



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR's statement with regard to

Høringsbrev om regler i ny utlendingsforskrift og endringer i gjeldende utlendingsforskrift – Krav om fire års arbeid eller utdanning i Norge for at det skal kunne innvilges familieetablering (200806521-/CEF, 11 May 2009)

UNHCR notes that the present proposal relates to measure number five of the 13 measures that the Norwegian Government announced in September 2008 "to reduce the number of arrivals of persons not in need of international protection". It is proposed that persons who have been granted residency on humanitarian grounds must have four years of education or work experience in Norway to be granted family reunification with existing or new family members. The same conditions apply for those who have been granted refugee status, but only related to family establishment. Exemptions can be made under special circumstances. At present, there are no criteria to be met concerning previous work or studies in Norway to be granted family establishment.

In line with its supervisory responsibility as provided for in its Statute and reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees, UNHCR would like to take this opportunity to reiterate that refugees should be exempted from the requirement to establish conditions of support for family members, namely evidence of adequate accommodation, sickness insurance and economic resources, as well as, a qualifying period of residence, in order to be granted family reunification. In this context, we note that a distinction between family reunification and family establishment, in terms of according certain rights or obligations to them, does not enjoy support in the universal human rights instruments, nor in conclusions of UNHCR's Executive Committee.

There is an internationally protected right to marry and found a family.¹ Likewise, UNHCR's Executive Committee, of which Norway is a member, does not make a distinction between family reunification and family establishment, and repeatedly emphasized the need for a broad definition of family and for family unity.²

¹ E.g. Article 16(1) of the Universal Declaration of Human Rights, Article 23(2) of the International Covenant on Civil and Political Rights, Article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

² In particular EXCOM Conclusions No. 24 (XXXII) of 1981 (at para. 5: "It is hoped that countries of asylum will apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family."), No. 85 (XLIX) of 1985 (at lit. w: "Exhorts States, in accordance with the relevant principles and standards, to implement measures to facilitate family reunification of refugees on their territory, especially through the consideration of all related requests in a positive and humanitarian spirit, and without undue delay") and No. 88 (XLX) of 1999 (at para. b: "Underlines the need for the unity of the refugee's family to be protected, *inter alia* by: ... (ii) the consideration of liberal criteria in identifying those family members who can be admitted, with a view to promoting a comprehensive reunification of the family").

In light of this, UNHCR recommends Norway to not introduce different criteria for family establishment than for family reunification. Refugees should be exempted from criteria such as a qualifying period of residence, irrespective of whether the family relationship arose before or after the resident's arrival in Norway. While it may be understood that a qualifying period of residence may be required for the family reunification of ordinary aliens, there is wide consensus that the reunification of the families of refugees should be treated as a matter of priority and that it should be implemented as soon as possible. It is recalled in this connection that UNHCR's Executive Committee in its Conclusion No. 24 (XXXII) of 1981, has expressed the desirability that countries of asylum and countries of origin "support the efforts of the High Commissioner to ensure that the reunification of separated refugee families takes place with the least possible delay" (at para. 2). At para. 9 of the same Conclusion it is furthermore stated that "[i]n appropriate cases family reunification should be facilitated by special measures of assistance to the head of family so that economic and housing difficulties in the country of asylum do not unduly delay the granting of permission for the entry of the family members."

According to Article 8 of the European Convention on Human Rights and Fundamental Freedoms, as well as the jurisprudence of the European Court of Human Rights, signatory states are obliged to ensure family reunification for the nuclear family of all those who can not be expected to reside in their, or their family member's, country of original residence.

Finally, it may be noted that UNHCR's Executive Committee in its Conclusion No. No. 104 (LVI) of 2005 on Local Integration "*reaffirm[ed]* the importance of family unity and reunification as referred to in its Conclusions Nos. 9, 24, 84, and 88; and *recognize[d]* that family members can reinforce the social support system of refugees, and in so doing, promote the smoother and more rapid integration of refugee families."

UNHCR Regional Office for the Baltic and Nordic countries
9 July 2009