

MALTA

ATT Nru. VIII ta' l-2004

ACT No. VIII of 2004

ATT mahruġ b'liġi mill-Parlament ta' Malta.

AN ACT enacted by the Parliament of Malta.

ATT biex jemenda l-Att dwar ir-Rifuġjati, Kap. 420.

AN ACT to amend the Refugees Act, Cap. 420.

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

6th August, 2004

ACT No. VIII of 2004

AN ACT to amend the Refugees Act, Cap. 420

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The title of this Act is the Refugees (Amendment) Act, 2004, and it shall be read and construed as one with the Refugees Act, 2000, hereinafter in this Act referred to as “the principal Act”. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for immigration may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes thereof.

2. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) for the definition of “safe country of origin” there shall be substituted the following:

“ “safe country of origin” means a country of which an applicant is a national or citizen or, if he is not a national or citizen thereof, in which he has a right of residence and which, in general terms, is considered as presenting no serious risk of persecution on the basis that a person seeking

asylum will be treated in accordance with the following principles in that country –

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular group or political opinion; and

(b) the principle of non-*refoulement* in accordance with the Convention is respected; and

(c) the prohibition on removal in breach of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected; and

(d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention.”; and

(b) immediately after the definition of “refugee” there shall be inserted the following new definition:

“ “Member State” shall have the same meaning assigned to it by article 2 of the European Parliament Elections Act.”.

Amendment of article 4 of the principal Act.

3. Immediately after sub-article (4) of article 4 of the principal Act, there shall be added the following subarticle (5):

“(5) (a) Without prejudice to the provisions of subarticle (4) there shall be such number of Assistant Refugee Commissioners (hereinafter referred to as Assistant Commissioners) as the Prime Minister may by notice in the Gazette from time to time determine.

(b) The Assistant Commissioners shall be appointed by the Prime Minister from among public officers and from among persons who in each case, in the opinion of the Prime Minister, have knowledge and experience in matters relating to refugees.

(c) The Assistant Commissioners shall under the general direction of the Commissioner have such functions and powers as are conferred on the Commissioner by this Act, and are assigned to each of them by the Commissioner, including the function and power to examine applications for refugee status and to administer the oath to any person, and any reference

in this Act, other than in this article to the Commissioner shall be deemed to include also reference to an Assistant Commissioner in the exercise of any function assigned to him by the Commissioner.”.

- 4.** Immediately after subarticle (3) of article 5 of the principal Act, there shall be added the following subarticle: Amendment of article 5 of the principal Act.

“(4) (a) There shall be such number of Chambers of the Refugee Appeals Board as the Minister may prescribe.

(b) Where there is more than one chamber of the Board, cases shall be assigned to the various chambers in accordance with such rules as the Minister may prescribe.

(c) Each chamber of the Board shall be composed of a chairperson and two other members as provided in subarticles (1) to (3) of this article, which together with all the other provisions of this Act other than this subarticle shall apply with respect to each chamber as if reference therein to the Board were a reference to a chamber of the Board.”.

- 5.** In article 8 of the principal Act, immediately after subarticle (2) thereof, there shall be inserted the following subarticles (2A) and (2B): Amendment of article 8 of the principal Act.

“(2A) Saving the provisions of subarticle (2B), an application as is referred to in subarticle (2) shall be made, and shall not be valid unless made, within two months of the applicant’s arrival in Malta.

(2B) Notwithstanding the provisions of subarticle (2A), the Commissioner may, for special and exceptional reasons to be stated in his decision, consider valid an application made after the lapse of the period mentioned in the same subarticle (2A) and proceed accordingly.”.

- 6.** For subarticle (1) of article 18 of the principal Act, there shall be substituted the following: Amendment of article 18 of the principal Act.

“(1) A person seeking asylum in Malta in terms of article 8 of this Act shall be examined under accelerated procedures in accordance with this article when his application appears *prima facie* to be manifestly unfounded as defined in article 2 of this Act.”.

7. Immediately after article 18 of the principal Act, there shall be inserted the following new article:

“18A. (1) This article shall apply to any person in Malta seeking refugee status and who:

(a) has been granted refugee status by a Member State other than Malta; or

(b) has been recognised in a country which is not a member state as a refugee and can still avail himself of that protection or otherwise enjoys sufficient protection in that country, including benefitting from the principle of non-refoulement, and such person can be re-admitted to that country; or

(c) is a national or citizen of any safe country of origin listed in the Schedule to this Act or, if he is not a national or citizen thereof, he has a right of residence therein.

