



**UNHCR's comments on
*Høringsforslag 16. februar 2009 – Forslag til ny utlendingsforskrift***

Introduction

UNHCR is entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees, and for seeking permanent solutions for the problem of refugees. According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto”, which includes supervision of national legislation, and proposed amendments thereto, of signatory countries regulating the application of the 1951 Convention relating to the Status of Refugees. UNHCR’s supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees. The Office therefore appreciates the opportunity to present these comments concerning *Høringsforslag 16. februar 2009 – Forslag til ny utlendingsforskrift*.

UNHCR understands that the present bill shall enter into force together with the new Aliens Act of 15 May 2008, which will enter into force on 1 January 2010, and replace the current Aliens Regulation of 21 December 1990. With regard to certain provisions of the proposed Aliens Regulation, namely the proposed § 7-1 (Internal Flight), § 7-4 (Dublin transfers), § 8-2 (assessment of humanitarian grounds on individual basis) and the new § 21 (3) of the current Aliens Regulation (unaccompanied minors who are 16 years or older), we would like to emphasize that our comments on the proposed amendments of *forskrift 21. desember 1990 nr. 1028 om utlendingers adgang til riket og deres opphold her (200805607-/CEF, 18 November 2008)*, which we submitted in January 2009, continue to be valid. In addition, reference is made to UNHCR’s summary observations of 11 December 2007 on the draft Aliens Act and the written comments submitted in 2006 on an earlier version of the draft.

Specific comments

Chapter VII – Protection

Proposed § 7-2 (derivative refugee status)

According to § 28(7) Aliens Act of 2008 the spouse or cohabitant of a refugee and the refugee’s children under the age of 18 who have no spouse or cohabitant are entitled to a residence permit as refugees (derivative refugee status). UNHCR had in the drafting process encouraged Norway to include as family

members entitled to derivative refugee status also other close relatives who lived together as part of the family unit and who are wholly or mainly dependent on the refugee (as agreed upon in Article 15 of the *EC Temporary Protection Directive*¹). The present proposal (at page 46) states that other family members of the refugee such as children over the age of 18, parents and siblings shall not be entitled to derivative refugee status.

UNHCR would like to reiterate that the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* states that "in practice, other dependants, such as aged parents of refugees, are normally considered [as family members entitled to derivative refugee status] if they are living in the same household" (para. 185) and encourage Norway to introduce a more generous provision as regards entitlement to derivative refugee status, with a view of promoting the unity of the family.

Proposed § 7-6 to § 7-9 (resettlement of refugees)

The proposed provisions relate to § 35 Aliens Act of 2008 and correspond to §§ 78, 79 and 81 of the current Aliens Regulation. The responsibility for the reception of resettled refugees remains with UDI, but can be transferred to another organ. The motivation states that 55 percent of the quota shall be filled with women and girls. UNHCR has no objection to this.

Chapter VIII – Residence permit on the grounds of strong humanitarian considerations or a particular connection with Norway

Proposed § 8-1 (15-month rule)

The proposed § 8-1 is a continuation of the current § 21 (3) and (4) Aliens Regulation. § 8-1 stipulates that an alien who has not received a decision on his asylum application within 15 months can receive a residence permit according to § 38 Aliens Act of 2008 (humanitarian grounds) in case he does not meet the requirements of § 28 Aliens Act of 2008 (asylum), if he can provide documentation proving his identity and none of the exceptions of § 8-1(2) applies. UNHCR has no objection to this.

¹ Council Directive 2001/44/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, OJ L 212/12 of 7 August 2001. See further UNHCR's Comment on Article 15 in *UNHCR Annotated Comments on 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*, 19 May 2003, available online at: <http://www.unhcr.org/refworld/docid/3ecdeebc4.html>. See also UNHCR's Comment on Article 2(h) *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted* (OJ L 304/12 of 30.9.2004), 28 January 2005, available online at: <http://www.unhcr.org/refworld/docid/4200d8354.html>.

Proposed § 8-4 (residence permit to witnesses in cases of human trafficking)

The proposed provision stipulates that an alien who seeks protection after having given a witness statement in a case concerning human trafficking (§ 224 Criminal Act), shall be granted a residence permit based on § 38 Aliens Act of 2008 (humanitarian grounds) unless he or she qualifies for protection under § 28 Aliens Act of 2008 (asylum) or particular reasons provide otherwise. § 38 (2) lit. d Aliens Act of 2008 explicitly mentions victims of human trafficking with regard to residence permits on humanitarian grounds. § 30 (1) lit. d Aliens Act of 2008 explicitly provides that victims of human trafficking shall be regarded as members of a particular social group in the meaning of § 28 (1) lit. a Aliens Act of 2008. UNHCR has no objection to this.

Proposed § 8-6 (residence permit in cases of practical impediments to return)

The proposed provision corresponds to the current § 21c Aliens Regulation and stipulates that a residence permit according to § 38 Aliens Act of 2008 (humanitarian grounds) can be granted to an asylum seeker who has received a final negative decision on his application for asylum, if the following prerequisites are met: (a) the return has not been effected within three years of the receipt of the application for asylum (*saksopprettelse*) and it is not likely that it can be effected; (b) there is no doubt about the identity of the asylum seeker; (c) the asylum seeker has contributed to making the return possible, including by obtaining travel documents of his country of origin; (d) if a case concerning expulsion according to § 66 Aliens Act of 2008 is filed, except when the reason for expulsion is the disregard of the timeframe in which the person has to leave Norway, no residence permit can be given before the inquiry is cleared.

