality.<sup>32</sup>

Greece recognizes as safe countries of origin those third countries where (a) there is no threat to life or freedom based on religion, race, ethnicity, participation in a particular social group, or political convictions; (b) there is no danger to the life of the applicant; and (c) the nonrefoulement principle of the Geneva Convention is followed.<sup>33</sup> Applications filed by nationals of safe countries of origin are fast-tracked and such persons are sent back to their countries of origin.

## 3. *Border Procedure*

If applicants apply at the border, they have the right to be informed of their rights, including the right to an interpreter and the right to consult a lawyer at their own expense. If no decision is made within twenty-eight days from the day of their application, they have the right to enter Greece in order to have their case reviewed.<sup>34</sup>

## 4. *Detention*

Pursuant to Decree 113/2013, an applicant in need of international protection or a stateless person must not be kept in detention for the sole reason that the person applied for international protection and entered the country illegally.<sup>35</sup> A person may be kept in detention until his/her documentation is confirmed or in case the person is deemed to be a danger to the public or to national security.<sup>36</sup> No one can be detained for more than three months.<sup>37</sup> The Greek government has closed some of the detention facilities that had extremely bad conditions.

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<sup>29</sup> Law 3907/2011, arts. 1-3.

<sup>30</sup> Presidential Decree 113/2013, art. 16, para. 4.

<sup>31</sup> *Id.* art. 16, para. 1.

<sup>32</sup> *Id.* art. 17, paras. 1 & 5.

<sup>33</sup> *Id.* art. 20.

<sup>34</sup> *Id.* art. 24.

<sup>35</sup> *Id.* art. 12, para. 1.

<sup>36</sup> *Id.* art. 12, para. 2(a) & (b).

<sup>37</sup> *Id.* art. 12, para. 6.

## 5. *Right to Appeal*

The applicant has the right to appeal to the examining authorities a decision that denies international protection or rejects an accelerated procedure.<sup>38</sup> The Appeals Authority is a body within the Ministry of Public Order and Citizens' Protection established by Law 3907/2011. It is staffed by civil servants and headed by a Director who is under the supervision of the Minister of Public Order and Citizens' Protection. The Authority is mandated to facilitate the work of the appeals committees, which examine asylum cases on appeal. The rules of procedure of the Appeals Authority are set forth in Ministerial Decision 334/2014.<sup>39</sup>

Since September 2015, when the mandate of the Appeals Committees expired, persons have been able to file appeals against first-instance negative decisions, but such applications cannot be processed. Therefore, there is currently no functioning system for an effective remedy. As the Commission noted, the lack of an appeal undermines the effective implementation of the relocation procedure, in which an applicant submits an appeal against a relocation or transfer decision.<sup>40</sup>

## 6. *Reception Conditions*

In 2015, Greece undertook the responsibility to create additional reception capacity for 30,000 people, provide rent subsidies to those asylum seekers who could not be accommodated in reception centers, and host an additional 20,000 families with the assistance of the UNHCR.<sup>41</sup> In its 2016 Recommendation the Commission acknowledged that improvements have been made concerning the increase in capacity of reception centers, but stated that reception capacity is still "insufficient."<sup>42</sup> The Commission also urged Greece to ensure that the reception conditions in both open and closed reception accommodations, and access to health care, are comparable to the standards laid down by Directive 2013/33/EU. It recommended that Greece ensure that reception facilities are sufficiently staffed to handle refugees<sup>43</sup> and added that maintenance of the reception conditions should be funded either from the national budget or EU funds, if possible.<sup>44</sup>

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<sup>38</sup> *Id.* art. 25, para. 1.

<sup>39</sup> Ministerial Decision No. 334/2014 on the Rules of Procedure of the Appeals Authority, E.K.E.D., Jan. 16, 2014, B:63, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/8GA8-2K9Y>.

<sup>40</sup> *Commission Recommendation of 2/10/2016*, *supra* note 14, pmbl. para. 18.

<sup>41</sup> *Id.*, pmbl. para. 12. See also Press Release, European Commission, European Commission and UNHCR Launch Scheme to Provide 20,000 Reception Places for Asylum Seekers in Greece (Dec. 15, 2015), [http://europa.eu/rapid/press-release\\_IP-15-6316\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6316_en.htm), archived at <https://perma.cc/92UR-X4YF>.

<sup>42</sup> *Commission Recommendation of 2/10/2016*, *supra* note 14, pmbl. para. 17.

<sup>43</sup> *Id.*, pmbl. para. 17 & Recommendation para. 1.

<sup>44</sup> *Id.*, pmbl. para. 17.

## C. Criteria for Recognition of Refugees and Those Eligible for Subsidiary Protection

Presidential Decree 141/2013<sup>45</sup> transposed the provisions of Directive 2011/95/EC, which determines the standards for the qualification of third-country nationals or stateless persons who qualify as refugees or are eligible for subsidiary protection.<sup>46</sup> Refugee status is given to a third-country national or a stateless person who meets the criteria established by Presidential Decree 141/2013.<sup>47</sup>

### 1. Criteria for Refugee Status

To be granted refugee status, an applicant must meet the following criteria:

- The applicant must face a well-founded fear of persecution within the meaning of article 1A of the Geneva Convention.
- The grounds for persecution must be related to the applicant's race, religion, nationality, political opinion, or membership in a particular social group.
- A causal link must exist between the well-founded fear of persecution on the grounds of one's race, religion, nationality, political opinion, or membership in a particular social group and the acts of persecution.
- The acts of persecution may take a variety of forms, such as physical or mental violence, including sexual violence, and in the case of a minor may also include acts of a gender-specific or child-specific nature.<sup>48</sup>

### 2. Subsidiary Protection Status

In order to be granted subsidiary protection status, there must be substantial grounds to believe that an applicant who does not otherwise qualify for refugee status would face a real risk of suffering serious harm if returned to his/her country of origin. The qualification for subsidiary protection from a "real risk of suffering serious harm" includes the death penalty or execution, torture or other inhuman or degrading treatment or punishment, or a serious and individualized threat to persons due to violence in the case of internal armed conflict.<sup>49</sup>

<sup>45</sup> Presidential Decree No. 141/2013, E.D.E.K., Oct. 21, 2013, A:226, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/3YPN-D2W5>.

<sup>46</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted, 2011 O.J. (L 337) 9, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>, archived at <https://perma.cc/E9GT-BA63>.

<sup>47</sup> Presidential Decree No. 141/2013, art. 12, paras. 1 & 2.

<sup>48</sup> *Id.* arts. 9 & 10.

<sup>49</sup> *Id.* art. 15.

The applicant must provide information pertaining to his/her age, background, country of origin, relatives, travel documents (if any), and reasons for applying for international protection. Each application is examined individually.<sup>50</sup>

#### **D. Rights of Refugees and Beneficiaries of Subsidiary Protection**

Greek law grants a number of rights and benefits to persons granted refugee status or subsidiary protection.

##### *1. Family Unity*

Greek asylum authorities are required to ensure the family unity of those who are recognized as refugees or beneficiaries of subsidiary protection. The families of such persons acquire the same status as the applicant, unless they do not wish to have such status.<sup>51</sup>

##### *2. Residence Permit*

Those who have been recognized as refugees or beneficiaries of secondary international protection are granted a residence permit for three years, which is renewable at the request of the person concerned,<sup>52</sup> except for those who pose a threat to national security or to public safety due to conviction for an especially serious crime.<sup>53</sup> The family members of refugees or beneficiaries of international protection are also granted a residence permit. Issuance and renewal of residence permits are subject to the same rules.<sup>54</sup>

##### *3. Travel Documents*

Recognized refugees are given travel documents to be able to travel abroad pursuant to the sample contained in the Annex of the Geneva Convention, unless reasons exist for banning the travel of the person concerned.<sup>55</sup> The passport is granted by the Passport Office of the Greek Police and the required documents, duration, and renewal are determined by Law 3103/2003.<sup>56</sup>

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<sup>50</sup> *Id.* art. 4.

<sup>51</sup> *Id.* art. 23, paras. 1 & 2(a).

<sup>52</sup> *Id.* art. 24.

<sup>53</sup> *Id.* art. 21, para. 2.

<sup>54</sup> *Id.* art. 23, para. 4.

<sup>55</sup> *Id.* art. 25.

<sup>56</sup> Law No. 3103/2003, E.K.E.D. Dec. 2, 1992, A:194, art. 1, para. 3, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/WT5F-ATXN>.



#### 4. *Education*

Minors who have been recognized as refugees must have access to education. In addition, adults have access to educational training and development under the same terms and conditions as nationals.<sup>57</sup>

#### 5. *Social Welfare*

Beneficiaries of international protection have access to social welfare under the same conditions as nationals.<sup>58</sup>

#### 6. *Access to Employment*

Those who are recognized as persons in need of international protection have access to employment, either salaried or independent, pursuant to Presidential Decree 189/1998.<sup>59</sup> The existing legislation on remuneration, terms of employment, training, and educational opportunities also apply to those who have been recognized as refugees.<sup>60</sup> In practice, asylum seekers face a stark reality in Greece with regard to access to the labor market, due to the economic crisis and the overall absence of available job opportunities. As of November 2015, the unemployment rate in Greece was 24.6% overall, and 48% for young persons under twenty-five years of age. In both instances, Greece has the the highest unemployment rate in the EU.<sup>61</sup>

#### 7. *Health Care*

Recognized refugees or persons with subsidiary protection status have the right to health care on the same basis and conditions as nationals.<sup>62</sup> Those who have special needs, such as pregnant women, the elderly, unaccompanied children, people who have been subject to torture or other inhuman or degrading treatment, or persons with disabilities, as well as trafficking victims and those who come from conflict areas, are entitled to sufficient medical care, including psychological care and support, under the same conditions as nationals.<sup>63</sup> Presidential Decree 220/2007 provides for free healthcare services for all asylum seekers regardless of whether they are hosted in the reception facilities or not. However, access is conditioned depending on the economic status of the asylum seekers. In the case of asylum seekers with disabilities, a monthly allowance is granted subject to Health Committee approval.<sup>64</sup>

<sup>57</sup> Presidential Decree No. 141/2013, art. 28.

<sup>58</sup> *Id.* art. 29.

<sup>59</sup> Presidential Decree No. 189/1998, E.K.E.D., June 25, 1998, A:180, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/WZR4-NFME>.

<sup>60</sup> Presidential Decree No. 141/2013, art. 27.

<sup>61</sup> *Unemployment Statistics*, EUROSTAT (Jan. 2016), [http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics), archived at <https://perma.cc/2GAX-DVMR>.

<sup>62</sup> Presidential Decree No. 141/2013, art. 31.

<sup>63</sup> *Id.* art. 31, para. 2.

<sup>64</sup> Presidential Decree No. 220/2007, art. 12.

### 8. Unaccompanied Minors

Unaccompanied minors are provided with extra care and protection by the appropriate Greek authorities. Greece has allocated 402 reception facilities to accommodate unaccompanied minors.<sup>65</sup> A joint ministerial decision, which was adopted in February 2016, provides the procedure to determine whether an applicant is a minor.<sup>66</sup> A guardian or a representative is appointed to represent the interests of the child and accommodations are provided either with family members, foster families, or special hospitality centers for minors.<sup>67</sup> The European Commission's 2016 Recommendation to the Greek government asserted that the current guardianship system is problematic, since public prosecutors are appointed to represent minors and do not have appropriate resources to handle the large number of minors who need a guardian. The Commission also noted the lack of a guardianship system within the Greek legal system to enable prosecutors to appoint permanent guardians.<sup>68</sup>

### 9. Repatriation

The appropriate Greek authorities are required to provide assistance to those refugees and those who possess subsidiary protection to return to their countries of origin, if they so wish.<sup>69</sup>

## III. Schengen Implications

At the peak of the migrant crisis in 2015, a number of EU Members resorted to re-imposing internal border controls to curb the number of migrants entering their country. Under the Schengen Borders Code, such measures are allowed temporarily.<sup>70</sup> However, the border controls adversely affected the free movement of persons and endangered the entire Schengen system.

In November 2015, the Commission, using its authority under the Schengen evaluation mechanism,<sup>71</sup> sent a team of experts to make an unannounced onsite evaluation visit to Greek

<sup>65</sup> Secretariat of the Committee of Ministers, *Communication from the Authorities (02/09/2016) Concerning the Case of M.S.S. Against Greece (Application 030696/09)*, DH-DD (2016)182 (Feb. 23, 2016), <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2892073&SecMode=1&DocId=2360486&Usage=2>, archived at <https://perma.cc/KCT5-FL8Q>.

<sup>66</sup> Joint Ministerial Decision of the Interior, Administrative Reorganization, and Health, No. 1982/2016, on Determining Whether an Applicant is a Minor, B:335 (Feb. 16, 2016), <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws> (in Greek), archived at <https://perma.cc/6P98-QQ9B>.

<sup>67</sup> Presidential Decree No. 141/2013, art. 35.

<sup>68</sup> *Commission Recommendation of 2/10/2016*, *supra* note 14, pmbl. para. 21.

<sup>69</sup> Presidential Decree No. 141/2013, art. 36.

<sup>70</sup> Regulation (EU) No. 1051/2013 of the European Parliament and of the Council of 22 October 2013 Amending Regulation (EC) No. 562/2006 in Order to Provide for Common Rules on the Temporary Reintroduction of Border Control at Internal Borders in Exceptional Circumstances, 2013 O.J. (L 295) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1051>, archived at <https://perma.cc/LG5S-YFB5>.

<sup>71</sup> Council Regulation (EU) No. 1053/2013 of 7 October 2013 Establishing an Evaluation and Monitoring Mechanism to Verify the Application of the Schengen Acquis and Repealing the Decision of the Executive Committee of 16 September 1998 Setting up a Standing Committee on the Evaluation and Implementation of

sea-border sites (Chios and Samos Islands) and some land-border sites, to examine the functioning and application of Schengen rules by Greece. The resulting Schengen Evaluation Report prepared by the Commission on February 2, 2016, acknowledged the efforts made and the measures taken by the Greek government to handle the migrant crisis, but stated that “the overall functioning of the Schengen area is at serious risk” and made a number of recommendations to ensure that Greece exercises effective control of its external borders, in accordance with Schengen rules.<sup>72</sup>

The Evaluation Report identified several deficiencies with Greece’s asylum system concerning the registration procedure, surveillance of sea borders, border-check procedures, human resources and training, and infrastructure and equipment.<sup>73</sup> With regard to registration procedures, the Commission recommended that Greece take, *inter alia*, the following measures:

- Improve the quality of the “temporary stay” documents by inserting security features to make it difficult for migrants to falsify documents
- Increase the staff of the Hellenic Police responsible for registration
- Provide the necessary accommodation facilities during the registration process and a sufficient number of fingerprinting scanners to ensure fingerprints of all irregular migrants, pursuant to the Eurodac Regulation<sup>74</sup>

As far as border surveillance, the Report recommended that Greece improve its border surveillance between Greece and Turkey to enable it to detect all vessels in order to apprehend persons who cross illegally.<sup>75</sup>

Greece is required to draft an action plan to address the deficiencies cited in the Commission’s report, forward this plan to the Commission and the Council, and report back on implementation of the plan.<sup>76</sup>

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Schengen, art. 4, 2013 O.J. (L 295) 27, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:295:0027:0037:EN:PDF>, archived at <https://perma.cc/7US7-F54W>.

<sup>72</sup> Council Implementing Decision Setting Out a Recommendation on Addressing the Serious Deficiencies Identified in the 2015 Evaluation on the Application of the Schengen Acquis in the Field of Management of the External Borders by Greece, Doc. No. 5985/16, Interinstitutional File No. 2016/0035 (NLE) (Feb. 12, 2016), <http://data.consilium.europa.eu/doc/document/ST-5985-2016-INIT/en/pdf>, archived at <https://perma.cc/ZZL5-3VLC>.

<sup>73</sup> *Id.*, pmbl., para. 6.

<sup>74</sup> *Id.*, Recommendations, paras. 3–5.

<sup>75</sup> *Id.* para. 12.

<sup>76</sup> *Id.*, pmbl., para. 8.

## IV. Case Law on Asylum System

### A. *M.S.S. v. Belgium and Greece*

The case of *M.S.S. v. Belgium and Greece* involved living conditions in reception centers in Greece.<sup>77</sup> An Afghan national entered the EU through Greece and then went to Belgium where he applied for asylum. On the basis of the Dublin Regulation he was sent back to Greece as the first country of entry into the EU, where he was kept in detention in a small room with twenty other detainees with limited access to restroom facilities. In 2011, the Grand Chamber of the ECHR held that both Belgium and Greece had violated the European Convention on Human Rights. It held that Belgium infringed article 3 of the Convention, first, by exposing the applicant to the risks arising from the deficiencies in the asylum procedure in Greece, since the Belgian authorities knew or ought to have known that the applicant had no guarantee that his asylum application would be seriously examined by the Greek authorities, and second, by knowingly exposing him to detention and living conditions that amounted to degrading treatment.<sup>78</sup> The Court also found that Greece violated article 3, as well as article 13 of the Convention on the right to an effective remedy, because of the harsh living conditions and inadequate asylum procedures in the country.<sup>79</sup>

### B. *N.S. v. Secretary of State for the Home Department*

In *N.S. v. Secretary of State for the Home Department*,<sup>80</sup> N.S., an Afghan national, was arrested in Greece on September 24, 2008, and placed in detention for entering Greece illegally. He was ordered to leave Greece within thirty days and was subsequently expelled to Turkey. He escaped from Turkey and went to the United Kingdom, where he claimed asylum. N.S. was informed that, in accordance with the requirements under Regulation No. 343/2003, he was to be transferred to Greece on August 6, 2009. He challenged that decision.

The case came before the Court of Justice of the European Union and was joined with a similar case (Case C-493/10) involving five asylum seekers in Ireland who opposed being transferred to Greece for examination of their asylum applications. All of the claimants traveled through Greece and were arrested there for illegal entry. They left Greece without applying for asylum and traveled to Ireland, where they applied for asylum.<sup>81</sup>

<sup>77</sup> *M.S.S. v. Belgium and Greece*, App. No. 30696/09 (Eur. Ct. H.R., Jan. 21, 2011), <http://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609> (scroll down and click PDF file), archived at <https://perma.cc/ELZ3-YG2U>.

<sup>78</sup> *Id.* paras. 358, 360, 367.

<sup>79</sup> *Id.*

<sup>80</sup> Joined Cases C-411/10 and & C-493/10 (Eur. Ct. Justice (Grand Chamber), Dec. 21, 2011), <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d543fe293820c7418e9d1c98ec1611a8d0.e34KaxiLc3eQc40LaxqMbN4OchaKe0?text=&docid=117187&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=342818>, archived at <https://perma.cc/JB8F-7YTH>.

<sup>81</sup> *Id.* paras. 51–52.

The Court held that EU law precludes the Member States from making a “conclusive presumption” that the Member State responsible for reviewing an asylum application, in accordance with Dublin rules, observes the fundamental rights of the European Union.<sup>82</sup> It stated that under article 4 of the Charter of Fundamental Rights of the European Union, Member States may not transfer an asylum seeker to the “Member State responsible” within the meaning of the Dublin Regulation where they are aware of systemic deficiencies in the asylum procedure and the reception conditions such that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment.<sup>83</sup>

As a result of these cases, EU Member States suspended transfers to Greece under the Dublin Regulation.<sup>84</sup>

## V. EU Funding on Asylum

At the request of Greece, the European Asylum Support Office (EASO) has provided financial assistance and deployed Asylum Support Teams to Greece to establish new asylum services and to assist with the reception of vulnerable persons.<sup>85</sup> Due to an increased number of migrants entering the EU through Greece, Greece made a further request to the EASO for Special Support, and support will be provided until the end of May 2016.<sup>86</sup>

The Commission has allocated a large amount of European Union funding for the period 2014–2020 to assist Greece with implementation of national measures in the field of asylum and migration. The Commission, through the Asylum, Migration and Integration Fund, provided a total of €294.5 million (about US\$328 million) to Greece, and under the Internal Security Fund – Borders and Visas a total of another €214.8 million (about US\$240 million). A further €133 million (about US\$149 million) has been awarded to Greece as emergency assistance since 2014. In addition, significant funding was provided to Greece under the European Refugee Fund in the years 2008–2013, including emergency funding of more than €50.6 million (about US\$56.5 million).<sup>87</sup>

## VI. Pending Issues

### A. Hot Spots

One of the requirements imposed on Greece by the Commission was the construction of “hot spot” registration centers in order to ensure the proper registration and identification of migrants before their transfer to relocation areas with the objective of transferring them to other countries within the EU or returning them to their countries of origin. In October 2015, Greece presented

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<sup>82</sup> *Id.* paras. 103–104.

<sup>83</sup> *Id.* para. 106.

<sup>84</sup> *Commission Recommendation of 2/10/2016*, *supra* note 14, at 1.

<sup>85</sup> *Commission Recommendation of 2/10/2016*, *supra* note 14, pmbl. para. 8.

<sup>86</sup> Press Release, IOM, *supra* note 8.

<sup>87</sup> *Commission Recommendation of 2/10/2016*, *supra* note 14, Recommendations, para. 8.

a Roadmap to the Council of the EU regarding its plan to implement the hot spots. In January 2016, the government announced that the hot-spot areas in the islands of Lesbos (extension to a pre-existing center), Leros, Chios, and Samos would be completed sometime in spring 2016. The Greek army has been mobilized to ensure the hot spots are completed.<sup>88</sup>

Greece is required to ensure full registration of all migrants entering illegally. Greece has made significant improvements in this regard, increasing the fingerprinting rate from 8% in September 2015 to 78% in January 2016. The EASO has been assisting Greece with ordering twenty-five fingerprinting stations for hotspot locations, and an additional sixty-five fingerprinting stations will be ordered soon. Meanwhile, the Greek Police have set up six fingerprinting stations in Lesbos.<sup>89</sup>

## **B. Planning for Resumption of Dublin Transfers**

Since 2011, Dublin transfers to Greece, as the first country of origin, were suspended by EU Member States because of the systemic deficiencies in its asylum system identified in the court decisions discussed in section IV above.<sup>90</sup> To ensure that the Common European Asylum System applies properly, on February 10, 2016, the Commission urged Greece to take additional measures to enable the eventual resumption of Dublin transfers, including bringing the reception conditions up to EU standards, ensuring effective access to the asylum procedures throughout Greece, resuming the operation of appeal committees, and making fully operational all 50,000 reception locations that Greece has committed to open.<sup>91</sup>

## **C. Return of Illegal Migrants**

The Commission has urged Greece to comply fully with the Returns Directive in order to ensure the return of those who do not qualify for international protection back to their country of origin. In this regard, the Commission advised Greece to utilize the maximum allowed detention of eighteen months to avoid a situation where detention ends before migrants are effectively returned.<sup>92</sup> The EU has financed an emergency forced return program under the Asylum Migration and Integration Fund (AMIF), implementation of which has been entrusted to the Greek police.<sup>93</sup> Another program financed by the AMIF is the emergency Assisted Voluntary Return (AVR) program, which provides the possibility to a total of 1,000 migrants to return voluntarily to their countries of origins.<sup>94</sup>

<sup>88</sup> ANNEX to the Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions Under the European Agenda on Migration Greece – State of Play Report, COM (2016) 85 final, Annex 2 (Oct. 2, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_annex\\_02\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_02_en.pdf), archived at <https://perma.cc/SF2A-LA4P>.

<sup>89</sup> *Id.* at 3.

<sup>90</sup> Commission Recommendation of 2/10/2016, *supra* note 14, at 1.

<sup>91</sup> *Id.* at 6–7.

<sup>92</sup> *Id.* at 5.

<sup>93</sup> *Id.* at 6.

<sup>94</sup> *Id.*

## D. Control of Borders

The Schengen system is based on the premise that the external borders of the EU must be secure in order to ensure an area free of internal border controls. The Commission has urged Greece, as a member of the Schengen area, to ensure the security of its external borders, especially the border with the former Yugoslav Republic of Macedonia where 32,000 migrants have camped outside of Idomeni.<sup>95</sup> Frontex, the EU's external borders agency, will provide assistance to Greece in its efforts to accommodate the migrants at the Idomeni camp and secure its border.<sup>96</sup>

## E. Agreement with Turkey

On March 7, 2016, the European Council, composed of heads of state and governments, brokered a provisional deal with Turkey regarding the migratory flow from Turkey to Greece.<sup>97</sup> Some key highlights of the agreement, which have a direct impact on Greece, include

- the return of all new irregular migrants crossing from Turkey into the Greek islands, with the costs covered by the EU; and
- resettlement, for every Syrian readmitted by Turkey from the Greek islands, of another Syrian from Turkey to the EU Member States, within the framework of the existing commitments.<sup>98</sup>

The UN Refugee Agency has cast doubt over the legality of the plan, on the grounds that return of migrants to Turkey would amount to collective expulsions, which are prohibited under international and EU law.<sup>99</sup>

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<sup>95</sup> *Migrant Crisis: Macedonia Shuts Balkans Route*, BBC NEWS (Mar. 2016), <http://www.bbc.com/news/world-europe-35763101>, archived at <https://perma.cc/8HRQ-AGF2>.

<sup>96</sup> *Communication from the Commission to the European Parliament and to the Council on the State of Play of Implementation of the Priority Actions Under the European Agenda on Migration*, at 13, COM (2016) 85 final (Feb. 10, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf), archived at <https://perma.cc/4K7B-CXG8>.

<sup>97</sup> Press Release, European Council, Statement of the EU Heads of State or Government (Mar. 7, 2016), <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement>, archived at <https://perma.cc/BF34-WDDD>.

<sup>98</sup> *Id.*

<sup>99</sup> *Migrant Crisis: UN Legal Concerns over EU-Turkey Plan*, BBC NEWS (Mar. 8, 2016), <http://www.bbc.com/news/world-europe-35754738>, archived at <https://perma.cc/LG83-HPXU>.



# Israel

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**SUMMARY** As a Jewish homeland open to the immigration of Jews from all over the world, and a signatory to the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, Israel has absorbed a large number of Jewish refugees from Europe, the Middle East, and Africa. In handling applications for political asylum of non-Jewish applicants, Israel applies international law criteria in accordance with its treaty obligations and claims to abide by the principle of non-refoulement.

Israel has traditionally maintained restrictive immigration policies. This is due to that fact that it borders states and populations that are hostile, is affected by geopolitically volatile conditions in the Middle East and Africa, respects civil liberties, and enjoys a significantly higher standard of living as compared with other countries in the surrounding region.

While it has generally allowed Eritrean and Sudanese nationals who entered unlawfully and are already in the country to stay, it has not provided them with opportunities to become permanent residents or citizens. In addition, Israel has erected a fence along its border with Egypt to prevent a further influx of African migrants. It is also currently building a fence along the border with Jordan, which is reportedly hosting more than 600,000 Syrian refugees.

## I. Introduction

Established as a Jewish homeland open to immigration of Jews from all over the world,<sup>1</sup> Israel has absorbed hundreds of thousands of Jewish refugees since its establishment in 1948. It has admitted, however, only a limited number of non-Jewish refugees.

Following the end of World War II, between 1945 and 1948, thousands of Jewish European displaced persons attempted to enter Palestine, which was then under a British Mandate.<sup>2</sup> Immigration to Palestine, however, remained severely limited until the establishment of the State of Israel in May 1948, as “the British authorities interned many of the would-be immigrants to Palestine in detention camps in Cyprus.”<sup>3</sup> Israel absorbed some 140,000 Holocaust survivors

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<sup>1</sup> Declaration of the Establishment of the State of Israel, May 14, 1948, [http://knesset.gov.il/docs/eng/megilat\\_eng.htm](http://knesset.gov.il/docs/eng/megilat_eng.htm), archived at <https://perma.cc/S56F-4Q5X>.

<sup>2</sup> Palestine was under a British Mandate confirmed by the Council of the League of Nations on July 24, 1922, “in favour of the establishment in Palestine of a national home for the Jewish people.” Terms of the British Mandate for Palestine Confirmed by the Council of the League of Nations, July 24, 1922, in *THE ARAB-ISRAELI CONFLICT AND ITS RESOLUTION: SELECTED DOCUMENTS 25* (Ruth Lapidoth et al. eds., 1992), also available on the Yale Law School Avalon Project website, at [http://avalon.law.yale.edu/20th\\_century/palmanda.asp](http://avalon.law.yale.edu/20th_century/palmanda.asp), archived at <https://perma.cc/F535-VN97>.

<sup>3</sup> *Refugees*, in UNITED STATES HOLOCAUST MUSEUM, HOLOCAUST ENCYCLOPEDIA, <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005139> (last visited Jan. 11, 2016), archived at <https://perma.cc/4NHW-9A4S>.

during its first years as an independent state. In addition, it has admitted about 586,000 Jews from Arab countries who were dispossessed of their homes both before and after the establishment of Israel.<sup>4</sup>

Israel has continued to admit many immigrants from all over the world, including almost a million Jews and non-Jewish relatives of Jews who qualified for *Oleh* immigration status under the Law of Return<sup>5</sup> and emigrated from the former Soviet Republics between 1990 and 2014.<sup>6</sup>

The admission of non-Jewish refugees who do not qualify under the Law of Return, however, has traditionally been very limited. Among those refugees who have been authorized to stay over the years were merely a few hundred Vietnamese escaping the Communist regime between 1975 and 1979 who later gained Israeli citizenship.<sup>7</sup> In 1993 Israel issued temporary visas to eighty-four Bosnian Muslims who had been driven from their homes as a consequence of the conflict in the former Yugoslavia.<sup>8</sup>

Tens of thousands of African migrants have entered Israel unlawfully via undesignated land crossings from Egypt in recent years. Most of these migrants are Eritrean and Sudanese nationals claiming to have escaped political persecution in their countries.<sup>9</sup> Their status has been the subject of public debate,<sup>10</sup> parliamentary hearings, several legislative amendments, and judicial review by the Supreme Court.

<sup>4</sup> *Fact Sheet: Jewish Refugees from Arab Countries*, JEWISH VIRTUAL LIBRARY, [http://www.jewishvirtuallibrary.org/jsource/talking/jew\\_refugees.html](http://www.jewishvirtuallibrary.org/jsource/talking/jew_refugees.html) (last updated Dec. 2015), archived at <https://perma.cc/7S4C-BQJH>.

<sup>5</sup> Relatives of Jews may qualify for status as an *Oleh*, a Jew immigrating to Israel, under the Law of Return 5710-1950, as amended, <http://knesset.gov.il/laws/special/eng/return.htm>, archived at <http://perma.cc/7UGG-4YK7>. According to section 4A, added in 1970, “a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew” are entitled to immigrate into Israel in accordance with the Law, “except for a person who has been a Jew and has voluntarily changed his religion.” *Id.* Furthermore, according to the Amendment, “[i]t shall be immaterial whether or not a Jew by whose right a right . . . is claimed is still alive and whether or not he has immigrated to Israel.” *Id.*

<sup>6</sup> *Immigrants(1), By Period of Immigration, Country of Birth and Last Country of Residence*, in CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 2013, at 237–38, [http://www.cbs.gov.il/shnaton64/st04\\_04.pdf](http://www.cbs.gov.il/shnaton64/st04_04.pdf), archived at <http://perma.cc/3SWG-3XJP>.

<sup>7</sup> Naomi Scheinerman, *Immigration to Israel: Vietnamese Boat People in Israel*, JEWISH VIRTUAL LIBRARY (Oct. 3, 2009), <http://www.jewishvirtuallibrary.org/jsource/Immigration/VietBoatPeople.html>, archived at <https://perma.cc/WC4N-JZPN>.

<sup>8</sup> Stephen Kinzer, *Israel Accepts 84 of Bosnia’s Muslim Refugees*, NY TIMES (Feb. 18, 1993), <http://www.nytimes.com/1993/02/18/world/israel-accepts-84-of-bosnia-s-muslim-refugees.html>, archived at <https://perma.cc/Q3QE-2K4U>.

<sup>9</sup> Brianna Lee, *Eritreans in Israel Protest for Refugee Protection*, INTERNATIONAL BUSINESS TIMES (June 25, 2015), <http://www.ibtimes.com/eritreans-israel-protest-refugee-protection-1984640>, archived at <https://perma.cc/HWK2-CJDS>.

<sup>10</sup> For a discussion of the legal and national security aspects of the influx of African migrants, see UNAUTHORIZED IMMIGRATION AS A CHALLENGE TO ISRAEL – CONFERENCE SUMMARY (Ruth Gavison & Meir Elran eds., The Institute for National Security Studies June 2013), <http://www.inss.org.il/uploadImages/systemFiles/memo128e.pdf> (in Hebrew), archived at <https://perma.cc/ZG2Q-3BQD>. For the crime rates of migrants’ in Tel Aviv, see Gilad Morag, *Police: 53.2% Rise in Migrant Crime in Tel Aviv*, YNETNEWS (Feb. 28, 2013), <http://www.ynetnews.com/articles/0.7340.L-4350598.00.html>, archived at <https://perma.cc/WHF9-JMAU>; Roy Arad, *Not Everyone in*

This report describes the current legal regime that applies to the admission of refugees in Israel and Israel's procedures for processing asylum requests.

## II. International Agreements

Israel is a signatory to the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.<sup>11</sup> It is also a signatory to the Final Act of the United Nations Conference on the Status of Stateless Persons, 1954,<sup>12</sup> and the 1961 Convention on the Reduction of Statelessness.<sup>13</sup> Accordingly, Israel recognizes a refugee as a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>14</sup>

Israel is also committed to the principle

that no State should expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.<sup>15</sup>

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*South Tel Aviv Wants the Asylum Seekers Out*, HAARETZ (Aug 13, 2015), <http://www.haaretz.com/israel-news/premium-1.670806> (by subscription), archived at <https://perma.cc/NDL5-HU7Y>.

<sup>11</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2aa10.html>, archived at <http://perma.cc/V86S-GU6S>; *Convention Relating to the Status of Refugees: Status of Signatories and Parties*, UNITED NATIONS TREATY COLLECTION (Jan. 13, 2016), [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&lang=en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en), archived at <https://perma.cc/63FJ-VBR3>; *Protocol Relating to the Status of Refugees: Status of Parties*, UNITED NATIONS TREATY COLLECTION (Jan. 13, 2016), [https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTS&tabid=2&mtdsg\\_no=V-5&chapter=5&lang=en#Participants](https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTS&tabid=2&mtdsg_no=V-5&chapter=5&lang=en#Participants), archived at <https://perma.cc/C5HT-GKGM>.

<sup>12</sup> Final Act of the United Nations Conference on the Status of Stateless Persons, Sept. 28, 1954, 5158 U.N.T.S. 118–24, <https://treaties.un.org/doc/Publication/UNTS/Volume%20360/v360.pdf>, archived at <https://perma.cc/5STD-FDRM>.

<sup>13</sup> Convention on the Reduction of Statelessness with Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness Held at Geneva from 24 March to 18 April 1959, and Resolutions I, II, III and IV of the Conference), Aug. 30, 1961, 989 U.N.T.S. 175, <https://treaties.un.org/doc/Publication/UNTS/Volume%20989/v989.pdf>, archived at <https://perma.cc/PS5N-BPMD>.

<sup>14</sup> Convention Relating to the Status of Refugees, *supra* note 11, art. 2.

<sup>15</sup> *Id.* art. 33.

### III. Restrictive Policy on Non-Jewish Immigration

Israel's immigration policies have been greatly affected by the country's geopolitical situation, specifically the ongoing Arab-Israeli conflict and the current volatile conditions in the Middle East and parts of Africa.

Responding to recent calls by Israeli liberals led by opposition leader Isaac Herzog to admit Syrian refugees escaping the turmoil in their country, Prime Minister Binyamin Netanyahu noted that Israel had provided medical care to over one thousand injured Syrians.<sup>16</sup> He further added that Israel had also made "efforts to aid African nations and thus stem the flow of migrants from African countries."<sup>17</sup> Netanyahu refused, however, to approve a general policy that would allow Syrian refugees to stay in Israel. At a cabinet meeting in September 2015, Netanyahu reportedly stated,

Israel is not indifferent to the human tragedy of the refugees from Syria and Africa. . . . But Israel is a small country, a very small country that lacks demographic and geographic depth; therefore, we must control our borders, against both illegal migrants and terrorism.<sup>18</sup>

### IV. Handling Asylum Requests

The authority to make determinations on refugee status in Israel is vested with the Minister of Interior. In 2002 an interministerial committee for determining eligibility for political asylum was established by the Attorney General. The Committee is responsible for evaluating individual requests and making recommendations to the Minister of Interior. Until July 1, 2009, requests by asylum seekers in Israel were transferred to the United Nations High Commissioner for Refugees (UNHCR). After that date the responsibility for handling requests from asylum seekers was transferred to the Refugee Status Determination Unit (RSD) of the Ministry of Interior. The RSD works in close collaboration with the United Nations.<sup>19</sup>

According to information provided by Israel's Population and Immigration Authority (PIA), RSD representatives have been trained by international experts in the treatment of asylum

<sup>16</sup> For further information on Israel's provision of medical care to wounded Syrians, see Charlotte Florance, *How an Israeli Hospital Builds Bridges with Syria by Caring for the War's Wounded*, DAILY SIGNAL (July 21, 2015), <http://dailysignal.com/2015/07/21/how-an-israeli-hospital-builds-bridges-with-syria-by-caring-for-the-wars-wounded/>, archived at <https://perma.cc/YE2S-KGFF>.

<sup>17</sup> Batsheva Sobelman, *One Country That Won't Be Taking Syrian Refugees: Israel*, LA TIMES (Sept. 6, 2015), <http://www.latimes.com/world/middleeast/la-fg-syrian-refugees-israel-20150906-story.html>, archived at <https://perma.cc/56YD-LVKT>.

<sup>18</sup> Yardena Schwartz, *Non-Jewish Refugees Get a Cold Shoulder in Israel*, NEWSWEEK (Oct. 10, 2015), <http://www.newsweek.com/2015/10/23/what-europe-can-learn-israels-refugee-crisis-382523.html>, archived at <https://perma.cc/W4B8-34B2> (click "See the Screenshot View" and click on the article in the left column).

<sup>19</sup> *Handling Asylum Seekers*, PIA, <http://www.piba.gov.il/authorityunits/pages/rsd.aspx> (in Hebrew; last visited Jan. 13, 2016), archived at <https://perma.cc/553R-WZ85>.

seekers. Requests for asylum are reviewed in accordance with principles under the UN refugee treaty and with sensitivity to the relevant circumstances of the applicants.<sup>20</sup>

## A. General Principles

The PIA issued its *Procedure for Handling Political Asylum Seekers in Israel* (PHPAS) on February 1, 2011.<sup>21</sup> The PHPAS clarifies that the processes it introduces do not derogate from the authorities vested in the Interior Minister by the Entry to Israel Law, 5712-1952,<sup>22</sup> except with regard to deportation authority. The Minister, therefore, does not have the authority to expel asylum applicants prior to the rendering of a final decision on their applications.<sup>23</sup> The PHPAS specifies that political asylum requests must be handled in conformity with Israeli law. Such requests must also be treated in consideration of Israel's treaty obligations, recognizing that "no person is to be expelled to an area in which there is prospective threat to his life, under the principle of non-refoulement."<sup>24</sup>

## B. Advisory Committee on Refugees

The PHPAS established an advisory committee on refugees that reports to the Interior Minister or his/her designee. The committee is chaired by a retired judge or a person who is qualified to serve as a district court judge and is not a civil servant, and who has been appointed by the Interior Minister in consultation with the Minister of Justice. The committee further includes one representative of each of the following ministries: Ministry of Justice, Ministry of Foreign Affairs, and Ministry of Interior's Population and Immigration Authority.<sup>25</sup>

## C. Filing an Application for Asylum

An application for political asylum by a foreign national in Israel must be submitted to the PIA within a year from the date of entry into Israel or, in the absence of special reasons, must be dismissed.<sup>26</sup> An application that is filed late may be considered by the head of a team in the PIA Infiltrators and Asylum Seekers Department if special reasons for the delay are presented by the applicant at the time of filing.<sup>27</sup>

<sup>20</sup> *Id.*

<sup>21</sup> Procedure for Handling Political Asylum Seekers in Israel [PHPAS] (effective Jan. 2, 2011), <http://www.piba.gov.il/AuthorityUnits/Documents/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel.pdf> (last visited Jan. 12, 2016), archived at <https://perma.cc/4EXL-GHRB>.

<sup>22</sup> Entry to Israel Law 5712-1952, 6 LAWS OF THE STATE OF ISRAEL [LSI] p. 150, 5712-1951/52, as amended.

<sup>23</sup> PHPAS, *supra* note 21, at 1.

<sup>24</sup> *Id.* For specific information on Israel's handling of political asylum requests, see *Requests for Political Asylum in Israel*, PIA, <http://www.piba.gov.il/AuthorityUnits/Documents/Requests%20for%20political%20asylum%20in%20Israel.pdf>, archived at <https://perma.cc/QW7V-ANYZ>.

<sup>25</sup> PHPAS, *supra* note 21, at 1–2.

<sup>26</sup> A Refugee Status Determination Application Form is available on the PIA website, at [http://www.piba.gov.il/AuthorityUnits/Documents/RSD%20application%20form\\_300615.pdf](http://www.piba.gov.il/AuthorityUnits/Documents/RSD%20application%20form_300615.pdf) (last visited Jan. 12, 2016), archived at <https://perma.cc/3A2K-3N9N>.

<sup>27</sup> PHPAS, *supra* note 21, § 1c(2).

An applicant who is in custody may submit his/her application to the PIA representatives in the custody facility. The PIA must ensure that the applicant is informed of the manner of submitting an application for asylum in Israel, the right to contact a legal representative of his/her choosing, and the scope of representation to which he/she is entitled during the process.<sup>28</sup> Applications for asylum by unaccompanied minors, “persons suffering from mental problems,” or victims of torture are handled with special sensitivity.<sup>29</sup>

#### **D. Registration and Identification**

The PHPAS states the following with regard to the registration and identification of asylum applicants:

- a. A foreign subject arriving at the Authority’s offices to submit an application . . . will undergo a registration and identification process, in which he will be photographed, biometric means of identification will be taken from him, and he will give his full address, contact details and other identifying particulars, as required. The foreign subject will be requested to immediately update his address and contact details, should there be any changes in them.
- b. The presence of an attorney representing the asylum seeker will be permitted during the registration and identification process, provided that his participation is limited to comments which he may make prior to the process or after its conclusion, but not during the process.<sup>30</sup>

#### **E. Interview and Determination**

Unless the applicant’s identification is refuted at the conclusion of the preliminary registration and identification process, he/she undergoes a basic interview.<sup>31</sup> The basic interview must be conducted in the official language of the applicant’s country of origin if he/she understands that language. Otherwise the interview will be conducted in any other language that he/she understands, and if need be, through an interpreter.<sup>32</sup> The presence of an attorney representing the asylum seeker is permitted subject to conditions specified in the PHPAS.<sup>33</sup>

At the conclusion of the basic interview, the interviewer immediately decides whether to refer the applicant for a comprehensive interview or initiate the process for immediate dismissal of the application.<sup>34</sup> The PHPAS provides a detailed list of requirements regarding the conduct of a

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<sup>28</sup> *Id.* § 1a.

<sup>29</sup> *Id.* § 1b.

<sup>30</sup> *Id.* § 2.

<sup>31</sup> *Id.* § 3a.

<sup>32</sup> *Id.* § 3b(1).

<sup>33</sup> *Id.* § 3b(3).

<sup>34</sup> *Id.* § 3c.

comprehensive interview<sup>35</sup> and additional procedures for reconsideration of applications that have been denied.<sup>36</sup>

## V. Asylum Requests by Nationals of Hostile States

Israel has rarely granted residence status to nationals of hostile states. Special arrangements are made for residents of the West Bank and Gaza for the sake of family reunification. Security concerns are reflected in the following PHPAS provision:

The State of Israel reserves the right not to absorb into Israel and not to grant permits to stay in Israel to subjects of enemy or hostile states – as determined from time to time by the authorized authorities, and so long as they have that status, and the question of their release on bond will be considered on a case by case basis, according to the circumstances and to security considerations.

Israel appreciates the UN Refugee Agency's notice according to which until a comprehensive political settlement is reached in our region it will make every effort to find refugees asylums [sic] in other countries.<sup>37</sup>

## VI. Prevention of “Infiltration” into Israel

### A. Regulation of Unlawful Entry into Israel

Israel currently shares borders with Egypt, the Gaza Strip, Jordan, Lebanon, Syria, and the West Bank. Because of security concerns Israel maintains heightened supervision of its borders. To better control its borders, the Knesset (Israel's Parliament) passed the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, on August 26, 1954.<sup>38</sup> The Law was designed to “improve the security at the state borders and the general security [in the country] by improving the legal measures that are used against infiltrators.”<sup>39</sup>

In accordance with the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, as amended, “infiltrators” (*mistanenim*) are persons who are not Israeli residents, do not possess an *Oleh*<sup>40</sup> or a permanent residence visa, and have entered Israel via a border that has not been designated as an international border crossing by the Minister of Interior.<sup>41</sup>

<sup>35</sup> *Id.* § 5.

<sup>36</sup> *Id.* § 9.

<sup>37</sup> *Id.* § 10.

<sup>38</sup> Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, 8 LSI 133 (5714-1953/54).

<sup>39</sup> Draft Bill for Borders Security (Offenses and Jurisdiction), 5713-1953, HATSAOT HOK No. 161 p. 172 (in Hebrew; translation by author, R.L.).

<sup>40</sup> An *Oleh* visa is issued to qualifying Jews or their family members under the Law of Return, 5710-1950, as amended, <http://knesset.gov.il/laws/special/eng/return.htm>, archived at <http://perma.cc/7UGG-4YK7>.

<sup>41</sup> Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954 § 1, as amended. An up-to-date version of the Law is available in the Nevo Legal Database, <http://www.nevo.co.il> (in Hebrew, by subscription), archived at <https://perma.cc/6TA7-UGDA>.



## B. Influx of African “Infiltrators” Since 2006

### 1. Statistical Data

Since 2006 an increased number of migrants have crossed the border from Egypt to Israel. A report issued by the PIA in April 2015 provides statistical data on “infiltrators” who “have unlawfully entered Israel through the border with Egypt, and have been identified at the border either upon entry or later within the jurisdiction of the State of Israel.”<sup>42</sup>

According to the report, nearly 65,000 Africans crossed illegally into Israel between 2006 and 2013.<sup>43</sup> By March 31, 2015, 45,711 of them were staying in Israel, including four who had entered since the beginning of 2015; 747 have reportedly left voluntarily; 33,506 are from Eritrea; 8,637 are from Sudan; 2,984 from other countries in Africa; and 584 are from elsewhere.<sup>44</sup>

### 2. Public Reaction

The increased number of African “infiltrators” has drawn public opposition, and their settling in population centers, particularly in Tel Aviv, and involvement in crimes in those centers has inflamed popular resentment.<sup>45</sup>

The influx of “infiltrators,” particularly between 2006 and 2013, has reportedly created fear that the demographic changes resulting from “a wave of impoverished Africans, mostly Muslims from Sudan and Christians from Eritrea, would overwhelm the Jewish nature of the state.”<sup>46</sup> In addition, some have raised national security concerns over the influx and have argued that Israel is “the only country of the First World that borders only Third World countries.”<sup>47</sup>

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<sup>42</sup> POPULATION AND IMMIGRATION AUTHORITY, POLICY PLANNING DIVISION, DATA ON FOREIGNERS IN ISRAEL 10 (Apr. 2015), <http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/oct2015.pdf> (in Hebrew), archived at <https://perma.cc/43T8-Q46L>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 4.

<sup>45</sup> Opposition to allowing infiltrators to stay has included allegations that they have perpetrated criminal offenses, particularly in Tel Aviv. See Morag, *supra* note 10. For data on crimes committed by “infiltrators,” see NETA MOSHE & SHARON SOFER, REPORTED CRIME BY FOREIGNERS INCLUDING INFILTRATORS, 2009–2013 (Knesset Information and Research Center Aug. 12, 2014), <https://www.knesset.gov.il/mmm/data/pdf/m03432.pdf> (in Hebrew), archived at <https://perma.cc/2MCD-D97D>.

