FLYGTNINGENÆVNET

Ministeriet for Flygtninge, Indvandrere og Integration
Holbergsgade 6
1057 København K

Dato: 16. april 2010
J. nr.: 10/00801
Sagsbeh.: auc

Ministeriet for Flygtninge, Indvandrere og Integration har ved e-post af 24. marts 2010 anmodet Flygtningenævnet om eventuelle bemærkninger til udkast til lovforslag om ændring af udlændingeloven (Skærpede udvisningsregler, samkøring af registre med henblik på styrket kontrol, reform af reglerne om tidsubegrænset opholdstilladelse, inddragelse af studieopholdstilladelser ved ulovligt arbejde, skærpede regler om indgivelse af ansøgning om opholdstilladelse efter indrejse her i landet og opsættende virkning, m.v.).

Flygtningenævnet kan i den anledning oplyse, at lovforslaget, der har været drøftet af Flygtningenævnets formandskab og i Koordinationsudvalget, ikke giver nævnet anledning til bemærkninger for så vidt angår de bestemmelser, der vedrører nævnets virksomhed.

Der henvises til j.nr. 09/09870.

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REHABILITERINGS- OG
FORSKNINGSCENTRET
FOR TORTUROFRE

REHABILITATION AND
RESEARCH CENTRE
FOR TORTURE VICTIMS

København, den 19. april 2010

Høringssvar i forbindelse med forslag til lov om ændring af udlændinge- og integrationsloven
(L187-188 fremsat den 26, marts 2010)

Rehabiliterings- og Forskningscentret for Torturofre (RCT) ønsker hermed at takke for muligheden for at afgive høringssvar. Vi skal dog samtidig beklage den ualmindeligt korte høringsfrist, som i væsentlig grad forringer de hørings-berettigede institutioners mulighed for at tilføre lovgivningsprocessen deres saglige, faglige ekspertise i overensstemmelse med god lovgivningsskik. Vi vil dog på trods af fristens overskridelse tillade os at fremsætte vores bemærkninger til lovforslaget, idet de foreslåede ændringer har vidtrækkende konsekvenser for torturofre og andre traumatiserede flygtninge.

Lægeoplysninger i forbindelse med humanitær opholdtilladelse

I forslaget til ændring af udlændingeloven (L188) foreslås indsat en ny bestemmelse i § 9b, stk. 3, hvorefter helbreds-betinget opholdstilladelse efter stk. 1 er betinget af, at udlændingen fremlægger nødvendig dokumentation for sine helbredsforhold. Af bemærkninger til lovforslaget fremgår under pkt. 8.3, at lægers erklæringer i forbindelse med ansøgning om humanitær opholdstilladelse kan tilsidesættes, hvis lægerne efterfølgende henvender sig til pressen og kritiserer ministeriets sagsbehandling.

RCT anser det for retssikkerhedsmæssigt betænkeligt, at ministeriet får beføjelse til at tilsidesætte en lægeerklæring uden at der foreligger en *begrundet mistanke* om lægens uvildighed og uden at der foretages en lægefaglig vurdering af læge-erklæringens saglighed og kvalitet og uden

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ankemulighed. Lovbemærkningerne om, hvorvidt der er tale om en "uvildig bedømmelse" eller ej synes ydermere ikke at harmonere med forvaltningslovens bestemmelser om inhabilitet i kapitel 2.
Lovforslagets § 9b vil have særdeles uheldige konsekvenser for ansøgeren, idet en tilsidesættelse af en lægeerklæring vil betyde, at ansøgeren må skifte læge og pålægges udgifter til en ny lægeerklæring og forsinkes i sin ansøgning. Det kan udelukke de mest ressourcesvage og dårligst bemidlede personer – herunder ofte torturofre og traumatiserede flygtninge – i at få behandlet deres ansøgning.