According to § 8-6(2) a residence permit as provided for in § 8-6(1) shall not given earlier than one year after the final negative decision was taken and the processes of proving identity and issuance of travel documents, unless special reasons provide otherwise.

UNHCR would like to make reference to the statement it submitted in this regard in February 2007 and reiterate the key aspects. With regard to the three-year requirement of § 8-6(1), UNHCR notes with concern that an asylum seeker who has received a final rejection after one year will have to wait two additional years before he or she falls within the scope of this provision. As concerns the one-year requirement of § 8-6 (2), the provision might be viewed as penalizing an asylum seeker who opts to appeal, as he or she would receive his final rejection at a later point than an asylum seeker who does not appeal. In addition we reiterate that, if it has been established that all return options have been exhausted a few months after a final rejection, there should be no need to postpone a decision to grant a residence permit as the delay would hamper the person's ability to begin the process of integration. UNHCR recommends that Norway amends the provision in a way that prevents a lengthy legal limbo for persons unable to be returned and instead aims to facilitate their integration into Norwegian society.

Finally, UNHCR is concerned about the legal status of persons who fall outside the scope of § 8-6(1) due to not fulfilling the conditions of § 8-6(1) lit. b, c and d. Given that they are unable to return due to technical obstacles, they have no choice but to remain in the country of asylum. On the other hand, given a negative asylum decision, they do not have any prospect for permanent residency or integration. UNHCR reiterates that Norway should apply a comprehensive approach for all persons who find themselves without any status and provide permanent solutions for all individuals that are unable to return.

Proposed § 8-10 (Requirement of documented identity before a residence permit is given)

The proposed provision stipulates that it is, as a main rule, a requirement for a residence permit according to § 38 Aliens Act of 2008 (humanitarian grounds) that the alien provides documentation for his identity, unless it is most likely that the claimed identity is correct and (c) the alien's country of origin lacks a functioning central administration or it is for other reasons impossible to obtain passport or other documentation, or (d) the asylum seeker can, out of considerations for his or her safety, not be expected to contact the authorities in his or her country of origin. UNHCR has no objection to this.

Chapter XI – Permanent residence permit

It is proposed that it is no longer a requirement that all three years of residence that are required prior to being entitled to a permanent residence permit have to be on the same kind of permit (grounds). UNHCR has no objection to this.

Chapter XII – Travel documents for refugees and aliens passport

According to § 64(1) Aliens Act of 2008, a person recognized as a refugee will be issued a refugee travel document upon application. A person who is granted a residence permit as a consequence of an application for asylum, but who is not recognized as a refugee, will be provided with an aliens passport upon application, § 64(2) Aliens Act of 2008.

The proposed chapter corresponds by and large to the current §§ 66 – 77 Aliens Regulation and regulates exceptions from a right to a refugee travel document, duration, renewal and withdrawal. UNHCR has no objection to this.

Chapter XV – Protection against expulsion and residence permits according to §§ 73, 74 Aliens Act of 2008

§ 73 Aliens Act of 2008 stipulates absolute protection against *refoulement*, § 74 Aliens Act of 2008 stipulates that an alien whose protection against *refoulement* is his or her sole basis for residence in Norway may be granted a temporary residence permit until the impediment to his or her return no longer applies and

that it may be stipulated that the permit shall not confer the right to take employment.

The proposed §15-2 states that a temporary residence permit according to § 74 Aliens Act of 2008 is normally granted for a period of six months, but can in special circumstances be granted for one year. The permit ceases to exist if the impediment to the alien's return ceases to exist – the crucial point being the first respective instance decision on the cessation of the impediment, which the alien can appeal (with suspensive effect) – before the permit is due to expire, or if and when the alien leaves Norway.

The proposed § 15-3 allows for the renewal of the temporary residence permit.

The proposed § 15-4 stipulates that the temporary residence permit according to § 74 Aliens Act of 2008 does not confer the right to family reunification nor to renewed entry once the alien has left Norway, and cannot lead to a permanent residence permit. Based on an individual assessment (*konkret vurdering*) it can be decided that the residence permit does not confer the right to work.

In order to foster a person's self-reliance and livelihood, UNHCR recommends that the persons concerned should be given the right to work.

Chapter XVI – Organization

In its *Report on the Implementation of the Agenda for Protection*, Norway stated that “[the] Regulations that will accompany the new [Aliens] Act will include a clause emphasizing the normative weight of UNHCR's recommendations on protection. The Regulations will stipulate that where Norwegian practice is found to be in conflict with such recommendations, it will, as a rule, be referred to the Immigration Appeals Tribunal for a hearing before the seven-person Grand Board.” UNHCR strongly welcomed the envisaged referral mechanism. However, with regard to the proposed § 16-4 the present bill states that the referral mechanism is “not an absolute rule” (at page 108). Furthermore, it applies only to UNHCR positions on protection needs, but not to humanitarian considerations (which, in practice, affects many asylum seekers from Afghanistan and Iraq) and does not apply if the practice in question has been subject to an instruction from the Ministry to the first instance. Examples for the latter are instructions like the ones recently issued with regard to Dublin transfers to Greece, as well as, asylum applications of persons originating from Somalia and Iraq.

By restricting the referral mechanism in the proposed way, the procedural safeguard Norway itself had viewed as an important achievement in its *Report on the Implementation of the Agenda for Protection* would be significantly undermined. UNHCR therefore encourages Norway to adopt the previously announced referral mechanism which can only enhance the credibility of decision-making and UNHCR's ability to implement its supervisory responsibility as provided for in Article 35 of the 1951 Convention relating to the Status of Refugees.

UNHCR Regional Office for the Baltic and Nordic countries
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