<sup>46</sup> William Booth, *Israeli Government to Refugees: Go Back to Africa or Go to Prison*, WASH. POST (May 14, 2015), [https://www.washingtonpost.com/world/middle\\_east/toughening-its-stance-toward-migrants-israel-pushes-africans-to-leave/2015/05/14/e1637bce-f350-11e4-bca5-21b51bbdf93e\\_story.html](https://www.washingtonpost.com/world/middle_east/toughening-its-stance-toward-migrants-israel-pushes-africans-to-leave/2015/05/14/e1637bce-f350-11e4-bca5-21b51bbdf93e_story.html), archived at <https://perma.cc/7SWT-Q2L3>.

<sup>47</sup> Amnon Rubinstein, *Irregular Immigration – The Position of Metzilah*, in UNAUTHORIZED IMMIGRATION AS A CHALLENGE TO ISRAEL – CONFERENCE SUMMARY, *supra* note 10, at 17–18.

Professor Ruth Gavison, founder and former president of the Association for Civil Rights in Israel,<sup>48</sup> has distinguished between

the entry of thousands, who actually come every month from countries that do not share a border with Israel and it is unclear whether they are labor migrants or asylum requesters, and a situation in which a relatively small number of persons who escape an imminent real danger that threatens them in their country adjacent to Israel arrive at the state borders.<sup>49</sup>

According to Professor Gavison,

[t]he dramatic phenomenon of large groups of people knocking at Israel's borders in recent years, in a well-organized and financed process of transfers, in a situation such that their incentive to come to the state of Israel in a regular fashion because of the combination of their resentment of their location and the attraction to the place where they are coming—this phenomenon is a structural result of the reality in their country and the country to which they desire to come.<sup>50</sup>

Highlighting the superior social, economic, political, and human rights conditions in Israel as compared with those in surrounding countries, and the difficulty in monitoring the land border with Egypt, Professor Gavison concluded that ever-growing, unauthorized migration into Israel has become a strategic problem.<sup>51</sup> Describing ways to handle it, she suggested that

[o]ur challenge is to apply the right balance. On the one hand, under these conditions the State of Israel cannot maintain open borders . . . [;] on the other hand, . . . the State of Israel . . . has a duty towards those who are “refugees” and escape because of a threat to their lives or welfare because of their identity or views. But . . . Israel—or other states—do not have such a duty towards work migrants. It does not have a duty, under normal conditions, towards refugees who arrived [in Israel] after passing through a country in which they are not exposed to a similar threat. Let us also remember that the duty towards the real refugees is to permit them to enter, and not to return them to the place where they are facing danger. There is no duty to grant them status in the country where they have found shelter, but they should be permitted to live there in a reasonable way until a place where they could be absorbed [as immigrants] could be found or until they can return safely to their homes.<sup>52</sup>

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<sup>48</sup> Prof. Ruth Gavison, THE ISRAEL DEMOCRACY INSTITUTE, <http://en.idi.org.il/about-idi/idi-staff/emeritus-fellows-and-leadership/ruth-gavison> (last visited Jan. 12, 2016), archived at <https://perma.cc/FAC4-P66Y>.

<sup>49</sup> Ruth Gavison, *Opening Remarks*, in UNAUTHORIZED IMMIGRATION AS A CHALLENGE TO ISRAEL – CONFERENCE SUMMARY, *supra* note 10, at 12 (translation by author, R.L.).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

### 3. *Government Policies on Admission and Prevention of Further Sizeable “Infiltration”*

A recent decision by Israel’s Supreme Court summarizes governmental policies on admitting African “infiltrators.”<sup>53</sup> Regardless of whether their motives in arriving in Israel were to improve their economic conditions, as the State argued, or to escape political persecution, as petitioners in the case argued, the Court noted that Israel did not send Sudanese nationals back to their country. The Court also noted that Israel subjected Eritrean nationals to a policy of “temporary nonremoval” in compliance with the principle of non-refoulement. These policies did not prevent nationals of either country from filing individual applications to be granted refugee status.<sup>54</sup>

Describing the development of policies on admitting African migrants, the Court stated that at first “infiltrators” were returned to Egypt. Because of the geopolitical situation in that country, however, this policy was discontinued.<sup>55</sup>

In response to public concern, in 2013 the Israeli government adopted an official policy offering Sudanese and Eritreans who were willing to leave \$3,500 plus a one-way ticket home or to a third-party country, namely Rwanda or Uganda. In addition, the government reportedly spent more than \$350 million to build a 140-mile fence along its entire border with Egypt. The steel barrier, completed in 2013, is believed to have almost fully stopped the illegal entry of migrants into Israel from the Sinai Peninsula. The fence has similarly shut down human traffickers said to have engaged in the rape of women and extortion of migrants.<sup>56</sup> An additional \$75 million eighteen-mile fence along the border with Jordan, a country considered “home to more than 600,000 Syrian refugees,” is currently being erected.<sup>57</sup>

### 4. *Internment of “Infiltrators” for Identification and Determination of Refugee Status*

Unable to return “infiltrators” to their countries of origin, the government started detaining such “infiltrators” in accordance with its authority under the Entry to Israel Law, 5712-1952.<sup>58</sup> In accordance with this Law, however, the government was generally not authorized to detain them for a period exceeding sixty days.<sup>59</sup>

To extend the detention period, the Knesset passed a series of temporary amendments to the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, that specifically authorize

<sup>53</sup> HCJ 8665/14 Tashuma Naga Dasta v. Knesset (decision rendered on Aug. 11, 2015) ¶ 5, <http://elyon1.court.gov.il/files/14/650/086/c15/14086650.c15.pdf> (in Hebrew), archived at <https://perma.cc/EW6B-ZUT9>.

<sup>54</sup> *Id.* ¶ 4.

<sup>55</sup> *Id.* ¶ 7.

<sup>56</sup> Ben Gittleston, *Inside Sinai’s Torture Camps*, THE ATLANTIC (Nov. 14, 2012), <http://www.theatlantic.com/international/archive/2012/11/inside-sinais-torture-camps/265204>, archived at <https://perma.cc/D4GL-K6DJ>.

<sup>57</sup> Schwartz, *supra* note 18.

<sup>58</sup> Entry to Israel Law, 5712-1952, 6 LSI p. 150, 5712-1951/52, *as amended*.

<sup>59</sup> Tashuma Naga Dasta v. Knesset ¶ 7.

deporting and holding “infiltrators” in custody.<sup>60</sup> As detention extending to one or three-year periods had been previously declared unconstitutional by the Supreme Court,<sup>61</sup> on December 8, 2014, the Knesset passed legislation that limited detention to a period of three months, which can be extended up to twenty months, while keeping intact the restrictions introduced by the earlier amendments, including that “infiltrators” must stay in detention facilities at night.<sup>62</sup>

According to explanatory notes of the Amendment Law, the new measures were designed to discourage further “infiltration” into Israel, enable the authorities to identify “infiltrators and remove them from Israel, enable the state to protect its borders and sovereignty, and prevent the continued settling of infiltrators at town centers in Israel.”<sup>63</sup>

In its leading decision rendered on August 11, 2015, the Supreme Court, sitting as an extended bench of nine justices, reviewed the constitutionality of the Amendment Law. The majority of the justices determined that the three-month detention period for “infiltrators” for the purpose of identifying them and determining whether they should be removed from Israel was valid. The placement of “infiltrators” in a specially designated center was also deemed lawful.<sup>64</sup> The Court determined, however, that the twenty-month maximum detention period set by the Amendment Law was not proportional and therefore void. It specified that the decision would take effect six months following the date of issuance, thereby allowing the Knesset to pass new legislation to substitute the twenty month maximum detention period with a period that would conform to constitutional requirements. The Court further determined that the authority to hold “infiltrators” in a detention center during the six month period would be limited to a detention of up to twelve months. Detainees held for periods exceeding twelve months in total would therefore be released immediately or no later than fifteen days following the date of the decision.<sup>65</sup>

On February 8, 2016, shortly before the expiration of the six month period authorized by the Court, the Knesset passed a temporary amendment that will be effective for three years, determining that the period of detention of an “infiltrator” in a detention center may not exceed twelve months.<sup>66</sup>

<sup>60</sup> Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, *as amended*, ch. C. An up-to-date version of the Law is available in the Nevo Legal Database, <http://www.nevo.co.il> (in Hebrew; by subscription), *archived at* <https://perma.cc/6TA7-UGDA>.

<sup>61</sup> Tashuma Naga Dasta v. Knesset ¶ 9.

<sup>62</sup> Prevention of Infiltration and Ensuring the Exit of Infiltrators Out of Israel (Temporary Amendment) 5755-2014, SEFER HA'HUKIM [BOOK OF LAWS] (official gazette) No. 2483 (Dec. 17, 2014), [http://fs.knesset.gov.il/%5C19%5Claw%5C19\\_lsr\\_306608.pdf](http://fs.knesset.gov.il/%5C19%5Claw%5C19_lsr_306608.pdf) (in Hebrew), archived at <https://perma.cc/JS3G-WMT5>.

<sup>63</sup> Tashuma Naga Dasta v. Knesset ¶ 12.

<sup>64</sup> *Id.* ¶¶ 40–49.

<sup>65</sup> *Id. Verdict* § 1 (adopting the opinion of Court President Miriam Naor set out in ¶ 115).

<sup>66</sup> Press Release, Knesset, Final Approval: Shortening Infiltrators' Period of Stay in a Detention Center from 20 Months to 12 Months (Feb. 8, 2016), <http://main.knesset.gov.il/News/PressReleases/Pages/press080216-0o00.aspx>, archived at <https://perma.cc/MTS6-889B>; Prevention of Infiltration (Offences and Jurisdiction) Law (Amendment No. 5 and Temporary Amendment) 5776-2016 Draft Bill, HATSAOT HOK HAMEMSHALA (Government Bills) No. 1006 p. 430 (Jan. 25, 2016), <http://knesset.gov.il/Laws/Data/BillGovernment/1006/1006.pdf>, archived at <https://perma.cc/8ACT-YFDF>.

## VII. Status of “Infiltrators” Who Are Not Held in Custody

“Infiltrators” who are not in custody may obtain a temporary visit visa under section 2(A)(5) of the Entry into Israel Law, 5712-1952.<sup>67</sup> They generally may be employed, as the government has expressed a commitment not to sanction employers of 2(A)(5)-visa holders.<sup>68</sup> Employers may be sanctioned, however, for employing holders of an expired visa or for employment in violation of conditions that either fully or partially prohibit employment in specific geographic locations, such as Tel Aviv and Eilat.<sup>69</sup> Although a temporary visit visa issued under section 2(A)(5) is not a work permit, employed visa holders are entitled to a number of benefits under Israeli labor law, including a minimum wage, sick pay, and health insurance.<sup>70</sup>

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<sup>67</sup> Entry to Israel Law 5712-1952, 6 LSI p. 150 (5712-1951/52), *as amended*.

<sup>68</sup> *Employment of Asylum Seekers*, AID ORGANIZATION FOR REFUGEES AND ASYLUM SEEKERS IN ISRAEL, <http://assaf.org.il/he/contentמקלט-מבקש-העסקת-מבקש/> (in Hebrew; last visited Jan. 12, 2016), *archived at* <https://perma.cc/A33E-WHSF>.

<sup>69</sup> *Foreign Workers*, PIA, [http://www.piba.gov.il/Subject/ForeignWorkers/Pages/oz\\_mistanenim.aspx](http://www.piba.gov.il/Subject/ForeignWorkers/Pages/oz_mistanenim.aspx) (in Hebrew; last visited Jan. 12, 2016), *archived at* <https://perma.cc/A33E-WHSF>.

<sup>70</sup> KAV LAOVED, WORKERS’ RIGHTS – FOR HOURLY WORKERS (July 2011), <http://assaf.org.il/he/sites/default/files/working%20rights%20english.pdf>, *archived at* <https://perma.cc/5XP7-FZC8>. A copy of a PIA decision form authorizing a conditional release with visa limitations is available at [http://www.piba.gov.il/Spokesmanship/Messages/Documents/Scan\\_visa01.pdf](http://www.piba.gov.il/Spokesmanship/Messages/Documents/Scan_visa01.pdf), *archived at* <https://perma.cc/2KPR-5WVD>.

# Italy

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**SUMMARY** Italy's legal system provides for a complex framework of assistance to asylum seekers. Italy has adhered to or ratified the most important international treaties providing for the protection of refugees and their families. The Italian police have broad powers to control and reject asylum seekers at the border. Italian legislation has created several government agencies at the national and regional levels to provide assistance to asylum seekers, including the review of their applications, financial and material help, and the monitoring of their activities within the country. Legislation that accords with Italy's international and European obligations has also established grounds for the rejection of asylum requests. Italian law provides for an abbreviated procedure for the review of asylum requests under certain conditions. Asylum seekers may be granted either refugee status or subsidiary international protection status. Deportation and repatriation proceedings are also regulated in national legislation. Asylum-related administrative decisions are subject to judicial review. Once granted protected status, refugees may avail themselves of all the education, work, health care, housing, and other benefits established by law for Italian citizens. Finally, protective measures are established for unaccompanied minors found in the country.

## I. Asylum in Italy in General

Italy has adhered to the Universal Declaration of Human Rights of 1948, whose article 14 provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>1</sup> Italy is also a signatory to the International Covenant on Civil and Political Rights of 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Both of these instruments contain provisions on asylum. In 1954 Italy ratified the UN Convention Relating to the Status of Refugees of 1951.<sup>2</sup> This Convention does not establish any obligations for the states to admit into their territories persons that apply for refugee status. The only obligation set forth in this Convention is the principle of nonrefoulement—the prohibition against “expel[ling] or return[ing] a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political

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<sup>1</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), <http://www.un.org/en/universal-declaration-human-rights/index.html>, archived at <https://perma.cc/E4NE-H9WP>.

<sup>2</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2aa10.html>, archived at <http://perma.cc/V86S-GU6S>. The Convention was ratified in Italy by Law No. 722 of July 24, 1954, <http://www.asgi.it/wp-content/uploads/public/legge.24.luglio.1954.n.722.pdf> (in Italian), archived at <https://perma.cc/6ULE-MX7V>; the Protocol was ratified by Law No. 95 of February 14, 1970, GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA [G.U.], <http://www.gazzettaufficiale.it/eli/id/1970/03/28/070U0095/sg> (in Italian), archived at <https://perma.cc/N75G-MBRZ>.

opinion.”<sup>3</sup> The Convention also provides an exception to the aforementioned obligation in the case of “a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”<sup>4</sup> Since 2007, the European Union Treaty has provided for a European common policy on asylum.<sup>5</sup>

To date, there are no international instruments providing for a universal right of asylum that Italy has adopted. However, Italy is among the few European countries to proclaim a right to asylum in their Constitution. The Italian Constitution provides that “[a] foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law.”<sup>6</sup>

## II. Regulatory Framework on Asylum

Beginning with the Constitution, several legislative and regulatory instruments regulate asylum and asylum seekers in Italy.

### A. Definitions

Italian law defines “refugee” as “a foreign citizen who, on the basis of on a well-founded fear of being persecuted by reason of race, religion, citizenship, belonging to a particular social group [or holding a particular] political opinion, is found outside of the territory of his/her country of citizenship and cannot or, on the basis of such fear, is unwilling to avail him/herself of the protection of his/her country.”<sup>7</sup> A stateless person found outside the territory in which he/she previously had his/her usual residence for the same reasons mentioned above, who may not or, on the basis of such fear, does not want to return to his/her country of citizenship, also falls into the definition of “refugee” for legal purposes in Italy.<sup>8</sup>

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<sup>3</sup> Convention art. 33(1).

<sup>4</sup> *Id.* art. 33(2).

<sup>5</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 63(1), Dec. 13, 2007, 2007 O.J. (C 306) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN>, archived at <http://perma.cc/45DW-Q6A5>.

<sup>6</sup> CONSTITUTION OF THE ITALIAN REPUBLIC (English version published by the Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication) art. 10 ¶ 3, [http://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf), archived at <https://perma.cc/B6VQ-GVQ7>.

<sup>7</sup> Decreto Legislativo 19 novembre 2007, n. 251 Attuazione della direttiva 2004/83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta [Legislative Decree No. 251 of November 19, 2007, Implementing Directive 2004/83/CE Concerning Minimum Provisions on the Attribution to Citizens of Third Countries or to Stateless Persons of the Qualification of the Refugee or of Persons Otherwise in Need of International Protection, as well as Minimum Provisions on the Content of the Protection Granted] (L.D. No. 251 of 2007) art. 2(1)(e), G.U., Jan. 4, 2008, n. 3, [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-01-04&atto.codiceRedazionale=007G0259&normativi=true&tipoVigenza=originario&tipoSerie=serie\\_generale&currentPage=1](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-01-04&atto.codiceRedazionale=007G0259&normativi=true&tipoVigenza=originario&tipoSerie=serie_generale&currentPage=1), archived at <https://perma.cc/Z798-PJ4A>.

<sup>8</sup> *Id.*



The law also defines “status of refugee” as the recognition of a foreign citizen as a refugee by the state.<sup>9</sup> Persons eligible for “subsidiary protection” are foreign citizens who do not qualify to be recognized as refugees but with respect to whom there are reasonable grounds to consider that, if they return to their country of origin or, in the case of stateless persons, if they return to their country of previous usual residence, they would face a serious risk of suffering serious harm and, as a consequence of such risk, they may not avail themselves of the protection of that country.<sup>10</sup> A “claim for international protection” is one aimed at obtaining the status of refugee or the status of person eligible for subsidiary protection.<sup>11</sup> A “requester of international protection” is a citizen of a third country or a stateless person who requests to be admitted to an internationally protected category.<sup>12</sup> “Humanitarian protection,” in turn, is the protection granted to citizens of a third country who are found in objective and serious personal conditions that do not allow their removal from Italy and whose request for international protection is denied.<sup>13</sup> “Unaccompanied minors” are those foreigners younger than eighteen years of age who are found, for whatever reasons, in the national territory, deprived of assistance or legal representation.<sup>14</sup>

International protection may be offered by the Italian state, political parties, or organizations that “control the state or part of its territory.”<sup>15</sup> International protection consists of the adoption of adequate measures to prevent the persecution of or infliction of serious harm on the affected persons.<sup>16</sup> The determination of whether an international organization controls a state or a part of its territory and if it provides protection depends on the guidelines issued by the Council of the European Union or, when appropriate, on the evaluation of the situation made by the competent international organizations.<sup>17</sup>

According to the law, “acts of persecution” for purposes of granting refugee status must “(a) be serious enough, by their nature or frequency, to represent a grave violation of fundamental human rights,” as understood by the UN Declaration of Human Rights; or “(b) constitute the accumulation of various measures, among them the violation of human rights, whose impact is sufficiently serious to affect the person in a manner similar to that of letter (a).”<sup>18</sup> Oppression of people on the basis of their race, religion, or national origin qualifies as persecution under Italian law.<sup>19</sup>

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<sup>9</sup> *Id.* art. 2(1)(f).

<sup>10</sup> *Id.* art. 2(1)(g).

<sup>11</sup> *Id.* art. 2(1)(i); Decreto del Ministero dell’Interno del 7 agosto 2015 [Decree of the Ministry of the Interior of August 7, 2015] art. 1(1)(a), [http://www.sprar.it/images/Bando\\_SPRAR\\_2016-2017.pdf](http://www.sprar.it/images/Bando_SPRAR_2016-2017.pdf), archived at <https://perma.cc/CQ6L-2FQH>.

<sup>12</sup> Decreto del Ministero dell’Interno del 7 agosto 2015, art. 1(1)(b).

<sup>13</sup> *Id.* art. 1(1)(e).

<sup>14</sup> L.D. No. 251 of 2007, art. 2(1)(m).

<sup>15</sup> *Id.* art. 6(1)(a) & (b).

<sup>16</sup> *Id.* art. 6(2).

<sup>17</sup> *Id.* art. 6(3).

<sup>18</sup> *Id.* art. 7(1).

<sup>19</sup> *Id.* art. 8(1).

## B. Regular Procedure for Requesting International Protection (Asylum)

### 1. Submission of Asylum Requests

Asylum requests must be submitted to the border police or to the office of the respective *questore* (head of the provincial police) with jurisdiction according to the requester's residence.<sup>20</sup> Requesters must reveal all pertinent facts to the authorities<sup>21</sup> and must produce all necessary documentation.<sup>22</sup> When unaccompanied minors are involved, these authorities must immediately inform the System for the Protection of Asylum Seekers and Refugees (Sistema di Protezione per Richiedenti Asilo e Rifugiati, SPRAR)<sup>23</sup> and the respective tribunal of minors for the adoption of appropriate measures.<sup>24</sup>

The competent *questore* of the territory issues a temporary residence permit valid until the conclusion of the recognition procedure. The Ministry of the Interior may legally grant to persons who have obtained refugee status a basic subsistence stipend for a period not to exceed forty-five days.<sup>25</sup> Refugees who lack their own means of subsistence or accommodations in Italy may receive assistance as well.<sup>26</sup> Asylum requests may not be rejected for untimely submission.<sup>27</sup>

<sup>20</sup> Decreto Legislativo 28 gennaio 2008, n. 25 Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato [Legislative Decree No. 25 of January 28, 2008, Implementing Directive 2005/85/CE Concerning Minimum Provisions for the Procedure Applicable to Member States for Purposes of the Recognition and Revocation of the Status of Refugee] (L.D. No. 25 of 2008) art. 26(1), G.U. No. 40 (Feb. 16, 2008), [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-02-16&atto.codiceRedazionale=008G0044&normativi=true&tipoVigenza=originario&tipoSerie=serie\\_generale&currentPage=1](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-02-16&atto.codiceRedazionale=008G0044&normativi=true&tipoVigenza=originario&tipoSerie=serie_generale&currentPage=1), archived at <https://perma.cc/SYM2-PT24>.

<sup>21</sup> L.D. No. 251 of 2007, art. 13(1).

<sup>22</sup> Law No. 39 of 1990, art. 4(5).

<sup>23</sup> MINISTRY OF THE INTERIOR, SYSTEM FOR THE PROTECTION OF ASYLUM SEEKERS AND REFUGEES – SPRAR, [http://www.sprar.it/index.php?option=com\\_k2&view=itemlist&layout=category&task=category&id=19&Itemid=667](http://www.sprar.it/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=19&Itemid=667) (last visited Feb. 1, 2016), archived at <https://perma.cc/F8BE-Y4Q8>.

<sup>24</sup> L.D. No. 25 of 2008, art. 26(6).

<sup>25</sup> Legge 28 febbraio 1990, n. 39 Conversione in legge, con modificazioni, del decreto-legge 30 dicembre 1989, n. 416, recante norme urgenti in materia di asilo politico, di ingresso e soggiorno dei cittadini extracomunitari e di regolarizzazione dei cittadini extracomunitari ed apolidi già presenti nel territorio dello Stato. Disposizioni in materia di asilo [Law No. 39 of February 28, 1990, Conversion into Law, with Amendments, of Decree-Law No. 416 of December 30, 1989, Concerning Urgent Provisions on Political Asylum, Entry and Residence of Extracommunity Citizens and for the Regularization of Extracommunity Citizens and Stateless Persons Already Present in the Territory of the State. Provisions Concerning Asylum] (Law No. 39 of 1990) art. 4(7), G.U. No. 49 (Feb. 28, 1990), <http://www.gazzettaufficiale.it/eli/id/1990/03/21/090A1329/sg>, archived at <https://perma.cc/JWY4-AYFT>.

<sup>26</sup> *Id.*

<sup>27</sup> L.D. No. 25 of 2008, art. 8(1).

## 2. *The National Commission and the Territorial Commissions*

The law creates the National Commission for the Right of Asylum (National Commission) and the Territorial Commissions for the Recognition of International Protection (Territorial Commissions). The National Commission's role is to guide and coordinate the Territorial Commissions, update their composition, and gather statistical information.<sup>28</sup> The National Commission is composed of a police prefect, representative of the President of the Council of Ministers, career diplomat, representative of the Department for Civil Liberties and Immigration, and representative of the Department of Public Security.<sup>29</sup> A delegate of the United Nations High Commissioner for Refugees (UNHCR) in Italy has a right to participate in the National Commission's meetings.<sup>30</sup>

The Territorial Commissions' role is to grant recognition of refugee status to a requester. They are administratively placed within the respective police prefecture and operate in coordination with the Department for Civil Liberties and Immigration of the Ministry of Interior.<sup>31</sup> They are composed of representatives of the national police and local authorities, and a UNHCR representative.<sup>32</sup>

## 3. *Procedural Steps*

Within two days after receiving the requester's documentation, the *questore* transfers it to the respective Territorial Commission, which must schedule a hearing to take place within thirty days.<sup>33</sup> Whenever feasible, the hearing officer must be of the same gender as the requester.<sup>34</sup> If necessary, the Territorial Commission uses interpreters during the hearing.<sup>35</sup> A Territorial Commission may forgo setting up a hearing if there are sufficient grounds to accept the request for the recognition of refugee status, and when the public health authorities or an authorized physician certify the inability or impossibility of holding a hearing in person.<sup>36</sup> A Territorial Commission may waive the requirement of a hearing with respect to requesters coming from certain specified countries.<sup>37</sup>

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<sup>28</sup> Legge 30 luglio 2002, n. 189 Modifica alla normativa in materia di immigrazione e di asilo [Law No. 189 of July 30, 2002 Amending Provisions Related to Immigration and Asylum] (Law No. 189 of 2002) art. 1-quinquies(1), G.U. No. 199 (Aug. 26, 2002), [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2002-08-26&atto.codiceRedazionale=002G0219&normativi=true&tipoVigenza=originario&tipoSerie=serie\\_generale&currentPage=1](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2002-08-26&atto.codiceRedazionale=002G0219&normativi=true&tipoVigenza=originario&tipoSerie=serie_generale&currentPage=1), archived at <https://perma.cc/9GRF-J48B>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> L.D. No. 25 of 2008, art. 4(1).

<sup>32</sup> Law No. 189 of 2002, art. 1-quater(1).

<sup>33</sup> *Id.* art. 1-quater(2); L.D. No. 25 of 2008, art. 12(1).

<sup>34</sup> L.D. No. 25 of 2008, art. 12(1-bis).

<sup>35</sup> Law No. 189 of 2002, art. 1-quater(3).

<sup>36</sup> L.D. No. 25 of 2008, art. 12(2).

<sup>37</sup> *Id.* art. 12(2-bis).

Territorial Commissions must declare asylum requests inadmissible when the requester has already been recognized as a refugee by a state signatory of the Refugee Convention and may avail him/herself of such protection, and also when the requester has already filed an identical asylum request after the Commission has already made a decision, without stating new grounds concerning his/her personal situation or the situation of his/her country of origin.<sup>38</sup>

If the request is declared admissible for review, the respective Territorial Commission must make a decision recognizing refugee status or affording the requester the status of subsidiary protection.<sup>39</sup> To make a decision, the Territorial Commission must consider the eventual consequences of repatriation in relation to Italy's international treaty obligations, including those under the European Union Treaty on Human Rights.<sup>40</sup> The respective Territorial Commission must make a decision whether to grant recognition of refugee status within three days.<sup>41</sup> The Territorial Commission's written decision is communicated to the requester jointly with information about his/her right to appeal the decision.<sup>42</sup> Public security authorities must be informed of rejections.<sup>43</sup>

#### 4. Exclusions

The law prohibits the entry into the national territory of foreigners who attempt to petition for recognition of refugee status when the border police have determined that the requester

- has already been recognized as a refugee in another country;
- comes from a state other than his/her own that has adhered to the Refugee Convention, and in which he/she has resided for a period of time, excluding the time necessary for his/her transit from that territory to the Italian border;<sup>44</sup>
- is suspected of committing a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- has committed a serious nonpolitical crime outside Italy prior to his/her admission to Italy as a refugee;

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<sup>38</sup> *Id.* art. 29(1)(a) & (b).

<sup>39</sup> *Id.* art. 32(1)(a).

<sup>40</sup> Law No. 189 of 2002, art. 1-quater(4).

<sup>41</sup> *Id.* art. 1-quater(2).

<sup>42</sup> *Id.* art. 1-quater(3).

<sup>43</sup> Decreto Legislativo 25 luglio 1998, n. 286 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero [Legislative Decree No. 286 of July 25, 1998, Consolidated Text of the Provisions Concerning the Discipline of Immigration and Provisions on the Conditions of Foreigners] (L.D. No. 286 of 1998) art. 10(6), G.U. No. 191 (Aug. 18, 1998), [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&normativi=true&tipoVigenza=originario&tipoSerie=serie\\_generale &currentPage=1](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&normativi=true&tipoVigenza=originario&tipoSerie=serie_generale &currentPage=1), archived at <https://perma.cc/K8L9-ESAZ>.

<sup>44</sup> Law No. 39 of 1990 art. 1(4).

- has been guilty of acts contrary to the purposes and principles of the UN;
- has been convicted in Italy for a crime established in the Code of Criminal Procedure;<sup>45</sup>
- is considered as dangerous for the security of the state; or
- belongs to a mafia organization, an organization dedicated to narcotics trafficking, or to a terrorist organization.<sup>46</sup>

Refugee status is also denied on the basis of an individual evaluation when the legal grounds to claim such status are not met, there are well-founded reasons to believe that the foreigner constitutes a danger to the security of the state, or the foreigner constitutes a danger to public order and safety, after being convicted of certain crimes established in the Code of Criminal Procedure.<sup>47</sup>

Foreigners who for any reason cease to receive protection or assistance from a UN agency other than the UNHCR when their situation has not been definitively established are still able to obtain refugee status in Italy.<sup>48</sup>

Other grounds that result in cessation of refugee status in Italy are committing a crime against peace, a war crime, or a crime against humanity as defined by international law; committing outside Italy and before admission as an asylum requester a serious crime or acts that are particularly cruel, even if committed with a declared political goal, that may qualify as a serious crime; and being convicted of acts contrary to UN principles, as established in the UN Charter.<sup>49</sup>

### 5. *Detention of Asylum Requesters*

Asylum requesters may not be detained solely because their asylum request is being reviewed.<sup>50</sup> However, these persons may be detained exclusively for the time necessary to make a decision on their asylum application to verify or determine their nationality or identity when they are not in possession of travel or identity documents or when, upon arrival in the territory, they presented false documents; to obtain the documents upon which the request for asylum is based when such documents are not immediately available; and while the procedure to determine the recognition of the right to be admitted in the country is pending.<sup>51</sup>

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<sup>45</sup> CODICE PROCEDURA PENALE [CODE OF CRIMINAL PROCEDURE] art. 380 ¶¶ 1 & 2, available at <http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-di-procedura-penale>, archived at <https://perma.cc/TU8U-6T9M>.

<sup>46</sup> Law No. 39 of 1990, art. 1(4).

<sup>47</sup> L.D. No. 251 of 2007, art. 12(1).

<sup>48</sup> *Id.* art. 10(1).

<sup>49</sup> *Id.* art. 10(2).

<sup>50</sup> Law No. 189 of 2002) art. 32(1) (amending art. 1-bis of D.L. No. 416 of 1989).

<sup>51</sup> *Id.*

Asylum requesters must be kept in detention if they have made their asylum request after being stopped for having evaded or attempting to evade the border control, when they are illegal residents, and while subject to an expulsion or rejection procedure.<sup>52</sup>

Detained persons are kept in identification centers in accordance with domestic, UN, and European legislation.<sup>53</sup> Access to detained persons is allowed with prior authorization from the Ministry of the Interior to UNHCR representatives and to lawyers and organizations devoted to the protection of refugees.<sup>54</sup> Requesters are given a temporary residence permit for the duration of the proceedings.<sup>55</sup>

## 6. *Right of Appeal*

Decisions of the National Commission and the Territorial Commissions concerning the admissibility of requests for refugee status are subject to judicial appeals.<sup>56</sup> A decision rejecting the recognition of refugee status, ordering the expulsion of the requester, or rejecting or revoking a residence permit is subject to appeal before the respective regional administrative tribunal.<sup>57</sup>

The same right of appeal is granted to requesters who have petitioned for the recognition of refugee status and are granted only subsidiary protection instead.<sup>58</sup>

## C. Simplified Procedure Applicable to Asylum Requests

The law establishes a simplified procedure for the review of asylum requests submitted by requesters who are detained after evading or attempting to evade the border control police, or who are subject to an expulsion or rejection procedure.<sup>59</sup> Such requesters are detained in an identification center, and the *questore* must submit all necessary documentation to the respective Territorial Commission within two days.<sup>60</sup> The Territorial Commission must schedule a hearing within fifteen days after receipt of the documentation<sup>61</sup> and come to a decision on the request within three days.<sup>62</sup> In the case of requesters subject to expulsion or rejection, the same procedure is followed, with the requesters being detained in the temporary identification center they are currently detained in until the proceedings have concluded, for up to thirty days.<sup>63</sup>

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<sup>52</sup> *Id.* art. 32(2).

<sup>53</sup> *Id.* art. 32(3).

<sup>54</sup> *Id.* art. 32(4).

<sup>55</sup> *Id.* art. 32(5).

<sup>56</sup> Law No. 39 of 1990, art. 4(6); L.D. No. 25 of 2008, art. 35(1).

<sup>57</sup> *Id.* art. 5(2) & (3).

<sup>58</sup> L.D. No. 25 of 2008, art. 35(1).

<sup>59</sup> D.L. No. 416 of 1989, art. 1-ter(1), *as amended by* Law No. 189 of 2002.

<sup>60</sup> L.D. No. 25 of 2008 art. 4(1).

<sup>61</sup> *Id.*

<sup>62</sup> D.L. No. 416 of 1989, art. 1-ter(2), *as amended by* Law No. 189 of 2002.

<sup>63</sup> *Id.* art. 1-ter(3).

Unauthorized departure from identification centers amounts to renunciation of the request for recognition of refugee status.<sup>64</sup>

The Commission's decision is subject to judicial appeal.<sup>65</sup> The judicial appeal does not suspend the deportation process, however. Requesters may still ask the police prefect to authorize them to remain in the national territory until the end of the judicial proceedings.<sup>66</sup>

#### **D. Cessation of Refugee Status**

Refugee status ceases under Italian law when refugees voluntarily

- avail themselves again of the protection of their country of citizenship;
- have lost their citizenship and voluntarily reacquire it;
- acquire Italian citizenship or another citizenship and enjoy the protection of their new country;
- voluntarily reestablish themselves in the country that they left or to which they had not returned for fear of persecution;
- may no longer renounce the protection of their country of citizenship, because they no longer comply with the requirements that had allowed for the recognition of refugee status; or
- return to the country in which they had their habitual residence (if they are stateless persons), because they no longer comply with the requirements that had allowed for the recognition of the refugee status.<sup>67</sup>

The grounds stated in the last two points above do not apply when the refugees argue that there are overriding reasons arising from previous persecution of such nature that prompt them to reject the protection of their country of citizenship or, in the case of stateless persons, of the country in which they had their habitual residence.<sup>68</sup> The change of circumstances may not be temporary and must be such as to eliminate the well-founded fear of persecution, and the serious humanitarian considerations that impede return to the country of origin must subsist.<sup>69</sup> Cessation is declared on the basis of an individual evaluation of foreigners' personal situations.<sup>70</sup>

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<sup>64</sup> *Id.* art. 1-ter(4).

<sup>65</sup> *Id.* art. 1-ter(6).

<sup>66</sup> *Id.*

<sup>67</sup> L.D. No. 251 of 2007, art. 9(1).

<sup>68</sup> *Id.* art. 9(2-bis).

<sup>69</sup> *Id.* art. 9(2).

<sup>70</sup> *Id.* art. 9(3).



Refugee status is subject to revocation by the Italian authorities when legal grounds to deny the status arise, facts have been presented erroneously or omitted by the requester, or false documentation has been produced.<sup>71</sup>

Refugees or foreigners admitted to subsidiary protection are subject to expulsion when they are considered a danger to state security, or to the public order or security after being convicted of a crime punishable by incarceration for four to ten years.<sup>72</sup>

Requesters who have obtained refugee status or subsidiary protection may expressly renounce their status.<sup>73</sup> The law also provides for a program for the voluntary repatriation of persons receiving international protection benefits.<sup>74</sup>

## **E. Handling of Refugees at the Border**

Border police are empowered to reject the entry of foreigners who appear at border crossings without complying with the requirements established in the law for their lawful entry into Italian territory.<sup>75</sup>

The *questore* is authorized to reject refugee requests and order that requesters be escorted to the border when they have entered the national territory by evading border controls and were stopped at the border or immediately after.<sup>76</sup> Foreigners who appear at the border crossing without complying with the legal requirements to enter the national territory but have nevertheless been temporarily admitted to the national territory out of need for “public assistance” may also be ordered expelled at the border.<sup>77</sup> Smugglers who bring undocumented foreigners to the border must take them immediately under their charge and return the persons to their state of origin or to the state that issued the travel document possessed by the foreigners.<sup>78</sup> These provisions do not apply to persons who request political asylum, or who petition for the recognition of their status as refugees or as beneficiaries of temporary protective measures for humanitarian reasons.<sup>79</sup>

Foreigners who are rejected at border crossing points are entitled to receive any assistance required to return to their places of origin.<sup>80</sup>

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<sup>71</sup> *Id.* art. 13(1)(a) & (b).

<sup>72</sup> *Id.* art. 20(1)(a) & (b).

<sup>73</sup> L.D. No. 25 of 2008, art. 34(1).

<sup>74</sup> L.D. No. 251 of 2007, art. 30(1).

<sup>75</sup> L.D. 286 of 1998, art. 10(1). *See also* Part II(B)(1), above.

<sup>76</sup> *Id.* art. 10(2)(a) & (b).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* art. 10(3).

<sup>79</sup> *Id.* art. 10(4).

<sup>80</sup> *Id.* art. 10(5).

## F. Assistance Provided to Refugees

Italian law protects the family unity of those receiving refugee status and the status of subsidiary protection.<sup>81</sup> Family members who are not entitled to the status of international protection enjoy the same rights afforded to their family member who enjoys such status.<sup>82</sup> Family members of persons who are granted international protection status who are present in the national territory and are not individually entitled to that right may obtain a residence permit on the basis of “family reasons” as provided in the law.<sup>83</sup> Family members who are or would be excluded from refugee status or subject to subsidiary protection status are not eligible to receive these benefits.<sup>84</sup>

Except in limited circumstances, refugees and protected persons may circulate freely in the national territory.<sup>85</sup> The law aims at promoting appropriate initiatives that address the disadvantages refugees and protected persons face after losing the protection of their country of origin, and to remove all obstacles that impede full integration.<sup>86</sup>

## G. Treatment of Refugees

Refugees and persons receiving subsidiary protection have the right to the same treatment established for Italian citizens who work for others or are self-employed, and who register with professional entities.<sup>87</sup> Refugees and persons receiving subsidiary protection may also access public-sector employment under the conditions and limitations established for European Union citizens.<sup>88</sup> These persons also have access to the Italian general educational system and professional training.<sup>89</sup> In order to obtain professional qualifications and revalidate professional degrees obtained abroad, refugees and protected persons must comply with legal requirements.<sup>90</sup>

Refugees and protected persons have the right to the same treatment afforded to Italian citizens in matters of social and health assistance,<sup>91</sup> including psychological treatment for previous torture and suffering experienced by them.<sup>92</sup>

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<sup>81</sup> L.D. No. 251 of 2007, art. 22(1).

<sup>82</sup> *Id.* art. 22(2).

<sup>83</sup> *Id.* art. 22(3).

<sup>84</sup> *Id.* art. 22(5).

<sup>85</sup> *Id.* art. 29(1).

<sup>86</sup> *Id.* art. 29(3).

<sup>87</sup> L.D. No. 251 of 2007, art. 25(1).

<sup>88</sup> *Id.* art. 25(2).

<sup>89</sup> *Id.* art. 26(2).

<sup>90</sup> *Id.* art. 26(3-bis).

<sup>91</sup> *Id.* art. 27(1).

<sup>92</sup> *Id.* art. 27(1-bis).

## H. Residence Permits Granted to Refugees' Family Members

Residence permits for family reasons, from which refugees may benefit, are granted to

- foreigners who have entered the national territory with an entry visa for family reunification or for reunification with minor children;
- foreigners regularly residing in Italy on other grounds for at least one year who have contracted marriages within the national territory with Italian or European Union citizens, or with foreign citizens residing regularly in the country;
- foreign family members regularly residing in Italy who are in the process of complying with requirements for reunification with Italian or European citizens residing in Italy, or with foreigners regularly residing in Italy (in such cases, the family permit is transformed into a residence permit for family reasons); and
- foreign (including natural) parents of Italian minors residing in Italy (in such a case the residence permit for family reasons is also granted regardless of the possession of a valid residence permit, provided that the requesting parent has not been deprived of parental rights according to Italian law.)<sup>93</sup>

## I. Monitoring of Refugees Within Italy

The law sets up a protection system for asylum requesters and refugees that pivots around local entities dedicated to the assistance of these persons.<sup>94</sup> The Ministry of the Interior appropriates funds annually to this effect.<sup>95</sup> To expedite the protection system for asylum requesters, refugees, and foreigners with humanitarian permits, and to facilitate the coordination of this protection system at the national level, the Ministry of the Interior was empowered to create SPRAR for the purpose of providing information to, promoting, consulting with, monitoring, and providing technical support to local entities that provide assistance to asylum requesters, refugees, and foreigners with humanitarian permits. SPRAR is under the direct supervision of the National Association of Italian Municipalities.<sup>96</sup>

Among other functions, SPRAR's duties include monitoring the whereabouts of asylum requesters, refugees, and foreigners with humanitarian permits in the country; creating a database concerning interventions at the local level for the benefit of these persons; and promoting repatriation programs in conjunction with the Ministry of Foreign Affairs.<sup>97</sup>

Italian authorities must inform the nearest diplomatic or consular representatives from a foreigner's country of origin regarding the detainment of the foreigner or his/her expulsion from

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<sup>93</sup> L.D. No. 286 of 1998, art. 30(1).

<sup>94</sup> Law No. 189 of 2002, art. 1-sexies(1).

<sup>95</sup> *Id.* art. 1-sexies(2).

<sup>96</sup> *Id.* art. 1-sexies(4); ASSOCIAZIONE NAZIONALE COMUNI ITALIANE [NATIONAL ASSOCIATION OF ITALIAN MUNICIPALITIES], <http://www.internazionali.anci.it>, archived at <https://perma.cc/S3C2-UC8E>.

<sup>97</sup> Law No. 189 of 2002, art. 1-sexies(5)(a), (b) & (e).

the national territory; or concerning the protection of a foreign minor, the death of the foreigner, or the foreigner's urgent hospitalization.<sup>98</sup> The authorities must deliver the documents and objects belonging to the foreigner to those representative offices.<sup>99</sup> The aforementioned information is not provided in the case of a foreigner who has presented an asylum claim, or whose refugee status has been recognized, or in the case of a foreigner benefitting from temporary protection measures for humanitarian reasons.<sup>100</sup>

Residence permits granted to persons who hold refugee status are valid for five years and are renewable.<sup>101</sup> Holders of subsidiary protection status are also granted residence permits, which allow them to work and study in Italy.<sup>102</sup> While holding refugee status granted in Italy, foreigners may travel overseas after obtaining authorization from the police.<sup>103</sup> When persons subject to subsidiary protection have reasonable grounds not to request a passport from the diplomatic authorities of their country of citizenship, Italian police authorities may grant them a travel authorization.<sup>104</sup> Applications for all types of permits may be rejected or the permits withdrawn for serious reasons related to national security and the public order.<sup>105</sup>

## J. Unaccompanied Minors

Unaccompanied minors found in the national territory who request international protection may benefit from the services provided by local entities specializing in that type of assistance.<sup>106</sup> Such minors are placed in the care of an adult family member who is a regular resident and present in Italy; if that is not possible, judicial authorities may adopt other measures aimed at protecting such minors.<sup>107</sup> Absolute confidentiality is to be observed concerning the implementation of measures to ensure the safety of the minors and their relatives.<sup>108</sup>

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<sup>98</sup> L.D. No. 286 of 1998, art. 2(7).

<sup>99</sup> *Id.* art. 2(7).

<sup>100</sup> *Id.*

<sup>101</sup> L.D. No. 251 of 2007, art. 23(1).

<sup>102</sup> *Id.* art. 23(2).

<sup>103</sup> *Id.* art. 24(1).

<sup>104</sup> *Id.* art. 24(2).

<sup>105</sup> *Id.* art. 24(3).

<sup>106</sup> *Id.* art. 28(1).

<sup>107</sup> *Id.* art. 28(2).

<sup>108</sup> *Id.* art. 28(3).

# Japan

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**SUMMARY** Japan has not accepted many refugees in the past. It began accepting refugees in 1978 in order to grant resident status to refugees from Indochina. Japan acceded to the 1951 UN Convention Relating to the Status of Refugees on October 3, 1981, and to the 1967 UN Protocol Relating to the Status of Refugees on January 1, 1982. In 2010, Japan began accepting refugees for resettlement in Japan in accordance with the UN Convention and Protocol.

When an alien applies for refugee status, he/she is permitted to stay in Japan during the period when his/her application is being examined, if requisite conditions are met. Once an applicant's refugee status is recognized, he/she may obtain special resident status.

Refugees can receive Japanese language classes, social adaptation training, and employment assistance.

## I. General Background

The number of refugees who have been admitted to Japan is much smaller than the number admitted to European countries (see Part IV, below). The reasons may be that

- Japan does not have strong ties with the countries where refugees are from;
- Japan's language barriers and cultural differences do not attract refugees;
- Japan is located far from the areas where refugees are from;
- Japan's record on refugee acceptance does not attract refugees; and
- the standards employed by Japan's Ministry of Justice (MOJ) in recognizing refugees are very strict.<sup>1</sup>

## II. Three Types of Refugee Acceptance

Japan began accepting refugees and granting them resident status in 1978 after refugees from Vietnam, Laos, and Cambodia began arriving on Japanese coasts. Japan accepted 11,319 Indochinese refugees as residents from 1978 to 2005.<sup>2</sup>

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<sup>1</sup> 第6次出入国管理政策懇談会 [SIXTH IMMIGRATION POLICY CONFERENCE], 報告書「今後の出入国管理行政の在り方」 [REPORT: FUTURE POLICY ON IMMIGRATION] 28 (Dec. 2014), available at <http://www.moj.go.jp/content/001130126.pdf>, archived at <https://perma.cc/D7CF-EZKB>.

<sup>2</sup> *Refugees*, MINISTRY OF FOREIGN AFFAIRS (MOFA), <http://www.mofa.go.jp/policy/refugee/japan.html> (last visited Jan. 27, 2016), archived at <https://perma.cc/XHC3-G2ZN>.

The mass outflow of Indochinese refugees prompted Japan to join the international system on refugees. Japan acceded to the Convention Relating to the Status of Refugees (Convention) on October 3, 1981, and to the Protocol Relating to the Status of Refugees (Protocol) on January 1, 1982.<sup>3</sup> After acceding to these treaties, Japan amended its Immigration Control Order, Cabinet Order No. 319 of October 4, 1951, to establish a system for recognizing refugee status, and renamed the Immigration Control Order as the Immigration Control and Refugee Recognition Act.<sup>4</sup> Under the Immigration Control and Refugee Recognition Act, the definition of “refugee” is the same as the definition in the Convention and Protocol. Japan recognized 633 refugees (the total number of applications was 22,559) from 1982 to 2014 under the Convention and Protocol.<sup>5</sup>

The Japanese government decided to start a resettlement program in 2008 and, from 2010 to 2014, accepted eighty-six refugees for resettlement in Japan.<sup>6</sup>

### III. Recognition of Refugee Status

#### A. Refugee Application on Entry

When an alien arrives at a port in Japan and claims to be a refugee, he/she must fill out a form for temporary permission to land.<sup>7</sup> An immigration inspector reviews the form and may grant temporary permission to land if the inspector deems that

- the alien has escaped from a territory where his/her life, body, or physical freedom was imperiled for the reasons specified in the Refugee Convention or other similar reasons; and
- it is reasonable to allow the alien to disembark temporarily.<sup>8</sup>

The temporary permission is granted for a period of up to six months. The examiner designates a facility where the alien stays during this period. The alien must stay within the boundary of the municipal government jurisdiction where the facility is located. The alien cannot work during this period.<sup>9</sup>

<sup>3</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2aa10.html>, archived at <http://perma.cc/V86S-GU6S>.

<sup>4</sup> Cabinet Order No. 319 of October 4, 1951, Immigration Control and Refugee Recognition Act, amended by Act No. 79 of 2009, translation available on the Japanese Law Translation website, at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&id=1934&re=&vm=02>, archived at <https://perma.cc/MV5R-MSJP>.