(2) The Minister may by regulation amend the list of countries specified in the Schedule to this Act provided that only countries which in his opinion are countries of safe origin may be listed in the said Schedule and provided further that the Minister shall remove from the said Schedule any country which in his opinion is no longer a safe country of origin.

(3) An application for refugee status by any person to whom this article applies shall be inadmissible.

(4) If in the course of an interview referred to in article 8(1) the person interviewed requests to apply for refugee status and that person is one to whom this article applies the immigration officer conducting the interview shall forthwith draw up a report in writing to the effect that any application by that person for refugee status is inadmissible under subarticle (3) and shall specify the reason for such inadmissibility.

(5) A copy of the report shall be given by the immigration officer to the person interviewed who shall be informed that he may apply to the Commissioner for a reconsideration of his request for refugee status.

(6) Where the ground for the inadmissibility of the application is that another country is a safe country of origin

the immigration officer shall, together with his report, provide the person interviewed with a document in the language of the said country informing the authorities of that country that the person interviewed requested refugee status and that his request was ruled inadmissible and not examined in substance.

(7) A person in whose regard a report is drawn up under this article may within seven days from the date of the report apply to the Commissioner for a reconsideration of the opinion on inadmissibility.

(8) The Commissioner shall forthwith examine any application under subarticle (7) and shall consider any submissions made or evidence produced by the applicant seeking to show that he is not a person to whom this article applies.

(9) Where the application concerns a report as is referred to in subarticle (6) the Commissioner shall also consider any submissions made or evidence produced by the applicant seeking to show that:

(a) the country declared in the report to be a safe country of origin is not a country to which the applicant may safely return; or

(b) that the applicant would be subjected to torture, cruel, inhuman or degrading treatment or punishment were he to be returned to that country.

(10) Any decision of the Commissioner under this article on the inadmissibility or otherwise of an application for refugee status by the applicant shall be final and no appeal shall lie from that decision.”.

8. Immediately after article 20 of the principal Act, there shall be inserted the following schedule:

Addition of
Schedule to the
principal Act.

**“SCHEDULE
(Article 18A)**

Australia	Iceland
Benin	India
Botswana	Jamaica
Brazil	Japan
Bulgaria	Liechtenstein
Canada	Mali
Cape Verde	New Zealand
Chile	Norway
Croatia	Romania
Costa Rica	Senegal
Gabon	Switzerland
Ghana	United States of America
	Uruguay”.

Consequential
amendment of the
Immigration Act,
Cap. 217.

9. Immediately after subarticle (8) of article 25A of the Immigration Act, there shall be added the following:

“(9) The Board shall also have jurisdiction to hear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation in accordance with the following subarticles of this article.

(10) The Board shall only grant release from custody under subarticle (9) where in its opinion the continued detention of such person is taking into account all the circumstances of the case, unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time.

(11) The Board shall not grant such release in the following cases:

(a) when the identity of the applicant including his nationality has yet to be verified, in particular where the applicant has destroyed his travel or identification documents or used fraudulent documents in order to mislead the authorities;

(b) when elements on which any claim by applicant under the Refugees Act is based, have to be determined, where the determination thereof cannot be achieved in the absence of detention;

(c) where the release of the applicant could pose a threat to public security or public order.

(12) A person who has been released under the provisions of subarticles (9) to (11) of this article, may where the Principal Immigration Officer is satisfied that there exists a reasonable prospect of deportation, and no proceedings under the Refugees Act are pending, be again taken into custody pending his removal from Malta.

(13) It shall be a condition of any release under subarticles (9) to (12) of this article that the person so released shall periodically (and in no case less often than once every week) report to the immigration authorities at such intervals as the Board may determine.”.

10. (1) Subarticle (2) of article 39 of the Amendment of Various Laws Act, 2004 shall be amended as follows:

Amendment of the
Amendment of
Various Laws Act,
2004.

(a) in the Maltese text only thereof, the words from “u kull Ordni” to “l-artikolu 49” shall be deleted and immediately after the words “25 ta’ Marzu, 2004” there shall be inserted the words “u kull Ordni magħmul taht dak l-Att relattiv għal dak l-artikolu 49 għandu jittqies bla effett għal kollox u għandu jittqies li qatt ma sar”; and

Act III of 2004.

(b) in the English text only thereof, immediately after the words “the said article 49” there shall be inserted the words “shall be without any effect whatsoever and shall be deemed to have never been made.”.

(2) The provisions of this article shall be deemed to have come into force on the 14th May, 2004.

Passed by the House of Representatives at Sitting No. 162 of the 26th July, 2004.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives