

L.N. 161 of 2014**REFUGEES ACT
(CAP. 420)****Procedural Standards in Examining Applications
for Refugee Status (Amendment) Regulations, 2014**

IN EXERCISE of the powers conferred by article 25 of the Refugees Act, the Minister for Home Affairs and National Security has made the following rules:-

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| Citation. | 1. The title of these regulations is the Procedural Standards in Examining Applications for Refugee Status (Amendment) Regulations, 2014, and these regulations shall be read and construed as one with the Procedural Standards in Examining Applications for Refugee Status Regulations hereinafter referred to as "the principal regulations". |
| S.L. 420.07 | |
| Amendment of title and regulation 1 of the principal regulations. | 2. In the title and in regulation 1 of the principal regulations, for the words "Refugee Status" there shall be substituted the words "International Protection". |
| General amendment. | 3. In the principal regulations for the word "asylum" wherever it occurs, with the exclusion of the words "asylum procedure", there shall be substituted the words "international protection". |
| Adds new regulation 4A to the principal regulations. | 4. Immediately after regulation 4 of the principal regulations, there shall be added the following new regulation: |
| "Examination of applications. | <p>4A. (1) The Refugee Commissioner shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.</p> <p>(2) When examining applications for international protection, the Commissioner shall first determine whether the applicants qualify as refugees and, if such applicants do not qualify, determine whether the applicants are eligible for subsidiary protection.</p> |

(3) The Commissioner shall ensure that decisions on applications for subsidiary protection are taken after an appropriate examination and that:

(a) applications are examined and decisions are taken on an individual basis;

(b) precise and up-to-date information is obtained from EASO and UNHCR as well as other relevant international human rights organisations;

Provided that the information referred to in this paragraph shall be accessible to the Refugees Appeals Board for the purpose of taking a decision on an application for international protection.

(c) the personnel examining applications and taking decisions have acquired the appropriate knowledge in the field of asylum and refugee law;

(d) the Commissioner has the possibility to seek advice, whenever necessary, from experts on medical, cultural, religious, child-related or gender issues.

(4) The Commissioner shall provide for rules concerning the translation of documents relevant for the examination of applications.

(5) The Commissioner shall ensure that the applicants are provided with information relating to legislation and procedure, free of charge:

Provided that when examining an application for international protection, due consideration shall be had as to whether:

(a) the application is likely to be unfounded; or

(b) the applicant is vulnerable, is an unaccompanied minor or is in need of special procedural guarantees."

Adds new regulation 4B to the principal regulations.

5. Immediately after regulation 4A of the principal regulations, there shall be added the following new regulation:

"Examination of facts and circumstances.

4B. (1) The Commissioner may, from time to time, lay down the rules and guidelines applicable to the procedure for the determination of an application.

(2) The Commissioner shall examine the application as soon as possible and shall, in the assessment of the credibility of an applicant's claim, endeavour to gather all relevant information that will enable him to make a recommendation taking due account of the applicant's cooperation in the proceedings.

(3) (a) The applicant shall submit as soon as possible all elements needed to substantiate the application for international protection. Such elements shall consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality, country and place of previous residence, previous applications for international protection, travel routes, travel documents and the reasons for applying for international protection.

(b) For the purpose of this regulation, when conducting a personal interview on the substance of the application, the Commissioner shall ensure that the applicant is given an adequate opportunity to present the elements needed to substantiate the application, including the opportunity to give an explanation regarding elements which may be missing and/or inconsistencies or contradictions in the application.

(4) The Commissioner shall assess the relevance of the elements referred to in sub-regulation (3). When aspects of the applicant's statements are not supported by documentary or other evidence, such aspects shall not need confirmation if:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.

(5) The assessment of the application for international protection shall be carried out on an individual basis taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentaries presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

(6) For the purpose of this regulation, where the Commissioner deems it relevant for the assessment of an application, the Commissioner shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm:

Provided that the applicant's refusal to undergo such a medical examination shall not prevent the Commissioner from taking a decision on the application."

Amendment of regulation 5 of the principal regulations.

6. Regulation 5 of the principal regulations shall be amended as follows:

(a) sub-regulations (1) and (2) thereof shall be deleted; and

(b) sub-regulations (3) to (8) thereof shall be renumbered as sub-regulations (1) to (6).

Substitutes regulation 14 of the principal regulations.