<sup>5</sup> MOFA, *supra* note 2; 難民問題と日本 III [Refugee Problems and Japan III], MOFA, <http://www.mofa.go.jp/mofaj/gaiko/nanmin/main3.html> (last visited Jan. 27, 2016), archived at <https://perma.cc/LH7N-DJS5>.

<sup>6</sup> 我が国における難民庇護の状況等 [Status of Refugee Protection in Japan], MOJ, <http://www.moj.go.jp/content/001138217.pdf> (last visited Jan. 27, 2016), archived at <https://perma.cc/XRZ2-UEM6>.

<sup>7</sup> Enforcement Ordinance of Immigration Control and Refugee Recognition Act (Enforcement Ordinance), MOJ Ordinance No. 54 of 1981, amended by MOJ Ordinance No. 36 of 2015, art. 18, para. 1, translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=refugee&ia=03&x=26&y=12&ky=&page=2&vm=02>, archived at <https://perma.cc/H6TL-F8UM>.

<sup>8</sup> Immigration Control and Refugee Recognition Act art. 18-2.

<sup>9</sup> Enforcement Ordinance art. 18, para. 5.

When an alien applies for refugee recognition, he/she must appear in person with an application form and other necessary documents, including materials that prove refugee status.<sup>10</sup> The Minister of Justice makes inquiries of the National Public Safety Commission as to whether the applicant has committed a serious nonpolitical crime outside Japan (citing article 1, item F-(b) of the Convention Relating to the Status of Refugees).<sup>11</sup>

When the Minister of Justice recognizes a refugee applicant as a refugee, the Minister issues a certificate of refugee status. If the Minister denies refugee status, he/she sends the decision and reasons in writing to the applicant.<sup>12</sup>

## **B. Status of a Refugee Applicant Who Is an Undocumented Resident**

In addition to applying for refugee status upon landing at a port in Japan, an alien can apply for refugee status after he/she has entered the country.<sup>13</sup> It is possible that the situation that creates the need for an alien to apply for refugee status arises after the alien entered Japan.<sup>14</sup> There is no provision that restricts refugee status applications from aliens whose refugee status applications were denied in the past.

When an alien without legal resident status, such as an undocumented resident, applies for refugee recognition, he/she is permitted to temporarily stay in Japan, and deportation procedures are suspended if he/she meets certain requirements, such as not having a criminal record and not being a flight risk. Among other requirements, an alien without legal resident status can apply for refugee status recognition if

- the alien submits an application within six months after disembarking in Japan, or six months from the day the alien became aware of the circumstances that would cause him/her to become a refugee while he/she is in Japan; or
- the alien directly enters Japan from a territory where he/she may suffer the types of persecution stipulated in the Refugee Convention.<sup>15</sup>

## **C. Objection to Refugee Status Denial**

When the Minister of Justice denies an applicant's request for refugee status, the applicant can file an objection with the Minister within seven days from the date that he/she has received the notice of denial.<sup>16</sup> The Minister must then consult with refugee examination counselors whom

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<sup>10</sup> *Id.* art. 55, para. 1.

<sup>11</sup> *Id.* art. 55, para. 4.

<sup>12</sup> Immigration Control and Refugee Recognition Act art. 61-2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* art. 61-2-2, para. 1.

<sup>15</sup> *Id.* art. 61-2-4, para. 1, item 6 (quoting art. 61-2-2, para. 1, items 1 & 2).

<sup>16</sup> *Id.* art. 61-2-9, paras. 1 & 2.



the Minister has appointed as experts able to make fair judgments.<sup>17</sup> When the applicant requests an oral presentation or a refugee examination counselor deems it necessary, the refugee examination counselor is given an opportunity to examine the applicant. When the Minister renders a decision, a summary of the refugee counselor's opinion must be presented to the applicant.<sup>18</sup>

#### IV. Recent Issues

As the following table illustrates, the number of refugees afforded recognition of refugee status under the Convention and Protocol has not increased in recent years:

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Recognition of refugee status	34	41	57	30	39	21	18	6	11
Resettled refugees	0	0	0	0	27	18	0	18	23
Special stay	53	88	360	501	363	248	112	151	110

**Source:** MOJ, 我が国における難民庇護の状況等 [*Status of Refugee Protection in Japan*], sched. 3, <http://www.moj.go.jp/content/001138217.pdf> (last visited Jan. 27, 2016), archived at <https://perma.cc/XRZ2-UEM6>.

In contrast, applications for refugee status under the Convention and the Protocol and objections to the denial of refugee status applications have rapidly increased in recent years:

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Refugee application	954	816	1,549	1,388	1,202	1,867	2,545	3,250	5,000
Objections	340	362	429	1,156	859	1,719	1,738	2,408	2,533

**Source:** MOJ, 難民認定申請数の推移 [*Trends in Asylum Numbers*] app. 1, tbl. 1, <http://www.moj.go.jp/content/001138214.pdf> (last visited Jan. 27, 2016), archived at <https://perma.cc/CTA3-XS7X>.

Until 2005, the number of applications was even smaller. Before 1996, the number of applications was less than one hundred.<sup>19</sup>

<sup>17</sup> *Id.* art. 61-2-10, para. 2.

<sup>18</sup> *Id.* art. 61-2-9, paras. 4 & 5.

<sup>19</sup> 難民認定申請及び処理数の推移 [*Trends in Numbers of Refugee Recognition Applications and Numbers of Cases Processed*], MOJ, [http://www.moj.go.jp/nyuukokukanri/kouhou/press\\_060224-1\\_060224-1-4.html](http://www.moj.go.jp/nyuukokukanri/kouhou/press_060224-1_060224-1-4.html) (last visited Jan. 27, 2016), archived at <https://perma.cc/C9MW-V5XV>.

Such a rapid increase in the number of applications and objections has caused delays in processing them. A conference convened by the MOJ examined the situation and identified three types of problematic cases:

- Aliens claiming refugee status on the basis of situations that are not listed in the Refugee Convention
- Aliens repeatedly applying for refugee status on the basis of situations for which their application was previously denied
- Aliens repeatedly applying for refugee status without a proper basis merely to postpone deportation<sup>20</sup>

The conference suggested that the government change the refugee recognition system, which enables and attracts aliens and enables them to keep applying for refugee status or request reexamination without justification.<sup>21</sup>

## V. Resident Status in Japan

An alien who is recognized as a refugee and has not yet acquired legal resident status is given special resident status for up to five years if, among other requirements, the alien

- submits an application for refugee recognition within six months after disembarking in Japan, or six months from the day he/she became aware of the circumstances that would cause him/her to become a refugee while in Japan; or
- directly entered Japan from a territory where he/she may suffer the types of persecution stipulated in the Refugee Convention.<sup>22</sup>

Even if those requirements are not met, an alien may be exceptionally permitted to live in Japan when the Minister of Justice recognizes a special reason.<sup>23</sup>

There is no particular restriction on special residents' activities.<sup>24</sup> There is no system for monitoring refugees, although refugees, like all residents, are required to report changes in their registered address.<sup>25</sup>

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<sup>20</sup> 第6次出入国管理政策懇談会・難民認定制度に関する専門部会 [6TH IMMIGRATION POLICY CONFERENCE, SUB-CONFERENCE BY EXPERTS ON REFUGEE RECOGNITION SYSTEM], 難民認定制度の見直しの方向性に関する検討結果 (報告) [RESULTS OF DISCUSSION OF REFUGEE RECOGNITION SYSTEM REVIEW POLICY (REPORT)] 11 (Dec. 2014), <http://www.moj.go.jp/content/001130133.pdf>, archived at <https://perma.cc/S5PS-RDNZ>.

<sup>21</sup> SIXTH IMMIGRATION POLICY CONFERENCE, *supra* note 1, at 31.

<sup>22</sup> Immigration Control and Refugee Recognition Act art. 61-2-2, para. 1, items 1 & 2.

<sup>23</sup> *Id.* art. 62-2-2, para. 2.

<sup>24</sup> Article 19 of the Immigration Control and Refugee Recognition Act set limitations on the activities of aliens who have a certain resident status. There is no such limitation on permanent residents and special residents, however.

<sup>25</sup> Immigration Control and Refugee Recognition Act art. 19-9.

One of the conditions for a refugee to obtain permanent resident status has been relaxed, compared with other aliens: the Minister of Justice has the discretion to grant permanent residence status to refugees who do not have sufficient income, assets, or the ability to support themselves,<sup>26</sup> which is usually required for aliens to obtain permanent residence.<sup>27</sup>

## VI. Assistance to Refugees in Japan

The Japanese government provides the following programs to refugees at the International Refugee Assistance Headquarters' Support Center within the Foundation for the Welfare and Education of the Asian People:

- 572 hours of Japanese-language education
- Social adaptation training
- Employment counseling and placement

While refugees are enrolled in the programs, free accommodation is provided for up to 180 days.<sup>28</sup>

## VII. Resettlement in Japan

On December 16, 2008, the Cabinet approved a pilot resettlement project. Three days later, the Inter-ministerial Coordination Council agreed on trial admission arrangements and specific plans for providing support for the local integration of refugees admitted into Japan for resettlement. The government decided to admit approximately thirty refugees (consisting of families) once a year for three consecutive years beginning in fiscal year 2010. Burmese refugees in the Mae La Camp in Thailand were chosen for the plan. In fiscal year 2010, five families consisting of twenty-seven refugees arrived in Japan and went through the 180-day integration program.<sup>29</sup>

These refugees do not have to apply for refugee status. They are accepted as special residents and therefore can apply for special resident status.<sup>30</sup>

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<sup>26</sup> *Id.* art. 61-2-11.

<sup>27</sup> *Id.* art. 22.

<sup>28</sup> 平成18年度からの国際救援センターの後継難民定住支援施設及び同施設において実施する難民定住支援プログラムの概要、難民対策連絡調整会議幹事会第5回会合資料[*Overview of Successor Facilities for Refugee Resettlement Support to Be Implemented from 2006 and Refugee Resettlement Support Programs at the Facilities, 5th Refugee Measures Coordination Executive Secretaries Meeting Material*], CABINET SECRETARIAT (Mar. 3, 2006), <http://www.cas.go.jp/jp/seisaku/nanmin/060303program.html>, archived at <https://perma.cc/6KSC-W464>.

<sup>29</sup> MOFA, *supra* note 2.

<sup>30</sup> 出入国管理及び難民認定法第7条第1項第2号の規定に基づき同法別表第2の定住者の項の下欄に掲げる地位を定める件 [Defining the Status of Long-Term Residents as Listed in the Lower Column of Appendix Chart No. 2 of the Immigration Control and Refugee Recognition Act in Accordance with Article 7, Paragraph 1, Item 2 of the Same Act], MOJ Notification No. 132 of 1990, *amended by* MOJ Notification No. 37 of 2010.

## VIII. Naturalization

Requirements for naturalization are the same for refugees as for other aliens. When an alien staying in Japan wants to become naturalized, he/she must

- have lived in Japan for more than five consecutive years;
- be of good conduct;
- be at least twenty years of age and legally capable;
- have sufficient income, assets, or the ability to support him/herself;
- have no nationality or give up his/her current nationality by obtaining Japanese nationality; and
- have never been a member of an organization that aims to destroy the Japanese government by violent measures.<sup>31</sup>

Some requirements are exempted, depending on the alien's situation, such as if the alien is married to a Japanese national or is the child of a Japanese national.<sup>32</sup>

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<sup>31</sup> Nationality Act, Act No. 147 of 1950, *amended by* Act No. 70 of 2014, art. 5.

<sup>32</sup> *Id.* arts. 5–8.

# Jordan

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**SUMMARY** Jordan's current refugee population is estimated to be 1.1 million, including Syrians, Iraqis, and others. While its Constitution provides protection against extradition for political asylum seekers, Jordan has not enacted domestic legislation to deal with refugees and is not a party to the 1951 Convention on Refugees or its 1967 Protocol. The legal instrument that provides the legal framework for the treatment of refugees is a 1998 Memorandum of Understanding signed between Jordan and the UNHCR.

## I. General Background

The UN High Commissioner for Refugees (UNHCR) estimated that the number of refugees and asylum seekers in Jordan would reach a total of 1.1 million by December 2015, including 57,140 Iraqis and 937,830 Syrians, based on trends and registration data from early 2014.<sup>1</sup> Despite its scarce resources, Jordan is considered a welcoming country and has provided refugees with health, security, and educational services, and offered the land on which the two Syrian refugee camps of Azraq and Zaatari were built.<sup>2</sup> However, Jordan lacks a clear legal framework to deal with refugees and asylum seekers.

## II. Constitutional Provisions

Article 21(1) of the Jordanian Constitution provides that “[p]olitical refugees shall not be extradited on account of their political beliefs or for their defense of liberty.”<sup>3</sup> However, it does not appear that Jordan has enacted any legislation that regulates the status of refugees, including those who seek asylum for political reasons.

Furthermore, Jordan is not a signatory and has not become a party to the Convention relating to the Status of Refugees of 1951 (1951 Convention) or its 1967 Protocol.<sup>4</sup>

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<sup>1</sup> 2015 UNHCR Country Operations Profile – Jordan, UNHCR, <http://www.unhcr.org/pages/49e486566.html> (last visited Jan. 6, 2016), archived at <https://perma.cc/Q3LQ-7NNA>.

<sup>2</sup> *Id.*

<sup>3</sup> CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN, *as amended*, <http://www.parliament.jo/node/137> (in Arabic), archived at <https://perma.cc/4D2K-CYDL>.

<sup>4</sup> See UNHCR, SUBMISSION BY THE UNHCR FOR THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS' COMPILATION REPORT – UNIVERSAL PERIODIC REVIEW: JORDAN 1 (Mar. 2013), available at <http://www.refworld.org/pdfid/513d90172.pdf>, archived at <https://perma.cc/7GE7-28JB>.

### III. Domestic Legislation

In the absence of special legislation addressing their status, refugees and asylum seekers in Jordan are subject to Law No. 24 of 1973 concerning Residency and Foreigners' Affairs.<sup>5</sup> This Law applies to all foreigners without distinction between refugees and nonrefugees. Article 2 defines a foreigner as anyone who does not have Jordanian nationality. The Law refers to refugees in some of its articles but does not define them as a separate category. For example, article 4 refers to a travel permit issued to a refugee by the country of his residence as valid documentation allowing him to enter Jordan. Of particular interest is article 10, which gives the Minister of Interior the authority, based on the recommendation of the general security director, to issue regulations concerning the travel documentation that Jordan may grant to refugees within its borders, despite there not being any regulations addressing the conditions under which those refugees can be admitted into the country.

A 2015 report by the International Labor Organization (ILO) confirms the lack of adequate legal protection for refugees in Jordan, stating as follows:

Jordanian law makes limited references to asylum seekers and refugees. Despite having the highest ratio of refugees to citizens in the world, Jordan has not signed the Refugee Convention of 1951 or its subsequent 1967 Protocol. Several concerns are usually cited over Jordan's non-signatory status, including the politically and socially complex—and yet unresolved—Palestinian refugee issue, popular sentiment against refugee integration, lack of resources and capacity to provide for refugees, and misinformation about the perceived social and economic burden of refugees and related questions of national security.

...

In practice, Jordan avoids the official recognition of refugees under its domestic laws and prefers to refer to Syrian refugees as 'visitors', 'irregular guests', 'Arab brothers' or simply 'guests', which has no legal meaning under domestic laws, and was the same for Iraqi refugees under the MOU. This was further confirmed in an interview with the MOL [Ministry of Labour], Labour Inspection department.<sup>6</sup>

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<sup>5</sup> Law No. 24 of 1973 concerning Residency and Foreigners' Affairs, *available at* <http://www.e-lawyerassistance.com/LegislationsPDF/jordan/residencylawAr.pdf> (in Arabic; last visited Jan. 6, 2016), *archived at* <https://perma.cc/RGH6-KPBH>.

<sup>6</sup> INTERNATIONAL LABOUR ORGANIZATION, ACCESS TO WORK FOR SYRIAN REFUGEES IN JORDAN: A DISCUSSION PAPER ON LABOUR AND REFUGEE LAWS AND POLICES 11–12 (2015), <https://data.unhcr.org/syrianrefugees/download.php?id=8919>, *archived at* <https://perma.cc/QKT3-GCU2>.

#### IV. Memorandum of Understanding Between Jordan and the UNHCR

In 1998, Jordan and the UNHCR signed a memorandum of understanding (MOU) to allow the UNHCR to act within its mandate to provide international protection to persons falling within its mandate. This MOU has become the legal framework under which refugees are treated and processed in Jordan.<sup>7</sup>

The MOU provides that Jordan accepts the definition of “refugee” contained in the 1951 Convention.<sup>8</sup> Jordan also agrees to respect the principle of nonrefoulement, meaning that no person seeking asylum in Jordan will be returned to a country where his or her life or freedom could be threatened because of his or her race, religion, nationality, membership of a particular social group, or political opinion.<sup>9</sup> Jordan also agrees that asylum seekers and refugees should receive treatment according to internationally accepted standards.<sup>10</sup>

Under the MOU, a refugee is granted legal status and the UNHCR will endeavor to find the refugee a durable solution, be it voluntary repatriation to the country of origin or resettlement in a third country. The stay of the refugee in Jordan should not exceed six months.<sup>11</sup>

Jordan and the UNHCR also agreed to respect the following rights and privileges of refugees and asylum seekers: (1) freedom to practice their religion and provide religious education to their children, and freedom from discrimination based on race, religion, or nationality, provided that religious rights are not contrary to laws, regulations, and public decency;<sup>12</sup> (2) free access to courts of law with the same right of litigation and legal assistance as is accorded Jordanian nationals, wherever possible;<sup>13</sup> and (3) exemption from overstay fines and departure fees.<sup>14</sup>

The UNHCR is allowed to interview asylum seekers who enter Jordan illegally and is to make its determination as to their status within seven days. In exceptional cases where another procedure is needed the determination period should not exceed one month.<sup>15</sup>

An article published in the *Jordan Times* refers to a 2014 amendment of the MOU. It reports that the amendment extended the time for UNHCR to process refugee applications from “between 21 and 30 days” to ninety days and extended “the validity of a refugee identification

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<sup>7</sup> Memorandum of Understanding Between the Government of Jordan and UNHCR (Apr. 5, 1998), available at <http://mawgeng.a.m.f.unblog.fr/files/2009/02/moujordan.doc>, archived at <https://perma.cc/N28J-MV22t>.

<sup>8</sup> *Id.* art. 1.

<sup>9</sup> *Id.* art. 2.

<sup>10</sup> *Id.* art. 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* art. 6.

<sup>13</sup> *Id.* art. 7.

<sup>14</sup> *Id.* art. 10.

<sup>15</sup> *Id.* art. 3.



card to one year instead of six months.”<sup>16</sup> According to a 2015 report by the International Human Rights Clinic (IHRC) and the Norwegian Refugee Council (NRC), the 2014 amendment has not been made publicly available.<sup>17</sup>

## V. Jordan’s Policies Towards Refugees

In the absence of a legal framework to deal with refugees, the Jordanian policies in this respect are unclear. The UNHCR asserts that Jordan provides asylum for many Syrians, Iraqis, and others, recognizes them as refugees, and has granted Syrian refugees in host communities access to health, education, and other services.<sup>18</sup> As previously mentioned, the ILO report relies on a confirmation by a Jordanian government official to assert that Jordan avoids recognizing Syrians as refugees.<sup>19</sup> The report also states that “Syrians entering the country as asylum seekers or who are registered as refugees with UNHCR are not given residency,”<sup>20</sup> while the UNHCR asserts that “Syrian nationals require neither a visa to enter nor a residence permit to remain in Jordan.”<sup>21</sup> A 2015 report by the European University Institute states that Jordan restricted the movement of Syrian refugees and instructed the UNHCR to stop issuing Asylum Seeker Certificates (ASCs), which are “indispensable for obtaining Ministry of Interior (MoI) Service Card for refugees’ access to public health care and education services in host communities.”<sup>22</sup>

The ILO report states that Jordan hosts over two million Palestinian refugees, “the largest number of Palestinian refugees of any one country in the world.”<sup>23</sup> However, most of these Palestinians have obtained full Jordanian citizenship, according to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).<sup>24</sup>

<sup>16</sup> Khetam Malkawi, *Gov’t, UNHCR Sign Amendments to Cooperation Memo*, JORDAN TIMES (Mar. 31, 2014), <http://www.jordantimes.com/news/local/gov%E2%80%99t-unhcr-sign-amendments-cooperation-memo>, archived at <https://perma.cc/3VRX-NFGH>.

<sup>17</sup> IHRC & NRC, REGISTERING RIGHTS: SYRIAN REFUGEES AND THE DOCUMENTATION OF BIRTHS, MARRIAGES, AND DEATHS IN JORDAN 36 (Oct. 2014), <http://www.nrc.no/arch/img/9208964.pdf>, archived at <https://perma.cc/Q8A5-GEJA>.

<sup>18</sup> 2015 UNHCR Country Operations Profile – Jordan, *supra* note 1.

<sup>19</sup> INTERNATIONAL LABOUR ORGANIZATION, *supra* note 6.

<sup>20</sup> *Id.*

<sup>21</sup> UNHCR, SUBMISSION BY THE UNHCR FOR THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS’ COMPILATION REPORT – UNIVERSAL PERIODIC REVIEW: JORDAN 2, *supra* note 4.

<sup>22</sup> EUROPEAN UNIVERSITY INSTITUTE (EUI), SYRIAN REFUGEES IN JORDAN: A REALITY CHECK (Feb. 2015), [http://cadmus.eui.eu/bitstream/handle/1814/34904/MPC\\_2015-02\\_PB.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/34904/MPC_2015-02_PB.pdf?sequence=1&isAllowed=y), archived at <https://perma.cc/9NCQ-4TKB>.

<sup>23</sup> INTERNATIONAL LABOUR ORGANIZATION, *supra* note 6.

<sup>24</sup> *Where We Work*, UNRWA, <http://www.unrwa.org/where-we-work/jordan>, archived at <https://perma.cc/ZW4Y-SENV>.

# Kenya

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**SUMMARY** Kenya hosts a large asylum-seeking and refugee population, which at present is managed jointly by the country's Department of Refugee Affairs (DRA) and the United Nations High Commissioner for Refugees (UNHCR) under the 2006 Refugees Act and the 2009 Refugees Regulations. Kenya recognizes two classes of refugees: *prima facie* refugees and statutory refugees. All asylum seekers go through an initial registration. At this point in the process, they are screened for their eligibility to seek asylum and to obtain accelerated processing. This is followed by an interview.

Recent terrorist attacks are said to have prompted Kenya to introduce changes to its refugee policy. One notable change was the introduction of an encampment policy requiring all asylum seekers and refugees in urban areas to relocate to designated camps. Although refugees have been allowed to engage in informal employment in the past, this appears to be getting increasingly difficult as the encampment policy constrains their ability to move about the country. In addition, work permits are rarely issued to refugees. Similarly, while refugees are technically free to apply for naturalization if they meet certain requirements, which on their face are not prohibitive, in practice Kenya does not naturalize refugees.

An asylum seeker is issued an asylum-seeker pass upon applying for refugee status, which is replaced by a refugee identification card after his application is granted. All asylum seekers and refugees are required to live in their designated refugee camps and need a movement pass in order to travel anywhere outside the camp.

## I. General Background

Kenya hosts a large asylum-seeking and refugee population. This is due largely to the country's location in a conflict-prone area. For example, neighboring countries like Somalia and South Sudan have experienced ongoing civil wars that have caused internal and external displacement of large segments of their population. According to the United Nations High Commissioner for Refugees (UNHCR), there were a total of 625,250 refugees and asylum seekers in the country in 2014.<sup>1</sup> This figure increased to 650,610 in 2015.<sup>2</sup> The majority of these people (close to 70%) were Somali citizens, while persons from South Sudan made up around 20% of the asylum-seeking and refugee population.<sup>3</sup> The remainder included Ethiopians, Congolese, and around 20,000 stateless persons.<sup>4</sup>

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<sup>1</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), GLOBAL APPEAL 2014–2015: KENYA 2 (Dec. 1, 2013), <http://www.unhcr.org/528a0a244.html>, archived at <http://perma.cc/68GJ-CQCQ>.

<sup>2</sup> UNHCR, GLOBAL APPEAL 2015 UPDATE: KENYA 2 (Dec. 1, 2014), <http://www.unhcr.org/5461e600b.html>, archived at <http://perma.cc/NX7P-GUYZ>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Refugees in Kenya primarily reside in the Dadaab refugee complex (which is in Garissa County and consists of five camps: Dagahaley, Hagadere, Ifo, Ifo II, and Kambios) and the Kakuma Refugee Camp located in Turkana County.<sup>5</sup> In addition, as of April 2014, there were reportedly over 50,000 urban refugees in Nairobi.<sup>6</sup>

Kenya is signatory to a number of international treaties applicable to individuals seeking asylum and protection. For instance, it acceded to the 1951 United Nations Convention Relating to the Status of Refugees on May 16, 1966, and its 1967 Protocol in 1981.<sup>7</sup> Kenya is also a state party to the 1969 African Union (AU) (formerly known as the Organization of African Unity, OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, which it signed in September 1969 and ratified in June 1992.<sup>8</sup> In addition, Kenya acceded to the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment in February 1997.<sup>9</sup> Of particular relevance to refugee issues is a provision in the Convention on nonrefoulement, which states that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>10</sup>

However, Kenya only recently put in place a national legal framework governing refugee matters and assumed partial responsibility for the refugee status determination (RSD) process. It did this when it took a step to implement its obligations under international law by enacting the Refugees Act in 2006, which took effect the next year, and its subsidiary legislation, the Refugees (Reception, Registration and Adjudication) Regulations, in 2009 (Refugees Regulations).<sup>11</sup>

<sup>5</sup> UNHCR & INTERNATIONAL ORGANIZATION OF MIGRATION (IOM), JOINT RETURN INTENTION SURVEY REPORT 2014 at 21(updated Feb. 25, 2015), <http://data.unhcr.org/horn-of-africa/download.php?id=1535>, archived at <http://perma.cc/57W6-Z8A6>; Kakuma, INTERNATIONAL ORGANIZATION FOR MIGRATION: KENYA, <http://kenya.iom.int/kakuma> (last visited Dec. 31, 2015), archived at <https://perma.cc/7HAD-KS9K>.

<sup>6</sup> UNHCR *Seeking Access to Detained Asylum-Seekers and Refugees in Nairobi*, UNHCR (Apr. 7, 2014), <http://www.unhcr.org/5342b35d9.html>, archived at <https://perma.cc/UW48-F2GB>.

<sup>7</sup> *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, UNHCR, <http://www.unhcr.org/3b73b0d63.html> (last visited, Dec. 28, 2015), archived at <https://perma.cc/2NMZ-C8M3>.

<sup>8</sup> *Ratification Table: AU Convention Governing Specific Aspects of Refugee Problems in Africa*, AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS, <http://www.achpr.org/instruments/refugee-convention/ratification/> (last visited Dec. 28, 2015), archived at <https://perma.cc/35NK-ZPFG>.

<sup>9</sup> *Status: Kenya*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg\\_no=iv-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-9&chapter=4&lang=en) (last visited Dec. 28, 2015), archived at [perma.cc/6XUT-YGU4](https://perma.cc/6XUT-YGU4).

<sup>10</sup> Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85, available on the Office of the United Nations High Commissioner for Human Rights (OHCHR) website, at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, archived at <https://perma.cc/LSG2-DZQT>.

<sup>11</sup> Sara Pavanello et al., *Hidden and Exposed: Urban Refugees in Nairobi, Kenya* 15 (HPG Working Paper, Mar. 2010), available on the Overseas Development Institute (ODI) website, at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5858.pdf>, archived at <https://perma.cc/MQW7-A464>; Refugees Act No. 13 of 2006, 17 LAWS OF KENYA, Cap. 173 (rev. ed. 2014), available on the Kenya Law website, at <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20173>, archived at <https://perma.cc/PHC7-67EH>; Refugees (Reception, Registration and Adjudication) Regulations, 2009 (Refugees Regulations), 17 LAWS OF KENYA, Cap. 173 (rev. ed. 2014), [http://www.kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=CAP.%20173#KE/LEG/EN/AR/R/CHAPTER%20173/SUBLEG/HC\\_2\\_V1](http://www.kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=CAP.%20173#KE/LEG/EN/AR/R/CHAPTER%20173/SUBLEG/HC_2_V1), archived at <https://perma.cc/Z9BJ-UBT6>.

Among other things, the Act established the Department of Refugee Affairs (DRA), whose responsibilities include receiving and processing applications for refugee status.<sup>12</sup> Prior to that, refugee matters were governed under the now repealed Immigration Act and Alien Restriction Act, and RSDs and other matters relating to refugee management were delegated to the UNHCR.<sup>13</sup> This practice continued long after 2006. It was only in 2014 that the DRA assumed some RSD functions, mainly endorsement of RSD determinations made by the UNHCR and issuance of notifications of recognition to refugees that meet the required criteria under the Refugees Act.<sup>14</sup> The UNHCR is currently in the process of transferring all RSD functions to the DRA, and this transfer was scheduled to be finalized by the beginning of 2016.<sup>15</sup>

This report describes key aspects of the Kenyan refugee legal framework (the Refugees Act of 2006 and the 2009 Refugees Regulations) and recent legal developments relevant to the management of the asylum-seeking and refugee population in Kenya.

## II. Key Provisions of the Refugees Act

### A. Definition

The Refugees Act recognizes two classes of refugees: statutory and *prima facie* refugees.<sup>16</sup> The former category applies to a person who has “a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion.”<sup>17</sup> The latter relates to a person who, “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence.”<sup>18</sup> Under the Act, asylum is “shelter and protection granted by the Government to persons qualifying for refugee status,” while an asylum seeker is “a person seeking refugee status.”<sup>19</sup>

The Minister of Interior and Coordination of National Government is empowered to declare a class of persons *prima facie* refugees and to amend or revoke such declaration.<sup>20</sup> The most

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<sup>12</sup> Refugees Act § 7.

<sup>13</sup> REFUGEE CONSORTIUM OF KENYA, ASYLUM UNDER THREAT: ASSESSING THE PROTECTION OF SOMALI REFUGEES IN DADAAB REFUGEE CAMPS AND ALONG THE MIGRATION CORRIDOR 15 (June 2012), available on the Reliefweb website, at [http://reliefweb.int/sites/reliefweb.int/files/resources/Asylum\\_Under\\_Threat.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Asylum_Under_Threat.pdf), archived at <https://perma.cc/E9PM-9C83>.

<sup>14</sup> MADELINE GARLICK ET AL., UNHCR POLICY DEVELOPMENT AND EVALUATION SERVICE, BUILDING ON THE FOUNDATION: FORMATIVE EVALUATION OF THE REFUGEE STATUS DETERMINATION (RSD) TRANSITION PROCESS IN KENYA ¶¶ 49, 68 & 255, U.N. Doc. PDES/2015/01 (Apr. 2015), <http://www.unhcr.org/5551f3c49.pdf>, archived at <https://perma.cc/EK8R-LWS5>.

<sup>15</sup> *Id.* ¶¶ 54 & 68.

<sup>16</sup> Refugees Act § 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* § 2.

<sup>20</sup> *Id.* § 3.

recent example of a demonstration of this authority came in June 2014 when, acting on humanitarian grounds, Interior Minister Joseph Ole Lenku declared as *prima facie* refugees South Sudanese persons fleeing the civil war in their country.<sup>21</sup> Kenya is said to have granted the same protection to persons from South and Central Somalia.<sup>22</sup>

## B. Disqualification, Cessation, Withdrawal, and Expulsion

Certain persons are disqualified from attaining refugee status, while persons who have been granted such status may lose it under some circumstances. A person is ineligible for refugee status if the person

- has committed a “crime against peace, a war crime, or a crime against humanity”;
- has committed a serious nonpolitical crime in or outside of Kenya;
- has committed acts “contrary to the purposes of the United Nations or the African Union”; or
- holds dual citizenship and could seek protection in one of the countries of his citizenship, and therefore does not have a well-founded fear of persecution.<sup>23</sup>

A person who has been granted refugee status may lose that status through a voluntary or involuntary change in circumstances. For instance, if a person “voluntarily re-avails himself of the protection of his nationality,” voluntarily reacquires a lost citizenship or acquires a new citizenship, or voluntarily reestablishes himself in the country where he feared persecution, he would lose his refugee status.<sup>24</sup> A person may also lose his refugee status as a result of changes to his circumstances independent of his own doing—for example, where the circumstances that formed the basis for the granting of status have “ceased to exist.”<sup>25</sup>

The DRA may withdraw the refugee status of any person if it has “reasonable grounds for believing” that the person has ceased to be a refugee or should not have been recognized as such in the first place.<sup>26</sup> This may occur if the person was ineligible for the status or the status was granted “erroneously as a result of misrepresentation or concealment of facts that were material to the refugee status determination.”<sup>27</sup> In addition, the Act authorizes the DRA to withdraw the refugee status of any person if it has reasonable grounds to believe that the person is a danger to national security or to any community in the country.<sup>28</sup>

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<sup>21</sup> Declaration of *Prima Facie* Refugees, GAZETTE NOTICE [GN] No. 5274, 116(91) THE KENYA GAZETTE (Aug. 1, 2014), [http://kenyalaw.org/kenya\\_gazette/gazette/notice/164302](http://kenyalaw.org/kenya_gazette/gazette/notice/164302), archived at <https://perma.cc/ZQR4-NLHB>.

<sup>22</sup> GARLICK ET AL., *supra* note 14, ¶ 258.

<sup>23</sup> Refugees Act § 4.

<sup>24</sup> *Id.* § 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* § 20.

<sup>27</sup> Refugees Regulations § 37.

<sup>28</sup> Refugees Act § 19.

The withdrawal of the refugee status of a person also results in the withdrawal of all derivative rights. When a person is granted refugee status, members of his family (including a spouse, dependent child, or sibling under the age of eighteen, or dependent parent, grandparent, grandchild, or ward living in the refugee's household) are also accorded the same rights.<sup>29</sup> If the person loses his refugee status, his family members also lose their status.<sup>30</sup> However, any family member who loses his derivative status is entitled to petition for protection independently.<sup>31</sup>

In addition to withdrawing a person's refugee status, the DRA may also expel any refugee or a member of his family if it deems it necessary "on the grounds of national security or public order."<sup>32</sup>

### C. Right of Appeal

In theory, asylum seekers and refugees have the right to appeal any decisions of the DRA. The Act establishes an Appeal Board chaired by an experienced legal professional, including as its members persons with knowledge of or experience in matters relating to immigration, refugee law, and foreign affairs, and requires that the Board operate independently in the exercise of its functions.<sup>33</sup> Under the Act, asylum seekers and refugees are entitled to appeal any unfavorable decision of the DRA to the Board.<sup>34</sup> However, Kenya has yet to constitute this body.<sup>35</sup> As a result, the DRA and the UNHCR are said to "refrain from issuing rejections [to asylum claims] until an appeal process is established which could hear appeals against such negative outcomes."<sup>36</sup> This is said to cause delays in the RSD process in violation of the Act, which requires the DRA to make a determination within ninety days of an application.<sup>37</sup>

### D. Nonrefoulement and Voluntary Return

The Refugees Act prohibits refoulement, stating that "[n]o person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected [sic] any similar measure" if doing so would result in the persecution of the person or endanger his life, physical integrity, or liberty.<sup>38</sup>

A program aimed at voluntarily repatriating Somali refugees has not had much success. In 2013, Kenya, Somalia, and the UNHCR signed an agreement to repatriate Somali refugees in the

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<sup>29</sup> *Id.* § 15.

<sup>30</sup> Refugees Act §§ 2 & 20; Refugees Regulations § 41.

<sup>31</sup> Refugees Act § 20; Refugees Regulations § 41.

<sup>32</sup> Refugees Act § 21; Refugees Regulations § 47.

<sup>33</sup> Refugees Act § 9.

<sup>34</sup> Refugees Act § 10; Refugees Regulations §§ 4, 28 & 46.

<sup>35</sup> GARLICK ET AL., *supra* note 14, Annex I, ¶2.

<sup>36</sup> *Id.* ¶ 28.

<sup>37</sup> Refugees Act § 11; GARLICK ET AL., *supra* note 14, ¶ 113.

<sup>38</sup> Refugees Act § 18.

country. One of the provisions of the agreement requires that the repatriation be voluntary, stating that “[t]he parties hereby reaffirm that the repatriation provided for in this Agreement of Somali refugees who have sought refuge in the Republic of Kenya shall take place in conformity with international law pertaining to voluntary repatriation.”<sup>39</sup> However, a 2014 survey found that only 2.9% of Somali refugees in the Dadaab complex had expressed interest in returning to Somalia within two years.<sup>40</sup>

Recent developments indicate that the Kenyan government has sought (more than once) to forcibly repatriate Somali refugees and asylum seekers to Somalia in possible violation of the Act and its agreement with Somalia and the UNHCR (for more on this issue, see Part IV, below).

### III. The Refugee Status Determination

The first step in the RSD process is registration. The Act and its subsidiary legislation require that anyone who wishes to remain in Kenya as a refugee must appear before the DRA and petition for recognition as such.<sup>41</sup> The legality of the manner in which the person entered Kenya is immaterial to the eligibility to petition for refugee status.<sup>42</sup> At this time, when the UNHCR is in the process of transferring its RSD function to the Kenya government, there are two parallel registration systems in place, one operated by the DRA and another run by the UNHCR.<sup>43</sup> Once registered, the applicant is given an “asylum seeker pass” (issued by the DRA), an “asylum seeker certificate” (issued by the UNHCR), and an interview appointment.<sup>44</sup>

Initial screening is done through a registration interview. The applicant is required to appear in person with his family members, if any.<sup>45</sup> At the time of the registration interview, the applicant is asked to provide basic information (including biographical information) and submit all relevant supporting documents.<sup>46</sup> The applicant and his family members, if any, are also required to submit to fingerprinting (which is checked against a national database) and photographing.<sup>47</sup> The interview is used to screen applicants for the purpose of identifying vulnerable persons eligible for accelerated processing (see Part III(2), below) and to determine whether they meet general eligibility requirements for refugee protection.<sup>48</sup>

<sup>39</sup> Tripartite Agreement Between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees in Kenya, 2013 (Nov. 10, 2013), available on the European Council on Refugees and Exiles (ECRE) website, at [http://www.ecre.org/index.php?option=com\\_downloads&id=817](http://www.ecre.org/index.php?option=com_downloads&id=817), archived at <https://perma.cc/5EVJ-P29P>.

<sup>40</sup> UNHCR & IOM, *supra* note 5, at 9.

<sup>41</sup> Refugees Act § 11; Refugees Regulations § 4.

<sup>42</sup> Refugees Act § 11.

<sup>43</sup> GARLICK ET AL., *supra* note 14, ¶ 69.

<sup>44</sup> *Id.* ¶ 72; Refugees Regulations § 4.

<sup>45</sup> Refugees Regulations § 6.

<sup>46</sup> *Id.* § 8.

<sup>47</sup> *Id.* § 9.

<sup>48</sup> *Id.* §§ 5 & 7; REFUGEE CONSORTIUM OF KENYA, *supra* note 13, at 27.



The registration process is followed by the RSD process, which can be categorized into two classes: determinations involving prima facie refugees and regular process.

### A. Prima Facie Refugees

The prima facie refugee process is relatively short. A person who is a member of a group entitled to this refugee status is accorded such status once he has been registered and his origin verified (no information was located with regard to how the verification process is handled) without the need to go through “a claim interview or further evidentiary or other requirements.”<sup>49</sup> If there is any indication that an applicant is possibly excludable under the applicable laws or may not qualify for refugee status for other reasons, the person is referred to the regular RSD process.<sup>50</sup>

As noted above, Kenya has accorded this status to claimants from South Sudan and South and Central Somalia.

### B. Regular RSD Process

Following the completion of the registration process, an applicant is interviewed by an RSD officer on the date set at the time of registration. The waiting period for interviews appears to vary from six months to two years.<sup>51</sup> The law requires the DRA to set up “a fair and transparent systems for the scheduling of refugee status determination interviews.”<sup>52</sup> Kenya gives priority for “accelerated processing” to certain classes of applicants, including unaccompanied minors and survivors of gender-based violence, persons with medical issues, and persons awaiting deportation orders.<sup>53</sup>

The burden of proving eligibility for refugee status lies with the applicant. The Refugees Regulations provide that the applicant has the duty to establish that he meets all the requirements for refugee status.<sup>54</sup> An applicant may present documentary evidence and/or witnesses in support of his claim.<sup>55</sup> Whenever documentary evidence is not available, “the credible testimony of an asylum seeker in consideration of conditions in the country of origin may suffice to establish eligibility for refugee status.”<sup>56</sup> During the RSD interview, the applicant may “present his refugee claims in person . . . or be represented at his own cost by a legal representative.”<sup>57</sup>

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<sup>49</sup> GARLICK ET AL., *supra* note 14, ¶ 80.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* ¶ 83.

<sup>52</sup> Refugees Regulations § 18.

<sup>53</sup> GARLICK ET AL., *supra* note 14, ¶ 101; Refugees Regulations § 30.

<sup>54</sup> Refugees Regulations § 22.

<sup>55</sup> *Id.* §§ 25 & 26.

<sup>56</sup> *Id.* § 22.

<sup>57</sup> *Id.* § 20.

The interview phase is followed by an assessment, decision-making, and review process. Following the interview, UNHCR and DRA caseworkers “evaluate evidence gathered in the interview, undertake any further research, conduct legal analysis and take other necessary steps to make an assessment of the applicant’s claim.”<sup>58</sup> They then formulate “a recommendation for a decision to grant or deny the claim.”<sup>59</sup> This is evaluated by a reviewer who verifies the work done by the interviewer and makes recommendations, including recalling of the applicant for an additional interview.<sup>60</sup> Once this process is completed to the satisfaction of the reviewer, the matter is then referred to the DRA, where the final decision is made and notification is sent to the applicant.<sup>61</sup>

#### IV. Recent Legal Developments

Recent terrorist attacks seem to have prompted Kenya to make drastic changes to its policy on asylum seekers and refugees. One of the key changes came in the form of an announcement of an encampment policy. Until recently, Kenya allowed refugees and asylum seekers to live in urban areas, a policy that received official endorsement when, in 2011, the government began registering refugees in urban centers (Nairobi, Malindi, Mombasa, and Nakuru) and issuing them refugee certificates.<sup>62</sup> For instance, by 2012, there were an estimated 100,000 refugees living in Nairobi, over three times the officially registered refugees in the city in 2006.<sup>63</sup> Following a series of terrorist attacks in urban locations, the DRA announced an encampment policy at the end of 2012, requiring all refugees and asylum seekers in cities to relocate to refugee camps with the plan to repatriate them to their home countries.<sup>64</sup> This triggered a legal challenge before the Kenya High Court at Nairobi. In a ruling issued in July 2013, the Court held that the government announcement was, among other things, a violation of the constitutional right of movement and the principle of nonrefoulement enshrined in the Refugees Act.<sup>65</sup>

In March 2014, the government again issued a directive ordering urban refugees to go to and remain in designated camps. Citing security and logistical challenges resulting from the presence of refugees and asylum seekers in urban areas, the directive provided that

- all refugees residing outside of the designated refugee camps must return to the camps immediately;

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<sup>58</sup> GARLICK ET AL., *supra* note 14, ¶ 86.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* ¶¶ 87, 89 & 90.

<sup>61</sup> *Id.* ¶¶ 110–111; Refugee Regulations § 30.

<sup>62</sup> REFUGEE CONSORTIUM OF KENYA, *supra* note 13, at 77.

<sup>63</sup> *Id.*; Pavanello et al., *supra* note 11, at 11.

<sup>64</sup> GARLICK ET AL., *supra* note 14, ¶¶ 270–271; Kituo Cha Sheria & 8 Others v. Attorney General [2013] paras. 1–6 eKLR, <http://kenyalaw.org/caselaw/cases/view/84157>, archived at <https://perma.cc/E2YL-22TJ>.

<sup>65</sup> Kituo Cha Sheria & 8 Others v. Attorney General, para. 94.

- all Kenyans must report refugees and illegal immigrants they encounter outside of camps; and
- an additional five hundred law enforcement officers were going to be deployed mainly to Nairobi and Mombasa “to enhance security and surveillance.”<sup>66</sup>

By May 2014, around 350 individuals, at least six of whom were registered refugees, were said to have been deported back to Somalia.<sup>67</sup> This time, the government measure survived judicial scrutiny; a petition before the High Court of Kenya at Nairobi challenging the legality of the directive was rejected.<sup>68</sup>

In December 2014, Kenya took the matter further and made key amendments to the Refugees Act of 2006. A key provision in the 2014 amendment sought to make permanent the encampment policy, stating that “[e]very person who has applied for recognition of his status as a refugee and every member of his family shall remain in the designated refugee camp until the processing of their status is concluded.”<sup>69</sup> Another provision states that “[e]very refugee and asylum seeker shall . . . not leave the designated refugee camp without the permission of the Refugee Camp Officer.”<sup>70</sup>

However, the most notable provision in the 2014 amendment was one that sought to dramatically reduce the number of refugees and asylum seekers in the country, potentially through forced repatriation. It states as follows:

The number of refugees and asylum seekers permitted to stay in Kenya shall not exceed one hundred and fifty thousand persons. (2) The National Assembly may vary the number of refugees or asylum seekers permitted to be in Kenya. (3) Where the National Assembly varies the number of refugees or asylum seekers in Kenya, such a variation shall be applicable for a period not exceeding six months only. (4) The National Assembly may review the period of variation for a further six months.<sup>71</sup>

The strict implementation of this law today would result in the refoulment of 400,000 refugees and asylum seekers, most of whom are Somali citizens. Following the enactment of this amendment, multiple petitions challenging the legality of the legislation were filed. On February

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<sup>66</sup> Press Statement, Cabinet Secretary for Interior and Coordination of National Government, Refugees and National Security Issues (Mar. 26, 2014), [https://www.hrw.org/sites/default/files/related\\_material/PRESS%20STATEMENT%20BY%20CABINET%20SECRETARY%20FOR%20INTERIOR%20%20COORDINATION%20OF%20NATI%20%20%20.pdf](https://www.hrw.org/sites/default/files/related_material/PRESS%20STATEMENT%20BY%20CABINET%20SECRETARY%20FOR%20INTERIOR%20%20COORDINATION%20OF%20NATI%20%20%20.pdf), archived at <https://perma.cc/DR2N-MGT6>.

<sup>67</sup> GARLICK ET AL., *supra* note 14, ¶ 280.

<sup>68</sup> Samow Mumin Mohamed & 9 Others v. Cabinet Secretary, Ministry of Interior Security and Co-Ordination & 2 Others [2014] paras. 30 & 31 eKLR, <http://kenyalaw.org/caselaw/cases/view/99326/>, archived at <https://perma.cc/357R-6A87>.

<sup>69</sup> Security Laws (Amendment) Act No. 19 of 2014, § 46 (Dec. 2014), available at [http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws\\_Amendment\\_Act\\_2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws_Amendment_Act_2014.pdf), archived at <https://perma.cc/XU3W-EGW3>.

<sup>70</sup> *Id.* § 47.

<sup>71</sup> *Id.* § 48.

25, 2015, the Constitutional and Human Rights Division of the High Court of Kenya at Nairobi found that this particular provision was “unconstitutional, and therefore null and void.”<sup>72</sup> The Court noted that placing a cap on the number of refugees and asylum seekers that may be present in Kenya would invariably result in the expulsion of hundreds of thousands of refugees and “violate the principle of *non refoulement*, which is a part of the law of Kenya and is underpinned by the Constitution.”<sup>73</sup>

Following the April 2, 2015, deadly attacks at Garissa University by the Somalia-based terrorist group Al-Shabaab, which claimed close to 150 lives, Kenya announced that it would close the Dadaab refugee complex immediately and repatriate its residents, all of whom are Somali, back to Somalia.<sup>74</sup> Kenya reportedly retracted its plans following pressure from the international community, including the United States of America.<sup>75</sup>

## V. Integration

A sustainable integration of refugees into a host country is said to have three interconnected aspects: legal (the according of rights to refugees, including the right of employment, property ownership, movement, permanent residency, and citizenship); economic (refugees becoming self-sufficient); and social (the ability of refugees to live among the citizens of the host country).<sup>76</sup>

In theory, refugees in Kenya are free to engage in any form of self-employment without the need to obtain formal authorization and they may take paid employment after obtaining a work permit.<sup>77</sup> The Act provides that “every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.”<sup>78</sup> Refugees and their spouses may apply for and obtain a class M work permit.<sup>79</sup> A holder of a class M work permit “may engage in any occupation,

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<sup>72</sup> Coalition for Reform and Democracy (CORD) & 2 Others v. Republic of Kenya & 10 Others, [2015] para. 427 eKLR, <http://kenyalaw.org/caselaw/cases/view/106083/>, archived at <https://perma.cc/F43C-DKV7>.