Den foreslåede bestemmelse vil endvidere indebære, at lægers ytringsfrihed begrænses i strid med de læge etiske regler, herunder navnlig § 15 om lægens Ret/pligt til deltagelse i den sundhedspolitiske debat:

> *"En læge, der bliver opmærksom på forhold, som lægen opfatter som sundhedsfagligt uforsvarlige, bør tilkendegive sin mening herom ved deltagelse i den offentlige debat."*

Anbefaling: RCT vil anbefale, at der ikke gives lovhjemmel til at tilsidesætte en lægeerklæring uden at der foreligger en begrundet mistanke om lægens uvildighed og uden at der foretages en lægefaglig vurdering af lægeerklærings saglighed.

Meddelelse af tidsubegrænset opholdstilladelse

I § 11 i lovforslaget (L188) foreslås det, at tidsubegrænset opholdstilladelse baseres på et pointsystem, hvorefter der skal udfyldes en række ufravigelige betingelser. Af bemærkningerne til lovforslaget fremgår det imidlertid under punkt 4.2.1, at der vil blive set bort fra disse krav i det omfang Danmarks internationale forpligtelser, herunder FN's Handicap-konvention, tilsiger det. Dette indbefatter bl.a. personer, der lider af posttraumatisk stress, hvis det efter en konkret og individuel vurdering har karakter af en langvarig funktions-nedsættelse.

Trods lovforslagets ordlyd er betingelserne med andre ord reelt ikke ufravigelige, idet der kan (og efter Danmarks folkeretlige forpligtelser *skal*) gøres undtagelse, når det fordres af FN's Handicapkonvention. Dette fremgår imidlertid ikke af selve lovteksten. RCT finder det retssikkerhedsmæssigt betænkeligt, at borgerens retsstilling ikke fremgår af selve lovteksten, men kun af lovbemærkningerne.

Regeringen vil gerne have en fast og fair udlændingepolitik, men indførelse af et pointsystem er kun fair for de, der er herrer over deres egen situation.

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Netop mange torturofre og traumatiserede flygtninge kan gennem tortur og traumer have mistet en hel del af herredømmet over egen situation. Det kan være folk, som er så mishandlede på krop og sjæl, at de trods rehabilitering aldrig genvinder deres fulde funktionsevne. De kan således ikke på lige fod med raske udlændinge leve op til pointsystemet. De, der i forvejen har været så grueligt meget ondt igennem, skal således igen lide for eftervirkningerne af den overlast, de tidligere har været udsat for – det er ikke fair. De fleste af de flygtninge, vi rehabiliterer på RCT, lider udover af posttraumatisk stress syndrom også af kroniske smerter og bevægelseshæmning. Det bliver ofte først sent opdaget, hvorfor de ikke kan fungere. RCT har derfor tidligere anmodet om, at asylansøgere bliver screenet for udsættelse for tortur og andre voldsomme traumer, således at de hurtigt efter tildeling af asyl, kan få tilbudt rehabilitering, hvis de ikke kan fungere. En sådan tidlig screening og indsats ville være økonomisk besparende for det danske samfund og lette megen menneskelig lidelse for de stærkt traumatiserede.

Kravet om at man ikke må have modtaget nogen som helst form for *offentlig hjælp efter lov om aktiv socialpolitik eller integrationsloven* rammer netop de flygtninge, der ikke har mulighed for at klare sig på egen hånd. De af vore klienter, som modtager denne form for offentlig forsørgelse, gør det alene af nød, fordi de er uarbejdsdygtige eller ikke kan komme i arbejde.

Tidsubegrænset opholdstilladelse giver flygtninge tryghed og følelse af, at de selv er herrer over, om de kan blive i Danmark og ikke er nødt til at rive hele familien op med rode og placere dem i et land, som de måske er bange for at ophold sig i, og hvor deres familie måske er myrdet eller flygtet fra. Vi kan allerede nu se, hvorledes de foreslåede skærpede krav til tidsubegrænset opholdstilladelse vil give flere traumatiserede flygtning anledning til frygt. Vi så gerne, at der i stedet blev gjort en øget indsats for at give ro og tryghed, så de svært traumatiserede flygtninge kunne genvinde deres kræfter til rehabilitering og integration.