7. Regulation 14 of the principal regulations shall be substituted by the following new regulation:

"Rights of refugees and persons granted subsidiary protection status.

14. (1) Notwithstanding the provisions of any other law to the contrary, and notwithstanding any deportation or removal order, a person declared to be a beneficiary of international protection shall be entitled:

(a) without prejudice to the provisions of articles 9 and 10 of the Act, to remain in Malta with freedom of movement, and to be granted, as soon as possible, personal documents, including a residence permit for a period of three years, which shall be renewable:

Provided that a residence permit to be granted to a family member may be valid for less than three years and shall be renewable;

(b) unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a convention travel document in the case of a refugee and a travel document in accordance with relevant provisions of national law in the case of a beneficiary of subsidiary protection, entitling him to leave and return to Malta without the need of a visa;

(c) to have access to employment or self-employed activities, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive State medical care:

Provided that the social welfare benefits granted to beneficiaries of subsidiary protection may be limited to core social welfare benefits.

(2) (a) Persons granted the status of refugee or subsidiary protection shall also be granted access to existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

(b) For the purpose of paragraph (a), beneficiaries of international protection who cannot provide documentary evidence of their qualifications shall have access to appropriate schemes for the assessment, validation and accreditation of their prior learning.

(3) (a) Family members of a person granted refugee status, if they are in Malta at the time of the decision or if they join him in Malta, enjoy the same rights and benefits as the refugee so that family unity may be maintained.

(b) Family members of a person granted subsidiary protection, if they are in Malta at the time of decision, enjoy the same rights and benefits as the person enjoying subsidiary protection status so that family unity may be maintained.

(4) Persons granted the status of refugee or subsidiary protection and who are considered as vulnerable persons shall, as far as possible, be provided with adequate health care."

Substitutes regulation 15 of the principal regulations.

8. Regulation 15 of the principal regulations shall be substituted by the following new regulation:

"Medical examination.

15. (1) A medical examination to determine the age of unaccompanied minors within the framework of any possible application for international protection may be carried out. Such medical examination shall be:

- (a) performed with full respect for the individual's dignity;
- (b) the least invasive; and
- (c) carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

(2) For the purpose of this regulation, if, after the medical examination has been conducted by the authority responsible for medical age assessment, there is still doubt with regard to the age of the applicant, it shall be assumed that the applicant is a minor for a period of up to one year.

Provided that:

(a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination which may include the rejection of his claim that he is a minor;

(b) the Children and Young Persons Advisory Board consents to carry out the determination of the age of the minors concerned;

(c) the decision to reject an application from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal:

Provided further that an unaccompanied minor who has refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection and that the best interests of the minor shall be a primary consideration in any such decision."

9. Immediately after regulation 15 of the principal regulations, there shall be added the following new regulation:

Adds new regulation 15A to the principal regulations.

"Action to be taken with regard to an unaccompanied minor falling within the provisions of article 13(3) of the Act.

15A. (1) With regard to an unaccompanied minor falling within the provisions of article 13(3) of the Act, action shall be taken as soon as possible, and not later than thirty days from the issue of the care order under that article, as follows:

(a) it shall be ensured that the appointed representative of the unaccompanied minor is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself for the personal interview. The representative shall be present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview;

(b) where an unaccompanied minor has a personal interview on his application for international protection, that interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.

(2) Without prejudice to the provisions of sub-regulation (1), unaccompanied minors shall be accommodated in centres specialised in accommodation for minors or in any other accommodation suitable for the minor or entrusted either to his adult relatives or to a foster family:

Provided that, in determining who will be entitled to assume the custody of the minor, regard shall be had to the views of the minor, taking into account the age and degree of maturity of such minor:

Provided further that, as far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and the age and degree of maturity of the minor concerned.

(3) If an unaccompanied minor is granted international protection, the authority responsible for the provision of services to unaccompanied minors, with the assistance of international organisations as necessary, shall proceed with the tracing of the family members of the minor, provided that this is in the best interests of the minor:

Provided that in cases where there may be a threat to the life or integrity of the minor himself or his close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning these persons is undertaken on a confidential basis."

10. Sub-paragraph (iii) of paragraph (d) of sub-regulation (1) of regulation 18 of the principal regulations shall be substituted by the following new sub-paragraph:

Amends
regulation 18 of
the principal
regulations.

"(iii) depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic or sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in Malta. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;".