<sup>73</sup> *Id.*

<sup>74</sup> Mark Hanrahan, *Kenya Tells UN to Close Dadaab Refugee Camp After Garissa University Attack*, INTERNATIONAL BUSINESS TIMES (Apr. 12, 2015), <http://www.ibtimes.com/kenya-tells-un-close-dadaab-refugee-camp-after-garissa-university-attack-1878568>, archived at <https://perma.cc/Z9GY-GZXP>.

<sup>75</sup> Kathleen Cauderwood, *Kenya Retracts Plans to Close Dadaab, World’s Largest Refugee Camp, After International Pressure*, INTERNATIONAL BUSINESS TIMES (May 7, 2015), <http://www.ibtimes.com/kenya-retracts-plans-close-dadaab-worlds-largest-refugee-camp-after-international-1912768>, archived at <https://perma.cc/GQ5H-GDFU>.

<sup>76</sup> REFUGEE CONSORTIUM OF KENYA, *supra* note 13, at 79.

<sup>77</sup> GARLICK ET AL., *supra* note 14, Annex I, ¶ 10.

<sup>78</sup> Refugees Act § 16.

<sup>79</sup> Kenya Citizenship and Immigration Regulations, 2012, Seventh Sched., 11 LAWS OF KENYA, Cap. 172 (rev. ed. 2014), <http://www.kenyalaw.org/8181/exist/kenyalex/sublegview.xql?subleg=CAP.%20172>, archived at <https://perma.cc/ZW7B-UURU>.

trade, business or profession.”<sup>80</sup> Although obtaining a two-year work permit previously cost refugees US\$700, this is no longer the case as Kenya has removed this fee and made permits available free of charge.<sup>81</sup>

While refugees may theoretically work, the practice is reportedly much different. The Refugee Consortium of Kenya stated in 2012 that the government does not issue work permits to asylum seekers or refugees except in “a few isolated cases.”<sup>82</sup> As a result, refugees and asylum seekers are forced to seek employment in the informal sector.<sup>83</sup> However, this is increasingly being made difficult by the country’s encampment policy, which restricts the ability of refugees and asylum seekers to move about the country freely.

A path to naturalization is apparently not available to refugees. The 2010 Kenyan Constitution provides that “[a] person who has been lawfully resident in Kenya for a continuous period of at least seven years” and who meets other conditions prescribed in the relevant legislation may be naturalized.<sup>84</sup> Kenyan law on citizenship provides additional conditions, including the ability to speak Kiswahili or a local language and the capacity to make a substantive contribution to Kenya’s development.<sup>85</sup> However, in practice, Kenya does not appear to grant citizenship to refugees.<sup>86</sup>

## VI. Role of Local Governments

While the 2010 Kenya Constitution ended the unitary system of government and decentralized power by establishing county governments with executive and legislative powers, it put the authority to deal with matters relating to refugee management exclusively in the hands of the national government.<sup>87</sup> Although, as noted above, counties host refugees, county governments have neither the authority nor the budget to directly participate in any aspect of the refugee management process.<sup>88</sup> However, there are a number of ways in which county governments

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<sup>80</sup> Kenya Citizenship and Immigration Act, 2011, § 41, 11 LAWS OF KENYA, Cap. 172 (rev. ed. 2014), <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20172>, archived at <https://perma.cc/X4SS-A3D9>.

<sup>81</sup> Pavanello et al., *supra* note 11, at 21; Kenya Citizenship and Immigration Regulations, *supra* note 79, Ninth Sched.

<sup>82</sup> REFUGEE CONSORTIUM OF KENYA, *supra* note 13, at 80–81.

<sup>83</sup> *Id.*

<sup>84</sup> CONSTITUTION OF KENYA, 2010, § 5, 6 LAWS OF KENYA (rev. ed. 2014), <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>, archived at <https://perma.cc/BFM2-BTYQ>.

<sup>85</sup> Citizenship and Immigration Act § 13.

<sup>86</sup> GARLICK ET AL., *supra* note 14, Annex I, ¶ 220.

<sup>87</sup> CONSTITUTION OF KENYA § 186; SAMUEL HALL, REGIONAL DURABLE SOLUTIONS SECRETARIAT (REDSS), DEVOLUTION IN KENYA: OPPORTUNITY FOR TRANSITIONAL SOLUTIONS FOR REFUGEES 10 & 62 (July 22, 2015), [https://www.drc.dk/media/1419712/final\\_devolution\\_report\\_230715.pdf](https://www.drc.dk/media/1419712/final_devolution_report_230715.pdf), archived at <https://perma.cc/HM3F-LTKK>.

<sup>88</sup> *Id.* at 62.

have indirect involvement in refugee management; chief among them is the question of allocation of community land for use as a refugee camp.<sup>89</sup>

## **VII. Government Assistance**

No information was located regarding any government assistance programs available for, or that cater to, asylum seekers and refugees.

## **VIII. Monitoring and Movement of Refugees**

As noted above, refugees and asylum seekers are required to remain in designated refugee camps. The Act requires that all asylum seekers and refugees be issued identity cards or passes.<sup>90</sup> An asylum seeker is issued an asylum-seeker pass after applying for refugee status.<sup>91</sup> The asylum-seeker pass must “specify the time and date” on which the asylum seeker must present himself in the designated refugee camp and includes information that failure to do so “may result in the withdrawal of the pass.”<sup>92</sup> After the person is granted refugee status, he is issued a refugee identification card.<sup>93</sup> Any refugee wishing to travel outside of the camp where he resides must first obtain a movement pass.<sup>94</sup>

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<sup>89</sup> *Id.* at 58.

<sup>90</sup> Refugees Act § 14

<sup>91</sup> Refugees Regulations § 4.

<sup>92</sup> *Id.* § 13.

<sup>93</sup> *Id.* § 33.

<sup>94</sup> Refugees Act § 17; Refugees Regulations § 35.

# Lebanon

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**SUMMARY** Lebanon is not a party to the Convention relating to the Status of Refugees of 1951 or its 1967 Protocol. It has not adopted any domestic legislation specifically addressing the status of refugees. Refugee status is at present determined mainly by the provisions of a Memorandum of Understanding (MOU) signed between Lebanon and the UNHCR.

## I. General Background

Lebanon has a large number of refugees. In a report issued by the Humanitarian Aid and Civil Protection department of the European Commission in October 2015, it was estimated that there were about 1.1 million Syrians, 295,000 Palestinians, and 17,000 Iraqis in Lebanon,<sup>1</sup> while the UN High Commissioner for Refugees (UNHCR) estimated the number of Syrian refugees alone to be 1,835,840 in 2015.<sup>2</sup>

The legal status of refugees in Lebanon lacks certainty. The existing legal instruments dealing with this issue have been criticized as inadequate and insufficient. A 2010 report by the UNHCR states that “[r]efugees enjoy few, if any, legal rights in Lebanon.”<sup>3</sup>

## II. Constitutional Provisions

Section B of the preamble of the Lebanese Constitution provides the following:

Lebanon is ... a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.<sup>4</sup>

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<sup>1</sup> EUROPEAN COMMISSION, *LEBANON: SYRIAN CRISIS* (Oct. 2015) [http://ec.europa.eu/echo/files/aid/countries/factsheets/lebanon\\_syrian\\_crisis\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/lebanon_syrian_crisis_en.pdf), archived at <http://perma.cc/MQ64-M8HF>.

<sup>2</sup> 2015 UNHCR *Country Operations Profile – Lebanon*, UNHCR, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486676&submit=GO> (last visited Feb. 1, 2016), archived at <https://perma.cc/2LRT-LDRM>.

<sup>3</sup> UNHCR, *SUBMISSION BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES FOR THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS’ COMPILATION REPORT – UNIVERSAL PERIODIC REVIEW: THE REPUBLIC OF LEBANON 2* (Apr. 2010), [http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/UNHCR\\_HighCommissionerforRefugees.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/UNHCR_HighCommissionerforRefugees.pdf), archived at <https://perma.cc/ZK3U-8KGS>.

<sup>4</sup> Lebanese Constitution (1926), as amended to 1995, <http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>, archived at <http://perma.cc/Z7H7-JC2R>.



It could be argued that this provision requires, among other things, that the government enact comprehensive legislation related to refugees. However, no such legislation exists. Furthermore, Lebanon has not signed the Convention relating to the Status of Refugees of 1951 or its 1967 Protocol.

### III. Domestic Legislation

The domestic legislation that governs refugees in Lebanon is essentially the Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country, which was enacted in 1962 (1962 Law).<sup>5</sup> The relevant provisions of this law are articles 26, 31, and 32.

Article 26 stipulates that:

Any foreigners who is subject of pursuit or has been convicted for a political crime by a non-Lebanese authority or whose life or freedom is threatened because of political considerations may ask for political asylum.

Article 31 stipulates that:

If a decision to expel a political refugee has been made it is not permissible to deport such refugee to the territory of a state where his life or freedom are not secured.

Pursuant to article 32 foreigners who enter Lebanon illegally can be imprisoned for one month to 3 years and/or fined.

### IV. Memorandum of Understanding between Lebanon and the UNHCR

As a result of the “absence of a national refugee law,” a Memorandum of Understanding (MOU) was signed between the UNHCR and the Government of Lebanon in September 2003. The MOU apparently provides a mechanism for the “issuing of temporary residence permits to asylum seekers.”<sup>6</sup> Under the terms of the MOU, the UNHCR adjudicates claims for asylum and the government issues a temporary residence permit, normally for three months but possibly extended to six to nine months, allowing UNHCR to find a durable solution for the refugee in question.<sup>7</sup>

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<sup>5</sup> Law of 1962 Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country, *Bulletin de Législation Libanaise (Journal Officiel)*, No. 28-1962, available on the website of the Lebanese Ministry of Justice, at <http://ahdath.justice.gov.lb/law-nearby-Foreigners.htm> (in Arabic), archived at <http://perma.cc/N6PB-7E8K>; a partial English translation of the Law is available on the UNODC website, at [https://www.unodc.org/res/cld/document/lbn/1962/order\\_no\\_319\\_regulating\\_the\\_status\\_of\\_foreign\\_nationals\\_in\\_lebanon\\_en\\_html/Order\\_no\\_319\\_EN\\_excerpts.pdf](https://www.unodc.org/res/cld/document/lbn/1962/order_no_319_regulating_the_status_of_foreign_nationals_in_lebanon_en_html/Order_no_319_EN_excerpts.pdf), archived at <https://perma.cc/7VZX-V33W>.

<sup>6</sup> UNHCR REGIONAL OFFICE IN LEBANON, COUNTRY OPERATIONS PLAN 1 (2004), <http://www.unhcr.org/3fd9c6a14.pdf>, archived at <http://perma.cc/H975-EC7S>.

<sup>7</sup> *Id.* at 2.

## V. Entry of Syrians

Instructions applicable to the entry of Syrians into Lebanon have been published by the General Directorate of General Security. These assign different lengths of stay and require different supporting documentation depending on the purpose of stay (tourism, attending school, receiving medical treatment, etc.).<sup>8</sup>

These instructions stipulate that “no Syrian shall be permitted to enter as a refugee save in exceptional circumstances as shall be later determined in coordination with the Ministry of Social Affairs”<sup>9</sup>. They further state that “Syrians previously registered as refugees will be allowed to reenter if they meet the conditions set out in this memorandum,” and that “a notarized commitment not to seek employment shall be provided when renewing temporary residency permits . . . by Syrian refugees holding UNHCR certificates.”<sup>10</sup>

A copy of these instructions<sup>11</sup> with an explanatory note<sup>12</sup> published by the Lebanese embassy in Berlin, Germany, state that the instructions came into effect on January 5, 2015. They do not say anything about the renewal of residency permits, and add that Syrian refugees “traveling through Lebanese seaports are granted 24 hour stay based on a general commitment of responsibility provided by the vessel representative to the General Security at the seaport 48 hours before the departure of the vessel in which he undertakes to transport them from the borders to the seaport and be responsible for them during their presence in Lebanese territory.”<sup>13</sup>

No information was located regarding whether these instructions were formally adopted and issued by a Council of Ministers decree, as required under article 5 of the 1962 Law.

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<sup>8</sup> “Instructions for the Entry of Syrians,” available on the website of the General Directorate of General Security, at <http://www.general-security.gov.lb/getattachment/fbe25f41-1241-449a-9f8c-c0bbcc27c974/syrian-rules.pdf.aspx?chset=a21d39a0-e95a-4e0c-8736-5c7d3c026258> (in Arabic), archived at <https://perma.cc/CC7J-NGL8>.

<sup>9</sup> *Id.* at IV.

<sup>10</sup> *Id.*

<sup>11</sup> *Visas: Actions Taken Regarding the Entry of Syrian Nationals to Lebanon*, EMBASSY OF LEBANON, BERLIN, <http://www.libanesische-botschaft.info/index.php/ar/2013-07-31-19-07-55/2013-07-31-19-08-26> (in Arabic) (last visited Feb. 12, 2016), archived at <https://perma.cc/N5KP-GVTP>.

<sup>12</sup> *Entry Visas for Lebanon*, EMBASSY OF LEBANON, BERLIN, <http://www.libanesische-botschaft.info/index.php/en/consular-services/visa> (last visited Feb. 12, 2016), archived at <https://perma.cc/K6MD-U69K>.

<sup>13</sup> *Visas: Actions Taken Regarding the Entry of Syrian Nationals to Lebanon*, *supra* note 11.

# Russian Federation

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**SUMMARY** Russia is a migrant destination country with a steady flow of labor migrants and refugees. Depending on an individual migrant's situation or his or her country of origin, a migrant to Russia can be granted a refugee status or may receive temporary asylum. Refuge and temporary asylum policies are developed according to the nation's Constitution, a set of laws and federal regulations, and international obligations under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. The Federal Migration Service is the federal government agency with regional offices across the country that is in charge of implementing all migration-related policies, monitoring migration processes, and managing migrant assistance and resettlement programs. Petitioning for refuge and asylum status in Russia is a complicated process, which must be initiated from abroad or at a border crossing. Applicants are subject to multilevel background review procedures. Migrants who receive legal status in Russia are entitled to receive the same social and medical benefits as Russian nationals. They are resettled within the country according to regional quotas defined by the federal government, are limited in selecting places of residence, and have their travels inside Russia monitored by the authorities. Simplified procedures for granting refugee status are foreseen for migrants from Ukraine who were affected by the ongoing Russian-Ukrainian conflict. After residing in Russia for one year, refugees are allowed to apply for naturalization.

## I. Introduction

Migration is a significant issue for Russia, which has the second longest land border of any country at 12,577 miles, and more than 23,000 miles of coastline.<sup>1</sup> Russia shares borders with fourteen countries and, according to recent data from the World Bank, is among the top five migrant destination countries.<sup>2</sup> Russia, with 12.3 million immigrants, was the second most frequent migrant destination country in the world after the US in 2010.<sup>3</sup> Most immigrants moved to Russia primarily for economic reasons.<sup>4</sup>

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<sup>1</sup> *The World Factbook: Russia*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/rs.html>, archived at [perma.cc/8T6M-D5QC](https://perma.cc/8T6M-D5QC).

<sup>2</sup> WORLD BANK, MIGRATION AND DEVELOPMENT BRIEF 24 (Apr. 13, 2015), <https://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief24.pdf>, archived at [http://perma.cc/4LDN-D6AL](https://perma.cc/4LDN-D6AL).

<sup>3</sup> WORLD BANK, MIGRATION AND REMITTANCES FACTBOOK 2011, <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>, archived at [http://perma.cc/65XY-MSGD](https://perma.cc/65XY-MSGD).

<sup>4</sup> *Id.*

The majority of migrants to Russia are coming from the former Soviet republics of Transcaucasia and Central Asia; countries of the Middle East and North Africa affected by recent conflicts; and Ukraine where, according to the United Nations High Commissioner for Refugees (UNHCR), nearly one million people were internally displaced by the ongoing conflict with Russia in the southeastern part of the country.<sup>5</sup> Since February 2014, some 600,000 Ukrainians have sought asylum or other forms of legal stay in neighboring countries, mainly in the Russian Federation.<sup>6</sup>

The Federal Migration Service of the Russian Federation (FMS), a government agency dealing with migration, reported that in 2014, 6,980 people from sixty-five countries applied for refugee status, and 267,764 people requested temporary asylum in the Russian Federation.<sup>7</sup> Most applicants were from Ukraine (5,789 refugee applicants and 265,448 temporary asylum seekers), Syria (473 refugee applicants and 1,435 temporary asylum seekers), and Afghanistan (301 and 396 respectively).<sup>8</sup>

Illegal migration is a substantial problem for Russian migration control services; however, after the automated migration control system became fully operational in 2014, and following the adoption of laws that increased punishments for overstaying visas and established simplified procedures for receiving work permits by labor migrants, the number of foreign nationals who are in the country illegally has decreased.<sup>9</sup> Reportedly, more than 1.2 million foreigners were deported and banned from reentry for lengthy periods of time for overstaying their visas in 2014.<sup>10</sup>

According to the FMS, the aim of all major legislative and regulatory activities in the field of migration is to better regulate migratory processes and minimize the negative consequences of unregulated migration.<sup>11</sup>

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<sup>5</sup> Nina Sorokopud, *Ukraine Internal Displacement Near 1 Million as Fighting Escalates in Donetsk Region*, UNHCR (Feb. 6, 2015), <http://www.unhcr.org/54d4a2889.html>, archived at <http://perma.cc/5ML8-27WY>.

<sup>6</sup> *Id.*

<sup>7</sup> *Statistics on Asylum-Seekers on the Territory of the Russia Federation in 2014 (as of December 31, 2014)*, FEDERAL MIGRATION SERVICE, <http://www.fms.gov.ru/document/18111> (in Russian) (last visited Dec. 18, 2015), archived at <http://perma.cc/6YCY-ZF8U>.

<sup>8</sup> *Id.*

<sup>9</sup> For more information on recent measures aimed at improving the monitoring of migrants present in Russia, see Peter Roudik, *Russia: Re-Entry Restrictions for Illegal Migrants*, GLOBAL LEGAL MONITOR (Feb. 27, 2015), <http://www.loc.gov/law/foreign-news/article/russia-re-entry-restrictions-for-illegal-migrants/>, archived at <http://perma.cc/337L-B97H>.

<sup>10</sup> Vladimir Vashchenko, *Interview with FMS Head Konstantin Romadanovsky*, ITAR-TASS NEWS AGENCY (Mar. 18, 2015), available at <http://www.fms.gov.ru/press/speeches/item/6843/> (in Russian), archived at <https://perma.cc/2SA5-DDTV>.

<sup>11</sup> FEDERAL MIGRATION SERVICE OF THE RUSSIAN FEDERATION, DECLARATION OF TASKS AND GOALS OF THE RF FMS FOR 2013–2018, [http://www.fms.gov.ru/upload/site1/document\\_file/GON6kk9aD3.pdf](http://www.fms.gov.ru/upload/site1/document_file/GON6kk9aD3.pdf) (in Russian), archived at [perma.cc/V3X7-D4M6](http://perma.cc/V3X7-D4M6) (copy and paste link into browser).

The Russian Federation declares its adherence to international standards in the definition of “refugee” and the grounds on which refugee status can be granted. In 1992, Russia joined the 1951 Convention and 1967 Protocol relating to the Status of Refugees.<sup>12</sup> Based on these key legal documents, Russia provides refuge to foreign nationals and stateless persons on its territory by granting political asylum, granting temporary asylum, or recognizing refugee status. Article 63 of the Russian Constitution states that “[t]he Russian Federation shall grant political asylum to foreign nationals and stateless persons according to the universally recognized norms of international law.”<sup>13</sup>

## II. Legislation on Refugees and Temporary Asylum

In Russia, issues of migration are regulated by federal legislation. Major principles establishing refugee and temporary asylum policies are defined by the national Constitution,<sup>14</sup> and by legislative acts regulating the registration and entry of foreign nationals and stateless persons into the country and granting them refugee status or providing temporary asylum. These include federal laws on

- entry into and exit from the Russian Federation,<sup>15</sup>
- migration registration of foreign nationals and stateless persons,<sup>16</sup>
- refugees,<sup>17</sup>
- legal status of foreign citizens,<sup>18</sup> and
- citizenship.<sup>19</sup>

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<sup>12</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2aa10.html>, archived at <http://perma.cc/V86S-GU6S>.

<sup>13</sup> CONSTITUTION OF THE RUSSIAN FEDERATION art. 63, <http://www.constitution.ru/en/10003000-03.htm>, archived at <http://perma.cc/2VF8-ZNYS>.

<sup>14</sup> *Id.*

<sup>15</sup> Federal Law No. 114 of Aug. 15, 1996, on Entry into and Exit from the Russian Federation, with the Latest Amendments of Dec. 14, 2015, <http://base.garant.ru/10135803/> (in Russian), archived at <http://perma.cc/974A-BGU8>.

<sup>16</sup> Federal Law No. 109 of July 18, 2006, on Migration Control of Foreign Citizens and Stateless Persons in the Russian Federation, with the Latest Amendments of Nov. 28, 2015, <http://base.garant.ru/12148419/> (in Russian), archived at <http://perma.cc/D7RW-56FX>.

<sup>17</sup> Federal Law No. 4528-I of Feb. 19, 1993 on Refugees, with the Latest Amendments of Dec. 22, 2014, <http://base.garant.ru/10105682/> (in Russian), archived at <http://perma.cc/9PNA-HC97>.

<sup>18</sup> Federal Law No. 115 of July 25, 2002, on the Legal Status of Foreign Citizens in the Russian Federation, with the Latest Amendments of Nov. 28, 2015, <http://base.garant.ru/184755/> (in Russian), archived at <http://perma.cc/YW28-5CQ7>.

<sup>19</sup> Federal Law No. 62 of May 31, 2002, on Russian Federation Citizenship, with the Latest Amendments of Dec. 31, 2014, <http://base.garant.ru/184539/> (in Russian), archived at <http://perma.cc/4FE5-NU7T>.

Procedural issues are resolved by a set of government resolutions and rules, including a resolution on granting temporary asylum in the territory of the Russian Federation,<sup>20</sup> a resolution on granting temporary asylum to citizens of Ukraine and stateless persons through a simplified procedure,<sup>21</sup> and provisional simplified rules for granting temporary asylum to citizens of Ukraine and stateless persons.<sup>22</sup>

All migration-related policies are implemented by the Federal Migration Service, a government agency operating through its regional bodies in all eighty-five constituent components of the Russian Federation within the Ministry of Internal Affairs of the Russian Federation. Constituent components impact immigration policies mainly by cooperating with federal authorities in defining annual quotas for receipt of migrants and providing assistance to the federal government in running local migrant assistance programs.<sup>23</sup> Commentators note that existing regulations and directives are not comprehensive or systematic, and are not clear in defining the rights of refugees, procedural requirements, and deadlines for the submission of documents. The vagueness and complexity of Russian legislation regarding refugees appears to be one reason for the existence of corruption in the field of refugee acceptance and processing, usually in the form of extorting bribes for processing and releasing refugee documents. Reportedly, local FMS officers request payments in an amount approximately equal to US\$1,000 for “fast and trouble-free” document processing.<sup>24</sup>

The increased role of local authorities in implementing migration policies is foreseen by the recently adopted National Concept of Migration Policy, which states that proper legislative regulation must be instituted in order to involve the authorities at all levels, from local to federal, in mitigating ongoing and forthcoming conflicts.<sup>25</sup> Regional attitudes toward participation in federal programs aimed at refugee resettlement differ depending primarily on the economic situation in the region. Because budget appropriations for the FMS do not take into account periodic influxes of refugees, the main impact is borne by the regions, which are often not able to

<sup>20</sup> Government of the Russian Federation Resolution No. 274 of Apr. 9, 2001, on the Granting of Temporary Asylum in the Territory of the Russian Federation, with the Latest Amendments of July 22, 2014, *available at* <http://www.fms.gov.ru/documents/resolutions/item/2842> (in Russian), *archived at* <http://perma.cc/6VM5-CN7L>.

<sup>21</sup> Government of the Russian Federation Resolution No. 690 of July 22, 2014, on the Granting of Temporary Asylum for Citizens of Ukraine and Stateless Persons in the Territory of the Russian Federation through Simplified Procedure, <http://government.ru/media/files/41d4f3a5c06af7f5f50e.pdf> (in Russian), *archived at* <http://perma.cc/5NLT-R5H4>.

<sup>22</sup> Provisional Simplified Rules for Granting Temporary Asylum in the Territory of the Russian Federation for Citizens of Ukraine and Stateless Persons of Aug. 1, 2014, <http://government.ru/media/files/41d4f3a5c06af7f5f50e.pdf> (in Russian; scroll to page 3), *archived at* <http://perma.cc/CA9X-V4NZ>.

<sup>23</sup> *Report on Migration Control in 2014*, FMS, <http://www.fms.gov.ru/document/3546> (last modified Oct. 28, 2015), *archived at* <https://perma.cc/74X4-ZHQF>.

<sup>24</sup> Yulia Beret, *Can Russia Handle the Flood of Ukrainian Immigrants?*, INTER PRESS SERVICE NEWS AGENCY (Jan. 19, 2016), <http://www.ipsnews.net/2016/01/can-russia-handle-the-flood-of-ukrainian-immigrants/>, *archived at* <https://perma.cc/6V5F-U2G7>.

<sup>25</sup> News Release, President of the Russian Federation, Concept of the State Migration Policy for the Period Until 2025 (July 13, 2012), <http://en.kremlin.ru/events/president/news/15635> (in Russian), *archived at* <http://perma.cc/7KR4-B6VP>.



sustain these expenses. As a rule, in order to accept and support a new population, regions establish new taxes on local residents.<sup>26</sup>

### III. Process for Obtaining Refugee Status and Temporary Asylum

#### A. Refugee Status

The basic method for protecting foreign nationals and stateless persons in the territory of the Russian Federation is to recognize them as refugees. According to Russian legislation, a refugee is

a person who is not a citizen of the Russian Federation and who because of a well-founded fear of becoming a victim of persecution by reason of race, religion, citizenship, national or social identity or political convention is to be found outside the country of his nationality and is unable or unwilling to avail himself of the protection of this country due to such fear, or having lost his or her nationality and staying beyond the country of his or her former place of residence as a result of similar developments, cannot return to it and does not wish to do so because of such fear.<sup>27</sup>

This definition is almost entirely the same definition as that found in the 1951 Convention and 1967 Protocol relating to the Status of Refugees.<sup>28</sup>

The Federal Law on Refugees states that a person who has expressed his/her wish to be recognized as a refugee and who has attained eighteen years of age can apply for refugee status either personally or through an authorized representative via the diplomatic mission or the consular office of the Russian Federation in his/her place of residence or outside the state of his/her nationality.<sup>29</sup> Foreign nationals or stateless persons can also apply for recognition as a refugee at a checkpoint on the state border of the Russian Federation.<sup>30</sup> If they are forced to cross the Russian border illegally, potential refugees must apply for a status during the next twenty-four hours after crossing the border at the checkpoint or beyond it. This can be done at the federal executive body in charge of security dealing with the border service, at the regional agency of the federal executive body for internal affairs, or at the regional agency of the federal executive body dealing with the migration service.<sup>31</sup>

According to Russian Federation legislation, applications for refugee status must be filed by all adult applicants and by unaccompanied minors.<sup>32</sup> The ensuing procedure for determining

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<sup>26</sup> Beret, *supra* note 24.

<sup>27</sup> Federal Law No. 4528-I of Feb. 19, 1993 on Refugees art. 1, <http://base.garant.ru/10105682/> (in Russian), archived at <http://perma.cc/9PNA-HC97>.

<sup>28</sup> Convention and Protocol Relating to the Status of Refugees, *supra* note 12.

<sup>29</sup> Federal Law No. 4528-I of Feb. 19, 1993 on Refugees art. 4.1.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* art. 4.2.



refugee status comprises two stages: the preliminary examination of an application for granting refugee status<sup>33</sup> and the examination of an application on the merits.<sup>34</sup>

During the first stage of the application process, the authorities define whether conditions that constitute the grounds for recognizing a person as a refugee are present or absent. The waiting period for applicants who are outside of Russia is one month from the date the application is received by the diplomatic mission or the consular office.<sup>35</sup> For those who apply for refugee status at a border checkpoint or inside the Russian territory, the process takes up to five business days to complete.<sup>36</sup>

Following the results of the preliminary examination of an application, persons are either issued a certificate stating that their application has been received or a notice of refusal of their application. A certificate serves as the document that identifies the person who is seeking refugee status.<sup>37</sup> After receiving a certificate, applicants must surrender their national (civil) passport and/or other identification documents. These documents are stored in the regional bodies of the FMS in the area where the applicant was assigned housing.<sup>38</sup>

Submission of a refugee status application changes the legal status of a petitioner and entitles him or her to certain rights, such as the right to have an interpreter, receive a one-time lump-sum grant for every family member accompanying the applicant (the amount varies but must be no less than one hundred rubles (approximately US\$1.41) per person, receive a place to live in a temporary accommodation center and receive food and medical aid there, and receive vocational training and job placement assistance.<sup>39</sup> Those who have received the certificate are required to undergo a mandatory medical examination. Refusal to undergo medical checks can be a ground for denial of a petitioner's application.<sup>40</sup>

During the second stage of determining one's refugee status, a more detailed review of information presented in the application is carried out. A decision on granting refugee status must be made on the basis of interviewing the applicant and verifying the truthfulness of information provided by the given person and his/her family members, reviewing information about the applicant in the possession of Russian authorities, and evaluating the circumstances of the applicant's arrival in Russia and the grounds for his/her stay in the country. The law does not

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<sup>33</sup> *Id.* art. 4.

<sup>34</sup> *Id.* art. 7.

<sup>35</sup> *Id.* art. 4.5.1.

<sup>36</sup> *Id.* art. 4.5.2; FMS, Administrative Rules No. 352 of August 18, 2013, on Reviewing Applications for Temporary Asylum and Refugee Recognition in the Russian Federation Territory, <http://www.fms.gov.ru/documents/regulations/item/1318/>, archived at <https://perma.cc/ZEQ5-J5KD>.

<sup>37</sup> Federal Law No. 45-281 of Feb. 19, 1993 on Refugees art. 4.7.

<sup>38</sup> *Id.* art. 4.8.

<sup>39</sup> *Id.* art. 6.1.

<sup>40</sup> *Id.* art. 6.2.3.

limit the number of interviews that may be requested of an applicant in order to clarify the facts he/she has provided.<sup>41</sup>

Following the results of the examination of an application, a decision is taken to either grant refugee status and provide the applicant with a refugee certificate that replaces all of his/her former documents, including foreign IDs, and serves as the only identification document recognized by Russian authorities, or to deny the refugee status application.<sup>42</sup>

A refugee certificate is valid throughout the territory of the Russian Federation and gives the refugee the right to stay in the country. Information on minor children of refugees is entered on the certificate of one of the parents.<sup>43</sup> While refugee status is granted for an unspecified period, the Law on Refugees requires persons who have this status to undergo re-registration with the FMS every year and a half.<sup>44</sup>

Persons recognized as refugees, including accompanying family members, are entitled to the following rights:

- Information about their rights and responsibilities through translation services if required, including assistance with document processing
- A travel allowance and baggage shipment to their assigned place of residence
- Protection by the Ministry of Internal Affairs at the place of temporary accommodation to ensure their safety
- Food and public utilities in the centers of temporary accommodation
- Access to housing paid from a special fund for temporary accommodation<sup>45</sup>
- Medical assistance in an amount equal to that received by Russian citizens
- Vocational training and job placement assistance
- Employment or the opportunity to establish their own business
- Social protection and social security
- Participation in public activities<sup>46</sup>

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<sup>41</sup> *Id.* art. 3.3.

<sup>42</sup> *Id.* art. 7.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* art. 8.2.7.

<sup>45</sup> *Id.* art. 8.1.

<sup>46</sup> *Id.*

## B. Temporary Asylum

Apart from granting refugee status, the Russian Federation provides individuals with the possibility of obtaining temporary asylum, which, according to the Law on Refugees, creates the possibility for a foreign national or a stateless person to stay temporarily in Russia.<sup>47</sup> Temporary asylum can be granted for a foreigner whose application for refugee status was denied but who cannot be expelled from the territory of the Russian Federation for humanitarian reasons.<sup>48</sup> However, the Law does not specify what motives or reasons can be regarded as “humanitarian.” Granting temporary asylum for humanitarian reasons falls within the discretion of the decision-making body.

To receive temporary asylum in Russia, a foreign national or a stateless person must file an application with the regional bodies of the FMS. Upon receiving the application, the applicant is issued a certificate indicating that he/she has applied for temporary asylum in the country, which gives him/her the official right to stay in the territory of Russia.<sup>49</sup> The term of consideration of the application is up to three months.<sup>50</sup>

All applicants are subject to fingerprinting conducted simultaneously with the submission of their application,<sup>51</sup> and to a compulsory medical examination. They are required to meet certain health standards in order to be eligible for asylum.<sup>52</sup>

The decision on granting an asylum application is made by the regional bodies of the FMS. If a positive decision is issued, an applicant receives a certificate of temporary asylum in the Russian Federation.<sup>53</sup> This certificate is the main identifying document for the bearer in the territory of Russia, substituting national documents, which are surrendered to local bodies of the FMS.<sup>54</sup>

Temporary asylum is granted for one year; however, it can be renewed annually.<sup>55</sup>

## C. Temporary Asylum for Citizens of Ukraine

The conflict between Russia and Ukraine, which has been ongoing since March 1, 2014,<sup>56</sup> has resulted in mass migration from the territory of Ukraine. According to the World Bank, Russia

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<sup>47</sup> *Id.* art. 1.

<sup>48</sup> *Id.* art. 12.

<sup>49</sup> *Id.*

<sup>50</sup> Government of the Russian Federation Resolution No. 274 of Apr. 9, 2001, on the Granting of Temporary Asylum in the Territory of the Russian Federation art. 2, available at <http://www.fms.gov.ru/documents/resolutions/item/2842> (in Russian), archived at <http://perma.cc/6VM5-CN7L>.

<sup>51</sup> *Id.* art. 3.

<sup>52</sup> *Id.* art. 6.

<sup>53</sup> *Id.* art. 8.

<sup>54</sup> *Id.* arts. 9–10.

<sup>55</sup> *Id.* art. 12.

to Ukraine and Ukraine to Russia are the next largest migration corridors in the world, following only the migration corridor from Mexico to the United States.<sup>57</sup> According to the FMS, during the period from April 1, 2014, to September 4, 2015, 1,056,587 citizens of southeast Ukraine arrived and are currently staying in the territory of the Russian Federation.<sup>58</sup>

To regulate the flow of migrants from the territory of Ukraine to Russia, the government adopted the Regulation on Granting Temporary Asylum for Citizens of Ukraine in the Territory of the Russian Federation through Simplified Procedure<sup>59</sup> and Provisional Simplified Rules for Granting Temporary Asylum in the Territory of the Russian Federation for Citizens of Ukraine and Stateless Persons.<sup>60</sup>

According to the rules, an applicant and members of his or her family may apply for temporary asylum at the local office of the FMS or at one of the multifunctional centers of federal and municipal services created for the purpose of handling the recent influx of Ukrainian refugees.<sup>61</sup> Applicants and accompanying family members are fingerprinted when submitting their asylum applications and undergo health checks within ten days after arrival.<sup>62</sup>

The decision on granting temporary asylum is made by the local FMS office where the application was submitted within three days after submission.<sup>63</sup>

According to official statistics, since the beginning of 2014 through September 4, 2015, 6,065 Ukrainian citizens have applied and received refugee status in Russia; 387,150 people received temporary asylum; permissions for temporary residence were issued to 249,324 people; 139,696 individuals participated in the program for voluntary resettlement of compatriots from abroad to the Russian Federation; 119,364 former Ukrainian nationals were naturalized as Russian citizens; and residence permits were given to 56,513 migrants.<sup>64</sup>

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<sup>56</sup> Press Release, President of Russia, Vladimir Putin Submitted an Address to the Federation Council (Mar. 1, 2014), <http://en.kremlin.ru/events/president/news/20353>, archived at <http://perma.cc/6Y3V-MSJS>.

<sup>57</sup> WORLD BANK, *supra* note 2.

<sup>58</sup> *Information on the Situation of the Emergency Mass Migration of Ukrainian Citizens and Stateless Persons from the Territory of Ukraine*, FMS, <http://www.en.fms.gov.ru/document/15549> (last visited Dec. 21, 2015), archived at <http://perma.cc/9ST2-3NYJ>.

<sup>59</sup> Government of the Russian Federation Regulation No. 690 of July 22, 2014, on the Granting of Temporary Asylum for Citizens of Ukraine in the Territory of the Russian Federation through Simplified Procedure, <http://government.ru/media/files/41d4f3a5c06af7f5f50e.pdf> (in Russian), archived at <http://perma.cc/5NLT-R5H4>.

<sup>60</sup> Provisional Simplified Rules for Granting Temporary Asylum in the Territory of the Russian Federation for Citizens of Ukraine and Stateless Persons, <http://government.ru/media/files/41d4f3a5c06af7f5f50e.pdf> (in Russian; scroll to page 3), archived at <http://perma.cc/CA9X-V4NZ>.

<sup>61</sup> *Id.* art. 2.

<sup>62</sup> *Id.* art. 3.

<sup>63</sup> *Id.* art. 5.

<sup>64</sup> *Information on the Situation of the Emergency Mass Migration of Ukrainian Citizens and Stateless Persons from the Territory of Ukraine*, *supra* note 58.

Because most of the arriving refugees are unskilled laborers, they are settled in the regions with the ability to absorb such a population that have available jobs in construction, manufacturing, or natural resources exploration. Scholars emphasize the lack of a proper policy to support and utilize refugees effectively and advocate the creation of a national database of specialist skills needs, which would allow for the selection and allocation of refugees based on their skills and experience.<sup>65</sup>

#### IV. Monitoring of Refugees' Travel and Relocation

Federal Law No. 159 regulates the entry and exit of foreigners into and out of Russia.<sup>66</sup> The Law provides that an individual's passport and a visa issued by the consular office of the Russian Federation abroad are required to provide entry to the Russian territory.<sup>67</sup> The Law also states that foreign nationals and stateless persons who receive refugee status may leave and enter the Russian Federation on the basis of a refugee travel document<sup>68</sup> because, as long as they enjoy refugee or asylum status in Russia, they are not supposed to use their foreign identification papers and are required to surrender passports issued by foreign states to local offices of the FMS (see discussion in Part II(A), above).

The refugee travel document identifies the bearer and is issued in the form of a paper document for five years.<sup>69</sup> This document also contains an electronic chip, which stores personal data, an electronic image of the person's face, and index fingerprints.<sup>70</sup>

Refugees and people with temporary asylum status are randomly settled throughout Russia according to quotas issued to all constituent components of the federation by the government.<sup>71</sup> If possible, refugees' preference of a region in which they wish to settle is taken into account. Upon arrival to the assigned place of residence, refugees and asylees are required to register with local FMS authorities and report name changes, address changes, and changes in marital status within seven days of the change.<sup>72</sup> Those who decide to change their place of permanent residency must be removed from the registry and re-register in their new place of residence within seven days.<sup>73</sup> Since June 2015, individuals have not been required to re-register if they

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<sup>65</sup> Beret, *supra* note 24.

<sup>66</sup> Federal Law No. 114 of Aug. 15, 1996, on Entry into and Exit from the Russian Federation Russian, <http://base.garant.ru/10135803/> (in Russian), archived at <http://perma.cc/974A-BGU8>.

<sup>67</sup> *Id.* art. 24.

<sup>68</sup> *Id.*

<sup>69</sup> Federal Law No. 4528-I of Feb. 19, 1993 on Refugees art. 8.1, <http://base.garant.ru/10105682/> (in Russian), archived at <http://perma.cc/9PNA-HC97>.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* art. 14.

<sup>72</sup> Government of the Russian Federation Resolution No. 274 of Apr. 9, 2001, on the Granting of Temporary Asylum in the Territory of the Russian Federation art. 14, available at <http://www.fms.gov.ru/documents/resolutions/item/2842> (in Russian), archived at <http://perma.cc/6VM5-CN7L>.

<sup>73</sup> *Id.*

travel or stay away from their regular place of residency for a longer period within the same regional unit of the Russian Federation.<sup>74</sup>

Regional bodies of the FMS collect information about refugees and those who were granted temporary asylum, as well as those who lose or have been deprived of their refugee status or temporary asylum. They keep records and send it to a government database, the State Information System of Migration Control. The system is maintained by the FMS and information collected is shared with other government law enforcement agencies, including the Ministry of Internal Affairs (federal police), Federal Security Service, Ministry of Mass Communications, Ministry of Foreign Affairs, and Federal Tax Service.<sup>75</sup> The personal biographic information of migrants, including their biometric data; employment and education records; criminal records; dates of allowed presence in Russia; reasons and circumstances related to their migration to Russia; deportation records; and information on their legal representatives, relatives, and children must be recorded in the system.<sup>76</sup>

## V. Path to Citizenship

Foreign nationals and stateless persons who have reached eighteen years of age and have legal capacity may apply for citizenship of the Russian Federation after meeting a number of requirements specified by law, which include a period of residence of no less than five years in the territory of the Russian Federation with a permanent residence permit, a legitimate source of livelihood, the obligation to follow the Constitution and laws of Russia, renunciation of the applicants non-Russian citizenship, and proven knowledge of the Russian language.<sup>77</sup>

The residency requirement is shortened to one year for those granted refugee status.<sup>78</sup>

<sup>74</sup> Federal Law No. 197 of June 29, 2015, on Amendments to the Federal Law of the Russian Federation on Freedom of Movement and Selection of Place of Abode Within the Russian Federation art. 1(2), <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=181859;fld=134;dst=100010;rnd=184768.9137759543070291;ts=0184768919362153014077> (in Russian), archived at <http://perma.cc/WEB6-ZAPR>.

<sup>75</sup> Government Regulation No. 94 of February 14, 2007, on State Information System of Migration Control, ROSSIJSKAIA GAZETA Feb. 21, 2007, No. 37 (in Russian), available at <http://base.garant.ru/190665/>, archived at <http://perma.cc/7HL5-ZYE3>.

<sup>76</sup> Federal Law No. 109, art. 9, <http://base.garant.ru/12148419/> (in Russian), archived at <http://perma.cc/D7RW-56FX>.

<sup>77</sup> Federal Law No. 62 of May 31, 2002, on Citizenship of the Russian Federation art. 13, <http://base.garant.ru/184539/> (in Russian), archived at <http://perma.cc/4FE5-NU7T>.

<sup>78</sup> *Id.* art. 13.2.

# Spain

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**SUMMARY** Spain's Law Regulating the Right of Asylum and Subsidiary Protection provides three types of international protection: conventional asylum for refugees, subsidiary protection, and exceptional protection for humanitarian reasons. Application procedures differ depending on whether the request for international protection was filed within Spain or at the Spanish border. The Ministry of Interior examines the application and must render a decision within a deadline of six months, or three months in some circumstances. The Law provides for the rights and obligations of international protection for applicants and those granted refugee status to include identity cards and travel documents, legal residence and work permits, social services, education, health care assistance, and family reunification. Spain also has a program for resettlement of refugees.

## I. Introduction

The Spanish Constitution<sup>1</sup> provides that the terms under which citizens from other countries and stateless persons may enjoy the right to asylum in Spain will be determined by law.<sup>2</sup> In furtherance of the constitutional mandate, Law 12/2009 Regulating the Right of Asylum and Subsidiary Protection (LRASP) was adopted to provide the legal framework applicable to refugees and stateless persons who seek asylum in Spain.<sup>3</sup> The Law applies to those who qualify as refugees under the definition provided by the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>4</sup> The regulation of the LRASP is still pending congressional approval. Therefore, Royal Decree 203/1995<sup>5</sup> enacting the regulation implementing the previous legislation on refugees is still applicable in so far as it does not contradict the current LRASP.<sup>6</sup>

While the state has authority over asylum, international protection, and refugee resettlement,<sup>7</sup> the autonomous communities (Spanish regions) and local authorities are responsible, in their

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<sup>1</sup> CONSTITUCIÓN ESPAÑOLA [CE] art. 13.

<sup>2</sup> *Id.* art. 13.4.

<sup>3</sup> Ley 12/2009 Reguladora del Derecho de Asilo y de Protección Subsidiaria (LRASP) art. 1, BOLETÍN OFICIAL DEL ESTADO [B.O.E.], Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>, archived at <http://perma.cc/H5QY-VTDS>.

<sup>4</sup> *Id.* art. 2.

<sup>5</sup> Real Decreto 203/1995, B.O.E., Mar. 2, 1995, [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-1995-5542](https://www.boe.es/diario_boe/txt.php?id=BOE-A-1995-5542) archived at <https://perma.cc/G98B-UUW2>.

<sup>6</sup> *España Incumple su Propia Ley de Asilo al no Desarrollar su Reglamento en Seis Años*, EL BOLETÍN (Sept. 5, 2015), <http://www.elboletin.com/nacional/122023/espaa-incumple-ley-de-ashilo.html>, archived at <https://perma.cc/HED3-V6EK>.

<sup>7</sup> CE art. 13.4.



respective jurisdictions, for the implementation of social integration policies on employment, education, culture, health, welfare, and housing for immigrants, including refugees.<sup>8</sup>

## II. International Protection

The LRASP provides three types of international protection: conventional asylum for refugees, subsidiary protection, and exceptional protection for humanitarian reasons.

Under the LRASP a refugee is an individual from a non-EU country with a well-founded fear of being persecuted in his or her country for reasons of race, religion, nationality, political opinion, membership of a certain social group, gender, or sexual orientation, who is outside his or her country of nationality and, because of such fears, may not or does not want to return to his or her country.<sup>9</sup> The status of refugee may also be granted to a stateless individual who is away from his or her country of habitual residence for the same fears, and may not or does not want to return to that country.<sup>10</sup>

The LRASP provides that foreigners who do not qualify as refugees may obtain *protección subsidiaria* (subsidiary protection) if there are reasons to believe that if they return to their country they would be exposed to a genuine risk of suffering any of the following: (a) a death sentence, (b) torture or inhuman or degrading treatment, or (c) serious threats against their life or integrity by reason of indiscriminate violence.<sup>11</sup>

In addition to conventional refugee status and subsidiary protection, the LRASP provides an additional international exceptional protection for humanitarian reasons to those that do not meet the requirements of the two previous categories.<sup>12</sup> Exceptional protection may be granted to those who are in a vulnerable situation, such as minors; unaccompanied minors; the disabled or elderly; pregnant women; single parents with minors; individuals who have been tortured, raped, or subjected to any other serious forms of psychological or physical violence; and victims of human trafficking.<sup>13</sup> In these cases, the government may grant authorization to remain in the country under the general immigration rules.<sup>14</sup> Minors granted international protection are provided health care and psychological assistance.<sup>15</sup> Unaccompanied minors are placed in special centers and assigned a legal representative who assists them throughout the process of applying for international protection.<sup>16</sup>

<sup>8</sup> Real Decreto 557/2011, Disposición Final Primera, B.O.E., Apr. 30, 2011, <http://www.boe.es/buscar/pdf/2011/BOE-A-2011-7703-consolidado.pdf>, archived at <https://perma.cc/FT8Q-XPE2>.

<sup>9</sup> *Id.* art. 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* arts. 4, 10.

<sup>12</sup> LRASP art. 46.1, B.O.E., Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>, archived at <http://perma.cc/H5QY-VTDS>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* art. 46.3.

<sup>15</sup> *Id.* art. 47.

<sup>16</sup> *Id.* art. 48.

### III. Non-Qualification for International Protection

The following individuals are excluded from refugee status:

- Individuals already protected under United Nations agencies other than the United Nations High Commissioner for Refugees (UNHCR)
- Individuals whose country of residence has given them the rights and obligations inherent to the nationals of such country
- Individuals who have committed or instigated the perpetration of a crime against peace, a war crime, a crime against humanity, or a serious crime under Spanish law, or have engaged in organized crime
- Individuals guilty of acts contrary to the principles and purpose of the United Nations and its founders<sup>17</sup>

The right to asylum and subsidiary protection in general will be denied to people who, based on well-founded reasons, may be a threat to the security of Spain or those with a final conviction for a serious crime who may constitute a threat to the community.<sup>18</sup>

Individuals who meet the following criteria are excluded from subsidiary protection:

- Individuals who have committed or instigated the perpetration of a crime against peace, a war crime, a crime against humanity, or a serious crime under Spanish law, or have engaged in organized crime
- Individuals guilty of acts contrary to the principles and purpose of the United Nations
- Individuals who constitute a danger to the internal or external security of Spain<sup>19</sup>

### IV. Enforcement Authorities

The LRASP provides that the Oficina de Asilo y Refugio (OAR, Office of Asylum and Refuge) within the General Sub-Directorate of Asylum of the Ministry of Interior is the authority on asylum matters.<sup>20</sup> The OAR has the authority in matters of registration of asylum applications, interviewing asylum seekers, and preparing cases before the Comisión Interministerial de Asilo y Refugio (CIMAR, Inter-ministerial Commission of Asylum and Refugee), an advisory entity within the Ministry of Interior.<sup>21</sup> The Spanish representative before the UNHCR, who is notified

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<sup>17</sup> *Id.* art. 8.

<sup>18</sup> *Id.* arts. 9.a, 9.b, 12.

<sup>19</sup> *Id.* art. 11.

<sup>20</sup> *Id.* art. 23.1.

<sup>21</sup> *Id.* arts. 23, 24.2.

of all applications for international protection in Spain, participates in the deliberations of the CIMAR.<sup>22</sup>

## **V. Application Process**

Applications for international protection may be made in person or through a representative in the case of legal or physical incapacitation, either inside Spain or at the border.<sup>23</sup> The applicant may file the international protection claim in the following places:

- Entry points at Border Control
- Within Spain at OARs, in any of the foreigners offices of the nineteen autonomous communities, or at police stations
- At diplomatic or consular Spanish missions abroad<sup>24</sup>

### **A. Application Procedure in Spain**

A person must claim asylum within one month of entering the country or one month from the moment the events that provide grounds for the request took place.<sup>25</sup>

The application must include all personal information and any documents or evidence supporting the case.<sup>26</sup> Once the application is filed, the applicant has the right to remain in Spain until the application is decided, has access to legal aid and an interpreter in his or her language, will have his or her application notified to the UNHCR, will have any return or extradition process halted until a final decision is reached, has access to his or her file at any time, and has the right to receive health care and social services.<sup>27</sup>

The applicant will be required to cooperate with the Spanish authorities, submit any information in support of his or her claim, submit his or her fingerprints, report his or her domicile in Spain and any change thereof, and appear before the competent authorities upon request.<sup>28</sup>

The OAR may reject any application for international protection if Spain does not have jurisdiction to process the petition in accordance with international agreements; when the application does not meet the legal requirements for its processing; when the applicant already has refugee status in another state; when the applicant comes from a safe third country; when the

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<sup>22</sup> *Id.* arts. 34, 35.

<sup>23</sup> *Id.* art. 17.1; Real Decreto 203/1995 art. 4.

<sup>24</sup> Real Decreto 203/1995 art. 4.

<sup>25</sup> LRASP art. 17.2; Real Decreto 203/1995 art. 7.1.

<sup>26</sup> *Id.* art. 18.2.b.

<sup>27</sup> *Id.* arts. 18.1, 19.1, 19.2.

<sup>28</sup> *Id.* art. 18.2.

application is a resubmission of a previous one already denied; and when the applicant is a national of another EU country.<sup>29</sup>

The applicant must be notified of a rejection of his or her application within a maximum of one month.<sup>30</sup> If there is no response within this time, it is understood that the admission of the application petition has been accepted and the applicant may remain in Spain while a final decision is reached.<sup>31</sup>

## **B. Application Procedure at the Border**

If the application is submitted at the border because the applicant does not meet the necessary requirements to enter Spain, the Ministry of Interior has four days to decide on the application.<sup>32</sup> If the application is admitted the applicant may remain in Spain.<sup>33</sup> If the application is rejected, the decision may be subject to reexamination, which must be filed within two days of the notice of nonadmittance and must be decided by the Ministry of Interior within two days of the review request.<sup>34</sup>

## **C. Application Procedure in Spanish Embassies and Consulates**

According to the LRASP, an asylum seeker may file a petition for international protection at the Spanish embassy or consulate in the country where he or she resides if such country is not the applicant's country of nationality, in order to request that Spain provide for his or her transfer to Spain.<sup>35</sup>

Because the regulation of the LRASP has not been enacted, this provision has not been applied due to the lack of rules for its implementation.<sup>36</sup>

## **VI. Eligibility Process**

Once an application is admitted for processing either at the border or in Spain, it is subject to examination by the Ministry of Interior.<sup>37</sup> Once this examination is completed, the Ministry of Interior renders a final decision on granting or rejecting the petition within six months upon the

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<sup>29</sup> *Id.* art. 20.1.

<sup>30</sup> *Id.* art. 20.2.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* art. 21.1.

<sup>33</sup> *Id.* art. 22.

<sup>34</sup> *Id.* art. 21.4.

<sup>35</sup> *Id.* art. 38.

<sup>36</sup> *Espana Incumple su Propia Ley de Asilo al no Desarrollar su Reglamento en Seis Anios*, *supra* note 6.

<sup>37</sup> LRASP art. 24.1, B.O.E., Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>, archived at <http://perma.cc/H5QY-VTDS>.

recommendation of the CIMAR.<sup>38</sup> The deadline of six months may be reduced to three months in the following situations:

- Petitions that appear obviously unfounded
- Applicants with special needs, such as unaccompanied children
- Applicants whose claims are based on grounds unrelated to the evaluation of the requirements for the granting of refugee or subsidiary protection status
- Applicants whose country of origin and nationality is considered safe or, if stateless, where the applicant's habitual residence is in a safe country
- The applicant submits the application one month after the date of entry into Spain or one month after the date of the events that justify the fear of persecution or serious harm, for no justifiable reason
- Applicants fall under any of the grounds for exclusion or denial of refugee status<sup>39</sup>
- Applications filed in an Internment Centre for Foreigners,<sup>40</sup> which are processed under the urgent procedure once the applicants have been admitted<sup>41</sup>

The eligibility decision may be subject to judicial review.<sup>42</sup> International protection applicants are provided with assistance to cover their basic needs, such as social services, education, and health care, when they do not have economic resources to provide for themselves.<sup>43</sup>

During the international protection procedure, the applicant and his or her family are lodged in public reception centers or facilities available through nongovernment organizations.<sup>44</sup> The applicant is also given work authorization until a final decision on international protection status is reached.<sup>45</sup>

## VII. Rights of Refugees and Beneficiaries of Subsidiary Protection

The protection granted to refugees and beneficiaries of subsidiary protection includes their non-refoulement and their right to remain in Spain.<sup>46</sup> They are also entitled to the following rights:

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<sup>38</sup> *Id.* arts. 24.2, 24.3.

<sup>39</sup> *Id.* art. 25.1.

<sup>40</sup> Real Decreto 162/2014, por el que se Aprueba el Reglamento de Funcionamiento y Régimen Interior de los Centros de Internamiento de Extranjeros [Royal Decree 162/2014, Approves the Regulation of the Operation and Internal Regime of the Internment Centers for Foreigners] art. 1, B.O.E., Mar. 15, 2014, <http://www.boe.es/buscar/act.php?id=BOE-A-2014-2749>, archived at <https://perma.cc/R79X-A689>.

<sup>41</sup> LRASP art. 25.2.

<sup>42</sup> *Id.* art. 29.

<sup>43</sup> *Id.* art. 30.

<sup>44</sup> *Id.* art. 31.

<sup>45</sup> *Id.* art. 32.

<sup>46</sup> *Id.* arts. 5, 36.1.a.

- To be issued an identity card and travel documents<sup>47</sup>
- Social service benefits<sup>48</sup>
- Legal residence and work permits<sup>49</sup>
- Access to information on the rights and obligations derived from the international protection granted<sup>50</sup>
- Access to social integration programs<sup>51</sup>
- Access to voluntary return programs<sup>52</sup>
- Freedom of circulation and movement<sup>53</sup>
- Right to family reunification<sup>54</sup>

The government will set up social integration programs for protected people under equal opportunity and nondiscrimination standards.<sup>55</sup>

The nonadmission or rejection of applications for international protection results in the return, expulsion, or compulsory departure of the applicant from Spain or his or her transfer to a country with jurisdiction to examine the petition, unless the applicant meets the requirements to legally remain in Spain on a temporary or resident visa, or if the applicant is authorized to remain in Spain on humanitarian grounds.<sup>56</sup>

## VIII. Family Reunification

Those granted international protection as refugees or beneficiaries of subsidiary protection have the right to apply for international protection of their family members, including spouses or partners in a permanent partnership or union, dependent parents, and minor children. Other family members may be reunified upon proof that they were dependent on the applicant in the

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<sup>47</sup> *Id.* art. 36.1.d.

<sup>48</sup> *Id.* art. 36.1.e–g.

<sup>49</sup> *Id.* art. 36.1.c; Convention Relating to the Status of Refugees arts. 12–34, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, <http://www.unhcr.org/3b66c2aa10.pdf>, archived at <https://perma.cc/36LL-Z9PR>.

<sup>50</sup> LRASP art. 36.1.b.

<sup>51</sup> *Id.* art. 36.1.i.

<sup>52</sup> *Id.* art. 36.1.j.

<sup>53</sup> *Id.* art. 36.1.h.

<sup>54</sup> *Id.* art. 36.1.k.

<sup>55</sup> *Id.* art. 36.2.

<sup>56</sup> *Id.* art. 37.

country of origin.<sup>57</sup> A resolution granting family reunification also grants resident status and work authorization to the beneficiaries under the same terms applicable to the main applicant.<sup>58</sup>

## IX. Resettlement of Refugees

Resettlement is a process by which a refugee who is temporarily granted asylum in a country is resettled in a third country where he or she is given permanent protection.<sup>59</sup>

The LSARP provided that the government would set up an annual national resettlement program (NRP) and establish the annual quota of resettled individuals in Spain. The NRP was adopted in coordination with the UNHCR and other related international organizations.<sup>60</sup> The Council of Ministries set up the first NRP on October of 2011 and the latest was approved on November 2015, allowing for the resettlement of a specific number of refugees including particularly vulnerable families, women, and children.<sup>61</sup>

Refugees resettled in Spain are governed by the same rules applicable to those granted refugee status under the LSARP procedures described above.<sup>62</sup>

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<sup>57</sup> *Id.* art. 40.

<sup>58</sup> *Id.* art. 41.3.

<sup>59</sup> UNHCR, Manual del Reasentamiento del ACNUR 474 (2011), <http://acnur.es/PDF/Manual-%20Reasentamiento-ACNUR.pdf>, archived at <https://perma.cc/HBK2-8TTL>; ACCEM, <http://www.accem.es/es/monograficos/reasentamiento> (last visited Jan. 29, 2016), archived at <https://perma.cc/P279-9EFJ>.

<sup>60</sup> LRASP, First Additional Provision, B.O.E., Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>, archived at <http://perma.cc/H5QY-VTDS>.

<sup>61</sup> *Referencia del Consejo de Ministros*, LA MONCLOA (Nov. 6, 2015), <http://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2015/refc20151106.aspx#refugiados>, archived at <https://perma.cc/F75R-QV2Z>; *España Acogerá a Treinta Refugiados en 2013 y 2014 dentro del Programa de Reasentamiento*, *España Acogerá Treinta Refugiados en 2013 y 2014 Dentro del Programa de Reasentamiento*, EUROPEAN RESETTLEMENT NETWORK, <http://www.resettlement.eu/news/espa%C3%B1a-acoger%C3%A1-treinta-refugiados-en-2013-y-2014-dentro-del-programa-de-reasentamiento> (last visited Jan. 29, 2016), archived at <https://perma.cc/32NB-KDL6>; *Spain's Resettlement Program*, EUROPEAN RESETTLEMENT NETWORK, <http://www.resettlement.eu/country/spain-0#germanys-resettlement-programme> (last visited Jan. 29, 2016), archived at <https://perma.cc/H6SE-7V3A>.

<sup>62</sup> LRASP, First Additional Provision, 2d para.



# Sweden

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**SUMMARY** Sweden accepts both quota refugees through the United Nations High Commissioner for Refugees relocation system and asylum seekers arriving at the border. In 2015 Sweden received approximately 160,000 applications for asylum, including more than 35,000 from unaccompanied minors. Prior to November 24, 2015, most asylum seekers were granted permanent residence permits, but after that date, asylum seekers arriving at the border have only been given temporary residence permits. Asylum seekers are given free housing, health and dental care, and schooling for children ages pre-kindergarten to twenty. Sweden allows for family reunification but family reunification has become more restrictive as a response to the refugee crisis. Overall, Sweden has revised its asylum policies considerably following the refugee crisis of 2015.

## I. General Background

Sweden has historically received a large number of asylum seekers, including the largest number per capita among the countries of the Organisation for Economic Co-operation and Development (OECD) in 2013.<sup>1</sup> During the Iraq war, Södertälje, a small municipality in Sweden, took more Iraqi refugees than the United Kingdom and the United States combined.<sup>2</sup> Sweden was also the first country in Europe to grant asylum seekers from Syria permanent residence permits.<sup>3</sup>

## II. Number of Asylum Seekers

Sweden received 160,000 asylum applications in 2015,<sup>4</sup> a steep increase from 80,000 in 2014.<sup>5</sup> During 2015 Sweden received the largest number of applicants per capita in the EU (almost 2%

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<sup>1</sup> *Sweden – the OECD’s Highest Per Capita Recipient of Asylum Seekers*, THE GUARDIAN (Dec. 2, 2014), <http://www.theguardian.com/news/datablog/2014/dec/02/sweden-oecd-higher-per-capita-asylum-seekers-syria>, archived at <https://perma.cc/HF99-39HA>.

<sup>2</sup> Ivar Ekman, *Far from War, A Town with a Well-Used Welcome Mat*, THE NEW YORK TIMES (June 13, 2007), [http://www.nytimes.com/2007/06/13/world/europe/13sweden.html?\\_r=0](http://www.nytimes.com/2007/06/13/world/europe/13sweden.html?_r=0), archived at <https://perma.cc/J3TY-CHUE>.

<sup>3</sup> *Syrians to Get Permanent Residence in Sweden*, RADIO SWEDEN (Sept. 3, 2013), <https://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=5634497>, archived at <https://perma.cc/UAC2-HVG9>.

<sup>4</sup> *Applications for Asylum Received, 2015*, MIGRATIONSVERKET (Jan. 1, 2016), <http://www.migrationsverket.se/download/18.7c00d8e6143101d166d1aab/1448974429957/Inkomna+ans%C3%B6kningar+om+asyl+2015+-+Applications+for+asylum+received+2015.pdf>, archived at <https://perma.cc/G646-RNGE>; see also *Nästan 163 000 människor sökte asyl i Sverige 2015*, MIGRATIONSVERKET (Jan. 1, 2016), <http://www.migrationsverket.se/Om-Migrationsverket/Nyhetsarkiv/Nyhetsarkiv-2016/2016-01-01-Nastan-163-000-manniskor-sokte-asyl-i-Sverige-2015.html>, archived at <https://perma.cc/3DMB-F6TK>.

<sup>5</sup> *Fler fick skydd under 2014*, MIGRATIONSVERKET (Jan. 1, 2015), <http://www.migrationsverket.se/Om-Migrationsverket/Nyhetsarkiv/Nyhetsarkiv-2015/2015-01-02-Fler-fick-skydd-under-2014.html>, archived at <https://perma.cc/ALF8-2WLO>.

of the total population).<sup>6</sup> The five largest countries of origin among asylum seekers were Syria, Afghanistan, Iraq, Eritrea, and Somalia.<sup>7</sup> Of these 160,000 applications, more than 35,000 were from unaccompanied children.<sup>8</sup> Among the unaccompanied minors 90% were boys between the ages of thirteen to eighteen.<sup>9</sup> Approximately 66% of all unaccompanied children in 2015 were Afghans.<sup>10</sup> Although there was an increase from 2014 to 2015 in asylum seekers from all countries, the steepest increase in asylum seekers was among those from Afghanistan, from 3,104 in 2014 to 41,564 in 2015, a 1,298% increase, compared with an increase of 30,583 to 51,338, a 68% increase, in applications from Syrians.<sup>11</sup>

### III. Recognition of the Right of Asylum

Sweden's Aliens Act regulates asylum.<sup>12</sup> Prior to November 24, 2015, there were three types of asylum statuses in Sweden: refugee, persons deemed in need of subsidiary protection, and persons in need of other protection.<sup>13</sup> On that date, the Swedish government announced that Sweden would align its asylum policy with that of the rest of the EU by limiting the number of grounds for asylum to include only refugees and persons in need of subsidiary protection, thus eliminating the third status type.<sup>14</sup>

#### A. Refugees

Sweden is a signatory to the Geneva Convention Relating to the Status of Refugees and its Protocol.<sup>15</sup> Refugees are defined in Swedish law as persons who are refugees according to this Protocol,<sup>16</sup> that is, a person who,

<sup>6</sup> *Sweden Expects 190,000 Asylum Seekers in 2015*, EURACTIV (Oct. 22, 2015), <http://www.euractiv.com/sections/justice-home-affairs/sweden-expects-190000-asylum-seekers-2015-318762>, archived at <https://perma.cc/8G8U-CSXP>.

<sup>7</sup> *Asylsökande 2015 och 2014*, MIGRATIONSVERKET (page updated Jan. 4, 2016), <http://www.migrationsverket.se/Om-Migrationsverket/Statistik/Asylsokande---de-storsta-landerna.html>, archived at <https://perma.cc/NPP8-6T3E>.

<sup>8</sup> *Applications for Asylum Received, 2015*, MIGRATIONSVERKET, *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Asylsökande 2015 och 2014*, MIGRATIONSVERKET, *supra* note 7.

<sup>12</sup> UTLÄNNINGSLAG [ALIENS ACT] (SVENSK FÖRFATTNINGSSAMLING (SFS) 2005:716), <http://www.notisum.se/rnp/sls/lag/20050716.HTM>, archived at <https://perma.cc/9UPC-U699/>.

<sup>13</sup> *Id.* 4 ch. 1, 2, 2a §§.

<sup>14</sup> Press Release, Regeringskansliet, Regeringen föreslår åtgärder för att skapa andrum för svenskt flyktingmottagande (Nov. 24, 2015), <http://www.regeringen.se/artiklar/2015/11/regeringen-foreslar-atgarder-for-att-skapa-andrum-for-svenskt-flyktingmottagande/>, archived at <http://perma.cc/42YN-92FP>.

<sup>15</sup> *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, UNHCR, <http://www.unhcr.org/3b73b0d63.html> (last visited Jan. 11, 2016), archived at <https://perma.cc/BVW4-T35Y>.

<sup>16</sup> 4 ch. 3 § ALIENS ACT.

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, sex, sexual orientation or membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>17</sup>

## **B. Persons Deemed in Need of Subsidiary Protection**

A persons in need of subsidiary protection is defined as one who is

a foreigner who does not qualify under the Ch. 4 § 1 Aliens Act definition as a refugee, and who is outside of his or her country of citizenship because there is a well-founded reason to believe that the foreigner would be at risk of being punished by death or be subject to corporal punishment, other inhumane or degrading treatment or punishment, or [being] a civilian, be in serious risk of injury due to an armed conflict, and the foreigner cannot, or because of the risk mentioned above, does not want to avail himself to the home country's protection.<sup>18</sup>

The same test applies to a stateless person who is outside a country where he or she has previously had his or her residence.<sup>19</sup>

## **C. Persons in Need of Other Protection**

A person in need of other protection is defined as

a foreigner who [is not recognized as a refugee under the definition and] is outside the country where he is a citizen, because he or she is in need of protection due to external or internal military conflict, or because of other tensions in the country, [who] feels a well-founded fear of being subjected to encroachment, or [who] cannot return to his or her homeland because of an environmental disaster.<sup>20</sup>

In addition to these three grounds for asylum, the Swedish Migration Office may, in “exceptionally distressing circumstances, [and] in exceptional cases,” grant residence permits to individuals who otherwise do not qualify as refugees.<sup>21</sup> This typically applies to cases where there are young children who are ill and cannot receive care in their home countries.

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<sup>17</sup> *Id.* 4 ch. 1 §.

<sup>18</sup> *Id.* 4 ch. 2 § (all translations by author).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* 4 ch. 2a §.

<sup>21</sup> *Asylum Regulations*, MIGRATIONSVERKET (June 16, 2015), <http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Asylum-regulations.html>, archived at <https://perma.cc/R6JP-ZKJB>.

## D. Dublin Regulation

Sweden is a member of the European Union (EU), and therefore adheres to the EU's Dublin Regulation, which stipulates that refugees within Europe should apply for asylum in the first EU country they reach and that other countries can send asylum seekers back to that country.<sup>22</sup>

## E. Refusal of Asylum

An application for asylum can be dismissed if a person has been deemed a refugee or in need of subsidiary protection in an EU member state or a third country (provided the person will be protected against persecution or has other needed protection there), or if the person can be sent to a country where he or she can apply for asylum and will be safe from persecution, the death penalty, forced labor, torture, or other inhuman or degrading treatment.<sup>23</sup>

# IV. Application Process

## A. Quota Refugees

Sweden receives quota refugees through the United Nations High Commissioner for Refugees (UNHCR) program.<sup>24</sup> Annually, Sweden accepts approximately 1,900 quota refugees.<sup>25</sup> The government and the opposition have agreed to gradually increase this number to 5,000.<sup>26</sup>

Quota refugees are screened by the UNHCR and by Migration Authority personnel, either through in-person interviews before the person arrives in Sweden, or by a review of the documents presented to the Migration Authority by the UNHCR.<sup>27</sup>

## B. Refugees Arriving at the Border

A large number of asylum seekers in Sweden seek asylum after arriving in Sweden without a valid visa.<sup>28</sup> Typically these asylum seekers have travelled through Europe to reach Sweden. A

<sup>22</sup> Council Regulation 604/2013, 2013 O.J. (L 180) 31, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>, archived at <https://perma.cc/DK8X-Z27Q>.

<sup>23</sup> 5 ch. 1§ ALIENS ACT.

<sup>24</sup> *The Swedish Refugee Quota*, MIGRATIONSVERKET (May 12, 2015), <http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/The-refugee-quota.html>, archived at <https://perma.cc/WJ2R-3SR4>.

<sup>25</sup> *Frågor och svar om kvotflyktingar*, MIGRATIONSVERKET (Apr. 29, 2014), <http://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Flyktingkvoten/Fragor-och-svar-om-kvotflyktingar.html>, archived at <https://perma.cc/6FK3-AXCB>.

<sup>26</sup> *Lagliga vägar*, REGERINGSKANSLIET (Dec. 11, 2015), <http://www.regeringen.se/regeringens-politik/regeringens-arbete-med-flyktingsituationen/overenskommelsen-insatser-med-anledning-av-flyktingkrisen/tillfalligt-uppehallstillstand-som-huvudregel-infors-under-en-begransad-tid/>, archived at <http://perma.cc/ZTB8-2596>.

<sup>27</sup> *Frågor och svar om kvotflyktingar*, MIGRATIONSVERKET, *supra* note 25.

<sup>28</sup> Compare number of quota refugees with total number of asylum seekers, *Applications for Asylum Received, 2015*, MIGRATIONSVERKET, *supra* note 4.

person arriving in Sweden must apply for asylum immediately upon arrival.<sup>29</sup> Asylum is sought at the Migration Authority Office Centers (located in the Stockholm area, Malmö, Gothenburg, Norrköping, and Gävle).<sup>30</sup>

### C. Determining “Bona Fide Asylum Seeker” Status

For quota refugees the UNHCR determines whether the person qualifies for refugee status. For all other asylum seekers government employees at the Migration Authority make this determination.<sup>31</sup> Persons meeting the requirements for a refugee under the Refugee Convention are given protected status as refugees unless they have committed international crimes or are a danger to Swedish national security.<sup>32</sup>

### D. Residence Permits

From 2012 to December 5, 2015, asylum seekers arriving from Syria were automatically given permanent residence.<sup>33</sup> On October 22, 2015, the government signed a deal with the opposition that only family members and unaccompanied minors would continue to receive permanent residence permits.<sup>34</sup> On November 24, 2015, the Swedish government announced that it would only give permanent residence permits to asylum seekers qualifying as quota refugees—i.e., refugees sent by the UNHCR.<sup>35</sup> Persons having sought asylum prior to the announcement would continue to receive permanent residence permits provided they were part of a family with asylum-seeking children who at the time the application is reviewed and decided (anticipated to be two years)<sup>36</sup> are younger than eighteen.<sup>37</sup>

<sup>29</sup> *The Swedish Migration Agency Answers Common Questions*, MIGRATIONSVERKET (Dec. 28, 2015), <http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Frequently-asked-questions.html>, archived at <https://perma.cc/JA3W-Q2N3>.

<sup>30</sup> *Where to Find Us*, MIGRATIONSVERKET (July 6, 2015), <http://www.migrationsverket.se/English/Contact-us/Find-us.html>, archived at <https://perma.cc/QFT8-PEVJ>.

<sup>31</sup> *Frågor och svar om kvotflyktingar*, MIGRATIONSVERKET (Apr. 29, 2014), <http://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Flyktingkvoten/Fragor-och-svar-om-kvotflyktingar.html>, archived at <https://perma.cc/48NX-ZPCN>; *Till dig som söker asyl i Sverige*, MIGRATIONSVERKET (Oct. 6, 2015), <http://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/For-dig-som-ar-vuxen-och-har-sokt-asyl/Till-dig-som-soker-asyl-i-Sverige.html>, archived at <https://perma.cc/Z66Q-DMPA>.

<sup>32</sup> 4 ch. 3 § Aliens Act.

<sup>33</sup> *Syrier får permanent uppehållstillstånd*, SVT (Sept. 3, 2013), <http://www.svt.se/nyheter/inrikes/alla-syrier-far-permanent-uppehallstillstand>, archived at <https://perma.cc/S4CQ-BZW9>.

<sup>34</sup> *Bred uppgörelse om flyktingsituationen*, SVERIGES RADIO (Oct. 23, 2015), <http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6286385>, archived at <https://perma.cc/BNE9-QUPZ>.

<sup>35</sup> Press Release, Regeringskansliet, *supra* note 14.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

## E. Responses to Refugee Crisis

### 1. Border Controls

The Swedish Government is working to considerably decrease the number of asylum seekers arriving at the Swedish borders.<sup>38</sup>

On November 12, 2015, Sweden implemented temporary border controls that were expected to continue for at least six months.<sup>39</sup> Ferries carrying passengers (including asylum seekers) are required to perform identification controls.<sup>40</sup> As a result, persons without government-issued identification are not allowed on ferries traveling to Sweden. A similar law requiring train and bus operators to perform identification checks on its passengers took effect on January 4, 2016.<sup>41</sup>

Although the actual meaning of the new law mandating the ID checks has been disputed, it appears the controls are for valid identification only; passengers are not required to present a visa.<sup>42</sup>

### 2. Medical Tests to Determine Age

On December 5, 2015, the government announced that unaccompanied minors who seek asylum in Sweden will be required to undergo medical testing unless they can prove their age.<sup>43</sup>

Medical age tests of asylum seekers who claim to be minors have been a controversial issue in Sweden. In 2012 the National Board of Health and Welfare (Socialstyrelsen) published a report in which it criticized age determination through medical testing as unreliable.<sup>44</sup> The Swedish

<sup>38</sup> *Id.*; see also the government's continuously updated webpage for government news and action related to the refugee crisis, *Regeringens arbete med flyktingsituationen*, REGERINGSKANSLIET, <http://www.regeringen.se/regeringens-politik/regeringens-arbete-med-flyktingsituationen/> (last visited Jan. 11, 2016), archived at <https://perma.cc/2GWF-GCRB>.

<sup>39</sup> Press Release, Regeringskansliet, Regeringen beslutar att tillfälligt återinföra gränskontroll vid inre gräns (Nov. 12, 2015), <http://www.regeringen.se/artiklar/2015/11/regeringen-beslutar-att-tillfalligt-aterinfora-granskontroll-vid-inre-grans/>, archived at <https://perma.cc/N7KV-NYDU>.

<sup>40</sup> Fartygssäkerhetsförordning [Vessel Safety Regulation] (SFS 2003:438), <http://www.notisum.se/rnp/sls/lag/20030438.HTM>, archived at <https://perma.cc/ZNA9-ABZ8>.

<sup>41</sup> Förordning om vissa identitetskontroller vid allvarlig fara för den allmänna ordningen eller den inre säkerheten i landet [Regulation on Certain ID-controls During Serious Risk to the Public Order] (SFS 2015:1074), [http://www.regeringen.se/contentassets/9ad6bc56ac5a4083bfefe74e12e73f47/forordning-om-vissa-identitetskontroller-vid-allvarlig-fara-for-den-allman-na-ordningen-eller-den-inre-sakerheten-i-landet-sfs-2015\\_1074.pdf](http://www.regeringen.se/contentassets/9ad6bc56ac5a4083bfefe74e12e73f47/forordning-om-vissa-identitetskontroller-vid-allvarlig-fara-for-den-allman-na-ordningen-eller-den-inre-sakerheten-i-landet-sfs-2015_1074.pdf), archived at <https://perma.cc/Q8JT-Z3J4>.

<sup>42</sup> See *Frågor och svar: Lag och förordning om identitetskontroller vid allvarlig fara för den allmänna ordningen eller den inre säkerheten i landet*, REGERINGSKANSLIET (Dec.18, 2015; updated Jan. 4, 2016), <http://www.regeringskansliet.se/artiklar/2015/12/fragor-och-svar-lag-och-forordning-om-identitetskontroller-vid-allvarlig-fara-for-den-allman-na-ordningen-eller-den-inre-sakerheten-i-landet/>, archived at <https://perma.cc/3APV-SBEY>.

<sup>43</sup> Press Release, Regeringskansliet, *supra* note 14.

<sup>44</sup> SOCIALSTYRELSEN, MEDICINSK ÅLDERSBEDÖMNING FÖR BARN I ÖVRE TONÅREN, 2012-06-26 Dnr 31156/2011 [THE NATIONAL BOARD OF HEALTH AND WELFARE REPORT ON MEDICAL AGE DETERMINATION OF CHILDREN IN THE



Bar Association has also published ethical guidance stating that licensed attorneys should not participate in medical age determinations of their clients.<sup>45</sup> In addition, the Swedish Supreme Migration Court (Migrationsöverdomstolen) found in September 2015 that the Migration Authority only needed to inform an asylum seeker of the possibility of undergoing medical age testing and that a decision on the asylum-seeker's application can be made without medical testing having taken place. The December 2015 announcement appears to change this policy.

### 3. *Return of Afghans*

Because a large number of asylum seekers are unaccompanied minors arriving from Afghanistan, the Swedish government and Afghanistan are negotiating an agreement for the return of asylum-seeking Afghans to Afghanistan.<sup>46</sup>

## V. Benefits Provided to Asylum Seekers

### A. Monetary Aid

Persons arriving in Sweden as asylum seekers receive free housing and monetary support while their application is pending.<sup>47</sup> Financial support is made up of a daily sum meant to cover the personal expenses of asylum seekers (such as clothing and telephone costs).<sup>48</sup> As of September 2015 the daily sum was SEK 24 (about US\$2.80) for single adults, or SEK 19 (about US\$2.20) for adults who shared a household, and SEK 12 (about US\$1.40) for children.<sup>49</sup> Persons who live in asylum centers where food is not offered free of charge also receive an extra sum to cover food expenses, making the total daily sum SEK 71 (about US\$8.20) or SEK 61 (about US\$7.10) for adults of a two-person or larger adult household.<sup>50</sup> Money received as financial assistance is not reclaimed if a person's asylum application is denied.

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UPPER TEENS, No. 31156/2011 of June 26, 2012], <http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18780/2012-6-54.pdf>, archived at <https://perma.cc/Z3VA-CE7Z>.

<sup>45</sup> Anne Ramberg, Sveriges Advokatsamfund [Swedish Bar Association], Cirkulär nr 21/2015, Vägledande uttalande angående medicinska åldersbedömningar i asylärenden [Ethical Guidelines for Medical Age Testing in Asylum Cases] (Oct. 6, 2015), [https://www.advokatsamfundet.se/Documents/Advokatsamfundet\\_sv/V%C3%A4gledande%20uttalanden/Cirkular\\_21\\_2015\\_Vagledande\\_uttalande\\_medicinska\\_aldersbedomningar.pdf](https://www.advokatsamfundet.se/Documents/Advokatsamfundet_sv/V%C3%A4gledande%20uttalanden/Cirkular_21_2015_Vagledande_uttalande_medicinska_aldersbedomningar.pdf), archived at <https://perma.cc/Y2FC-78T8>.

<sup>46</sup> Press Release, Regeringskansliet, Sverige och Afghanistan inleder förhandlingar om återtagandeavtal (Dec. 4, 2015), <http://www.regeringen.se/pressmeddelanden/2015/12/sverige-och-afghanistan-inleder-forhandlingar-om-atertagandeavtal/>, archived at <https://perma.cc/95GB-FKHG>.

<sup>47</sup> 8 § LAG OM MOTTAGANDE AV ASYLSÖKANDE M.FL. (SFS 1994:137), <http://www.notisum.se/rnp/SLS/LAG/19940137.htm>, archived at <https://perma.cc/U23C-SJ3N>.

<sup>48</sup> *Id.* 17 §.

<sup>49</sup> *Ekonomiskt stöd*, MIGRATIONSVERKET (Sept. 18, 2015), <http://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/For-dig-som-ar-vuxen-och-har-sokt-asyl/Ekonomiskt-stod.html>, archived at <https://perma.cc/VL2E-CSRQ>.

<sup>50</sup> *Id.*



## B. Health and Dental Care

Asylum seekers have the right to health care under the Health Care Act<sup>51</sup> and the Act on Health Care for Asylum Seekers.<sup>52</sup> This Special Act on Care for Asylum Seekers also regulates dental care.<sup>53</sup> Minors who are asylum seekers have the same right to health care as Swedish citizen children living in Sweden.<sup>54</sup>

## C. Schooling

Asylum seekers have a legal right to attend school (ages pre-kindergarten to completion of high school) while awaiting asylum.<sup>55</sup>

## D. Housing

Upon arriving in Sweden asylum seekers are either provided housing or are responsible for finding housing themselves.<sup>56</sup> Persons who find their own housing must provide the address to the Migration Authority.<sup>57</sup>

## E. Passports

There are no travel restrictions that prevent asylum seekers from returning to their home countries. Asylum seekers without passports receive an “alien’s passport.”<sup>58</sup> Until 2014 almost all persons who were granted any form of international protection were also provided passports. Following a policy decision in 2014, only persons who have received asylum because of their

<sup>51</sup> HÄLSO- OCH SJUKVÅRDSLÄG [HEALTH CARE ACT] (SFS 1982:763), <http://www.notisum.se/rnp/sls/lag/19820763.htm>, archived at <https://perma.cc/WT6E-33F3>.

<sup>52</sup> LAG OM HÄLSO- OCH SJUKVÅRD ÅT ASYLSÖKANDE M.F.L. [ACT ON HEALTH CARE FOR ASYLUM SEEKERS ET AL.] (SFS 2008:344), <http://www.notisum.se/rnp/sls/lag/20080344.HTM>, archived at <https://perma.cc/W7Q3-AZMT>.

<sup>53</sup> *Id.* 1 §.

<sup>54</sup> *Id.* 5 §.

<sup>55</sup> 7 ch. 2 § SKOLLAG [ACT ON SCHOOLING] (SFS 2010:800), [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skollag-2010800\\_sfs-2010-800/?bet=2010:800#K7](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skollag-2010800_sfs-2010-800/?bet=2010:800#K7), archived at <https://perma.cc/ZZR4-LT9V>; see also *This Is How the Migration Agency Is Currently Receiving Refugees*, MIGRATIONSVERKET (Oct. 28, 2015), <http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Nyheter/2015-10-28-This-is-how-the-Migration-Agency-is-currently-receiving-refugees.html>, archived at <https://perma.cc/P3QL-HET8>.

<sup>56</sup> LAG OM MOTTAGANDE AV ASYLSÖKANDE M.F.L. [ACT ON RECEPTION OF ASYLUM SEEKERS ET AL.] (SFS 1994:137), <http://www.notisum.se/rnp/SLS/LAG/19940137.htm>, archived at <https://perma.cc/U23C-SJ3N>.

<sup>57</sup> *Boende*, MIGRATIONSVERKET (Aug. 29, 2014), <http://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/For-dig-som-ar-vuxen-och-har-sokt-asyl/Boende.html>, archived at <https://perma.cc/7SQU-5NN5>.

<sup>58</sup> *Främlingspass*, MIGRATIONSVERKET (Nov. 5, 2015), <http://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/For-dig-som-ar-vuxen-och-har-sokt-asyl/Om-du-far-stanna/Framlingspass.html>, archived at <https://perma.cc/MNY5-QKHS>.

relationship with the government of their home countries receive alien's passports; others are requested to apply for a passport through the embassies of their home countries.<sup>59</sup>

## F. Priority for Asylum Seekers in Schools with a Waiting List

In the fall of 2015 Swedish Minister for Education Gustav Fridolin announced a legislative bill that would require schools with queue systems to receive asylum seekers by prioritizing them over ordinary citizens who were placed in the queue earlier.<sup>60</sup>

## G. Impact of Refugee Crisis on Benefits Provided Asylum Seekers

The refugee crisis has put a strain on Swedish community/societal functions, with the Swedish Civil Contingencies Agency reporting in November that there was a risk to the health and life of people in Sweden because health providers, the police, and the like could not keep up.<sup>61</sup> The Swedish Migration Minister has announced that there is no available housing.<sup>62</sup> Reportedly, asylum seekers spent nights outside without any shelter in November of 2015.<sup>63</sup> Temporary tents intended to house asylum seekers have been erected.<sup>64</sup> Courts have also found that the Migration Agency can require that asylum seekers be given priority in housing queues.<sup>65</sup>

## VI. Path to Citizenship

Asylum seekers arriving in Sweden receive either a temporary permit or a permanent residence permit.<sup>66</sup> Until November 24, 2015, most asylum seekers qualified for permanent residency.<sup>67</sup>

<sup>59</sup> *Id.*

<sup>60</sup> Press Release, Regeringskansliet, Nyanlända elevers rätt till utbildning ska utredas (Nov. 26, 2015), <http://www.regeringen.se/pressmeddelanden/2015/11/nyanlanda-elevers-ratt-till-utbildning-ska-utredas/>, archived at <https://perma.cc/E327-HGVM>.

<sup>61</sup> Anette Holmqvist, John Granlund, *Larmrapporten – uthålligheten tar slut i december*, Aftonbladet (Nov. 18, 2016), <http://www.aftonbladet.se/nyheter/samhalle/article21785732.ab>, archived at <https://perma.cc/F4NN-QF88>.

<sup>62</sup> *Kommentarer med anledning av flyktingsituationen*, REGERINGSKANSLIET (Nov. 5, 2015), <http://www.regeringen.se/pressmeddelanden/2015/11/kommentarer-med-anledning-av-flyktingsituationen/>, archived at <https://perma.cc/MGZ3-XQ9Y>.

<sup>63</sup> *Migrationsverket kan inte längre erbjuda boende till alla asylsökande*, MIGRATIONSVERKET (Nov. 19, 2015), <http://www.migrationsverket.se/Om-Migrationsverket/Nyhetsarkiv/Nyhetsarkiv-2015/2015-11-19-Migrationsverket-kan-inte-langre-erbjuda-boende-till-alla-asylsokande.html>, archived at <https://perma.cc/5Q7Z-JSHH>; *Asylsökande tvingades sova utomhus i Malmö*, SVERIGES RADIO (Nov. 20, 2015), <http://sverigesradio.se/sida/artikel.aspx?programid=96&artikel=6306948>, archived at <https://perma.cc/5APZ-9U3E>.

<sup>64</sup> *MSB sätter upp "icke varaktiga" flyktingtält som inte kräver bygglov*, DAGENS JURIDIK (Nov. 25, 2015), <http://www.dagensjuridik.se/2015/11/msb-satter-upp-icke-varaktiga-flyktingtalt-som-inte-kraver-bygglov>, archived at <https://perma.cc/XL5W-7H4K>.

<sup>65</sup> *Behov av asylboende väger tyngre än de som står i bostadskö – hyresvärd förlorar i hovrätten*, DAGENS JURIDIK (Dec. 10, 2015), <http://www.dagensjuridik.se/2015/12/behov-av-asylboende-vager-tyngre-dem-som-star-i-bostadsko-hyresvard-forlorar-i-hovratten>, archived at <https://perma.cc/M36W-HE39>.

<sup>66</sup> *Asylregler*, MIGRATIONSVERKET (Jan. 25, 2016), <http://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Att-ansoka-om-asyl/Asylregler.html>, archived at <https://perma.cc/U59S-XDLZ>.

<sup>67</sup> *Id.*

After November 24, 2015, however, only UNHCR quota refugees qualify for permanent residency.<sup>68</sup>

To become a citizen through naturalization a person must have been a permanent resident of Sweden for four years if he or she is a refugee.<sup>69</sup> There are also special rules for the acquisition of citizenship that apply to young adults.<sup>70</sup> A young adult (between eighteen and twenty-one years of age) can acquire Swedish citizenship through notification if he or she has a permanent residence permit and has lived in Sweden since the age of thirteen, or fifteen if he or she is stateless.<sup>71</sup> In addition to being a permanent resident, naturalization also requires that the person seeking citizenship be at least eighteen years old and prove his/her identity.<sup>72</sup>

## VII. Monitoring by Security Police

The Security Police is involved in reviewing some applications and advises against the granting of asylum in certain cases.<sup>73</sup> The purpose is to ensure that persons who are a threat to Sweden are not given permanent residency rights or citizenship.<sup>74</sup> Only a small portion of all asylum applications are reviewed by the Security Police.<sup>75</sup> In 2014, only 109 out of 81,301 asylum applications were reviewed by the Security Police. In twenty-four of these cases the Security Police advised against granting the person asylum.<sup>76</sup> The Security Police does not consider asylum seekers' needs for asylum but only looks to the security of Sweden and Swedish interests.<sup>77</sup> The Security Police also reviews citizenship applications, which it considers "a central part of [its] work."<sup>78</sup> In 2014 it reviewed 2,252 out of 36,804 applications for citizenship (158 remitted) and advised against granting of citizenship in thirty-one cases.<sup>79</sup>

In February 2015 a Syrian citizen who had been granted asylum was convicted of having tortured a person in Syria. The Security Police had determined that it was against Swedish

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<sup>68</sup> Press Release, Regeringskansliet, *supra* note 14.

<sup>69</sup> 11 § LAG OM SVENSKT MEDBORGARSKAP [ACT ON SWEDISH CITIZENSHIP] (SFS 2001:82), <http://www.notisum.se/rnp/sls/lag/20010082.HTM>, archived at <https://perma.cc/D94K-36A8>.

<sup>70</sup> *Id.* 8 §.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* 11 §.

<sup>73</sup> *Säpo bedömer allt fler asylärenden*, SVERIGES RADIO (Nov. 10, 2015), <http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6299129>, archived at <https://perma.cc/KB7R-DJKZ>.

<sup>74</sup> SÄKERHETSPOLISENS ÅRSBOK 2014 [SECURITY POLICE ANNUAL REPORT 2014] at 62, [http://www.sakerhetspolisen.se/download/18.4c7cab6d1465fb27b01ef6/1426608732902/Arsbok2014\\_webb.pdf](http://www.sakerhetspolisen.se/download/18.4c7cab6d1465fb27b01ef6/1426608732902/Arsbok2014_webb.pdf), archived at <https://perma.cc/RP4C-GPTY>.

<sup>75</sup> *Id.* at 63.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

interests that he remain in Sweden, but the court found that he could not be deported because of the current situation in Syria.<sup>80</sup>

## VIII. Role of Municipalities

### A. Historical Right to Refuse Housing of Asylum Seekers

Municipalities have a right to self-governance in the constitution.<sup>81</sup> Historically, a few regions such as Södertälje have accepted large numbers of asylum seekers while other more affluent municipalities have received smaller numbers.<sup>82</sup>

The Swedish government has proposed that all municipalities should be required to accept asylum seekers and persons who have been granted asylum status in their municipalities as of March 2016.<sup>83</sup> However, the proposal states that consideration should be given to the socio-economic circumstances (such as unemployment rate) in the municipality.<sup>84</sup>

### B. Financial and Social Responsibility to Care for Asylum Seekers

While the state covers the costs (housing, health care, social services, schools) for asylum seekers for the first two years while they are in Sweden, the municipality is thereafter responsible for the asylum seeker.<sup>85</sup> This includes the county council's responsibility to provide health care to the asylum seeker. Also, undocumented immigrants have the right to urgent health care at the cost of the municipality (county council).<sup>86</sup>

## IX. Managing the Refugee Crisis

In addition to the measures in response to the refugee crisis mentioned elsewhere in this report, Swedish agencies and municipalities are expected take a number of measures to support the volume of asylum seekers now seeking refuge in Sweden. These include raising municipal

<sup>80</sup> Emma Bouvin, 28-åring döms för folkrättsbrott, DAGENS NYHETER (Feb. 26, 2015), <http://www.dn.se/nyheter/verige/28-arling-doms-for-folkrattsbrott/>, archived at <https://perma.cc/KLM6-EBBV>.

<sup>81</sup> 1 ch. 1§ REGERINGSFORMEN [RF] [CONSTITUTION] (SFS 1974:152), <https://www.notisum.se/rnp/sls/lag/19740152.htm>, archived at <https://perma.cc/9WFN-QL65>.

<sup>82</sup> See Ekman, *supra* note 2.

<sup>83</sup> Proposition [Prop.] [Government Bill] 2015/16:54, Ett gemensamt ansvar för nyanlända [A Shared Responsibility for New Arrivals], [http://www.regeringen.se/contentassets/49e25a1fca3d4dcbbc5ed13d2bfb9b03/prop-2015\\_16\\_54-ett-gemensamt-ansvar-for-mottagande-av-nyanlanda.pdf](http://www.regeringen.se/contentassets/49e25a1fca3d4dcbbc5ed13d2bfb9b03/prop-2015_16_54-ett-gemensamt-ansvar-for-mottagande-av-nyanlanda.pdf), archived at <https://perma.cc/9NDA-T4U9>.

<sup>84</sup> *Id.* at 5 (proposed section 7).

<sup>85</sup> 15 § LAG OM ETABLERINGSINSATSER FÖR VISSA NYANLÄNDA INVANDRARE [ACT ON MEASURES FOR ESTABLISHMENT OF NEWLY ARRIVED IMMIGRANTS] (SFS 2010:197), <http://www.lagboken.se/Views/Pages/GetFile.ashx?portalId=56&cat=47592&docId=619301&propId=5>, archived at <https://perma.cc/V89D-22WY>.

<sup>86</sup> See LAG OM HÄLSO- OCH SJUKVÅRD TILL VISSA UTLÄNNINGAR SOM VISTAS I SVERIGE UTAN NÖDVÄNDIGA TILLSTÅND [ACT ON HEALTH CARE FOR CERTAIN ALIENS IN SWEDEN WITHOUT NECESSARY PAPERS] (SFS 2013:407), <http://www.notisum.se/rnp/sls/lag/20130407.htm>, archived at <https://perma.cc/BX32-H3MJ>.

taxes,<sup>87</sup> creating low-wage jobs,<sup>88</sup> and building temporary housing.<sup>89</sup> The Swedish government has also signed an extra budget amendment bill because of the migration crisis.<sup>90</sup> Sweden moreover has asked the European Commission for relief by reducing its monetary contribution to the EU budget and by relocating asylum seekers from Sweden.<sup>91</sup> On December 15, 2015, the European Commission announced that Sweden was exempted from its obligations under the relocation scheme.<sup>92</sup> Sweden's other requests are still pending.