Danskkravet er som bekendt vanskeligt eller umuligt at leve op til for en del stærkt traumatiserede flygtninge, hvis hukommelse og indlæringsevne er læderet efter tortur. Er man yderligere analfabet, tages der i lovforslaget ikke hensyn til dette, hvilket heller ikke synes fair.

Beskæftigelseskravet på 2 år og 6 måneders ordinær fuldtidsbeskæftigelse vil være umuligt at leve op til for mange svært traumatiserede flygtninge. Denne vurdering deles også af Den Almindelige Danske Lægeforening. At beskæftigelseskravet også gælder for personer, som har fået tildelt førtidspension, forekommer urimeligt, idet det jo allerede ved tildeling af

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førtidspension er vurderet, at personens arbejdsevne er nedsat i et sådant omfang, at vedkommende ikke vil kunne forsøge sig selv via arbejde under nogen form.

Anbefaling: RCT vil anbefale, at det i selve lovforslaget udtrykkeligt angives, at betingelserne vedrørende modtagelse af sociale ydelser, danskkravet, beskæftigel-seskravet og betingelserne om medborgerskab ikke finder anvendelse, hvis Danmarks internationale forpligtelser tilsiger det (jf. bemærkningernes punkt 4.4).

Inddragelse af opholdtilladelse

Lovforslagets § 19, stk. 2, nr. 4 foreslår, at også personer med tidsubegrænset opholdstilladelse i op til 10 år efter tilladelsens meddelelse, kan få inddraget denne ved rejser til hjemlandet. Ifølge bemærkningerne (punkt 7.2) begrundes 10 års grænsen med, at det først på dette tidspunkt må antages, at udlændingen har opnået en sådan tilknytning til det danske samfund, at en rejse af kortere varighed til hjemlandet, ikke kan føre til, at opholdstilladelsen inddrages.

Den foreslåede bestemmelse harmonerer ikke med lovforslagets intention om at velintegrerede udlændinge hurtigere skal kunne få tidsubegrænset opholdstillad-else i Danmark. På den ene side belønner lovforslaget velintegrerede udlændinge ved at give dem mulighed for hurtigere at opnå tidsubegrænset opholdstilladelse. På den anden side "straffer" lovforslaget den selvsamme gruppe ved at fratage dem den tidsubestemte opholdstilladelse, såfremt de i op til 10 år efter tilladelsen meddelelse rejser til deres hjemland. Det vil således ikke blive tillagt betydning, at de pågældende udlændinge har opnået en faktisk tilknytning til det danske samfund. Lovforslaget vil endvidere ramme traumatiserede flygtninge, som allerede har fået meddelt tidsubegrænset opholdstilladelse (efter gældende ret).

Opnåelse af tidsubegrænset opholdstilladelse er ifølge bemærkningerne udtryk for, at udlændingen har opnået en faktisk tilknytning til Danmark og har gjort en aktiv indsats for og respekterer dansk kultur og demokratiske værdier. På dette grundlag må udlændingen formodes at have en berettiget forventning om at kunne bevare denne tilknytning og deres opholdsgrundlag i Danmark. Lovforslaget tillægger imidlertid ikke dette aspekt nogen vægt ved vurderingen af, om de pågældende skal fratages deres tidsubegrænsede opholdstilladelse.

Anbefaling: RCT vil anbefale, at lovforslagets § 19, stk. 2, nr. 4,

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udformes således, at personer med tidsubegrænset opholdstilladelse undtages, således at de ikke risikerer at få inddraget deres opholdsgrundlag ved rejser til hjemlandet.

