L.N. 175 of 2007

IMMIGRATION ACT
(CAP. 217)

Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007

IN exercise of the powers conferred by article 36 of the Immigration Act, the Minister responsible for immigration has made the following regulations:-

Citation and purpose.

1. (1) The title of these Regulations is Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities, 2007.

(2) These Regulations transpose Council Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking of human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities.

(3) These Regulations shall apply to third country nationals who are or have been victims of offences related to the trafficking of human beings, even if they have entered Malta illegally.

(4) The Principal Immigration Officer may, when he considers it necessary, apply the provisions of these Regulations to third country nationals who have been the subject of an action to facilitate illegal immigration.

(5) These Regulations, shall apply without prejudice to the provisions relating to the protection of witnesses under the Police Act, and to the protection granted under the Refugees Act, and shall define the conditions for granting residence permits of limited duration to third country nationals who co-operate with the Principal Immigration Officer in the fight against trafficking of human beings or against action to facilitate illegal immigration.

Cap. 164.
Cap. 420.

Interpretation.

2. In these regulations, unless the context otherwise requires -

"Act" means the Immigration Act;

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"action to facilitate illegal immigration" covers those cases provided for in article 32 of the Immigration Act;

"co-operate" means the giving of information by the third country national to the immigration authorities related, *inter alia*, to his arrival in Malta as a victim of trafficking or related to his illegal arrival in Malta and includes, in particular, the names of persons of traffickers and their accomplices or details related to points of departure, which information leads to, or contributes significantly to the tracing or prosecution of the trafficker;

"Director" means the Director for Citizenship and Expatriate Affairs;

"Member State" means any one of the Member States of the European Union;

'Minister' means the Minister responsible for immigration;

"residence permit" includes a permit issued under article 4A of the Act and in particular includes an authorization of any type, whether temporary or not, or whether given for a special or ad hoc purpose, giving the right of residence to a citizen of the Union within the territory of Malta;

"third country national" means any person who is not a national of a Member State;

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"trafficking of human beings" covers those cases provided for in Sub-title VIII Bis of Title VIII of the Criminal Code;

"unaccompanied minor" means a third country national, below the age of eighteen, who arrives in Malta unaccompanied by an adult responsible for him whether by law or custom, and for as long as he is not effectively taken into the care of such a person, or a minor who is left unaccompanied after he has entered Malta.

Co-operation and reflection period.

3. (1) When it appears to the Principal Immigration Officer that the third country national is co-operating with him in the fight against trafficking of human beings or, where applicable, against action to facilitate illegal immigration, he shall inform the third country national concerned of the possibilities offered under these Regulations.

(2) The Principal Immigration Officer may invite a non-governmental organisation or another relevant association to give such information to the third country national concerned.

(3) The Principal Immigration Officer shall grant a period of reflection, of not more than two months, with effect from the day when the information referred to in subparagraph (1) is given by the Principal Immigration Officer, for the third country national to detach himself from the influence of the perpetrators of the offence so as to enable him to take an informed decision on the possibility of co-operating.

(4) During the reflection period the third country national shall not be removed from Malta:

Provided that the reflection period shall not create any entitlement to residence under these regulations.

(5) During the period of reflection, while due regard is had to his safety and protection needs, the third country national who does not have sufficient resources shall be provided with:

(i) the standards of living capable of ensuring his subsistence;

(ii) access to emergency medical care;

and, where applicable:

(iii) attention to the needs of the most vulnerable;

(iv) psychological assistance;

(v) translation and interpreting services;

(vi) free legal aid:

Provided that in the case where the third country national is a minor, he shall have access to the public education system under the same conditions as Maltese nationals.

(6) The period of reflection shall be terminated at any time by the Principal Immigration Officer for reasons relating to public policy or the protection of national security or if he establishes that the third country national concerned has actively, voluntarily and on his own initiative renewed contact with the perpetrators of the offences of trafficking of persons or facilitating illegal immigration.

Minors.

4. A third country national who is a victim of trafficking of human beings being or is the subject of an action to facilitate illegal immigration in terms of the provisions of these regulations, and who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be assisted in terms of the Children and Young Persons (Care Orders) Act as if he were a child or young person under such Act.

Cap. 285.

Residence permit.

5. (1) Without prejudice to any restrictions arising from public policy or public security, the Principal Immigration Officer may, at the end of the reflection period, or earlier if he is of the view that the third country national already fulfils the conditions stipulated in paragraphs (a) to (c), recommend to the Director the issuing of a residence permit for the third country national concerned when it is clear that:

(a) the permission to remain in Malta of the third country national may present an opportunity for the investigations or judicial proceedings;

(b) the third country national intends to co-operate with the Principal Immigration Officer;

(c) the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons or facilitating illegal immigration:

Provided that, when the third country national concerned is a minor, the Principal Immigration Officer shall take due account of his best interests and ensure that the procedure is appropriate to his age and maturity.

(2) The residence period referred to in subregulation (1) shall be valid for a period of six months which shall be renewable if the conditions mentioned in the said subregulation continue to subsist and, in particular, taking into account the best interests of the child in cases where the third country national is a minor.

(3) The provisions of regulation 3(5) shall apply to the third country national concerned, when he does not have the necessary resources, after the issue of the residence permit and for the duration of such permit:

Provided that the third country national shall be provided with the necessary medical care or other assistance, when he does not have sufficient resources, and has special needs such as in the case of pregnant women, disabled persons, victims of sexual or other forms

of violence, and minors.

(4) The third country national concerned may be granted a work permit for the duration of the residence permit, in accordance with article 11(3) of the Act, and, especially when such third country national is a minor, access to vocational training and education.

(5) Where applicable, the third country national concerned shall be granted access to programmes or schemes, provided by Government, non-governmental organisations or associations having a specific agreement with Government, aimed at the recovery of a normal social life including, where appropriate, courses designed to improve professional skills or preparation of his assisted return to the country of origin.

Non-renewal and withdrawal of the residence permit.

6. (1) Upon the recommendation of the Principal Immigration Officer, the Director shall not renew the residence permit if the conditions provided for in regulation 5(1) no longer subsist or if the proceedings referred to in the same paragraph have been terminated, in which case the provisions of the Act relating to removal shall apply.

(2) Upon the recommendation of the Principal Immigration Officer, the Director shall withdraw the residence permit if the conditions set out in regulation 5(1) no longer subsist and, in particular:

(a) if the holder has actively, voluntarily and on his own initiative renewed contacts with those suspected of perpetrating the offences referred to in regulation 3(6); or

(b) if the Principal Immigration Officer believes that the co-operation by the third country national concerned is fraudulent or that his complaint is fraudulent or wrongful; or

(c) for reasons relating to public policy and to the protection of national security; or

(d) when the third country national ceases to co-operate; or

(e) when the Principal Immigration Officer decides to discontinue the proceedings.