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<sup>87</sup> SVERIGES KOMMUNER OCH LANDSTING, EKONOMIRAPPORTEN OM KOMMUNERNAS OCH LANDSTINGENS EKONOMI – OKTOBER 2015, <http://webbutik.skl.se/bilder/artiklar/pdf/7585-077-1.pdf?issuusl=ignore> (in Swedish), archived at <https://perma.cc/BB77-KS9X>; SWEDISH ASSOCIATION OF LOCAL AUTHORITIES AND REGIONS, THE ECONOMY REPORT ON SWEDISH MUNICIPAL AND COUNTY COUNCIL FINANCES – OCTOBER 2015, <http://webbutik.skl.se/bilder/artiklar/pdf/7585-078-8.pdf?issuusl=ignore> (in English), archived at <https://perma.cc/KM2T-HKNA>.

<sup>88</sup> Press Release, Regeringskansliet, *supra* note 14.

<sup>89</sup> *Id.*; see also Uppdrag att ta fram vägledning och föreskrifter till bestämmelserna om tillfälliga anläggningsboenden i plan- och byggförordningen [Assignment to Create Guidelines and Regulations to the Provisions on Temporary Housing in the Building Regulation] (2011:338) Diarienummer: N2015/08896/PUB (delvis), <http://www.regeringen.se/regeringsuppdrag/2015/12/uppdrag-att-ta-fram-vagledning-och-foreskrifter-till-bestammelserna-om-tillfalliga-anlaggningsboenden-i-plan--och-byggforordningen-2011338/>, archived at <https://perma.cc/5L5K-GZVA>. For a list of Swedish government responses and proposals, see *Regeringens åtgärder med anledning av flyktingsituationen*, REGERINGSKANSLIET, <http://www.regeringen.se/regeringens-politik/regeringens-arbete-med-flyktingsituationen/atgarder-med-anledning-av-flyktingsituationen/> (last visited Jan. 13, 2016), archived at <https://perma.cc/3HR8-WCJU>.

<sup>90</sup> Regeringens proposition [Prop.] [Government Bill] 2015/16:47 Extra ändringsbudget för 2015 [Extra Amending Budget for 2015], <http://www.regeringen.se/contentassets/cbd9f48b9fcf4031ad0c8fb10c638cc4/extra-andringsbudget-for-2015-prop.-20151647>, archived at <https://perma.cc/Q5T6-QTUA>.

<sup>91</sup> Press Release, Regeringskansliet, Statsministern tog emot Europeiska rådets ordförande Donald Tusk (Nov. 5, 2015), <http://www.regeringen.se/artiklar/2015/11/statsministern-tog-emot-europeiska-radets-ordforande-donald-tusk/>, archived at <https://perma.cc/C997-RCC8>.

<sup>92</sup> Press Release, European Commission, Commission Proposes Temporary Suspension of Sweden's Obligations Under the EU Relocation Mechanism (Dec. 15, 2015), [http://europa.eu/rapid/press-release\\_IP-15-6329\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6329_en.htm), archived at <https://perma.cc/SQV5-XJQV>.

# Switzerland

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**SUMMARY** Swiss asylum legislation is based on the principles contained in the Geneva Convention Relating to the Status of Refugees. The most important norms for admission and handling of refugees are contained in the Asylum Act and the Foreign Nationals Act. People who are recognized as refugees or are awarded temporary protection are granted a temporary residence permit. An asylum application can be submitted at the airport, at the border, or inside Switzerland at a reception and processing center. The applicant's personal details are recorded, his or her fingerprints and photographs are taken, and the data are compared with national and European databases. The State Secretariat for Migration conducts an interview to decide whether to approve or deny the asylum application. If asylum is granted, the refugee can claim social security benefits as if he or she were a Swiss national. After ten years of permanent residence and if additional conditions are met, a foreigner may apply for citizenship in Switzerland. For recognized refugees half of the years spent in Switzerland on a temporary residence permit may count towards that total time.

## I. General Background

Swiss asylum legislation is based on the principles contained in the Geneva Convention Relating to the Status of Refugees.<sup>1</sup> Asylum is therefore awarded in accordance with criteria recognized under international law to applicants who are threatened or persecuted. Furthermore, Switzerland supports international campaigns to help people in regions affected by war and disaster, or grants temporary visas. The Swiss Federal Council (Bundesrat)<sup>2</sup> also supports efforts to eliminate causes for flight and involuntary migration.<sup>3</sup>

Between January and November 2015, 34,653 asylum applications were submitted in Switzerland, 21.8% of which were approved.<sup>4</sup> In November 2015, 5,691 asylum applications were registered in Switzerland.<sup>5</sup> This is an increase of 941 applications in comparison to the previous month. Most applicants in November came from Afghanistan (2,386), Syria (991), and Iraq (586),<sup>6</sup> and 21.8% of these applications were granted.<sup>7</sup>

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<sup>1</sup> Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, <http://www.unhcr.org/3b66c2aa10.pdf>, archived at <http://perma.cc/K3X4-FA37>.

<sup>2</sup> The Federal Council (Bundesrat) is the name of the Swiss government.

<sup>3</sup> *Basic Principles of Asylum Legislation*, STATE SECRETARIAT FOR MIGRATION, <https://www.sem.admin.ch/sem/en/home/asyl/asyl/asylrecht.html> (last updated Nov. 14, 2011), archived at <http://perma.cc/ZG4B-NN6U>.

<sup>4</sup> ASYLSTATISTIK, STAATSSSEKRETARIAT FÜR MIGRATION [ASYLUM STATISTICS, STATE SECRETARIAT FOR MIGRATION] 18 (2015), <https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/monat/2015/stat-mt-201511-d.pdf>, archived at <http://perma.cc/SS24-UKYW>.

<sup>5</sup> *Id.* at 14.

<sup>6</sup> *Id.* at 15.



## II. General Rules and Norms for Admitting Refugees and Handling Refugee Claims

The most important norms for admission and handling of refugees are contained in the Asylum Act<sup>8</sup> and the Foreign Nationals Act.<sup>9</sup>

### A. Asylum Act

The Asylum Act regulates the granting of asylum, the legal status of refugees in Switzerland, and the temporary protection of persons in need of protection in Switzerland and their return.<sup>10</sup> The State Secretariat for Migration (Staatssekretariat für Migration, SEM) is charged with denying or refusing an asylum application as well as deciding whether to remove an applicant from Switzerland.<sup>11</sup>

Refugees are defined as persons who “in their native country or in their country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or due to their political opinions.”<sup>12</sup> Serious disadvantages include a “threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure.”<sup>13</sup>

People who have refused to perform military service or have deserted from the military have no right to refugee protection.<sup>14</sup>

Temporary protection is awarded to an applicant if he or she is in serious general danger, in particular during a war or civil war, as well as in situations of general violence.<sup>15</sup>

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<sup>7</sup> *Id.* at 14.

<sup>8</sup> Asylgesetz [AsylG] [Asylum Act], June 26, 1998, as amended, SYSTEMATISCHE RECHTSSAMMLUNG [SR] 142.31, <https://www.admin.ch/opc/de/classified-compilation/19995092/201510010000/142.31.pdf>, archived at <http://perma.cc/4EWF-5P6B>, unofficial English translation at <https://www.admin.ch/opc/en/classified-compilation/19995092/201510010000/142.31.pdf>, archived at <http://perma.cc/QG7D-ZSCM>.

<sup>9</sup> Bundesgesetz über die Ausländerinnen und Ausländer [Ausländergesetz] [AuG] [Foreign Nationals Act], Dec. 16, 2005, SR 142.20, <https://www.admin.ch/opc/de/classified-compilation/20020232/201510010000/142.20.pdf>, archived at <http://perma.cc/6G74-UYXM>, unofficial English translation at <https://www.admin.ch/opc/en/classified-compilation/20020232/201510010000/142.20.pdf>, archived at <http://perma.cc/5LEJ-RKJX>.

<sup>10</sup> Asylum Act art. 1.

<sup>11</sup> *Id.* art. 6a, para. 1.

<sup>12</sup> *Id.* art. 3, para. 1.

<sup>13</sup> *Id.* art. 3, para. 2.

<sup>14</sup> *Id.* art. 3, para. 3.

<sup>15</sup> *Id.* § 4.



## **B. Foreign Nationals Act**

The Foreign Nationals Act regulates the entry and exit, residence, and family reunification of foreign nationals in Switzerland, as well as measures to further integration.<sup>16</sup> Residence and work permits are granted by the Swiss cantons.<sup>17</sup>

## **III. Processes for Handling Refugees Arriving at the Border**

The asylum procedure starts with the submission of an application.<sup>18</sup> It can be filed at a border control point at a Swiss airport, upon entry at an open border crossing, or at a reception and processing center inside Switzerland.<sup>19</sup> Since September 2012, it has no longer been possible to submit an asylum application from abroad.<sup>20</sup>

If the application for asylum is made at the border or within Switzerland, the asylum seeker is assigned to a reception and processing center.<sup>21</sup> At the reception and processing center the applicant's personal details are recorded and fingerprints and photographs taken, and summary questioning is performed.<sup>22</sup>

If the application is made at an airport, personal details are recorded at the airport and fingerprints and photographs taken. Other biometric data may be collected, and summary questioning is performed.<sup>23</sup> The authorities must decide within two days whether the applicant will be allowed to enter Switzerland.<sup>24</sup> The asylum procedure may take place at the airport or in a cantonal processing center.<sup>25</sup>

## **IV. Adjustments/Amendments to the Procedure for Handling Refugees as a Result of the Current Refugee Crisis**

### **A. Controlling Mass Immigration Initiative**

On February 9, 2014, the Swiss adopted a popular initiative aimed at controlling immigration by introducing annual quotas as well as by amending the Agreement on the Free Movement of

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<sup>16</sup> Foreign Nationals Act art. 1.

<sup>17</sup> *Id.* art. 40.

<sup>18</sup> Asylum Act art. 18.

<sup>19</sup> *Id.* art. 19.

<sup>20</sup> Asylgesetz (AsylG) (Dringliche Änderungen des Asylgesetzes) Änderung vom 28. September 2012 [Asylum Act (Urgent Amendments of the Asylum Act) Amendment of September 28, 2012], AMTLICHE SAMMLUNG [AS] 2012, 5359, <https://www.admin.ch/opc/de/official-compilation/2012/5359.pdf>, archived at <http://perma.cc/4BFQ-LBLU>.

<sup>21</sup> Asylum Act art. 21.

<sup>22</sup> *Id.* art. 26, para. 2.

<sup>23</sup> *Id.* art. 22.

<sup>24</sup> *Id.* art. 22, para. 4.

<sup>25</sup> *Id.* art. 23.

Persons between Switzerland and the European Union (EU) with regard to the social security benefits of immigrants seeking employment and the residence permits of immigrants who have lost their jobs.<sup>26</sup> The initiative introduced a new article 121a into the Swiss Constitution.<sup>27</sup> Article 121a of the Swiss Constitution tasks the Federal Council and the Parliament with introducing a new admissions system for foreign nationals within three years and negotiating an amendment to the Agreement on Free Movement of Persons. On February 11, 2015, the Federal Council released draft legislation to amend the Foreign Nationals Act.<sup>28</sup> The Federal Council is consulting with the EU on a safeguard clause, but has also instructed the Federal Department of Justice and Police to draft a unilateral safeguard clause to allow the autonomous control of immigration by imposing temporary and targeted restrictions on permits for persons from EU/EFTA states.<sup>29</sup>

Furthermore, the Federal Council is consulting on reducing administrative hurdles for recognized refugees and temporarily admitted persons so that they can find work more easily.<sup>30</sup>

## B. Amendment of the Asylum Act

Another amendment currently under discussion would restructure the asylum system. The Federal Council has drafted legislation that was approved by the Parliament on September 25, 2015. The deadline for a referendum on the draft legislation ends on January 14, 2016.<sup>31</sup>

The draft legislation would amend the Asylum Act to accelerate the asylum process. A majority of asylum applications would be processed in federal centers instead of centers run by the cantons. In addition, asylum seekers would receive free legal advice and representation for the

<sup>26</sup> Volksinitiative „Gegen Masseneinwanderung“, Volksabstimmung vom 9. Februar 2014 [Popular Initiative “Against Mass Immigration,” Popular Vote of February 9, 2014], EIDGENÖSSISCHES JUSTIZ- UND POLIZEIDEPARTEMENT [FEDERAL DEPARTMENT OF JUSTICE AND POLICE], <http://www.ejpd.admin.ch/ejpd/de/home/aktuell/abstimmungen/2014-02-09.html>, archived at <http://perma.cc/E8XE-483Q>.

<sup>27</sup> BUNDESVERFASSUNG DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT [BV] [FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION], Apr. 18, 1999, SR 101, <https://www.admin.ch/opc/de/classified-compilation/19995395/201506140000/101.pdf>, archived at <http://perma.cc/W5Y9-FLDJ>, unofficial English translation at <https://www.admin.ch/opc/en/classified-compilation/19995395/201506140000/101.pdf>, archived at <http://perma.cc/3UYQ-R3QX>.

<sup>28</sup> Bundesgesetz über die Ausländerinnen und Ausländer [Ausländergesetz] [AuG] (Steuerung der Zuwanderung) Änderung [Foreign Nationals Act (Control of Immigration) Amendment], [https://www.sem.admin.ch/dam/data/sem/aktuell/gesetzgebung/teilrev\\_aug\\_art-121a/vorentw-aug-d.pdf](https://www.sem.admin.ch/dam/data/sem/aktuell/gesetzgebung/teilrev_aug_art-121a/vorentw-aug-d.pdf), archived at <http://perma.cc/DS95-7PWH>.

<sup>29</sup> *Implementation of the New Constitutional Provisions on Immigration*, STATE SECRETARIAT FOR MIGRATION, [https://www.sem.admin.ch/sem/en/home/themen/fza\\_schweiz-eu-efta/umsetzung\\_vb\\_zuwanderung.html](https://www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta/umsetzung_vb_zuwanderung.html) (last updated Dec. 18, 2015), archived at <http://perma.cc/SZA3-E8H4>.

<sup>30</sup> Press Release, Federal Council, Controlling Immigration: Federal Council Approves Draft Legislation and Negotiating Mandate (Feb. 11, 2015), [https://www.sem.admin.ch/sem/en/home/aktuell/news/2015/ref\\_2015-02-110.html](https://www.sem.admin.ch/sem/en/home/aktuell/news/2015/ref_2015-02-110.html), archived at <http://perma.cc/68RH-6CPC>.

<sup>31</sup> *Änderung des Asylgesetzes (AsylG) (Neustrukturierung des Asylbereiches)* [Amendment of the Asylum Act (Asylum Act) (Restructuring of the Asylum System)], STAATSEKRETARIAT FÜR MIGRATION, [https://www.sem.admin.ch/sem/de/home/aktuell/gesetzgebung/aend\\_asylg\\_neustruktur.html](https://www.sem.admin.ch/sem/de/home/aktuell/gesetzgebung/aend_asylg_neustruktur.html) (last updated Sept. 3, 2014), archived at <http://perma.cc/B26W-FW8Y>.

asylum procedure.<sup>32</sup> The legislation aims at processing the majority of asylum applications within 140 days.<sup>33</sup>

## V. Steps Taken to Determine Whether a Person is Entitled to Refugee Status

After the asylum seeker is allowed entry into Switzerland and has submitted an application at the airport or a reception and processing center, there is an initial screening and questioning. In the next step, the applicant is allocated to a canton by the SEM<sup>34</sup> according to a quota system codified in article 21 of Asylum Order 1.<sup>35</sup>

Interviews to establish whether a person is entitled to refugee status are conducted either in the reception and processing centers or in the canton within twenty days after the decision on allocation.<sup>36</sup> The SEM takes the results from the initial questioning into account. The agency has the obligation to investigate the facts,<sup>37</sup> but the burden of proof is on the applicant.<sup>38</sup>

If the asylum application is approved, the applicant receives a temporary residence permit.<sup>39</sup> After ten years, a permanent residence permit may be issued.<sup>40</sup>

## VI. Screening Procedure for Arriving Refugees Being Resettled in the Country

The Swiss Confederation has set up reception and processing centers that are run by the SEM.<sup>41</sup> The reception and processing centers record the applicant's personal details and take fingerprints and photographs. They may collect additional biometric data, prepare reports on a person's age,<sup>42</sup> verify evidence and travel and identity documents, and make inquiries specific to origin and identity. Furthermore, the centers ask general questions about the applicant's identity and

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<sup>32</sup> Asylgesetz [AsylG] Änderung [Asylum Act Amendment], [https://www.sem.admin.ch/dam/data/sem/aktuell/gesetzgebung/aend\\_asylg\\_neustruktur/vorentw-d.pdf](https://www.sem.admin.ch/dam/data/sem/aktuell/gesetzgebung/aend_asylg_neustruktur/vorentw-d.pdf), archived at <http://perma.cc/3XQD-6BVX>.

<sup>33</sup> *Id.* art. 24, para. 6.

<sup>34</sup> Asylum Act art. 27.

<sup>35</sup> Asylverordnung 1 über Verfahrensfragen [Asylverordnung 1] [AsylV 1] [Asylum Order 1 on Procedural Questions] [Asylum Order 1], Aug. 11, 1999, as amended, SR 142.311, <https://www.admin.ch/opc/de/classified-compilation/19994776/201509290000/142.311.pdf>, archived at <http://perma.cc/9KVQ-ZJ5C>.

<sup>36</sup> Asylum Act art. 29, para. 1.

<sup>37</sup> *Id.* art. 6; Verwaltungsverfahrensgesetz [VwVG] [Administrative Procedure Act], Dec. 20, 1968, SR 172.021, art. 12, <https://www.admin.ch/opc/de/classified-compilation/19680294/201501010000/172.021.pdf>, archived at <http://perma.cc/2CMC-N47N>, unofficial English translation at <https://www.admin.ch/opc/en/classified-compilation/19680294/201501010000/172.021.pdf>, archived at <http://perma.cc/3U2X-9J4X>.

<sup>38</sup> Asylum Act art. 7.

<sup>39</sup> *Id.* art. 74, para. 2.

<sup>40</sup> *Id.* art. 74, para. 3.

<sup>41</sup> *Id.* art. 26, para. 1.

<sup>42</sup> *Id.* art. 17, para. 3bis.

itinerary, and his or her reasons for leaving the country of origin.<sup>43</sup> The applicant has a duty to cooperate and must hand over necessary documents and identification papers.<sup>44</sup>

The Swiss authorities are allowed to search the applicant<sup>45</sup> and to confiscate travel documents and identity papers.<sup>46</sup>

Fingerprints are compared with the fingerprint database managed by the Federal Office of Police.<sup>47</sup> They are also entered into the European Eurodac database.<sup>48</sup>

## VII. Accommodations and Assistance Provided to Refugees

Recognized refugees, asylum seekers, provisionally admitted persons who have been in Switzerland for less than seven years, and those in need of protection can claim public social assistance. The cantonal authorities are responsible for providing that support.<sup>49</sup> The amount of benefits provided differs according to cantonal law.<sup>50</sup> The costs are reimbursed by the federal government.<sup>51</sup>

Public assistance paid to asylum seekers and provisionally admitted persons without a residence permit is less than that paid to Swiss nationals<sup>52</sup>—generally, 20% less than what a Swiss national receives. Asylum seekers are generally awarded around 1,200 Swiss francs (CHF) (approximately US\$1,215) per person each month for accommodations, food, toiletries and household articles, clothing, pocket money, and health insurance and health care costs.<sup>53</sup> Recognized refugees are provided with the same amount of public assistance as a Swiss national.<sup>54</sup> Most cantons have delegated the task of providing social security services to relief

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<sup>43</sup> *Id.* art. 26, para. 2.

<sup>44</sup> *Id.* art. 8.

<sup>45</sup> *Id.* art. 9.

<sup>46</sup> *Id.* art. 10.

<sup>47</sup> *Id.* art. 99, para. 3.

<sup>48</sup> *Id.* art. 102a bis.

<sup>49</sup> *Id.* art. 80.

<sup>50</sup> *Id.* art. 82, para. 1.

<sup>51</sup> *Id.* art. 88.

<sup>52</sup> *Id.* art. 82, para. 3.

<sup>53</sup> *Social Assistance for Asylum Seekers, Provisionally Admitted Persons and Those in Need of Protection*, STATE SECRETARIAT FOR MIGRATION, [https://www.sem.admin.ch/sem/en/home/asyl/sozialhilfe/asylsuchende\\_vorlaeufig.html](https://www.sem.admin.ch/sem/en/home/asyl/sozialhilfe/asylsuchende_vorlaeufig.html) (last updated Oct. 19, 2015), archived at <http://perma.cc/4J2T-97PT>.

<sup>54</sup> *Social Assistance*, STATE SECRETARIAT FOR MIGRATION, <https://www.sem.admin.ch/sem/en/home/asyl/sozialhilfe.html> (last updated Aug. 11, 2015), archived at <http://perma.cc/9UNS-NF9J>.

organizations. In the remaining cantons, the task is fulfilled by the general municipal social service agencies or by special cantonal welfare services for refugees.<sup>55</sup>

Once an asylum seeker is recognized as a refugee, he or she can also claim a child allowance.<sup>56</sup>

## VIII. Steps Resettlement Applicants Must Undergo Before Arrival

On March 6, 2015, the Swiss Federal Council decided to accept over the course of three years three thousand people from Syria who have been designated by the United Nations High Commissioner for Refugees (UNHCR) as vulnerable refugees. Two thousand refugees will be part of the resettlement program, and the remaining one thousand refugees will receive a humanitarian visa.<sup>57</sup> All three thousand will receive refugee status in Switzerland and will not have to go through the usual asylum procedure. For security reasons, the files of all people in the program will be checked by the Federal Intelligence Service. Furthermore, Switzerland will try to ensure a fair balance between people with a higher potential for integration (children, skilled workers) and people with special needs (handicapped, sick, the elderly).<sup>58</sup>

## IX. Path to Naturalization

In general, foreign nationals may apply for a naturalization license only if they have been permanent residents of Switzerland for a total period of twelve years, including three of the five years prior to the application being made.<sup>59</sup>

An amendment to the Swiss Citizenship Act passed in 2014 shortened the residence period to ten instead of twelve years.<sup>60</sup> Furthermore, for asylum seekers and recognized refugees, half of the

<sup>55</sup> *Social Assistance for Persons with Refugee Status*, STATE SECRETARIAT FOR MIGRATION, [https://www.sem.admin.ch/sem/en/home/asyl/sozialhilfe/anerkannte\\_fluechtlinge.html](https://www.sem.admin.ch/sem/en/home/asyl/sozialhilfe/anerkannte_fluechtlinge.html) (last updated Oct. 19, 2015), archived at <http://perma.cc/WHN7-8NRE>.

<sup>56</sup> Asylum Act art. 84.

<sup>57</sup> Press Release, Der Bundesrat [Federal Council], Bundesrat beschliesst zusätzliche Massnahmen für die Opfer des Syrienkonflikts [Federal Council Agrees on Additional Measures for the Victims of the Syrian Conflict] (Mar. 6, 2015), <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-56476.html>, archived at <http://perma.cc/E2S3-RJ9G>.

<sup>58</sup> FAKTENBLATT: AKTUELLE LAGE, RESETTLEMENT UND RELOCATION [FACT SHEET: CURRENT SITUATION, RESETTLEMENT AND RELOCATION], EIDGENÖSSISCHES JUSTIZ- UND POLIZEIDEPARTEMENT, STAATSEKRETARIAT FÜR MIGRATION 3 (Sept. 18, 2015), [https://www.eda.admin.ch/content/dam/mission-eu-brussels/de/documents/EJPD\\_Faktenblatt\\_Aktuelle%20Lage%20Asyl%20Resettlement%20und%20Relocation%20DE.pdf](https://www.eda.admin.ch/content/dam/mission-eu-brussels/de/documents/EJPD_Faktenblatt_Aktuelle%20Lage%20Asyl%20Resettlement%20und%20Relocation%20DE.pdf), archived at <http://perma.cc/9ZNW-PY3L>.

<sup>59</sup> Bürgerrechtsgesetz [BÜG] [Swiss Citizenship Act], Sept. 29, 1952, SR 141.0, art. 15, para. 1, <https://www.admin.ch/opc/de/classified-compilation/19520208/201301010000/141.0.pdf>, archived at <http://perma.cc/8FHC-N79G>, unofficial English translation at <https://www.admin.ch/opc/en/classified-compilation/19520208/201301010000/141.0.pdf>, archived at <http://perma.cc/8349-5MV8> (both texts current only up to Jan. 1, 2013).

<sup>60</sup> Bürgerrechtsgesetz, [BÜG] [Swiss Citizenship Act] June 20, 2014, BUNDESBLATT [BBL.] [FEDERAL GAZETTE] 5133 (2014), <https://www.admin.ch/opc/de/federal-gazette/2014/5133.pdf>, archived at <http://perma.cc/ZW97-WAL9>.

years spent in Switzerland on a temporary residence permit will count towards the total period.<sup>61</sup> The Federal Council has not yet set a date on which the amendments will enter into force.<sup>62</sup>

Before a naturalization license is granted, the Swiss authorities examine if the applicant

- a. is integrated into Swiss society;
- b. is familiar with Swiss habits, customs and practices;
- c. abides by Swiss law;
- d. and does not pose a risk to Swiss internal or external security.<sup>63</sup>

The specific Swiss canton and commune might have additional requirements.<sup>64</sup>

## **X. Monitoring and Movement of Refugees While in the Country**

While the asylum application is pending, asylum seekers are obligated to make themselves available to the federal and cantonal authorities and must inform the competent authorities of their address and any change of address immediately.<sup>65</sup>

According to section 28 of the Asylum Act, the SEM or the cantonal authorities may allocate a place of stay to asylum seekers. Refugees must stay in the canton to which they have been allocated,<sup>66</sup> but may choose to reside anywhere within that canton.<sup>67</sup> If they wish to relocate to another canton, they must apply for permission from the new canton.<sup>68</sup>

## **XI. Roles of Subnational Governments**

The Swiss cantons are responsible for providing social assistance to asylum seekers and refugees, although some cantons have delegated this task to relief organizations, general municipal social service agencies, or special cantonal welfare services for refugees. The costs are reimbursed by the federal government. In 2009, the cantons received CHF55.90 (approximately US\$65.60) per day on average for each refugee requiring support.<sup>69</sup>

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<sup>61</sup> *Id.* art. 33, para. 1, letter b.

<sup>62</sup> *Id.* art. 52.

<sup>63</sup> Swiss Citizenship Act, Sept. 29, 1952, art. 14.

<sup>64</sup> *Id.* art. 15a.

<sup>65</sup> Asylum Act art. 8, para. 3.

<sup>66</sup> *Id.* art. 74, para. 1.

<sup>67</sup> Foreign Nationals Act art. 36.

<sup>68</sup> *Id.* art. 37, para. 1.

<sup>69</sup> STATE SECRETARIAT FOR MIGRATION, *supra* note 55.

Furthermore, the canton to which an asylum seeker has been allocated is responsible for enforcing a removal order from the SEM when an asylum application has been rejected.<sup>70</sup>

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<sup>70</sup> Asylum Act arts. 44, 46.



# Turkey

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**SUMMARY** Although most refugees seeking asylum in Turkey are from non-European countries, Turkey's instrument of accession to the 1951 Convention on the Status of Refugees limits the scope of the Convention's application to European asylum seekers, and Turkey's Settlement Act still places emphasis on persons of Turkish descent and culture as the immigrants eligible for settlement in the country and possible citizenship. While Turkey's Law on Foreigners and International Protection has instituted major changes in the country's asylum system, most current asylum seekers are placed under "temporary protection" for settlement in another country rather than being accepted as refugees for settlement in Turkey. In the case of the influx of migrants from Syria, Turkish authorities have over the years expanded their rights and protections, but they remain barred from gaining regular refugee status and instead are classified as beneficiaries of temporary protection.

Applications for refugee status must be filed in person in provincial offices of the Directorate General of Migration Management. Such applications are registered and the applicant is then scheduled for an interview. The authorities issue the applicant and any accompanying family members an International Protection Applicant Identity Document, valid for six months, upon completion of the interview. Assessment of the application is to be finalized within six months of the date of its registration. Under some circumstances, such as giving the authorities misleading information, an application is handled under an accelerated procedure that may result in its being rejected.

Under the terms of temporary protection, the authorities provide for refugees' basic needs and also furnish social services, translation services, IDs, travel documents, access to primary and secondary education, and work permits. Applicants for protection may be obliged by the authorities to live in designated reception and accommodation centers or in a specific location, and to report to the authorities in a certain manner or at certain intervals.

## I. General Background

In the not too distant past, Turkey was viewed primarily as "a country of emigration (or migrant-sending country) and a source country for asylum seekers."<sup>1</sup> With the advent of the new century, however, Turkey has seen changing migration patterns with respect to irregular labor migrants,

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\* At present there are no Law Library of Congress research staff members versed in Turkish. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>1</sup> Ahmet İcduygu, *Turkey's Evolving Migration Policies: A Mediterranean Transit Stop at the Doors of the EU 1* (IAI Working Papers 15/31, Sept. 21, 2015), <http://www.iai.it/sites/default/files/iaiwp1531.pdf>, archived at <https://perma.cc/2SQS-UBFZ>.

transit migrants, asylum seekers and refugees, and regular migrants.<sup>2</sup> Over the past two decades, “as a result of intense migratory movements,” Turkey has emerged as a “transit country,” and morphed from a country of emigration to one of immigration.<sup>3</sup>

According to a 2016 profile report issued by the Office of the United Nations High Commissioner for Refugees (UNHCR), since the onset of the Syrian crisis in 2011 Turkey “has maintained an emergency response of a consistently high standard.” Under a temporary protection regime, the government has ensured “non-refoulement and assistance in 22 camps, where an estimated 217,000 people are staying,” and at the time the report was issued was said to be constructing two additional camps.<sup>4</sup> Antonio Guterres, former United Nations high commissioner for refugees, in praising Turkey’s efforts to open its borders to large numbers of Syrians, Iraqis and Afghans, has reportedly stated that “Turkey accepted 11% of all refugees”<sup>5</sup> of this type and that “Turkey is now home to around 45 per cent of all Syrian refugees in the region.”<sup>6</sup> The number of Syrian refugees was said to have reached nearly 1.7 million as of autumn 2015 (with some 2.2 million Syrians having entered the country from the outbreak of the Syrian civil war to December 2015).<sup>7</sup>

Nevertheless, a June 2015 report issued by the Migrant Integration Policy Index (MIPEX), covering 2014, had stated that “Turkey’s legal framework hinders the integration of migrants,” and the country “is failing to integrate migrants amid an increased flow of refugees from Syria.”<sup>8</sup> The report criticized the fact that there were “restricted rights and little-to-no-state support” for immigrant workers and their families, and stated that “Turkey also has the weakest protections

<sup>2</sup> Ahmet İçduygu & Damla B. Aksel, *Turkish Migration Policies: A Critical Historical Retrospective*, 18:3 PERCEPTIONS 179 (Autumn 2013), <http://sam.gov.tr/wp-content/uploads/2014/02/Ahmet-%C4%B0%C3%A7duygu-and-Damla-B.-Aksel.pdf>, archived at <https://perma.cc/8P3Y-BUPH>.

<sup>3</sup> İçduygu, *supra* note 1, at 3.

<sup>4</sup> 2015 UNHCR Country Operations Profile – Turkey, UNHCR, <http://www.unhcr.org/pages/49e48e0fa7f.html> (last visited Jan. 28, 2016), archived at <https://perma.cc/8U56-MF75>.

<sup>5</sup> Mary Chastain, *New Turkey Refugee Laws Keep Syrian Refugees in Limbo*, BREITBART (June 19, 2015), <http://www.breitbart.com/national-security/2015/06/19/new-turkey-refugee-laws-keep-syrian-refugees-in-limbo>, archived at <https://perma.cc/9UB7-M5W3>.

<sup>6</sup> Press Release, UNHCR, UNHCR: Total Number of Syrian Refugees Exceeds Four Million for First Time (July 9, 2015), <http://www.unhcr.org/559d67d46.html>, archived at <https://perma-archives.org/warc/V64U-ZK3N>.

<sup>7</sup> *Turkey to Require Syrian Visas amid Efforts to Implement EU Deal*, EUROPE ONLINE MAGAZINE (Dec. 17, 2015), [http://en.europeonline-magazine.eu/turkey-to-require-syrian-visas-amid-efforts-to-implement-eu-deal\\_429898.html](http://en.europeonline-magazine.eu/turkey-to-require-syrian-visas-amid-efforts-to-implement-eu-deal_429898.html), archived at <https://perma.cc/UQ98-DCP3>. The *Regional Refugee & Resilience Plan 2015-16: Turkey*, which had projected the number of Syrian refugees in Turkey in 2015 to reach 2.5 million, estimated that “300,000 will reside in 25 camps and 2.2 million people will live among communities. In addition, it is estimated that 8.2 million people in refugee hosting areas will be impacted.” REGIONAL REFUGEE & RESILIENCE PLAN 2015-16: TURKEY at 3, <https://undg.org/wp-content/uploads/2015/11/3RP-Report-Turkey1.pdf> (last visited Jan. 6, 2016), archived at <https://perma.cc/3SGW-2H34>.

<sup>8</sup> *Turkey Ranks Bottom in Migrant Integration Report with Flow of Refugees*, HÜRRİYET DAILY NEWS (June 23, 2015), <http://www.hurriyetdailynews.com/turkey-ranks-bottom-in-migrant-integration-report-with-flow-of-refugees.aspx?pageID=238&nID=84424&NewsCatID=339>, archived at <https://perma.cc/3YCY-ET74> (citing THOMAS HUDDLESTON ET AL., MIGRATION INTEGRATION POLICY INDEX 2015 at 208–11 (2015), <http://mipex.eu/sites/default/files/downloads/files/mipex-2015-book-a5.pdf>, archived at <https://perma.cc/3Q5T-6XVC>).

against discrimination because a dedicated anti-discrimination law and agency are still lacking and pending approval by Parliament.”<sup>9</sup>

Moreover, the European Union is pressuring Turkey to control the number of refugees flowing to Europe. European Commissioner Johannes Hahn, reportedly frustrated by the continued streaming of refugees into Greece despite a November 2015 European Union-Turkey agreement to stem the flow (see discussion below), asserted that Turkey must produce results before the February 18–19, 2016, summit of EU leaders, stating that, despite the action plan having been agreed upon more than two months earlier, “we are still not seeing a significant decline in the number of migrants.”<sup>10</sup>

## II. Some Major Laws and Policies Applicable to Refugees<sup>11</sup>

### A. Law on Settlement

Between 1934 and 2006, Turkey’s Law on Settlement, Law No. 2510, regulated the formal settlement of foreigners in Turkey, “[restricting] the right of asylum and immigration only to the persons of ‘Turkish descent and culture.’”<sup>12</sup> When a new Law on Settlement was adopted in 2006, the emphasis on that background was retained, and so “it is understood that in Turkey, the channel of facilitated formal settlement, which also leads to citizenship in a short period of time, is still reserved for the individuals of such groups.”<sup>13</sup>

### B. Law on Foreigners and International Protection

It was not until the 1950s, when Turkey joined the newly created UN Convention Relating to the Status of Refugees (it also subsequently adopted the Convention’s 1967 Protocol), that Turkey had any specific legislation on migration management other than the Settlement Law of 1934.<sup>14</sup> In 1999, Turkey reached a turning point in its bid for accession to the European Union, and

<sup>9</sup> HUDDLESTON ET AL., *supra* note 8, at 210.

<sup>10</sup> Robin Emmott, *Turkey Must Cut Migrant Flows to Europe, Top EU Official Says*, REUTERS (Feb. 6, 2016), <http://www.reuters.com/article/us-europe-migrants-turkey-eu-idUSKCN0VF0IU>, archived at <https://perma.cc/AP4C-4DJB>.

<sup>11</sup> For a complete list of applicable laws, regulations, and decrees, see OKTAY DURUKAN ET AL., COUNTRY REPORT: TURKEY 11–13 (Asylum Information Database May 18, 2015), [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_turkey\\_final.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_turkey_final.pdf), archived at <https://perma.cc/HR7C-VZCR>. This report is a comprehensive study of asylum in Turkey; page 12 contains a flow chart of asylum procedures.

<sup>12</sup> N. Aslı Şirin Öner & Deniz Genç, *Continuity or Change in Turkey’s Mass Migration Policy: From 1989 Émigrés to Syrian “Guests,”* in TURKISH MIGRATION CONFERENCE 2015 SELECTED PROCEEDINGS 26 (Transnational Press London 2015).

<sup>13</sup> *Id.* (citing İskan Kanunu [Settlement Law], Law No. 5543, Sept. 19, 2006, as last amended Apr. 23, 2015, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5543.pdf>, archived at <https://perma.cc/D89G-GT6N> and İskan Kanunu Uygulama Yönetmeliği [Implementation Regulations of the Settlement Law], Dec. 2, 2007, as last amended Jan. 10, 2015, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.11748&MevzuatIliski=0&sourceXmlSearch>, archived at <https://perma.cc/N8XR-2L9F>).

<sup>14</sup> *Id.*

thereafter it began to introduce a new policies and laws, among them the 2005 National Action Plan for Adoption of Acquis on Asylum and Migration, aimed at modernizing the country's legal structure on migration.<sup>15</sup> In April 2013, the Law on Foreigners and International Protection (LFIP), "the first inclusive and updated act about migration-related issues," was adopted; it became effective in April 2014.<sup>16</sup> The purpose of the LFIP is to

regulate the principles and procedures with regard to foreigners' entry into, stay in and exit from Turkey, and the scope and implementation of the protection to be provided for foreigners who seek protection from Turkey, and the establishment, duties, mandate and responsibilities of the Directorate General of Migration Management under the Ministry of Interior.<sup>17</sup>

### C. Temporary Protection Regulation

On October 22, 2014, the Temporary Protection Regulation was issued. It pertains to, among other matters,

temporary protection proceedings that may be provided to foreigners, who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment.<sup>18</sup>

### D. Law on Work Permits for Foreigners

The Law on Work Permits of Foreigners prescribes that the Ministry of Labour and Social Security is to make a final decision on a foreigner's application for a work permit within thirty days.<sup>19</sup> If the decision is negative, the applicant can appeal it within thirty days to an administrative court.<sup>20</sup> To access the labor market, the asylum seeker and the prospective employer must jointly file the papers for the work permit.<sup>21</sup> Restrictions may apply, however,

<sup>15</sup> Öner & Genç, *supra* note 12, at 27.

<sup>16</sup> *Id.*; Yabancılar ve Uluslararası Koruma Kanunu [Law on Foreigners and International Protection], Apr. 4, 2013 (most provisions in force on Apr. 11, 2014), RESMÎ GAZETE [OFFICIAL GAZETTE], No. 28615 (Apr. 11, 2013), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf>, archived at <https://perma.cc/RQ3R-EWCV>; Law on Foreigners and International Protection (LFIP), Law No. 6458, art. 1(1), Apr. 4, 2013 (REPUBLIC OF TURKEY, MINISTRY OF INTERIOR, DIRECTORATE GENERAL OF MIGRATION MANAGEMENT, Apr. 2014), [http://www.goc.gov.tr/files/files/eng\\_minikanun\\_5\\_son.pdf](http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf), archived at <https://perma.cc/9VPV-GWYZ> (unofficial English translation).

<sup>17</sup> LFIP art. 1(1).

<sup>18</sup> Geçici Koruma Yönetmeliği [Temporary Protection Regulation], Oct. 22, 2014, <http://www.goc.gov.tr/files/files/20141022-15-1.pdf>, archived at <https://perma.cc/H8PQ-QUQL>, English translation available at <http://www.goc.gov.tr/files/files/temptemp.pdf>, archived at <https://perma.cc/9V29-HQZ5>.

<sup>19</sup> Yabancıların Çalışma İzinleri Hakkında Kanun [Law on Work Permits for Foreigners], Law No. 4817, art. 12, Feb. 27, 2003, *as last amended* May 21, 2015, RESMÎ GAZETE, No. 25040 (Mar. 6, 2003), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4817.pdf>, archived at <https://perma.cc/VE6F-G386>; Law on the Work Permits for Foreigners (LWPF), Law No. 4817, Feb. 27, 2003, *as amended through* Apr. 21, 2015, available at <http://turkishlaborlaw.com/work-permits-in-turkey/work-permit-law>, archived at <https://perma.cc/67T3-PKJL>.

<sup>20</sup> LWPF art. 17.

<sup>21</sup> DURUKAN ET AL., *supra* note 11, at 84.

for a certain period, “where the situation of the labour market and developments in the working life as well as sectoral and economic conditions necessitate,” or to certain sectors or administrative/geographic areas.<sup>22</sup> The Ministry of Labour and Social Security decides whether or not to approve work permit applications on the basis of certain “evaluation criteria,” e.g., “for a work place to be eligible for hiring a foreign national, at least five Turkish citizens must be employed at the same work place. For every additional foreign national to be hired, the work place is obliged to demonstrate another 5 Turkish employees.”<sup>23</sup>

## E. EU/Turkey 2015 Joint Action Plan

On November 29, 2015, the European Union and Turkey signed an agreement under which the EU will give Turkey €3 billion (about US\$3.25 billion) to manage the refugee crisis in the country, aimed at the 2.2 million Syrian refugees and 300,000 Iraqis, and to prevent their reaching EU countries. Under the Joint Action Plan, “Turkey will be in charge of sea patrols and enforce border restrictions to manage the flow of refugees to Europe[,] . . . combat human trafficking and passport forgeries, and return refugees to their countries of origin if they do not meet refugee requirements” thereby becoming a “‘wall of defense’ against the flood of refugees.”<sup>24</sup>

On February 10, 2016, the European Commission published a report on Turkey’s progress in implementing the agreement.<sup>25</sup> Among the conclusions and recommendations are that Turkey needs to “make significant progress in preventing irregular departures of migrants and refugees from its territory”; take urgent action to align their visa policy with that of the EU, “prioritising those countries that are a source of irregular migration to the EU”; align its draft law on personal data protection with European standards and swiftly adopt it to allow closer operational cooperation between Turkey and Europol, Eurojust, and law enforcement agencies of EU Member States; step up bilateral cooperation with Greece in border surveillance, anti-migrant-smuggling efforts, and implementation of bilateral readmission obligations; and strengthen

<sup>22</sup> *Id.*; LWPf art. 11.

<sup>23</sup> DURUKAN ET AL., *supra* note 11, at 84; Yabancıların Çalışma İzinleri Hakkındaki Kanunun Uygulama Yönetmeliği [Implementation Regulation of the Law on Work Permits for Foreigners] art. 13, Aug. 29, 2003, *as amended*, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=7.5.6244&MevzuatIliski=0&sourceXmlSearch=yabanc%C4%B1lar%C4%B1n%20%C3%A7al%C4%B1%C5%9Fma>, archived at <https://perma.cc/95XS-NR7J>.

<sup>24</sup> *Repercussions of Euro-Turkey Refugee Deal*, THE REGIONAL CENTER FOR STRATEGIC STUDIES, CAIRO (Dec. 10, 2015), <http://www.rcssmideast.org/en/Article/551/Repercussions-of-Euro-Turkey-Refugee-Deal#.VqgNPChyHdk>, archived at <https://perma.cc/CMJ3-PK92>; see also Press Release, European Commission, EU-Turkey Cooperation: A €3 Billion Refugee Facility for Turkey (Nov. 24, 2015), [http://europa.eu/rapid/press-release\\_IP-15-6162\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6162_en.htm), archived at <https://perma.cc/3Y6L-UD3K>; EU-Turkey Joint Action Plan, EUROPEAN COMMISSION, [http://europa.eu/rapid/press-release\\_MEMO-15-5860\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm) (last updated Oct. 22, 2015), archived at <https://perma.cc/FS5D-AMB5>.

<sup>25</sup> *Annex to the Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions Under the European Agenda on Migration: EU-Turkey Joint Action Plan – Implementation Report* COM (2016) 85 final (Feb. 10, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_annex\\_01\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_01_en.pdf), archived at <https://perma.cc/AW37-8TCA>.



actions against human smuggling in coastal areas.<sup>26</sup> For its part, the EU, based on the agreement on the Facility for Refugees in Turkey, must begin as soon as possible to deliver assistance and address the needs of refugees under the agreement. Moreover, the Commission and Turkey should be ready to reprioritize the existing assistance programs to Turkey “to respond rapidly to newly emerging needs” in the area of migration.<sup>27</sup>

### III. Rules for Admission of Refugees and Handling Refugee Claims

Although Turkey is a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol,<sup>28</sup> its instrument of accession stipulates that the Turkish government will maintain a geographic limitation pursuant to the Convention’s article 1b, limiting the scope of the Convention’s application in Turkey “only to persons who have become refugees as a result of events occurring in Europe.”<sup>29</sup> Therefore, as one scholar has pointed out, “Turkey can only legally accept European asylum seekers as ‘refugees’ *stricto sensu*,” even though “the majority of asylum seekers in Turkey originate from non-European states, notably from Iraq, Iran, Afghanistan, Somalia and Sudan.”<sup>30</sup> In practice, the geographic limitation is only partially implemented because

... Turkey allows the ... (UNHCR) to operate and conduct refugee status determination [RSD] procedures whereby refugee status is jointly granted by the UNHCR and the Ministry of Interior with the underlying condition that accepted refugees do not locally integrate but instead resettle in a third country. Considering its geographical proximity to conflict-ridden states, Turkey’s geographical limitation disqualifies a vast number of asylum seekers and refugees seeking permanent protection from the Turkish state.<sup>31</sup>

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Id.* The sectors identified as priority sectors for financial assistance to the refugees include “humanitarian aid, education, labour market integration, health care and social inclusion, municipal infrastructure and the management of refugee flows.” See also Press Release, European Commission, Managing the Refugee Crisis: Commission Reports on Implementation of EU-Turkey Joint Action Plan (Feb. 10, 2016), [http://europa.eu/rapid/press-release\\_IP-16-268\\_en.htm](http://europa.eu/rapid/press-release_IP-16-268_en.htm), archived at <https://perma.cc/9FDP-2CHE>.

<sup>28</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, 150, <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf>, archived at <https://perma.cc/3ZQ2-8L3V>; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, 268, <https://treaties.un.org/doc/Publication/UNTS/Volume%20606/v606.pdf>, archived at <https://perma.cc/MM53-ARP9>. Turkey signed the Convention on August 24, 1951, and ratified it on March 30, 1962, *Status As At: 22-02-2016, Convention Relating to the Status of Refugees*, UN TREATY COLLECTION (UNTC), [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&lang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en), archived at <https://perma.cc/4QH6-E8G4>, and acceded to the Protocol on July 31, 1968. *Status as at 22-02-2016, Protocol Relating to the Status of Refugees*, UNTC, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en), archived at <https://perma.cc/26SR-5SLA>.

<sup>29</sup> See UNTC status pages, *supra* note 28, under “Declarations and Reservations.”

<sup>30</sup> Cavidan Soykan, *The New Draft Law on Foreigners and International Protection in Turkey*, 2:2 OXFORD MONITOR OF FORCED MIGRATION 38, 38–39 (Nov. 2012), <http://oxmofm.com/wp-content/uploads/2012/11/Cavidan-FINAL.pdf>, archived at <https://perma.cc/9LLY-96PC>. Soykan adds that “only three other states . . . opted for this geographical limitation apart from Turkey: Congo, Madagascar and Monaco.” *Id.* at 38 n.3.

<sup>31</sup> İçduygu, *supra* note 1, at 7. According to the UNHCR, “refugee status determination” (RSD) is “the legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law.” *Refugee Status Determination*,

In accordance with the LFIP, Turkey grants non-European refugees limited protection under one of several types of temporary status—“conditional refugee status, humanitarian residence permit, or temporary protection” (see also “Definition of Refugees” discussion, below)—allowing them to stay in the country until a long-term place of settlement outside Turkey is found for them.<sup>32</sup> Thus, in general, asylum-seekers apply to the Directorate General for Migration Management for protection, but “[d]epending on their circumstances and country of origin, they may be eligible to apply to the UNHCR” to attain refugee status.<sup>33</sup>

More recently, Syrians have been placed as a group under temporary protection status, while non-Syrian, non-European applicants may apply to the UNHCR for RSD procedures to be carried out. If an applicant is deemed to be a refugee according to the UNHCR’s mandate, the UNHCR will attempt to resettle the person or family in a third country; the process may take years, however, because the UNHCR is not equipped to handle the current numbers of asylum-seekers in Turkey.<sup>34</sup>

## A. Definition of Refugees

A refugee is defined under the LFIP as follows:

A person who as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process.<sup>35</sup>

The LFIP also provides international protection to “conditional refugees”—persons who are unable or unwilling to return to the country of their former residence based on the same grounds as refugees but as a result of events occurring outside European countries. Conditional refugee status is granted upon completion of the refugee status determination process, and those granted such status are permitted to reside in Turkey temporarily until they are resettled in a third country.<sup>36</sup>

Finally, subsidiary protection is granted, upon completion of status determination procedures, to a foreigner or stateless person who cannot qualify as either a refugee or a conditional refugee, if

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UNHCR, <http://www.unhcr.org/pages/4a16b1d06.html> (last visited Jan. 27, 2016), archived at <https://perma.cc/BH7E-A3ML>.