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Værtsordning

Ifølge forslag til lov om ændring af integrationsloven (L187) foreslås det, at indsætte en ny bestemme i § 5a, hvorefter kommunalbestyrelserne kan etablere værtsordninger for nyankomne udlændinge med henblik på at styrke deres netværk i lokalsamfundet og herigennem deres integration i det danske samfund.

RCT betragter dette forslag som særdeles positivt. Gennem de mangeårige erfaringer vi har med via Dansk Flygtningehjælp at skaffe frivillige danskere til vore klienter, kan vi se, hvorledes det bidrager til klienternes integration og følelse af at blive accepteret af danske medborgere. Flertallet af de klienter, vi får henvist, har alene kontakt til danskere, som får betaling for kontakten. Kombinationen af at vi danskere ofte er lukkede, og torturofre gennem torturen har mistet tilliden til deres medmennesker gør det vanskeligt for disse traumatiserede flygtning på egen hånd at komme i kontakt med danskere, med hvem de kan udvikle et ligeværdigt forhold. Sprogindlæring og kendskab til det danske samfund er yderst vanskelig, hvis man ikke har nogen at praktisere sproget med eller få almindelige oplysninger fra. Kontakt med godhjertede frivillige danskere kan være afgørende for, at traumatiserede flygtninge får følelsen af at blive anerkendt og tør bevæge sig ud i det danske samfund.

Anerkendelse

Afslutningsvis ønsker vi at pointere, at anerkendelse af torturofrenes og andre traumatiserede flygtninges situation er en meget væsentlig faktor i integrationen. Stiller man denne sårbare gruppe til stadighed dårligere end andre ved at stille krav, som de ikke har mulighed for at leve op til, risikerer man at underminere den livskraft, der endnu måtte være i behold efter udsættelse for tortur.

Såfremt ministeriet måtte ønske en uddybelse af ovennævnte bemærkninger, stiller RCT sig naturligvis til rådighed.

Med venlig hilsen

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UNHCR
The UN
Refugee Agency

Formateret

UNHCR's observations on

Formateret: Dansk

Law on amendments to the Alien Act (Skærpede udvisningsregler, samkøring af registre med henblik på styrket kontrol, reform af reglerne om tidsubegrænset opholdstilladelse, inddragelse af studieopholdstilladelse ved ulovligt arbejde, skærpede regler om indgivelse af opholdstilladelse efter indrejse her i landet og opsættende virkning, m.v.)

Formateret: Dansk

Formateret: Dansk

Formateret: Dansk

Introduction

UNHCR provides these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees[1]. As set forth in its Statute, UNHCR fulfils its international protection mandate by, inter alia, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto." UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the *1951 Convention relating to the Status of Refugees* ("herinafter; the 1951 Convention") according to which State parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention". The same commitment is included in Article II of the *1967 Protocol relating to the Status of Refugees* ("the 1967 Protocol")."

UNHCR notes that the proposed amendments mainly concerns integration of immigrants in Denmark. However, the proposal, in many provisions, does not distinguish between persons granted international protection and other immigrants. Some amendments also directly concern the rights of beneficiaries of international protection and their families.

The Office's mandate for integration of refugees and the search for durable solutions for refugees stem primarily from Article 34 of the 1951 Convention and its Statute. Article 34 of the Convention states that States shall as far as possible facilitate the

[1] See Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1, available at http://www.unhcr.org/refworld/docid/3ae6b3628.html ("Statute").

"assimilation and naturalisation" of refugees, and in particular, States shall make every effort to expedite naturalisation proceedings. UNHCR also has an interest in ensuring that measures are taken to enforce non-discrimination and anti-racism efforts, as well as to combat xenophobia. Integration can contribute to reinforcing positive attitudes in the host community vis-à-vis refugees, along with asylum seekers and other third country nationals, which are important for social cohesion.

UNHCR appreciates the opportunity to present its comments to the proposed amendments, however considering the short deadline given by the Danish government, the Office has not had adequate opportunity to analyze the proposal, but will limit itself to highlight the following observations. UNHCR reserves the right, once adequate analysis is completed, to provide further detailed and public comments to the legislation, and to further elaborate any opinion provided in these preliminary, and necessarily incomplete, comments.

General observations

UNHCR welcomes the many positive initiatives taken by the Danish government in recent years to ensure integration of protection beneficiaries and notes the positive results highlighted in the report supporting the proposal.

To some extent, refugees and other beneficiaries of international protection face similar challenges to those of other third country nationals in regard to access to the labour market, education and other integration challenges. UNHCR therefore welcomes that protection beneficiaries are included in the integration programmes available in Denmark. However, the specific situation of protection beneficiaries distinguishes them in some ways from other third country nationals. Refugees involuntarily move from one country to another. They have suffered the loss of protection by their own State and possible separation from family and community support. Many have experienced traumatic events in their country of origin and may therefore be in need of specialised care and counselling, as well as, specific health services. Refugees may also need special consideration in assessing their performance against general integration targets. UNHCR therefore considers that a number of the proposed amendments do not sufficiently take into account this specific situation of protection beneficiaries and recommends that changes be made to better reflect their specific needs as elaborated below.

According to international refugee law, the integration of refugees and other beneficiaries of international protection should be a process, whereby they are progressively granted a wider range of rights and entitlements broadly aligned with those enjoyed by the host state's citizens. Over time, the process should lead to permanent residence rights and a durable solution, preferably, voluntary return, if possible, or the acquisition of citizenship in the country of asylum. As specified in

ExCom Conclusion No.104 (LV), the ultimate goal of international protection is to achieve durable solutions for refugees.[2]

UNHCR considers integration, not only, as a legal and socio-economic process, but also a social and cultural process of acclimatization by the refugees to the local communities. It should enable refugees to live together with the host population, without discrimination or exploitation and contribute actively to the social life of their country of asylum. The timely grant of secure legal status and residency rights are essential factors in the integration process. UNHCR therefore recommends that refugees and other beneficiaries of international protection receive long-term residence rights at an early stage, as shorter term residency have been proven to have a negative impact on the person's sense of belonging and motivation to integrate. Although Denmark has opted out from the EU *acquis* on asylum, it may be worth noting that UNHCR has in various commentaries to the EU *acquis*, recommended that permanent residency permits should be granted to refugees, at the latest at the en d of the three years residence period established by the Qualification Directive. UNHCR considers that the three-year-deadline also should apply to persons granted subsidiary protection.[3]

UNHCR further recommends that naturalisation should be available within a reasonable timeframe and facilitated, as set out in Article 34 of the Convention.[4] Moreover, in order to create a secure basis conducive for integration, UNHCR advices against frequent periodic reviews of their status.

Proposal for increased possibilities of expulsion in case of violations of the Criminal Law

The new § 22 proposes that unconditional imprisonment can lead to expulsion, in cases of "social fraud", or if crimes have been committed in a situation of severe disturbances of public order.

UNHCR welcomes the statement that Denmark's international obligations will be respected in the implementation of this provision and would, in this connection, wish to take the opportunity to recall some of these obligations pertaining to persons with protection needs.[5]

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[2] See also, "Local Integration", Global Consultations on International Protection, EC/GC/02/6, 25 April 2002.
[3] "Note on the Integration of Refugees in the European Union", UNHCR, May 2007, p. 6
[4] Ibd.
[5] C.f UNHCR ExCom Conclusion 1977, No. 7 (XXVIII) - 1977, available at: http://www.unhcr.org/ refworld/ docid/3ae68c4437.html [accessed 16 April 2010] Advisory Opinion from the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Scope of the National Security Exception Under Article 33(2) of the 1951 Convention Relating to the Status of Refugees, 6 January 2006, "The Scope and Content of the Principle of *Non-Refoulement*: Opinion", Sir Elihu Lauterpacht and Daniel Bethlehem, 20 June 2001, in "*Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*", edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, Cambridge (2003).