<sup>32</sup> *Refugees & Asylum in Turkey*, REFUGEE SOLIDARITY NETWORK, <http://www.refugeesolidaritynetwork.org/learn-more/turkey-asylum-basics> (last visited Jan. 27, 2016), archived at <https://perma.cc/PL5L-FHCE>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* art. 61(1).

<sup>36</sup> *Id.* art. 62(1).



return to the country of origin or country of former habitual residence would have certain dire consequences, such as imposition of the death penalty, torture, or a serious threat of indiscriminate violence due to armed conflict.<sup>37</sup>

Designating an individual as being under subsidiary protection “represents a shift away from prior policy, which classified those who did not qualify for refugee status simply as guests—the designation [that] early flows of Syrians received.”<sup>38</sup> Now, most Syrians classified as refugees by the UNHCR fall under the subsidiary protection status created in the LFIP.<sup>39</sup> The relevant provision, article 91, states as follows:

- (1) Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection.
- (2) The actions to be carried out for the reception of such foreigners into Turkey; their stay in Turkey and rights and obligations; their exit from Turkey; measures to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; determination of the duties and mandate of the central and provincial institutions and organisations shall be stipulated in a Directive to be issued by the Council of Ministers.<sup>40</sup>

## B. Administration of the Law Related to Foreigners and Refugees

With the entry into force of the LFIP in April 2014, the Directorate General of Migration Management (DGMM) under the Ministry of Interior “has become the sole institution responsible for asylum matters. While Turkey still maintains the geographical limitation to the 1951 Convention, the law provides protection and assistance for asylum-seekers and refugees, regardless of their country of origin.”<sup>41</sup> It was not until May 18, 2015, that the DGMM took over provincial migration management duties in all eighty-one provinces from the Turkish National Police.<sup>42</sup> Before the adoption of the LFIP, all matters related to foreigners, including the processes for determining the status of asylum applications, were handled by these police, who are under the Department of Foreigners, Borders and Asylum under the Directorate of General

<sup>37</sup> *Id.* art. 63(1).

<sup>38</sup> Rebecca Kilberg, *Turkey’s Evolving Migration Identity*, MIGRATION POLICY INSTITUTE (July 24, 2014), <http://www.migrationpolicy.org/article/turkeys-evolving-migration-identity>, archived at <https://perma.cc/8G7G-9LL8>.

<sup>39</sup> *Id.*

<sup>40</sup> LFIP art. 91.

<sup>41</sup> UNHCR, *supra* note 4.

<sup>42</sup> *Provincial Directorates of Migration Management Has [sic] Become Operational*, ADANA BTU, <http://iso.adana.btu.edu.tr/eng/HaberDetay.Asp?id=30041> (last visited Feb. 22, 2016), archived at <https://perma.cc/XU8T-DYZG>; Elif Nur Çakır & Nuri Bodur, *New Resident Permit Application Process in Turkey*, 28(3) GLOBAL EMPLOYER: GLOBAL IMMIGR. & MOBILITY Q. UPDATE (Baker & McKenzie, Sept. 2015), <http://bakerxchange.com/rv/ff0023b9fd7f1759f4025bb7eb428b3828da0e9b>, archived at <https://perma.cc/E3KB-RT5X>.

Security of the Ministry of Interior.<sup>43</sup> Particulars of the DGMM are covered under Part Five of the LFIP.

### C. Adjustments to Refugee Handling Procedure Due to Refugee Crisis

As a result of the limitation clause in Turkey's instrument of accession to the UN Convention on Refugees, Syrian migrants in Turkey cannot register with the Turkish government as refugees, nor are they being registered and given the option to go through a UNHCR RSD process "due to the enormity of the caseload."<sup>44</sup> Before the implementation of the LFIP, protection afforded to Syrians fleeing to Turkey "was in the form of an ad hoc solution."<sup>45</sup> With the Law's entry into force, Syrian nationals apply to the Turkish government for temporary protection and, "[b]ased on vulnerabilities and other criteria, Syrians may be referred by the government for resettlement to a third country."<sup>46</sup> The Temporary Protection Regulation was issued on October 22, 2014, in conformity with article 91 of the LFIP. It does not specifically mention refugees from Syria or Iraq; rather it pertains to, among other matters,

temporary protection proceedings that may be provided to foreigners, who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment . . . .<sup>47</sup>

## IV. Border Processing of Refugees

The provisions of the LFIP apply to foreigners' activities and actions and to (1) the international protection to be afforded them in cases of individual protection claims made at borders, designated border crossing points ("border gates"), or within Turkey; (2) "the immediate temporary protection to be provided to foreigners in cases when there is a large influx into Turkey and where they cannot return back to the country they were forced to leave"; and (3) "the structure, duties, mandate and responsibilities of the Directorate General of Migration Management."<sup>48</sup> At the same time, the Law states that it will "be implemented without prejudice to provisions of international agreements to which Turkey is party to and specific laws."<sup>49</sup>

In general, entry into and exit from Turkey is through the border gates, and foreigners must submit a valid passport or travel document to the border officials at the time of entry or exit.<sup>50</sup> Border-crossing document checks can also be carried out on vehicles en route to Turkey or in

<sup>43</sup> Öner & Genç, *supra* note 12, at 28.

<sup>44</sup> İçduygu, *supra* note 1, at 7.

<sup>45</sup> Öner & Genç, *supra* note 12, at 35.

<sup>46</sup> REFUGEE SOLIDARITY NETWORK, *supra* note 32.

<sup>47</sup> Temporary Protection Regulation art. 1(1).

<sup>48</sup> LFIP art. 2(1).

<sup>49</sup> *Id.* art. 2(2).

<sup>50</sup> *Id.* arts. 5(1) & 6(1).

transit areas at airports.<sup>51</sup> Checks will be conducted at the time of entry to determine whether or not the foreigner falls within the scope of persons who are to be refused entry.<sup>52</sup> Such persons include those who do not hold a passport, travel document, visa, or residence or work permit or whose documents or permits have been obtained deceptively or are false.<sup>53</sup>

If a comprehensive check of a foreigner is required, the person may only be held for a maximum of four hours, during which time he or she may either return to his/her country at any time or wait for the completion of the admission process (which is not limited to the four-hour period). The principles and procedures governing comprehensive checks are to be set forth in a Directive.<sup>54</sup> The LFIP states, however, that the abovementioned conditions “shall not be construed and implemented to prevent the international protection claim.”<sup>55</sup>

## V. Steps Taken to Determine Entitlement to Refugee Status/Protection

### A. Filing

Applicants for international protection must file an application in person with the relevant governorate (provincial administration), which carries out the actions related to the application; if an application is lodged with law enforcement units at the border gates or within the country, it will immediately be reported to the governorate.<sup>56</sup> While every foreigner or stateless person has the right to apply on his/her own behalf, an applicant may also apply on behalf of accompanying family members seeking protection on the same grounds.<sup>57</sup>

In the case of international protection claims lodged by unaccompanied children, the best interest of the child will be the primary consideration in all actions related to such children, and as of the date the application is received, the provisions of Turkey’s Child Protection Law will apply.<sup>58</sup>

Person with special needs are to be given priority with respect to the rights and actions set forth in the LFIP regarding international protection.<sup>59</sup>

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<sup>51</sup> *Id.* art. 6(2) & (3).

<sup>52</sup> *Id.* art. 6(4).

<sup>53</sup> *Id.* art. 7(1)(a).

<sup>54</sup> *Id.* art. 6(5).

<sup>55</sup> *Id.* art. 8(1).

<sup>56</sup> *Id.* art. 65(1) & 2.

<sup>57</sup> *Id.* art. 65(3). The consent of adult family members is required in cases where an application is made on their behalf.

<sup>58</sup> *Id.* art. 66(1)(a). Juvenile Protection Law, Law No. 5395, July 3, 2005, available at <http://www.lawsturkey.com/law/juvenile-protection-law-5395> (unofficial English translation), archived at <https://perma.cc/76CF-98M9>; Çocuk Koruma Kanunu [Child Protection Law], July 3, 2005 (most provisions in force on July 15, 2005), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5395.pdf>, archived at <https://perma.cc/P3BD-NDZK>.

<sup>59</sup> LFIP art. 67(1).

The LFIP also states that applicants for international protection “shall not be subject to administrative detention solely for lodging an international protection claim,”<sup>60</sup> and that imposition of administrative detention “is an exceptional action.”<sup>61</sup>

## B. Registration and Control

On May 18, 2015, the DGMM launched its registration database, GOC-NET, “a platform for streamlining all refugees and asylum-seekers into a national database system.”<sup>62</sup> As of October 1, 2015, Turkey had registered 2,072,290 Syrian refugees.<sup>63</sup>

The governorates must register all international protection applications.<sup>64</sup> The applicant has the obligation to report identity information truthfully; the applicant should also submit identification and travel documents to the competent authorities at the time of registration if such documents are available. To that end, a search may be conducted of the applicant and his/her belongings.<sup>65</sup> If at the time of registration there is no documentation on the applicant’s identity, the determination of identity will be made based on information obtained from the comparison of personal data and from investigation.<sup>66</sup>

At the time of registration, the authorities are also to take information about applicants’ reasons for leaving their country of origin/former habitual residence; their post-departure experiences and events that led to their filing the application; and “their way, means of transportation and routes of entering Turkey.”<sup>67</sup> If applicants previously applied for or are beneficiaries of international protection in another country, information and documentation regarding their application or protection status will also be taken.<sup>68</sup>

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<sup>60</sup> *Id.* art. 68(1).

<sup>61</sup> *Id.* art. 68(2). Under LFIP, administrative detention may be applied to determine the person’s identity or nationality if “there is serious doubt as to the accuracy of the information provided”; to bar entry if the terms of entry at the border gates have been breached; if the elements of the grounds for the application cannot be identified unless the person is subject to the detention; or if the person poses a serious threat to public order or security. *Id.* art. 68(2)(a)–(ç).

<sup>62</sup> Moreover, “3RP partners provided extensive financial and technical support to strengthen the registration capacity of the Government.” REGIONAL REFUGEE & RESILIENCE PLAN 2016-2017 IN RESPONSE TO THE SYRIA CRISIS: TURKEY, at 6, <http://www.3rpsyriacrisis.org/wp-content/uploads/2015/12/Turkey-2016-Regional-Refugee-Resilience-Plan.pdf>, archived at <https://perma.cc/RVY4-K449>. “The 2016–2017 3RP brings together more than 200 partners in a coordinated region-wide response to the Syria crisis.” 3RP: A Strategic Shift, REGIONAL REFUGEE & RESILIENCE PLAN 2016-17, <http://www.3rpsyriacrisis.org/the-3rp> (last visited Jan. 29, 2016), archived at <https://perma.cc/Q7SD-BD5H>.

<sup>63</sup> REGIONAL REFUGEE & RESILIENCE PLAN 2016-2017 IN RESPONSE TO THE SYRIA CRISIS: TURKEY, *supra* note 62, at 6.

<sup>64</sup> LFIP art. 69(1).

<sup>65</sup> *Id.* art. 69(2).

<sup>66</sup> *Id.* art. 69(3).

<sup>67</sup> *Id.* art. 69(4).

<sup>68</sup> *Id.*

Applicants are informed at the time of registration of the time and place of their interview for determining their status.<sup>69</sup> If an applicant has been assessed as posing a public health threat, he or she will undergo medical screening.<sup>70</sup> Applicants are also to be given information about the application procedures that will be followed; about applicant rights and obligations and how to comply with them, and the possible consequences of failure to comply or to cooperate with the authorities; and about appeal procedures and time limits.<sup>71</sup>

Upon registration, applicants are issued, without paying a fee, a registration document valid for thirty days that contains identity information and indicates that the holder has applied for international protection. If necessary, the document can be extended by additional thirty-day validity periods. The registration document enables the holder to stay in Turkey.<sup>72</sup>

### C. Grounds for Exclusion from International Protection

An applicant will be excluded from international protection if he or she is “receiving protection from organs or agencies of the United Nations” other than the UNHCR; if he or she is recognized by the former country of residence as having the rights and obligations attached to that country’s nationals; or if “there is strong evidence to believe that they are guilty of offenses” set forth in article 1F of the Convention Relating to the Status of Refugees.<sup>73</sup> Those offenses include “a crime against peace, a war crime, or a crime against humanity . . . ; a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; . . . [and] acts contrary to the purposes and principles of the United Nations.”<sup>74</sup>

### D. Inadmissible Applications and Withdrawal of Applications

The LFIP sets forth three types of grounds on which applications for international protection may be deemed inadmissible, including if the applicant repeats the same application without providing a different reason, separately makes an application without a well-founded reason, or has arrived in Turkey from a country that was the applicant’s first country of asylum or a safe third country for the applicant.<sup>75</sup> Upon any of these circumstances becoming known during any stage of assessment of the application, the assessment will be terminated, and the party concerned or his/her lawyer or legal representative will be notified of the decision on the inadmissibility of the application.<sup>76</sup>

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<sup>69</sup> *Id.* art. 69(5).

<sup>70</sup> *Id.* art. 69(6).

<sup>71</sup> *Id.* art. 70(1).

<sup>72</sup> *Id.* art. 69(7).

<sup>73</sup> *Id.* art. 65(1)(a–c).

<sup>74</sup> Convention Relating to the Status of Refugees, *supra* note 28, art. 1F.

<sup>75</sup> LFIP art. 72(1).

<sup>76</sup> *Id.* art. 72(2) & (3).

## E. Interview

Applicants are given in-person interviews “within thirty days from the date of registration, with a view to reach[ing] an effective and fair decision.”<sup>77</sup> The applicant must cooperate in providing the officials with all information and documents that support the protection application.<sup>78</sup> After each interview, an interview report is to be drafted and a copy is to be given to the interviewee.<sup>79</sup>

## F. Identity Document

Upon completion of the interview, the authorities issue the applicant and any accompanying family members an International Protection Applicant Identity Document. Valid for six months, it indicates the international protection application and bears the holder’s alien identification number. The period of validity of the identity documents for applicants whose application assessment could not be finalized will be extended for an additional six months.<sup>80</sup> The identity document serves as a substitute for a residence permit and is not subject to a fee.<sup>81</sup>

## G. Decision

The assessment of an application is to be finalized within six months of the date of its registration by the Directorate General; the applicant will be informed if a decision cannot be reached within that period.<sup>82</sup> Decisions are made on an individual basis; however, an application lodged on behalf of a family will be evaluated as a single application, with the decision applicable to the whole family, with the proviso that exclusion of the applicant from international protection will not require the exclusion of the family members as long as none of the reasons for exclusion applies to them.<sup>83</sup>

In making the decision, the authorities take into consideration “the personal circumstances of the applicant and current general conditions in the country of origin . . . or former . . . residence.”<sup>84</sup> A decision may be made that the applicant does not need international protection if he or she can be given protection “against the threat of persecution or serious harm in a certain region of the country of citizenship or former residence, and if the applicant is in a condition to safely travel to and settle in that region of the country,”<sup>85</sup> but the emergence of such circumstances will not prevent the application from being fully assessed.<sup>86</sup>

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<sup>77</sup> *Id.* art. 75(1).

<sup>78</sup> *Id.* art. 75(2).

<sup>79</sup> *Id.* art. 75(6).

<sup>80</sup> *Id.* art. 76(1).

<sup>81</sup> *Id.* art. 76(4).

<sup>82</sup> *Id.* art. 78(1).

<sup>83</sup> *Id.* arts. 78(2) & 64(6).

<sup>84</sup> *Id.* art. 78(3).

<sup>85</sup> *Id.* art. 78(4).

<sup>86</sup> *Id.* art. 78(5).

## H. Accelerated Procedure for Possible Disqualification

The LFIP lists a number of cases in which an application will be evaluated under an accelerated procedure because the applicant has taken certain actions that may negatively affect the application—namely, where the applicant

- a) has never mentioned elements that would require international protection when presenting reasons while lodging the application;
- b) misled the authorities by presenting untrue or misleading information or documents or, by withholding information or documents that might negatively impact the decision;
- c) has destroyed or disposed of identity or travel documents in bad faith in order to make determination of identity or citizenship difficult;
- ç) has been placed under administrative detention pending removal;
- d) has applied solely to postpone or prevent the implementation of a decision that would lead to his/her removal from Turkey;
- e) pose[sic] a public order or public security threat or, has previously been removed from Turkey on such grounds; [or]
- f) repeats the application after the [initial] application is considered to have been withdrawn.<sup>87</sup>

An applicant undergoing the evaluation of his/her application under an accelerated procedure is to be interviewed “no later than three days as of the date of application,” and the application assessment is to be completed “no later than five days after the interview.”<sup>88</sup> If a longer period is required to assess the application, it may be taken out of the accelerated procedure.<sup>89</sup> The accelerated procedure is not used to evaluate applications lodged by unaccompanied children.<sup>90</sup>

## I. Review and Appeal

The LFIP provides for administrative review and judicial appeal of asylum decisions.<sup>91</sup> Applicants and beneficiaries of international protection may be represented by a lawyer for activities and actions related to international protection, if they pay for such representation; if the applicant/beneficiary cannot afford the attorney fees for judicial appeals, legal assistance will be provided pursuant to Turkey’s law on lawyers.<sup>92</sup>

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<sup>87</sup> *Id.* art. 79(1).

<sup>88</sup> *Id.* art. 79(2).

<sup>89</sup> *Id.* art. 79(3).

<sup>90</sup> *Id.* art. 79(4).

<sup>91</sup> *Id.* art. 80(1).

<sup>92</sup> *Id.* art. 81(1) & (2).



## VI. Accommodations and Assistance for Refugees

### A. Basic Needs

Social assistance services and benefits are to be provided to applicants and international protection beneficiaries in need.<sup>93</sup> As of March 2015, the Turkish Disaster and Emergency Management Authority of Turkey's Prime Ministry, along with the Turkish Red Crescent, had established twenty-five Syrian refugee camps. These camps reportedly have markets, reliable heating, religious services, communications infrastructure, firefighting services, interpreters, psychosocial support, banking services, and cleaning services.<sup>94</sup> Camp residents are given three meals a day and also electronic cards that provide some money for personal needs.<sup>95</sup> An applicant for asylum who is found to be in need may also be provided an allowance.<sup>96</sup>

The relevant Turkish laws on social security and medical insurance<sup>97</sup> apply to those applicants and international protection beneficiaries who are not covered by medical insurance and who do not have the means to afford medical services. To pay the premiums for medical insurance, funds are allocated to the DGMM budget, but those who receive coverage are asked to contribute in full or in part, in proportion to their financial means.<sup>98</sup>

The Ministry for Family and Social Policies places unaccompanied minors "in suitable accommodation facilities, in the care of their adult relatives or, a foster family, taking the opinion of the unaccompanied child into account."<sup>99</sup> If suitable conditions are available, minors over sixteen years of age may be placed in reception and accommodation centers.<sup>100</sup> To the extent possible, siblings are to be placed together.<sup>101</sup> "Victims of torture, sexual assault or, other serious psychological, physical or sexual violence" are to be given "adequate treatment. . . in order to eliminate the damage caused by such actions."<sup>102</sup>

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<sup>93</sup> *Id.* art. 89(2).

<sup>94</sup> Tülin Canbay, *Public Services for Asylum Seekers in Turkey Within the Perspective of New Migratory Movements*, in *TURKISH MIGRATION CONFERENCE 2015 SELECTED PROCEEDINGS*, *supra* note 12, at 2–3.

<sup>95</sup> *Id.* at 3.

<sup>96</sup> LFIP art. 89(5). Allowances are given with Ministry of Finance approval. Exceptions are applicants whose applications are deemed inadmissible or fall under the accelerated procedure (under articles 72 and 79).

<sup>97</sup> Social Insurance and Universal Health Insurance Law, Law No. 5510, May 31, 2006, *as amended* Apr. 17, 2008, available at <http://turkishlaborlaw.com/images/turkish-social-security-law/social-security-law-5510.pdf>, archived at <https://perma.cc/GAJ5-KQJ3>, Turkish text *as last amended effective* Apr. 1, 2015 available at <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5510.pdf>, archived at <https://perma.cc/5BA4-EG9B>.

<sup>98</sup> LFIP art. 89(3)(a). The insurance is terminated for and reimbursement expected from persons found at a later date to have already had medical insurance coverage or the financial means for it or to have applied for asylum solely on the basis of obtaining it. *Id.* art. 89(3)(b).

<sup>99</sup> *Id.* art. 66(1)(b).

<sup>100</sup> *Id.* art. 66(1)(c).

<sup>101</sup> *Id.* art. 66(1)(ç).

<sup>102</sup> *Id.* art. 67(2).

## B. Translation Services

Upon request, applicants are provided with translation and/or interpretation services at each stage of the application process.<sup>103</sup>

## C. ID Cards

Persons granted refugee status are issued an identity document, valid for three years at a time, that bears their alien identification number.<sup>104</sup> For persons granted conditional refugee or subsidiary protection status, the identity document issued has a one-year validity period.<sup>105</sup> The identity documents of refugees and conditional refugees/subsidiary protection beneficiaries, which are issued without charge, substitute for a residence permit. The DGMM determines the format and content of these documents.<sup>106</sup>

## D. Travel Documents

In conformity with the Convention on Refugees, the Turkish governorates issue refugees a travel document.<sup>107</sup> Requests for travel documents made by conditional refugees and subsidiary protection beneficiaries are evaluated within the scope of article 18 of the Passport Law, which addresses passports bearing the stamp “Exclusively for foreigners” (*yabancılar mahsus*).<sup>108</sup>

## E. Education

The LFIP provides that applicants and international protection beneficiaries and their family members are to have access to primary and secondary education.<sup>109</sup> In September 2014 the Circular on Foreigners’ Access to Education (No. 2014/21) was adopted.<sup>110</sup> The Circular and the

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<sup>103</sup> *Id.* art. 70(2).

<sup>104</sup> *Id.* art. 83(1).

<sup>105</sup> *Id.* art. 83(2).

<sup>106</sup> *Id.* art. 83(3).

<sup>107</sup> *Id.* art. 84(1); Convention Relating to the Status of Refugees art. 28. Article 28(1) of the Convention states as follows:

The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

<sup>108</sup> LFIP art. 84(2); Passport Law, Law No. 5682, July 15, 1950, <http://www.legislationline.org/documents/id/8984>, archived at <https://perma.cc/M5U4-NWJ6>, Turkish text as last amended Sept. 11, 2014 available at <http://www.mevzuat.gov.tr/MevzuatMetin/1.3.5682.pdf>, archived at <https://perma.cc/EED9-XY8H>. A number of provisions were repealed in 2013. A clause of article 18 was amended on August 1, 2010.

<sup>109</sup> LFIP art. 89(1).

<sup>110</sup> Öner & Genç, *supra* note 12, at 34; General Directorate of Basic Education, Ministry of National Education, Genelge 2014/21 [Circular 2014/21], Sept. 23, 2014, available on the Antalya Provincial Directorate of National

Temporary Protection Regulation make registration with the Turkish authorities a prerequisite for access to education. Syrian refugee children must also provide “a residence permit, temporary protection identification or the Foreigners’ Identification Card” to enroll in a school; without such a document, the children may enroll as “guests.”<sup>111</sup>

## F. Work

The LFIP provides that an applicant for asylum or a conditional refugee may apply for a work permit six months from the date of lodging a claim for international protection.<sup>112</sup> Upon being granted the status of refugee or beneficiary of subsidiary protection, the individual “may work independently or be employed, without prejudice to the provisions stipulated in other legislation restricting foreigners to engage in certain jobs and professions”; the ID issued to the individual serves as his/her work permit and contains a written statement to that effect.<sup>113</sup>

The applicant or subsidiary protection beneficiary may have his access to the labor market restricted for a given period, if circumstances in the labor market or sectoral and economic conditions necessitate it. Such restrictions do not apply, however, to refugees and subsidiary protection beneficiaries “who have been residing in Turkey for three years; are married to Turkish citizens; or, have children with Turkish citizenship.”<sup>114</sup>

On January 16, 2015, the Regulation on Work Permits of Refugees Under Temporary Protection was published in Turkey’s *Official Gazette*, providing for such refugees, referred to in article 91 of the LFIP and article 7 of the Regulation on Temporary Protection, to be granted work permits under certain conditions and with certain restrictions.<sup>115</sup> The Regulation disallows foreigners under temporary protection from working independently or being employed without a legally issued work permit and establishes penalties in the form of administrative fines prescribed under the Law on Work Permits for Foreigners, the law on the basis of which the Regulation was issued, for violation of this rule.<sup>116</sup> Foreigners under temporary protection can apply to the Ministry of Labour and Social Security for a work permit six months from the date on which they registered as being under temporary protection status. At the workplace for which the work permit is requested, the number of temporary protection workers cannot exceed 10% of the

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Education website, at [http://antalya.meb.gov.tr/meb\\_iys\\_dosyalar/2014\\_10/02015212\\_yabanc.pdf](http://antalya.meb.gov.tr/meb_iys_dosyalar/2014_10/02015212_yabanc.pdf) (in Turkish), archived at <https://perma.cc/7RD4-67KL>.

<sup>111</sup> Öner & Genç, *supra* note 12, at 34. The authors point out, however, that “there are several problems in schooling of the Syrian children in Turkey. The main one is the language barrier.” *Id.* at 34.

<sup>112</sup> LFIP art. 89(4)(a).

<sup>113</sup> *Id.* art. 89(4)(b).

<sup>114</sup> *Id.* art. 89(4)(c).

<sup>115</sup> *Turkey Grants Work Permit for Syrian Refugees*, TURKISH LABOR LAW (Jan. 19, 2016), <http://turkishlaborlaw.com/news/legal-news/362-turkey-grants-work-permit-for-syrian-refugees>, archived at <https://perma.cc/Y5U3-6CRV>; Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine dair Yönetmelik [Regulation on Work Permits of Refugees Under Temporary Protection] (Foreign Work Permit Regulation), RESMÎ GAZETE, No. 29594 (Jan. 15, 2016) (Council of Ministers Decision No. 2016/8375 of Jan. 11, 2016), <http://www.mevzuat.gov.tr/MevzuatMetin/3.5.20168375.pdf>, archived at <https://perma.cc/G5B2-ECJ2>.

<sup>116</sup> TURKISH LABOR LAW, *supra* note 115; Law on Work Permits for Foreigners art. 21.

Turkish citizens employed, but if the employer proves that there is no qualified Turkish citizen in the province who can perform the job being done by the foreign worker, the employment quota may not be applied.<sup>117</sup> Foreigners under temporary protection cannot be paid less than the minimum wage.<sup>118</sup>

The Ministry's General Director of Labor, Nurcan Önder, in discussing new regulations for work permits in the country, noted that most of the refugees "do not have an identity card. When we have a look at their professions, we see that 80 percent of these people's professions are unknown. We have therefore accepted them [as] 'unqualified.' Only 3 percent of Syrian refugees in Turkey are part of the 'qualified' labor force . . . ."<sup>119</sup>

## VII. Path to Naturalization for Entitled Refugees

The Turkish Citizenship Law provides that an alien "can acquire Turkish citizenship by a decision of the competent authority provided that he/she fulfils the conditions laid down in this Law. However, fulfilment of the stipulated conditions does not grant that person an absolute right in the acquisition of citizenship."<sup>120</sup> Acquisition of Turkish citizenship by a decision of the competent authority can be carried out by several means, including naturalization or possession of exceptional status.<sup>121</sup> The Law includes, in the category of acquisition based on exceptional status, persons recognized as immigrants.<sup>122</sup> All individuals who are eligible for exceptional acquisition of citizenship can be naturalized without being subject to the five-year residency requirement; their applications will be accepted upon the proposal of the Ministry of Interior and the decision of the Council of Ministers.<sup>123</sup>

## VIII. Monitoring of Refugees

The Turkish authorities may impose administrative obligations upon applicants for protection—for example, insist that they "reside in the designated reception and accommodation centres, a specific location or a province" and that they "report to the authorities in the form and intervals

<sup>117</sup> TURKISH LABOR LAW, *supra* note 115; Foreign Work Permit Regulation art. 8.

<sup>118</sup> TURKISH LABOR LAW, *supra* note 115; Foreign Work Permit Regulation art. 10.

<sup>119</sup> Bülent Sarioğlu, *Only 3 Pct of Syrian Refugees in Turkey "Qualified" Labor: Ministry*, HÜRRİYET DAILY NEWS (Feb. 3, 2016), <http://www.hurriyetdailynews.com/only-3-pct-of-syrian-refugees-in-turkey-qualified-labor-ministry.aspx?pageID=238&nID=94718&NewsCatID=347>, archived at <https://perma.cc/X8EZ-PFHJ>.

<sup>120</sup> Türk Vatandaşlığı Kanunu [Turkish Citizenship Law], No. 5901, May 29, 2009, as last amended May 18, 2012, art. 10, RESMÎ GAZETE, No. 27256 (June 12, 2009), [http://www.nvi.gov.tr/Files/File/Mevzuat/Nufus\\_Mevzuati/Kanun/pdf/turk\\_vatandasligi\\_kanunu.pdf](http://www.nvi.gov.tr/Files/File/Mevzuat/Nufus_Mevzuati/Kanun/pdf/turk_vatandasligi_kanunu.pdf), archived at <http://perma.cc/HLB7-TA9V>, English translation available at <http://eudo-citizenship.eu/NationalDB/docs/TUR%20Turkish%20citizenship%20law%202009%20%28English%29.pdf>, archived at <https://perma.cc/PPS4-BM3B>. It seems that only article 28, on rights accorded to persons who lost Turkish citizenship through renunciation of it, was affected by the 2012 amendment, although article 28 was greatly expanded, from one clause to ten.

<sup>121</sup> *Id.* art. 12(1)(a).

<sup>122</sup> *Id.* art. 12(1)(b)–(c).

<sup>123</sup> *Id.* art. 12; ZEYNEP KADIRBEYOĞLU, EUDO CITIZENSHIP OBSERVATORY: COUNTRY REPORT: TURKEY 13 (Nov. 2012), <http://eudo-citizenship.eu/docs/CountryReports/Turkey.pdf>, archived at <https://perma.cc/2GZH-623Y>.

as requested.”<sup>124</sup> Applicants must register with the address-based registration system, as was noted above, and report the address of their domicile to the governorate.<sup>125</sup>

The DGMM, for reasons of public security and public order, may also require conditional refugees and beneficiaries of subsidiary protection “to reside at a given province and report to authorities in accordance with determined procedures and periods,”<sup>126</sup> and these persons, too, must register their address in the system and report the address to the governorate.<sup>127</sup>

## IX. Termination or Cancellation of International Protection Status

International protection status will be terminated if the beneficiaries

- a) voluntarily re-avail themselves of the protection in their country of citizenship;
- b) voluntarily regain the citizenship that they have been deprived of;
- c) acquired a new nationality, and enjoy the protection of the country of their new nationality;
- ç) voluntarily returned to the country from which they have fled or stayed outside of due to fear of persecution.<sup>128</sup>

In cases of voluntary return, the Turkish authorities provide material and financial support to the applicants and international protection beneficiaries, and the repatriation is carried out by the DGMM “in cooperation with international organisations, public institutions and agencies, and civil society organisations.”<sup>129</sup> Subsidiary protection status is also terminated if the circumstances upon which it had been granted are no longer applicable “or have changed to an extent that the protection is no longer needed.”<sup>130</sup> Termination of international protection status or subsidiary protection status may be reassessed, and the person concerned may be given the opportunity to present the reasons supporting its continuation.<sup>131</sup>

International protection status may also be cancelled in cases where the beneficiaries presented false documents or used fraud, deceit, or withholding of facts to obtain the status, or where it is later determined that the beneficiaries should have been excluded on those grounds for exclusion cited above.<sup>132</sup>

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<sup>124</sup> LFIP art. 71(1).

<sup>125</sup> *Id.* art. 71(2).

<sup>126</sup> *Id.* art. 82(1).

<sup>127</sup> *Id.* art. 82(2).

<sup>128</sup> *Id.* art. 85(1).

<sup>129</sup> *Id.* art. 87.

<sup>130</sup> *Id.* art. 85(3); *see also* art. 85(2).

<sup>131</sup> *Id.* art. 85(4).

<sup>132</sup> *Id.* art. 86(1).

# United Kingdom

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**SUMMARY** The UK has extensive provisions in place to provide protection to persons seeking asylum while protecting the public from individuals who may exploit the asylum system. The application process for asylum seekers starts at the border. A fast-track process has been developed to help reduce the extensive caseload of asylum cases, which allows certain applications to be rejected upon receipt if the individual is from a country deemed safe by the UK. For all other applicants, a decision is made on the well-established criteria of whether the individual has a well-founded fear of persecution or other harm. A new program has been introduced in response to the Syrian crisis, which accepts selected refugees from the Syrian region.

## I. Introduction

The United Kingdom of Great Britain and Northern Ireland, consisting of England, Wales, Scotland, and Northern Ireland, has recently undergone a period of devolution with the creation of a Scottish Parliament, a Welsh Assembly, and a Northern Ireland Assembly (currently suspended) that can legislate in certain areas. Citizenship and nationality are not devolved areas, however, and thus remain the responsibility of the Parliament.<sup>1</sup> The Secretary of State for the Home Department (a member of the British executive branch) and his department, commonly referred to as the Home Office, has responsibility for almost all matters relating to immigration, including asylum, nationality, and border control laws.

Since 1891, the common law of the UK has provided that “no alien has any right to enter this country except by leave of the Crown.”<sup>2</sup> The Aliens Restriction Act 1914,<sup>3</sup> the Aliens Restriction (Amending) Act 1919,<sup>4</sup> and the Rules and Orders made under these Acts<sup>5</sup> gave the common law rule a statutory basis and formed the restrictions on immigration.

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<sup>1</sup> “Nationality” refers to the status of those individuals who are British citizens, British subjects with the right of abode in the United Kingdom and thus outside the scope of the United Kingdom’s immigration control, and citizens of British Overseas Territories. In this report, the term “citizenship” is used to include nationality. These terms are commonly interchanged. Nationality has been defined as a person’s international identity that demonstrates they belong to a state, as evidenced by a passport. Citizenship has been considered to be more “a matter of law determined by the facts of a person’s date and place of birth, those of their parents and the application of the provisions of the relevant legislation,” and is concerned with the rights, duties, and opportunities that a person has within a state, such as voting rights, military service, and access to healthcare. LAURIE FRANSMAN, *FRANSMAN’S BRITISH NATIONALITY LAW* 12 (2d ed. 1998).

<sup>2</sup> *Musgrove v. Chun Teeong Toy*, [1891] A.C. 272, *followed in* *Schmidt v. Home Office*, [1969] 2 Ch. 149.

<sup>3</sup> Aliens Restriction Act 1914, 4 & 5 Geo. 5, c. 12.

<sup>4</sup> Aliens Restriction (Amendment) Act 1919, c. 92, [http://www.legislation.gov.uk/ukpga/1919/92/pdfs/ukpga\\_19190092\\_en.pdf](http://www.legislation.gov.uk/ukpga/1919/92/pdfs/ukpga_19190092_en.pdf), archived at <https://perma.cc/4G8L-2SXH>.

<sup>5</sup> Aliens Order (1920) Stat R. & O. 448, *as amended*.



The statutory regime governing immigration in the UK is currently contained in the Immigration Act 1971<sup>6</sup> and the Immigration Rules<sup>7</sup> made under it. The Immigration Rules are a fluid set of rules that change frequently. To change them, a Statement of Changes to the Immigration Rules is laid before Parliament; these changes enter into law within forty days unless Parliament objects to them.<sup>8</sup> The law requires individuals who are not British or Commonwealth citizens with the right of abode in the UK or members of the European Economic Area<sup>9</sup> to obtain leave to enter the UK from an immigration officer upon their arrival.<sup>10</sup>

The early 2000s saw record numbers of individuals seeking asylum in the UK, peaking at 84,132 in 2002.<sup>11</sup> These numbers led to significant public discontent, so the government introduced a number of measures that sought to limit the number of applicants entering the country, which included making it more difficult to obtain asylum and decreasing the benefits that asylum applicants could receive.<sup>12</sup> As a result the number of asylum seekers dropped to a low of 17,916 in 2010.<sup>13</sup> In 2014, the numbers rose again to 25,033, with asylum seekers forming 4.1% of immigrants entering the UK during that year.<sup>14</sup> In 2014, most asylum seekers were nationals of African countries (35%), Asian countries (32%), and Middle Eastern nations (20%). Ten percent of applicants were from Europe.<sup>15</sup> As of August 2015, 9,756 applications for asylum from 2014 had been granted, amounting to approximately 50% of those with known outcomes. 8,634 applications had been refused or withdrawn, or 44.3%.<sup>16</sup> Appeals were lodged in 74.3% of the 2014 cases in which asylum was initially refused, and of those for which the outcome was known, 30.1% of the appeals were approved.<sup>17</sup>

Due to the number of asylum seekers entering the UK over the past few years and the nature of the system for considering applications and appeals, a considerable backlog of cases has built up,

<sup>6</sup> Immigration Act 1971, c. 77, as amended, [http://www.legislation.gov.uk/ukpga/1971/77/pdfs/ukpga\\_19710077\\_en.pdf](http://www.legislation.gov.uk/ukpga/1971/77/pdfs/ukpga_19710077_en.pdf), archived at <https://perma.cc/4KSN-42ZB>.

<sup>7</sup> Immigration Rules, H.C. 395 (1994), ¶ 7, <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-1-leave-to-enter-or-stay-in-the-uk#pt1stay>, archived at <https://perma.cc/V7Q9-8CR9>.

<sup>8</sup> Immigration Act, 1971, c. 77, § 3(2).

<sup>9</sup> The European Economic Area consists of the Members of the European Union plus Norway, Iceland, and Liechtenstein.

<sup>10</sup> Immigration Act, 1971, c. 77, § 3; Immigration Rules, *supra* note 7, ¶ 7.

<sup>11</sup> House of Commons Library Briefing Paper, *Asylum Statistics*, SN014003, Dec. 15, 2015, at 6, <http://researchbriefings.files.parliament.uk/documents/SN01403/SN01403.pdf>, archived at <https://perma.cc/7SRJ-2C8L>.

<sup>12</sup> See, e.g., Borders, Citizenship and Immigration Act 2009, c. 11, <http://www.legislation.gov.uk/ukpga/2009/11>, archived at <https://perma.cc/5879-RQ7R>; Nationality, Immigration and Asylum Act, 2002, c. 41, <http://www.legislation.gov.uk/ukpga/2002/41>, archived at <https://perma.cc/PQ3W-8JJ3>; Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19.

<sup>13</sup> House of Commons Library Briefing Paper, *Asylum Statistics*, *supra* note 11, at 6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* ¶ 2.4.

<sup>16</sup> *Id.* ¶ 2.2.

<sup>17</sup> *Id.* table 3.



causing substantial delays.<sup>18</sup> The number of pending asylum cases at the end of 2015 was 24,236.<sup>19</sup>

## II. Government Departments Responsible for Asylum

The Home Office is the government department with primary responsibility for almost all aspects relating to immigration, including asylum, nationality and border control laws. There are various directorates within the Home Office that handle specific items relating to these areas of responsibility.<sup>20</sup>

UK Visas and Immigration, acting on behalf of the Home Secretary and Minister for Immigration, is responsible for processing asylum applications.<sup>21</sup> Immigration Enforcement ensures that immigration laws are complied with, such as the prohibition on working without proper authorization. Immigration Enforcement also works to remove individuals that do not have permission to remain in the UK. The Border Force is responsible for immigration and customs controls at UK ports and airports and has recently been given the duty of conducting exit checks. HM Passport Office is responsible for processing applications for British passports, both overseas and in country.<sup>22</sup>

## III. Asylum Laws and Policy

Asylum is the term given to the protection offered to individuals who are fleeing persecution in their own country.<sup>23</sup> As a general rule, asylum seekers may apply for asylum only after entering the UK. Asylum applicants who meet the application criteria receive refugee status. Applicants who do not receive refugee status may still be granted leave to remain in the UK for humanitarian or other reasons if there is a real risk that they would suffer serious harm after returning to their country of origin. The nature of this harm is not specified in the UN Convention and Protocol Relating to the Status of Refugees.<sup>24</sup> Refugee status and humanitarian protection provide the individual with permission to reside in the UK for an initial period of five

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<sup>18</sup> *Id.* ¶ 2.5.

<sup>19</sup> *Id.*

<sup>20</sup> Home Office, GOV.UK, <https://www.gov.uk/government/organisations/home-office>, archived at <https://perma.cc/A99D-FU9F>.

<sup>21</sup> House of Commons Library Briefing Paper, *Asylum Statistics*, *supra* note 11, at 4.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, SN03186, May 13, 2015, at 6, <http://researchbriefings.files.parliament.uk/documents/SN03186/SN03186.pdf>, archived at <https://perma.cc/E9DJ-BN8P>.

<sup>24</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Refugees Convention) & Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Protocol), <http://www.unhcr.org/3b66c2aa10.html>, archived at <http://perma.cc/V86S-GU6S>; Home Office, *Asylum Policy Instructions*, Version 9.0, Jan. 6, 2015, ¶ 6.2, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397778/ASSESSING\\_CREDIBILITY\\_AND\\_REFUGEE\\_STATUS\\_V9\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf), archived at <https://perma.cc/9BPM-Q8JU>.

years, with the right to work and access welfare benefits.<sup>25</sup> Lawful residence in the UK for a continuous period of five years generally qualifies an individual to apply for UK citizenship.<sup>26</sup>

If a person does not qualify for refugee status or humanitarian protection but removal would breach the UK's human rights obligations, a situation that typically arises when a person has strong private and family ties to the UK, he/she may be granted temporary permission to remain in the UK. This leave will typically be subject to conditions.<sup>27</sup>

The UK offers very limited refugee resettlement programs whereby selected refugees are able to come and settle in the UK without having to go through the asylum process described above. Currently, there is a program for vulnerable Syrian refugees (see Part XII, below).<sup>28</sup>

Biometric information must be provided upon entry to the UK, and since April 2015 the UK has also been applying a system of exit checks, whereby travel data is recorded from people leaving the UK and reconciled against other immigration databases. Applicants for asylum are fingerprinted and their information checked against databases to help prevent those with a known criminal background from entering the UK.<sup>29</sup> The data are also cross-referenced against the Immigration Asylum Fingerprint system to ensure there are no duplicate applications. In addition, the fingerprints are checked against the Eurodac database to ascertain whether the applicants have an outstanding application with another member state of the European Union.<sup>30</sup> These procedures also help identify fraudulent visa applications.<sup>31</sup>

## A. Statutory Regime

The policy surrounding, and law governing, immigration and asylum is highly complex. The government attempts to balance the needs of those seeking genuine protection and prevent the entrance of those wishing to come to the UK for undesirable purposes. The statutory regime governing immigration and asylum in the UK is primarily contained in the Immigration Act 1971<sup>32</sup> and the Immigration Rules.<sup>33</sup> The 1971 Act makes it an offense for aliens to enter the UK

<sup>25</sup> House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, *supra* note 23, at 6.

<sup>26</sup> British Nationality Act 1981, c. 61, <http://www.legislation.gov.uk/ukpga/1981/61>, archived at <https://perma.cc/AZU6-Y6SS>.

<sup>27</sup> House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, *supra* note 23, at 6.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> Asylum and Immigration Appeals Act 1993, c. 23, § 3, <http://www.legislation.gov.uk/ukpga/1993/23/section/3>, archived at <https://perma.cc/SA4S-49D2>.

<sup>30</sup> HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, THE WORK OF THE UK BORDER AGENCY: GOVERNMENT RESPONSE TO THE COMMITTEE'S SECOND REPORT OF SESSION 2009–10, 2009–10, HC 320, at 2, available at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhaff/370/370.pdf>, archived at <https://perma.cc/Y9D9-VTJ7>.

<sup>31</sup> *Id.*

<sup>32</sup> Immigration Act 1971, c. 77.

<sup>33</sup> Immigration Rules, *supra* note 7.

without obtaining leave to enter.<sup>34</sup> Officials have authority to attach conditions to such leave, and failing to observe these conditions is also a prosecutable offense.<sup>35</sup>

The UK's national laws are subject to the European Convention on Human Rights<sup>36</sup> and the UN Refugee Convention.<sup>37</sup> Unlike the Human Rights Convention, the Refugee Convention has not been directly incorporated into UK domestic law, but its provisions influence the formulation of immigration rules, and practices contrary to the Convention are not permitted.<sup>38</sup>

## **B. Process Taken to Determine Whether to Grant an Asylum Application**

Decisions for asylum and humanitarian protection claims are considered on an individual, objective, and impartial basis.<sup>39</sup> Immigration officers take no part in determining asylum applications but pass them on to UK Visas and Immigration, which makes a decision on behalf of the Secretary of State for the Home Department.<sup>40</sup> Personnel examining applications for asylum act on behalf of the Secretary of State and must have knowledge of the “relevant standards applicable in the field of asylum and refugee law.”<sup>41</sup> The Asylum Policy Instructions issued by the Secretary of State provide guidance to caseworkers making decisions as to whether to grant or deny a claim of asylum.<sup>42</sup>

The determining factor for receiving asylum is whether the individual meets the criteria contained in article 1 of the Refugee Convention and Protocol. This article defines a refugee as a person who,

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.<sup>43</sup>

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<sup>34</sup> Immigration Act 1971, c. 77, § 24.

<sup>35</sup> *Id.* § 24(1)(ii)(b).

<sup>36</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), archived at <https://perma.cc/TE86-JJDK>. The European Convention on Human Rights was incorporated into the national legislation of the United Kingdom by the Human Rights Act 1998, c. 42, <http://www.legislation.gov.uk/ukpga/1998/42>, archived at <https://perma.cc/6N4J-4EWK>.

<sup>37</sup> Refugees Convention, *supra* note 24.

<sup>38</sup> *Id.*; Asylum and Immigration Appeals Act 1993, c. 23, § 2, <http://www.legislation.gov.uk/ukpga/1993/23>, archived at <https://perma.cc/6N4J-4EWK>.

<sup>39</sup> Immigration Rules, *supra* note 7, ¶ 339J.

<sup>40</sup> FARID RAYMOND ANTHONY, QUESTIONS AND ANSWERS ON IMMIGRATION TO BRITAIN (2013), Q.264.

<sup>41</sup> Immigration Rules, *supra* note 7, ¶ 339HA.

<sup>42</sup> Home Office, *Asylum Policy Instructions*, *supra* note 24.

<sup>43</sup> Refugees Convention, *supra* note 24, art. 1. E NUMBER }.

The UK further implements a number of additional criteria when determining whether to grant refugee status. The Secretary of State grants an application for asylum if he/she is satisfied that:

- (i) [the asylum seeker] is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;
- (iv) having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and
- (v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.<sup>44</sup>

If the individual meets the criteria, the UK will grant asylum to the applicant.<sup>45</sup> If the application does not meet any of the above criteria it will be refused. The decision on his/her application is provided in writing and includes the reasons for the application's rejection and details on how to challenge the decision.<sup>46</sup> A person who has been notified that he/she has been refused asylum may be liable to removal as an illegal entrant, removal under the powers provided for in section 10 of the Immigration and Asylum Act 1999, or deportation.<sup>47</sup>

An individual's refugee status may be subsequently revoked if the Secretary of State is satisfied that the provisions of the Refugee Convention cease to apply because

- (i) [the refugee] has voluntarily re-availed himself of the protection of the country of nationality;
- (ii) having lost his nationality, he has voluntarily re-acquired it;
- (iii) he has acquired a new nationality, and enjoys the protection of the country of his new nationality;
- (iv) he has voluntarily re-established himself in the country which he left or outside which he remained owing to a fear of persecution;
- (v) he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality; or

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<sup>44</sup> Immigration Rules, *supra* note 7, ¶ 334.

<sup>45</sup> *Id.* ¶ 328.

<sup>46</sup> *Id.* ¶ 336.

<sup>47</sup> *Id.* ¶ 338.

(vi) being a stateless person with no nationality, he is able, because the circumstances in connection with which he has been recognised a refugee have ceased to exist, to return to the country of former habitual residence.<sup>48</sup>

### C. Substantiating a Claim for Asylum

When considering any asylum, humanitarian protection, or human rights claim, all material factors to substantiate the claim, including a statement of the reason for the claim and any documentation relating to identity, nationality, and other countries the individual has resided in must be submitted to the Secretary of State.<sup>49</sup> For asylum applications, no information can be disclosed, nor obtained, from the alleged persecutor, that would “jeopardise the physical integrity of the applicant and his dependents, or the liberty and security of his family members still living in the country of origin.”<sup>50</sup> Caseworkers reviewing an asylum application on behalf of the Secretary of State consider a number of factors to determine whether the applicant has been, or may be, subject to persecution or serious harm, including

- the facts relating to the country of origin, including its laws and regulations;
- statements and documents from the applicant;
- the applicant’s position, background, and personal circumstances;
- whether the applicant’s activities since leaving the country of origin were undertaken for the purposes of creating an asylum or humanitarian protection claim; and
- whether the applicant should have reasonably been able to obtain protection in another country or other state of citizenship.<sup>51</sup>

In cases where the applicant’s statements are not supported by documentary or other evidence, proof of these facts will not be necessary if the person has made a genuine effort to substantiate his/her claim and a satisfactory explanation regarding the lack of materials has been made, the claimant’s statements are coherent and plausible and do not contradict information relevant the person’s case, the claim was made at the earliest possible time, and the claimant has been able to establish his/her general credibility.<sup>52</sup>

An application for asylum is rejected if the claim has not been adequately substantiated, or if the applicant has not established him/herself as eligible for asylum or humanitarian protection. The applicant’s claim may also be rejected if he/she fails to disclose facts that are material to the case or otherwise assist the Secretary of State in establishing the facts of the case.<sup>53</sup> Failing to report to a designated place to be fingerprinted or to complete a questionnaire, or failing to comply with a condition to report to an immigration officer for examination, are all grounds for the Secretary

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<sup>48</sup> *Id.* ¶¶ 339A, 339B.

<sup>49</sup> *Id.* ¶ 339I.

<sup>50</sup> *Id.* ¶ 339IA.

<sup>51</sup> *Id.* ¶ 339J.

<sup>52</sup> *Id.* ¶ 339L.

<sup>53</sup> Home Office, *Asylum Policy Instructions*, *supra* note 24, at 39.

of State to reject an asylum application. If the applicant leaves the UK without proper authorization at any time during the application process or fails to complete any steps of the process, the application is considered as withdrawn.<sup>54</sup>

Any individual that has a pending asylum application may not be subject to action to remove the applicant or his or her dependents from the UK.<sup>55</sup> Decisions on asylum applications are provided for in writing<sup>56</sup> and must be made as soon as possible. If the decision cannot be made within six months of the date of application, the Secretary of State must inform the applicant of the delay. In cases where the applicant has requested in writing information regarding when the decision should be expected, the Secretary of State must provide this information.<sup>57</sup>

#### **D. Humanitarian Leave**

In cases where the asylum applicant is not eligible for asylum, he/she may be entitled to stay in the UK on humanitarian grounds if he/she is in the UK, or has arrived at a port of entry in the UK, and does not qualify as a refugee under regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.<sup>58</sup> The key criterion to a grant of humanitarian leave is the existence of substantial grounds for believing that if the applicant returned to the country of origin he/she would face a “real risk of suffering serious harm” and the applicant is therefore unable to return to that country.”<sup>59</sup> He/she must also not fall within a category of persons who are to be excluded from humanitarian protection.<sup>60</sup> When a claim for humanitarian protection is presented, the Secretary of State considers the individual’s statements that detail his or her reasons for making the claim; documentation of his/her identity, nationality,

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<sup>54</sup> Immigration Rules, *supra* note 7, ¶ 333C.

<sup>55</sup> *Id.* ¶ 329.

<sup>56</sup> *Id.* ¶ 333.

<sup>57</sup> *Id.* ¶¶ 333, 333A.

<sup>58</sup> *Id.* ¶ 339C.

<sup>59</sup> *Id.* ¶¶ 339C, 339I. Serious harm in this instance is defined as: “(i) the death penalty or execution;(ii) unlawful killing;(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or(iv) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.” *Id.* ¶ 339C.

<sup>60</sup> *Id.* ¶ 339D, which provides that a person will be excluded from humanitarian protection if

the Secretary of State is satisfied that: (i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;(ii) there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate instigated such acts;(iii) there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; or(iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment were it committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.

countries of previous residence, travel history, etc.; and fact sheets relating to the country of origin or return that may verify the applicant's statements.<sup>61</sup>

### E. Individuals Prohibited from Obtaining Refugee Status

As noted above, the UK must balance the needs of people in genuine need of asylum against those that wish to enter the UK for undesirable purposes. These "undesirable purposes" are rather broad and individuals may be refused entry into the UK if the Secretary of State personally directs that "the exclusion of that person from the United Kingdom is conducive to the public good",<sup>62</sup> or the Immigration Officer has information that it

seems right to refuse leave to enter on the ground that exclusion from the United Kingdom is conducive to the public good; if, for example, in the light of the character, conduct or associations of the person seeking leave to enter it is undesirable to give him leave to enter.<sup>63</sup>

The Secretary of State may exclude individuals from the protection of the Refugee Convention if they should be excluded in accordance with regulation 7 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.<sup>64</sup> The burden of proof is on the Secretary of State to show that the applicant falls within the criteria of regulation 7.

### F. Restricted Leave

There are some instances where asylum applicants are not eligible for refugee, humanitarian, discretionary, or other protected status in the UK in accordance with article 1F of the Convention, but may not be returned to their home country as it would breach the UK's obligations under the European Convention on Human Rights.<sup>65</sup> In these instances, the individual may obtain restricted leave to remain.<sup>66</sup> This leave is typically granted in cases where there are serious reasons to consider that the asylum seeker has

committed war crimes, crimes against humanity, serious non-political crimes outside the country or refuge or acts contrary to the purposes and principles of the United Nations, or [is] a danger to national security or [is] otherwise non-conducive to the public good.<sup>67</sup>

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<sup>61</sup> *Id.* ¶ 339I.

<sup>62</sup> *Id.* ¶¶ 320(6), 321A(4).

<sup>63</sup> *Id.* ¶ 320(19).

<sup>64</sup> Immigration Rules, *supra* note 7, ¶ 339AA.

<sup>65</sup> Asylum Instruction Exclusion: Article 1F of the Refugee Convention ¶ 2.1, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257429/exclusion.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257429/exclusion.pdf), archived at <https://perma.cc/S6S4-YWDX>.

<sup>66</sup> Home Office, *Asylum Policy Instruction: Restricted Leave*, Jan. 23, 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397502/API\\_Restricted\\_Leave\\_Article\\_1F.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397502/API_Restricted_Leave_Article_1F.pdf), archived at <https://perma.cc/659P-SFKL>.

<sup>67</sup> Asylum Instruction Exclusion, *supra* note 65, ¶ 2.1.



The above criteria includes those who espouse extremist views. The rationale behind restricted leave is to preserve the public interest, protect the public, and at the same time uphold the rule of law.<sup>68</sup>

Cases where restricted leave are granted are regularly reviewed with the intention of removing the individual from the UK at the earliest available opportunity. Government policy provides that only in exceptional circumstances will individuals in the UK on restricted leave become eligible for settlement or citizenship, and that it anticipates such circumstances will be rare.<sup>69</sup> Typically, restricted leave is granted for a maximum period of six months, which may be less if it appears likely that the individual will be removed prior to this date, or the risk the individual poses dictates that the period should be reviewed more frequently.<sup>70</sup> It is the individual's responsibility to apply for additional leave to remain; however, the case must also be reviewed by the authorities to assess whether the individual can be lawfully removed to his or her home country.<sup>71</sup> If it is determined that removal is permitted, the individual has a right of appeal and, once any appeals have been exhausted, the individual will be removed from the UK.<sup>72</sup> Individuals that are subject to restricted leave are not allowed recourse to public funds unless they are destitute, and the burden of proof is on the individual to prove this fact.<sup>73</sup>

There are a number of conditions that may be imposed on individuals who are in the UK on restricted leave. It is presumed that such individuals will have a condition attached to their leave that requires them to regularly report to the Secretary of State.<sup>74</sup> Individuals on restricted leave may have restrictions imposed on any employment. Specifically, there could be a requirement to notify the Secretary of State of any employment or volunteer roles, a prohibition on engaging in certain occupations or professions, or a complete ban on employment.<sup>75</sup> Guidance notes that a complete ban on employment should only be used in exceptional cases where the individual poses a high risk to the public and requires such cases to be referred to the local police to be handled under the regime for potentially dangerous people.<sup>76</sup> Restrictions on employment are noted in the immigration status document or biometric residence permit, which will include a remark that notes the individual's immigration status.<sup>77</sup> Guidance also notes that individuals on

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<sup>68</sup> Home Office, *Asylum Policy Instruction Restricted Leave*, *supra* note 66, ¶ 1.3.1.

<sup>69</sup> *Id.* ¶ 1.2.5.

<sup>70</sup> *Id.* ¶ 4.1.2.

<sup>71</sup> *Id.* ¶ 4.10.1.

<sup>72</sup> *Id.* ¶ 4.10.2.

<sup>73</sup> *Id.* ¶ 4.3.1. The following document provides the criteria that the Home Office uses to assess whether an individual is destitute: Home Office, *Assessing Destitution*, 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/326774/Assessing\\_Destitution\\_Instruction.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326774/Assessing_Destitution_Instruction.pdf), archived at <https://perma.cc/2MUZ-F2LJ>.

<sup>74</sup> *Id.* ¶ 4.6.1.

<sup>75</sup> Home Office, *Asylum Policy Instruction Restricted Leave*, *supra* note 66, ¶ 4.4.1.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

restricted leave should generally be restricted from receiving education, either online or in person.<sup>78</sup>

Residence restrictions may also be imposed on the individual, and may subject the applicant to conditions such as not spending more than three consecutive nights away from the address without prior written consent of the Secretary of State or not spending more than ten nights away from the address in any six-month period.<sup>79</sup> Any conditions should be specified and explained in the notice attached to the leave to enter.<sup>80</sup>

Each case of restricted leave is considered on its facts. Issues considered in determining where to accommodate the individual include whether there is a significant community from the applicant's country of origin, as the government does not want to cause either risk to the individual from that community or risk to the community from the individual.<sup>81</sup> If it is suspected that the person is not complying with the conditions, the Immigration, Compliance and Engagement Team may commission an investigation.<sup>82</sup>

All cases that involve exclusion and restricted leave are handled by the Special Cases Unit.<sup>83</sup>

## G. Revoking Refugee Status

The Secretary of State may revoke a person's refugee status if the individual has misrepresented or omitted facts, or used false documents, which were decisive in the grant of refugee status. If information becomes available after asylum is granted that there are reasonable grounds that the individual is a danger to the security of the UK, or the community if they have been convicted of a serious crime, refugee or humanitarian protection status can be cancelled or revoked in accordance with article 1F of the Convention.<sup>84</sup> Leave to enter or remain should typically be refused if it is undesirable to allow the person to remain in the UK due to his or her conduct, character, or associations, or because the person represents a threat to the national security of the UK.<sup>85</sup> Individuals who are refused asylum because of the above grounds are prioritized for enforcement action and removal.<sup>86</sup>

When the Secretary of State uses these provisions to revoke a person's refugee status the person in question must be notified in writing that his or her qualification for refugee status is being reconsidered along with the reasons for the reconsideration. The person has the opportunity to

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<sup>78</sup> *Id.* ¶ 4.7.

<sup>79</sup> *Id.* ¶ 4.5.5.

<sup>80</sup> *Id.* ¶ 4.5.5.

<sup>81</sup> *Id.* ¶ 4.5.6.

<sup>82</sup> *Id.* ¶ 4.5.13.

<sup>83</sup> *Id.* ¶ 4.1.1.

<sup>84</sup> Immigration Rules, *supra* note 7, ¶¶ 339A, 339G.

<sup>85</sup> *Id.* ¶ 322(5).

<sup>86</sup> Home Office, *Asylum Policy Instruction Restricted Leave*, *supra* note 66, ¶ 3.1.2.

submit either a written statement or undergo an in-person interview stating why his or her refugee status should not be revoked.<sup>87</sup>

#### IV. Accommodation and Benefits for Asylum Seekers

In an attempt to remove the perception that the United Kingdom is a “soft touch” for asylum seekers and the public perception that asylum seekers are taking away money from benefits that citizens of Britain are entitled to, the early 2000s saw the government introduce a number of controversial new laws. These laws provide that asylum seekers are not permitted to work, allow for administrative detention, limit the benefits provided, and enable benefits to be withdrawn if it is believed the applicant did not make a claim for asylum within a reasonably practicable time.<sup>88</sup> Asylum seekers from countries that are deemed “safe” and those whose claims are “clearly unfounded” are detained and can be removed from the UK while they appeal the decision to deny them asylum.<sup>89</sup>

In all cases where children are involved, section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to safeguard and promote the welfare of children in the UK when it discharges its functions.<sup>90</sup>

Section 95 of the Immigration and Asylum Act 1999 provides that the Home Office has a duty to provide support to asylum seekers.<sup>91</sup> Section 116 of this Act provides that it is the responsibility of the Home Office to provide accommodation and support to asylum seekers<sup>92</sup> who would otherwise be destitute.<sup>93</sup> Registered social landlords are not required to provide housing to the Home Office; however, local authorities may be compelled by the Home Office to provide accommodation.<sup>94</sup> Support is provided to asylum seekers through furnished accommodation including utilities, a weekly cash allowance to cover essential living needs, and free access to healthcare and schooling.<sup>95</sup>

<sup>87</sup> Immigration Rules, *supra* note 7, ¶ 339BA.

<sup>88</sup> Nationality, Immigration and Asylum Act, 2002, c. 41, <http://www.legislation.gov.uk/ukpga/2002/41>, archived at <https://perma.cc/PQ3W-8JJ3>; Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19.

<sup>89</sup> HOME OFFICE, CONTROLLING OUR BORDERS: MAKING MIGRATION WORK IN BRITAIN, FIVE YEAR STRATEGY FOR ASYLUM AND IMMIGRATION, 2005, Cm. 6472, Annex C; Nationality, Immigration and Asylum Act, 2002, c. 41.

<sup>90</sup> Borders, Citizenship and Immigration Act 2009, c. 11, <http://www.legislation.gov.uk/ukpga/2009/11>, archived at <https://perma.cc/5879-RQ7R>.

<sup>91</sup> Immigration and Asylum Act 1999, c. 33, § 95, <http://www.legislation.gov.uk/ukpga/1999/33>, archived at <https://perma.cc/ZPF5-XP2G>.

<sup>92</sup> *Id.* § 116 (amending section 21 of the National Assistance Act 1948, 11 & 12 Geo. 6, c. 29, <http://www.legislation.gov.uk/ukpga/Geo6/11-12/29>, archived at <https://perma.cc/YAC4-FQUH>).

<sup>93</sup> Home Office, *Duty to Offer Support, Family Unity, Vulnerable Persons, Withdrawing Support*, Policy Bulletin 83, ¶ 1.3, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/326157/pb83.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326157/pb83.pdf) (last updated July 2014), archived at <https://perma.cc/DRT7-KLF3>.

<sup>94</sup> Immigration and Asylum Act 1999, c. 33 §§ 100–101.

<sup>95</sup> Home Office, *Reforming Support for Failed Asylum Seekers and Other Illegal Migrants: Response to Consultation*, Nov. 2015, ¶ 1.1,

Asylum seekers do not have a choice as to where they will be accommodated while they are waiting for a decision, and they are generally accommodated outside of London and the southeast in accordance with a “dispersal policy.”<sup>96</sup> Section 97 of the Immigration and Asylum Act 1999 provides that caseworkers should provide accommodation to asylum seekers in areas where there is a ready supply.<sup>97</sup> When deciding where to accommodate asylum seekers, caseworkers are required to give regard to a number of factors, including the applicants’ ethnic group, family ties, and religion.<sup>98</sup> Having family in a certain area of the UK does not guarantee that the applicant will be accommodated in that area. Guidance provides that “[t]he person’s individual circumstances and the nature of the relationship with that relative or friend should always be carefully taken into account. But in the absence of exceptional circumstances, dispersal will generally be appropriate.”<sup>99</sup>

The government has reported that as of March 2015 approximately 20,400 asylum seekers awaiting a final determination were being provided with support under section 95 of the Asylum Act. In the calendar year 2014–15 the cost of this support was estimated at £100 million (approximately US\$165 million).<sup>100</sup> Support is also being provided to failed asylum seekers in accordance with section 94(5) of the Asylum Act, which provides that support should continue if the failed asylum seeker has dependent children with him or her. As of March 31, 2015, this provision covered 2,900 families (approximately 10,100 people), costing an estimated £45 million (approximately US\$75 million) for the year 2014–15.<sup>101</sup>

The government is able to recover payments provided to asylum seekers if it later becomes apparent that the asylum seeker receiving support has assets of any kind in the UK or overseas that are capable of being used.<sup>102</sup> These monies may also be recovered from deductions taken from any continued asylum support payments.<sup>103</sup>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/473284/Response\\_to\\_Consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473284/Response_to_Consultation.pdf), archived at <https://perma.cc/TY48-EHN2>.

<sup>96</sup> Immigration and Asylum Act 1999, c. 33 § 97; House of Commons Library Briefing Paper, ‘Asylum Support’: Accommodation and Financial Support for Asylum Seekers, No. 1909, Oct. 14, 2015, at 4, <http://research.briefings.files.parliament.uk/documents/SN01909/SN01909.pdf>, archived at <https://perma.cc/5MA5-3XVN>.

<sup>97</sup> UK Visas and Immigration, *Dispersal – Accommodation Requests Policy*, v.2.0, ¶ 1.1, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/425305/Accommodation\\_Requests\\_PUBLIC\\_v2.0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425305/Accommodation_Requests_PUBLIC_v2.0.pdf) (last updated Apr. 30, 2015), archived at <https://perma.cc/6EYH-UP78>.

<sup>98</sup> House of Commons Library Briefing Paper, ‘Asylum Support’: Accommodation and Financial Support for Asylum Seekers, *supra* note 96, ¶ 2.1.

<sup>99</sup> *Id.* ¶ 2.4.

<sup>100</sup> *Id.* ¶ 1.1.

<sup>101</sup> *Id.* ¶ 1.2.

<sup>102</sup> Asylum Support Regulations 2000, SI 2000/704, ¶ 17, <http://www.legislation.gov.uk/uksi/2000/704/regulation/17/made>, archived at <https://perma.cc/E22F-GPX6>.

<sup>103</sup> *Id.* ¶ 18.

Asylum support will not be provided if the individual did not submit an application for asylum as soon as reasonably practicable after they arrived in the UK.<sup>104</sup> Support may be suspended or stopped if an asylum seeker, or the asylum seeker's dependent, breaches certain criteria, such as committing an offense, abandoning the address of accommodation, failing to comply with requests for information regarding the asylum claim, or failing to comply with a requirement to report or with a condition of the application.<sup>105</sup> If support is discontinued, the asylum seeker has a right of appeal to the Tribunal Service.<sup>106</sup>

## V. Support for Failed Asylum Seekers

Failed asylum seekers who are taking all reasonable steps to leave the UK but are unable to do so for reasons beyond their control may also continue to receive support under section 4 of the Immigration Act 1999 if they will otherwise become destitute within a fourteen-day period.<sup>107</sup> This support is known as section 4 support<sup>108</sup> and, as of March 31, 2015, approximately 4,900 failed asylum seekers were receiving support under this section at an estimated cost of £28 million (approximately US\$45 million).<sup>109</sup>

The government has noted that the large amounts of money spent supporting failed asylum seekers “is wrong in principle and sends entirely the wrong message to those migrants who do not require our protection but who may seek to exploit the system. It also undermines public confidence in our asylum system.”<sup>110</sup> It is seeking to reform the system of support for failed asylum seekers and has introduced an immigration bill that would repeal the requirement to provide support to failed asylum seekers, with certain exceptions.<sup>111</sup>

<sup>104</sup> Nationality, Immigration and Asylum Act 2002, c. 41, § 55.

<sup>105</sup> Asylum Support Regulations 2000, *supra* note 102, ¶ 20.

<sup>106</sup> Immigration and Asylum Act 1999, c. 33, § 103(2).

<sup>107</sup> The test for destitution for section 4 applicants is the same as provided in section 95(3) of the Immigration and Asylum Act 1999, which provides: “a person is destitute if: a. he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or b. he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.” Further information on the test used to determine destitution is available at UK Visas & Immigration, *Asylum Support, Section 4 Policy and Process*, Version 6.0 (last updated Dec. 21, 2015), ¶1.7, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/487381/Asylum\\_Support\\_Section\\_4\\_Policy\\_and\\_Process\\_PUBLIC\\_v6.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487381/Asylum_Support_Section_4_Policy_and_Process_PUBLIC_v6.pdf), archived at <https://perma.cc/DC3T-2WLL>, and Asylum Support Regulations 2000, *supra* note 102, ¶¶ 5–7.

<sup>108</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, SI 2005/930, ¶ 3(2), <http://www.legislation.gov.uk/uksi/2005/930/made>, archived at <https://perma.cc/7D8C-DUE8>.

<sup>109</sup> House of Commons Library Briefing Paper, ‘*Asylum Support*’: *Accommodation and Financial Support for Asylum Seekers*, *supra* note 96, ¶ 1.2.

<sup>110</sup> Home Office, *Reforming Support for Failed Asylum Seekers and Other Illegal Migrants: Response to Consultation*, *supra* note 95, ¶ 1.3.

<sup>111</sup> *Id.* ¶ 1.3.

## VI. Appeals Against the Refusal to Grant Asylum

Appeals against the refusal to grant asylum are processed by Her Majesty's Courts and Tribunals Service. The Tribunals Service (Immigration and Asylum Chambers) hears asylum and immigration appeals, operating a two-tier system, with a first-tier and then an upper tribunal. Additional appeals from this tribunal are permitted and heard by the Court of Appeal.<sup>112</sup> The First-tier Tribunal's Asylum Support Chamber is responsible for hearing appeals against decisions that refuse, terminate, or withdraw accommodation or financial support to an asylum seeker.<sup>113</sup>

### A. Appeals Process

A significant issue faced by the UK in processing asylum cases has been not only the sheer number of cases seen each year, but the appeals process that subsequently followed many first decisions. Asylum seekers' rights of appeal have been significantly reduced since the early 2000s, most recently by a series of measures contained in the Immigration Act 2014.<sup>114</sup> Many application categories have removed the right of appeal in cases of decisions by UK Visas and Immigration that refuse their asylum application. Instead, for some categories, the refused applicant may have the refusal "reconsidered" or subject to an administrative review, which are more limited in both scope and focus than court appeals.<sup>115</sup> There are limited time frames in which any appeals or administrative reviews may be requested.

Fifty-nine percent of all applications for asylum are refused at the initial decision.<sup>116</sup> Around three-quarters of those refused applicants appeal the decision, and around one-quarter of these appeals are allowed.<sup>117</sup>

### B. Special Immigration Appeals Commission

Cases that involve sensitive information, such as those taken on national security or public interest grounds, are heard by the Special Immigration Appeals Commission (SIAC),<sup>118</sup> which was established in 1997.<sup>119</sup> It is a superior court of record and currently hears appeals against decisions made by the Home Office to "deport, or exclude, someone from the UK on national

<sup>112</sup> House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, *supra* note 23, at 4.

<sup>113</sup> *Id.*

<sup>114</sup> Immigration Act 2014, c. 22, <http://www.legislation.gov.uk/ukpga/2014/22>, archived at <https://perma.cc/5KC6-YVU8>.

<sup>115</sup> *Id.* at 4; House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, *supra* note 23, at 4.

<sup>116</sup> House of Commons Library Briefing Paper, *Asylum Statistics*, *supra* note 11, at ¶ 1.3,

<sup>117</sup> *Id.* at 2.

<sup>118</sup> *Id.* at 5.

<sup>119</sup> Special Immigration Appeals Commission Act 1997, c. 68, <http://www.legislation.gov.uk/ukpga/1997/68>, archived at <https://perma.cc/L3V4-7FHF>.



security grounds, or for other public interest reasons,” and “appeals against decisions to deprive persons of citizenship status.”<sup>120</sup> As the SIAC is not a court of law, it considers “evidence in documentary, or any other form, and evidence that would not be admissible in a court of law,”<sup>121</sup> and it may rely upon witnesses that the appellant cannot cross examine and “sources of all kinds.”<sup>122</sup>

One part of the procedure of the SIAC that has been criticized are the closed sessions that it conducts if the evidence before it is considered to be sensitive, such as certain types of intelligence materials where the disclosure could damage the public interest. In these cases, the appellant and his or her lawyer may not sit in the session. The government inserted a safeguard to ensure that appellants receive adequate representation during these closed hearings by having their interests represented by a Special Advocate, a lawyer with special security clearances.<sup>123</sup> Nonetheless, the result of these closed hearings is that individuals can be deported if they are considered to be a risk to national security, which can be determined according to evidence heard in a closed hearing alone.

The standard of proof used by the SIAC in arriving at its decisions is the civil standard of the “balance of probabilities.” From the open judgments and evidence available, the conclusions drawn by the SIAC indicate that it relies upon the totality of evidence, and considers the cumulative effect of evidence against a person when making a decision as to whether they are a threat to the national security of the UK. Thus, it appears that it does not require a high standard of evidence of concrete acts to show that an individual presents a danger; the SIAC looks at the total evidence against the person, including, but not limited to, associations with and membership in terrorist organizations, to determine whether an individual is a threat to national security.<sup>124</sup>

## VII. Removal

Individuals who are not lawfully present in the UK may be removed and could be subject to a ban on re-entry for a period of up to ten years.<sup>125</sup> The statutory regime for deportation from the UK is contained in the Immigration Act 1971. This Act provides that a person can be deported from the UK by a deportation order if he or she is not a British citizen, and

<sup>120</sup> Special Immigration Appeals Commission, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/421503/Consolidated\\_text\\_of\\_SIAC\\_Rules\\_2003.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421503/Consolidated_text_of_SIAC_Rules_2003.pdf), (last updated Apr. 10, 2015), archived at <https://perma.cc/L7CN-RXXD>.

<sup>121</sup> PP v. Sec’y of State for the Home Department, SC/54/2006, ¶ 4 (Nov. 23, 2007), <http://www.siac.tribunals.gov.uk/Documents/outcomes/PP.pdf>, archived at <https://perma.cc/A62V-46UZ>. This rule is contained in the Special Immigration Appeals Commission (Procedure) Rule 2003, SI 2003/1034, ¶ 44(2)–(3), <http://www.legislation.gov.uk/uksi/2003/1034/made>, archived at <https://perma.cc/Y2RM-U7RN>.

<sup>122</sup> Per Lord Hope, A et al. v. SSHD, 2005 UKHL 71, cited in PP v. Sec’y of State for the Home Department, SC/54/2006, ¶ 4.

<sup>123</sup> Special Immigration Appeals Commission Act 1997, c. 68, § 6, <http://www.legislation.gov.uk/ukpga/1997/68>, archived at <https://perma.cc/2ASQ-R89Z>. The role of the Special Advocate in these closed sessions is dictated by the Special Immigration Appeals Commission (Procedure) Rules 2003, SI 2003/1034, ¶ 35.

<sup>124</sup> MATTHEW LEWANS, ADMINISTRATIVE LAW AND JUDICIAL DEFERENCE 81 (2016).

<sup>125</sup> House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, *supra* note 23, at 6.



- the Secretary of State has deemed that the person's deportation is conducive to the public good;
- the person is the spouse, civil partner, or child under eighteen of someone ordered to be deported; or
- the court has recommended deportation in the case of a person over the age of seventeen convicted of an offense punishable with imprisonment.<sup>126</sup>

More recent legislation has defined the phrase "conducive to the public good" to include instances where the person has been convicted of a "serious offense"<sup>127</sup> (notably terrorist offenses), or a cumulative number of minor offenses in which the court did not recommend deportation, or where the person obtained indefinite leave to remain by deception. The deportation order is revocable by a further order from the Secretary of State, or if the person becomes a British citizen.<sup>128</sup>

Persons awaiting deportation can be detained but have a right to bail unless there is a substantial likelihood, on the balance of probabilities, that the individual

- will commit an offense punishable with imprisonment,
- will be a serious threat to the maintenance of public order, or
- has knowingly entered the United Kingdom with others in breach of immigration law.<sup>129</sup>

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<sup>126</sup> Immigration Act, 1971, c. 77, § 3(5); *see also* Immigration Rules, *supra* note 7, ¶ 363.

<sup>127</sup> "Serious Crime" is defined as follows by section 72(2) of the Nationality, Immigration and Asylum Act, 2002, c. 41:

A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is – (a) convicted in the United Kingdom of an offence, and (b) sentenced to a period of imprisonment of at least two years." Section 72(3) provides: "A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if – (a) he is convicted outside the United Kingdom of an offence, (b) he is sentenced to a period of imprisonment of at least two years, and (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.

Section 72(4) states as follows:

A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if – (a) he is convicted of an offence specified by order of the Secretary of State, or (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).

<sup>128</sup> Immigration Act, 1971, c. 77, § 5.

<sup>129</sup> *Id.* § 5 & sched. 3; *see also* Immigration Rules, *supra* note 7, ¶ 362.

An individual in the circumstances above may also be detained if

- directions are in force for his or her removal from the United Kingdom,
- it is in the interest of national security,
- it is conducive to the public good, or
- another person to whose family he or she belongs is or has been ordered to be deported.<sup>130</sup>

When an order for deportation is made against an individual for reasons of national security or because it is conducive to the public good, a statement of the reasons for the decision should be made.<sup>131</sup>

If all applications for asylum are refused and the individual has exhausted all rights of appeal the asylum seeker must leave the UK. If he or she does not do so voluntarily, the Home Office will arrange for the individual to be removed.<sup>132</sup> The Border Force is responsible for removing individuals from the UK who are not lawfully present there.<sup>133</sup> When a decision has been made to deport a person from the United Kingdom, notice is given to that person, and the Secretary of State may authorize the person's detention or issue an order restricting his/her residence, employment, or occupation, and may also impose additional requirements for reporting to the police.<sup>134</sup>

Other than in certain limited circumstances, the government bears the costs for the removal of individuals subject to deportation orders. The person subject to the deportation order is informed of the flight details, but no reference is included in the case working instructions as to the times of the flights to which individuals may be assigned.<sup>135</sup>

Deportees are typically sent to their country of citizenship or to a country where they are a national; in certain circumstances, however, they may be deported to a third country, provided their entrance is acceptable there.<sup>136</sup>

An individual with a pending asylum application and his/her dependents are not subject to removal from the UK.<sup>137</sup>

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<sup>130</sup> *Id.* § 3(6).

<sup>131</sup> *Id.* § 5, sched. 3.

<sup>132</sup> House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, *supra* note 23, at 7.

<sup>133</sup> *Id.* at 4.

<sup>134</sup> Immigration Rules, *supra* note 7, pt. 13 (Deportation).

<sup>135</sup> UK Visas and Immigration, Enforcement Instructions and Guidance, ch. 47, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270022/chapter47.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270022/chapter47.pdf) (last updated Nov. 27, 2013), archived at <https://perma.cc/7YVQ-HMJQ>.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* ¶ 329.

## VIII. Deportation on National Security Grounds

As noted above, an individual can be deported from the UK for reasons of national security. The term “national security” has not been defined in legislation in the UK, and case law indicates that no judicial definition has been provided, “even in those cases where the Courts have considered the extent of their powers to review executive decisions of that kind.”<sup>138</sup> Indeed, the case law shows that great deference has been given to the executive to determine what is in the interest of national security, as the judiciary considers that the executive is in a better position to assess the threat posed to the national security of the country.<sup>139</sup>

The British government uses this tool of deportation as part of its counterterrorism strategy. Prosecution is the UK’s preferred approach to addressing suspected terrorists, but it considers that deportation on national security grounds is another means of disrupting terrorist activity.<sup>140</sup> MI5 has specified that

[w]here the person concerned is a foreign national, and is a threat to the UK, deportation will usually be an appropriate means of disrupting terrorist activity. This is important in terms of ensuring public safety, as well as sending a strong signal that foreign nationals who threaten our national security cannot expect to be allowed to remain in the UK. Those who are outside the UK will normally be excluded.<sup>141</sup>

The Immigration, Asylum and Nationality Act 2006 provided a number of additional measures that made it easier for the government to deport individuals for reasons of national security.<sup>142</sup> It limited the grounds of appeal in cases of national security to those solely based on human rights concerns.<sup>143</sup>

## IX. Path to Naturalization

Individuals lawfully present in the UK for specified periods of time, including those granted refugee status, may be eligible for naturalization if they meet additional criteria. Legislation regarding citizenship is contained primarily in the British Nationality Act 1981, as amended.<sup>144</sup> Refugees may be able to obtain British citizenship through naturalization.<sup>145</sup> Citizenship is not

<sup>138</sup> *Hilton v. Sec’y of State for Foreign and Commonwealth Affairs*, Information Tribunal (National Security Appeals Panel) ¶ 47, <http://www.informationtribunal.gov.uk/Documents/nsap/hilton.pdf>, archived at <https://perma.cc/D7MB-7HXS>.

<sup>139</sup> *A et al. v. Sec’y of State for the Home Department*, [2004] UKHL 56, ¶ 37.

<sup>140</sup> HM GOVERNMENT, COUNTERING INTERNATIONAL TERRORISM: THE UNITED KINGDOM’S STRATEGY, 2006, (2005-6) Cm. 6888, ¶ 69, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/272320/6888.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272320/6888.pdf), archived at <https://perma.cc/NB5N-TDVE>.

<sup>141</sup> *Id.* ¶ 73.

<sup>142</sup> Immigration, Asylum and Nationality Act 2006, c. 13, <http://www.legislation.gov.uk/ukpga/2006/13>, archived at <https://perma.cc/B3KC-N3MW>.

<sup>143</sup> *Id.* § 7.

<sup>144</sup> British Nationality Act 1981, c. 61, <http://www.legislation.gov.uk/ukpga/1981/61>.

<sup>145</sup> *Id.* §§ 3–5.

granted automatically to individuals who have legally resided in the United Kingdom for any period of time, nor is it granted automatically to individuals who marry British citizens or babies born in the UK. Such individuals must meet specific criteria contained within the British Nationality Act 1981 and apply for citizenship.

### A. Naturalization and Residence

Citizenship through naturalization is not an entitlement or right. Certain legal requirements must be met and the Home Secretary must “see fit” to grant citizenship.<sup>146</sup> These requirements include the ability to communicate in English, Welsh, or Scottish Gaelic; being of sound mind; and having a good character.<sup>147</sup>

### B. Family Reunification

Individuals who obtain permanent leave to remain or citizenship are entitled to bring their immediate family members, defined as their spouse and any children under the age of eighteen.<sup>148</sup> Parents and grandparents of settled persons or citizens are permitted to join their children or grandchildren in the United Kingdom but only if they are over the age of sixty-five and have no other relatives to support them in their home country.<sup>149</sup> Other close relatives, such as aunts, uncles, brothers, and sisters may be eligible “if living alone outside the United Kingdom in the most exceptional compassionate circumstance.”<sup>150</sup> There are financial requirements that the British citizen or UK resident must meet in order to ensure their family migrant does not require recourse to public funds. These financial requirements were challenged in the courts, but were upheld by the Court of Appeal.<sup>151</sup>

## X. Immigration Detention

A controversial aspect of the UK’s asylum policy has been that of detaining immigrants.<sup>152</sup> Home Office officials have the authority to detain asylum seekers and other migrants who enter the UK without proper authorization. This detention is for administrative purposes and generally used to establish the applicant’s identity, determine the basis of their claim, and ensure that an individual can be removed from the UK, or where there are any reasons to cause officials to believe that the individual will not comply with any conditions attached to a grant of leave to enter. There is no maximum time period for which individuals may be detained, nor is there any

<sup>146</sup> *Become a British Citizenship*, GOV.UK, <http://www.ukba.homeoffice.gov.uk/britishcitizenship/eligibility/naturalisation/standardrequirements/> (last visited Jan. 26, 2016), archived at <https://perma.cc/K9CM-G2KN>.

<sup>147</sup> British Nationality Act 1981, c. 61, sch. 1.

<sup>148</sup> Immigration Rules, *supra* note 7, pt. 8.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* ¶ 317(i)(f).

<sup>151</sup> *MM et al. v. Secretary of State for the Home Department*, [2014] EWCA Civ. 985, <http://www.bailii.org/ew/cases/EWCA/Civ/2014/985.html>, archived at <https://perma.cc/V6DT-Y3SL>.

<sup>152</sup> House of Commons Library Briefing Paper, *Immigration Detention in the UK: An Overview*, No. 7294, Sept. 7, 2015, at 3, <http://researchbriefings.files.parliament.uk/documents/CBP-7294/CBP-7294.pdf>, archived at <https://perma.cc/KL2Z-6B77>.

automatic judicial oversight of detention decisions. Home Office policy states that detention should not be used routinely and, when used, should be for the shortest period necessary.<sup>153</sup>

There are ten detention centers (known as immigration removal centers) across the UK.<sup>154</sup> There are other forms of secure accommodation that are used for families prior to their removal from the UK, as well as other residential and nonresidential short-term holding facilities.<sup>155</sup> The rules that the detention centers operate under are provided for in the Detention Centre Rules 2001. These rules detail the admission and discharge of detained individuals, as well as basic welfare and privileges that detained individuals may have within the centers, including access to healthcare and education, access to individuals in these centers by visitors, and restrictions on the use of alcohol.<sup>156</sup>

Detention centers are frequently used, but primarily to house male immigrants. For a one-year period from June 2014–June 2015 there were a total of 32,053 individuals detained in these centers. The total cost for asylum detention in the 2013/14 people was £164.4 million (approximately US\$270 million). Inappropriate use of immigration detention has cost the government additional sums as a result of compensation to individuals that have been unlawfully detained. In the period 2013–14 these compensation payments amounted to a total of £4.8 million (approximately US\$8 million).<sup>157</sup>

## XI. Oversight

There are a number of different facets to ensure that asylum laws and policy are properly implemented. The Home Secretary and her Ministers are responsible for the work of the Home Office's immigration directorates. The Independent Chief Inspector of Borders and Immigration keeps under review the effectiveness and efficiency of the border and immigration functions. Immigration removal centers and short-term holding facilities are overseen by Her Majesty's Inspectorate of Prisons and Independent Monitoring Boards.<sup>158</sup>

Members of Parliament may also hear complaints from constituents about poor services or other issues by the immigration directorates and either bring them before Parliament or refer them to the Parliamentary and Health Services Ombudsman for investigation. The Ombudsman will only hear complaints from Members of Parliament, and requires the individual to attempt to resolve any issues with the appropriate organization directly before it will take any action.<sup>159</sup>

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 4.

<sup>155</sup> *Id.*

<sup>156</sup> Detention Centre Rules 2001, SI 2001/238, <http://www.legislation.gov.uk/ukxi/2001/238/made>, archived at <https://perma.cc/5DWU-X94M>.

<sup>157</sup> House of Commons Library Briefing Paper, *Immigration Detention in the UK: An Overview*, *supra* note 152, at 6.

<sup>158</sup> House of Commons Library Briefing Paper, *Constituency Casework: Asylum, Immigration and Nationality*, *supra* note 23, at 5.

<sup>159</sup> *Id.*; Information For MP's, PARLIAMENTARY AND HEALTH SERVICES OMBUDSMAN, <http://www.ombudsman.org.uk/make-a-complaint/information-for-mps> (last visited Jan. 13, 2016).

## XII. Adjustments to Process Due to Syrian Refugee Crisis

The Syrian crisis has resulted in millions of refugees, most of whom have sought asylum in countries neighboring its region. The response of the UK government to the refugee crisis has been largely criticized as inadequate.<sup>160</sup> While the UK accepted asylum applications from Syrian refugees until January 29, 2014, when the UK established the Syrian Vulnerable Person Resettlement Program, it did not participate in any resettlement programs and the policy was to provide humanitarian aid to Syria's neighbors rather than accept recognized Syrian refugees for resettlement in the UK.<sup>161</sup> At the end of 2015 the UK was the second largest bilateral donor, committing £1.1 billion (approximately US\$1.85 billion) in aid to help refugees in Syria and the region.<sup>162</sup>

As the crisis continued to develop and worsen, the government created the Syrian Vulnerable Persons Refugee Scheme to allow selected Syrian refugees to come to the UK. Reports from December 2015 state that the Syrian Vulnerable Persons Refugee Scheme has resettled 252 Syrian nationals in the UK.<sup>163</sup> The government aimed to resettle 1,000 Syrians under this program by the end of 2015,<sup>164</sup> but figures are not yet available to show whether this target was met. The program targets vulnerable Syrians, prioritizing victims of sexual violence and torture, the elderly, and the disabled.<sup>165</sup> The program was criticized for the limited number of people that it helped and on September 7, 2015, the Prime Minister announced that the program would be extended and up to 20,000 refugees would be resettled in the UK over the next five years. This program does not include refugees who are already in Europe, and the UK does not intend to participate in refugee relocation programs that are under development by the European Union. Its aim is to take the most vulnerable refugees directly from the region of Syria and the government is working on the logistics of doing so with local authorities and the voluntary sector.<sup>166</sup> The resettled refugees will be provided with five years of humanitarian protection status and allowed to work as well as access public funds.<sup>167</sup> The criteria under the program will be expanded to include children, particularly orphaned children if the UNHCR recommends their resettlement.<sup>168</sup> Given the vast increase in costs, the international aid budget will fund the first year of resettlement to "ease pressure on local authorities."<sup>169</sup> The program selects cases from

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<sup>160</sup> *Refugee Crisis: Call from the Legal Community for Urgent Action*, LAWYERS REFUGEE INITIATIVE, <http://www.lawyersrefugeeinitiative.org/> (last visited Dec. 28, 2015), archived at <https://perma.cc/CQB6-28H3>.

<sup>161</sup> House of Commons Library Briefing Paper, *The Syrian Refugee Crisis*, SN06805, Dec. 06, 2015, at 6, <http://researchbriefings.files.parliament.uk/documents/SN06805/SN06805.pdf>, archived at <https://perma.cc/G2LJ-BSDG>.

<sup>162</sup> *Id.* at 8.

<sup>163</sup> House of Commons Library Briefing Paper, *Asylum Statistics*, *supra* note 11, at 3.

<sup>164</sup> Oct. 19, 2015, PARL. DEB. (H.C.) (6th ser.) 661.

<sup>165</sup> House of Commons Library Briefing Paper, *The Syrian Refugee Crisis*, *supra* note 161, at 3.

<sup>166</sup> *Id.* at 3.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 4.

<sup>169</sup> *Id.*

the UNHCR's case of registered refugees that are living in host communities in the region. During registration with the UNHCR the refugees may indicate that they are interested in resettlement under the Syrian Vulnerable Persons Refugee Scheme (VPR). The UNHCR identifies cases that are suitable for resettlement in the UK and refers them to the Home Office. The Home Office then conducts checks on the eligibility of the individual and seeks to match them with a place with a local authority.<sup>170</sup>

While the Syrian Vulnerable Persons Refugee Scheme has created a new method of entry for recognized Syrian refugees, Syrian nationals who arrive in the UK outside of this program may still claim asylum upon arrival.

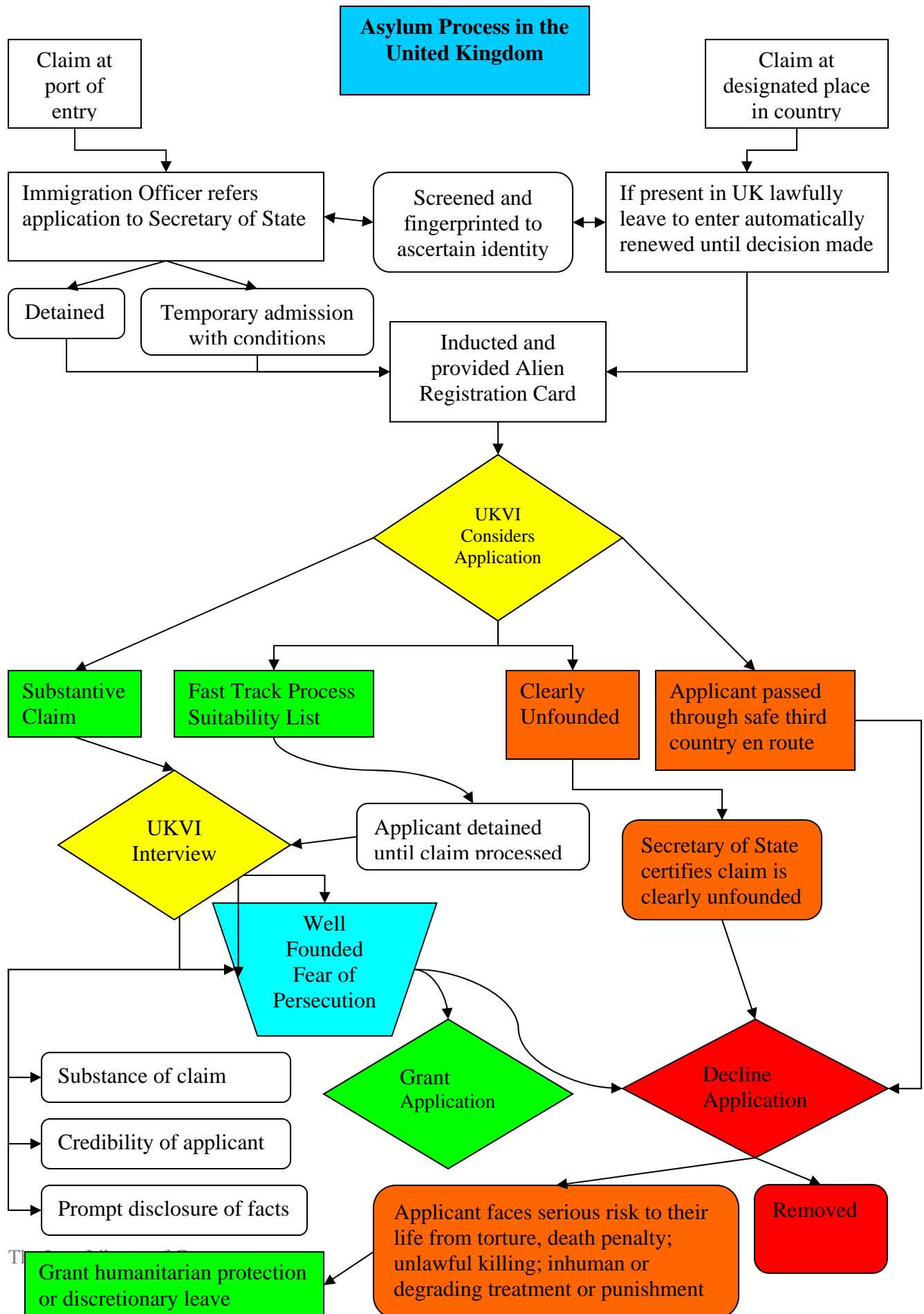
Syrian nationals were the fourth largest group claiming asylum in the UK in 2015, with 2,204 applicants. The UK granted 5,457 Syrian nationals asylum at the first point of their applicant process between January 2012 and September 2015, and in 2015 87% of initial asylum decisions in Syrian cases granted permission for the applicant to remain in the UK.<sup>171</sup>

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<sup>170</sup> *Id.* at 10.

<sup>171</sup> *Id.* at 3.





# Bibliography

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**SUMMARY** This bibliography comprises selected, English-language works on refugee and asylum law that were published in the last two years. The list is divided into a section on [general works](#) and sections focusing on [Africa](#), the [Americas](#), [Asia and the Pacific](#), and [Europe](#). Articles comparing two jurisdictions are listed on the basis of the first-mentioned jurisdiction.

## I. General Works

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