In principle, every state has the right to expel non-nationals from its territory in accordance with the State's obligations under international law, in particular human rights law. There are specific provisions applicable to non-nationals who are lawfully on the territory. With regard to refugees lawfully on the territory, expulsion to a third country is limited under Article 32 and Article 33(2) of the 1951 Convention. Article 32 enumerates the permissible grounds for expulsion as "national security" and "public order". These grounds would not permit expulsion or return (*refoulement*) to the country of origin, or to a third country where the refugee's life or liberty would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Refoulement under the 1951 Convention may only be justified when the stringent conditions of its Article 33(2) are met. The permissible grounds for *refoulement* under Article 33(2) are limited to situations when there are reasonable grounds for regarding a particular refugee as "a danger to the security of the country" of asylum or when he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the host community. If the grounds for expulsion of a refugee foreseen in the proposed Danish Act do not fall under these terms, they would be contrary to the 1951 Convention. Since a refugee, unlike an ordinary alien, does not have a country to which to return, his expulsion may have particularly serious consequences, which would justify a restrictive interpretation of this provision. Also the *travaux préparatoires* for both Articles 32 and 33(2) emphasize that these provisions should be interpreted in a restrictive manner.

In UNHCR's understanding, the gravity of the crimes should be judged against international standards, not simply by its categorization in the host State. In either case, these should be treated as exceptions and the principle of proportionality should be applied. This would require that there be a rational connection between the removal of the refugee and the elimination of the danger; the removal must be the last possible resort to eliminate the danger; and the danger to the country of refuge must outweigh the risk to the refugee upon expulsion.

The *public order* exception would permit the expulsion of a refugee who had been convicted of certain serious crimes where such crimes are considered to be violations of public order. Even in cases where criminal offences are repeatedly committed, one of the offences should be particularly grave in order to justify expulsion. A separate finding is required to the effect that the continued presence of the offender is prejudicial to the maintenance of public order. In addition, these convictions are only relevant if they indicate a present threat that the individual will act the same way in the future.

Article 33(2) requires a conviction by a Court of a "particularly serious crime", which would include crimes such as murder, rape, arson and armed robbery. Certain other offences could be considered particularly serious if they are accompanied by the use of deadly weapons, involve serious injury to persons, or there is evidence of serious habitual criminal conduct. Factors to be considered include the nature of the act, the actual harm inflicted, the form of procedure used to prosecute the crime, and whether

most jurisdictions would consider the act in question as a serious crime. It should thus be considered that only egregious crimes warrant an exception to the *non-refoulement* principle.

More importantly, conviction of a particularly serious crime is not sufficient, in, and, of itself. The person concerned must, in view of this crime, also present a *danger to the community*. As with Article 32, this would require an assessment of the present or future danger posed by the wrong-doer. Hence, not any offence and not any criminal conviction may justify expulsion under the terms of either Article 32 or 33(2). Expulsion measures against a refugee should only be taken in very exceptional cases and after due consideration of all the circumstances, including the possibility for the refugee to be admitted to a third country other than his or her country of origin. Against this background UNHCR believes that the proposed rules relating to expulsion of refugees go beyond what is permitted by Article 32 of the 1951 Convention.

In UNHCR's view, the proposal is also problematic insofar as the expulsion of a refugee entails that s(he) loses his/her refugee status. The cessation of refugee status is exhaustively regulated by Article 1C of the 1951 Convention. This provision does not allow for cessation of refugee status on the ground that a refugee has committed common crimes such as those which according to the proposed Danish legislation can lead to expulsion. Revocation, or withdrawal, of refugee status may be foreseen for refugees who engage in conduct coming within the scope of Article 1F(a) or 1F(c), provided that all the criteria for the application of either of these articles is met. While asylum could be withdrawn in cases where Articles 32 and 33(2) are applicable, the termination of refugee status would be at variance with the 1951 Convention unless, as noted above, the criteria of Articles 1C, 1F(a) and 1F(c) are met.

Changes in the rules on temporary residecy permits

The proposed new § 11,3 stipulates that "*Med mindre der er grundlag for at inddrage opholdstilladelsen efter § 19, kan der efter ansøgning meddeles tidsubegrænset opholdtilladelse til en udlænding over 18 år, der har opnået mindst 100 point efter stk. 6, jf. Dog stk. 10-12*".

Formateret: Dansk

UNHCR welcomes that refugees can obtain residence permit already after four years, in comparison to, the current period of 7 years, if the criteria for obtaining the 100 points are met. However, UNHCR notes that the abolition of the current 7 years period, which is replaced by the criteria in § 11 (no financial support received from the government within the previous 3 three years, no debt to the government, passing the Danish language test "dansk prøve 2", *2 ½ year employment within the last three years etc)* in order to for fill the point system will be difficult for many refugees to meet, if not impossible for certain groups.

UNHCR also notes that the new §11 and 12 stipulate that exemption for these requirements can be made with reference to the *Convention on the Rights of Persons with Disabilities* or Denmark's international obligation in general. No other exemption is

foreseen based on personal circumstances or specific vulnerabilities, which may not meet the standards of this Convention. Keeping in mind that refugees move for non-economic reasons and that they have often experienced severe losses and trauma; they may require special assistance and may not be able to embrace fully the new challenges and opportunities in the way expected in the proposed system.

UNHCR further notes that inability to obtain the required points and long-term residence will have a negative impact on refugees' possibilities to obtain citizenship. According to the Circular on naturalisation § 5 indefinite residence permit is a requirement for obtaining citizenship. UNHCR is concerned with this, as many protection beneficiaries will not be able to find a durable solution other than naturalisation and may, despite reasonable efforts, not be able to meet the integration targets set out in the proposed § 11,3.

UNHCR recommends that the requirements set out in § 11,3 exempt beneficiaries of international protection, who, due to age, trauma or other vulnerabilities, cannot be expected to meet the integration targets, but who, as protection beneficiaries, nevertheless are entitled to a secure status and a durable solution.

Withdrawal of residence permit granted on in accordance with § 7 of the Allens Act in connection with vacation in the country of origin

The proposed new § 19, 2 number 4 stipulates that "nar en udlaending, der har opholdstilladelse efter § 7 eller §, 8, stk. 1 eller 2, rejser pa ferie eller andet korterevarende ophold til det land, hvor den myndighed, der har givet opholdstilladelsen, har fundet, at udlaendingen risikere forfoelgelse omfattet af udlaendingelovens § 7, og forholdene, der har begrundet opholdstilladelsen, har aendret sig pa en sadan made, at udlaendingen ikke laengere riskerer sadan forfoelgelse, jf. § 7 og § 8, stk. 1 og 2. En opholdstilladelse kan inddrages efter 1 pkt. indtil 10 ar efter det tidspunkt, hvor opholdstilladelsen er meddelt foerste gang".

Formateret: Dansk

Currently, a temporary residency permit can be withdrawn if the grounds for issuing the permit were incorrect (cancellation of status) or, in the case of asylum seekers, if the conditions in the country of origin has changed so there is no further risk of persecution (cessation of status). The Law proposal requests clarification of when a temporary residency permit can be withdrawn due to cessation of status when the refugee/person with protection status no longer is at risk of persecution. The existing practice is that, a refugee with temporary residency permit has to apply to the Immigration Service in advance of the visit to the country of origin in order to get permission to return without risking to interrupt the residency. The application includes the reasons for return, time of visit and expected return date. Upon return, the refugee meets with the Immigration Service to discuss whether the conditions in the country of origin have substantially changed to the extent that cessation of status could be applicable.

The proposal is that refugees/persons with protection status will loose the residency permit if the reasons, upon which, they received residency permits if they voluntarily

return to their country of origin on vacation and the conditions in the country of origin have changed so there is no risk of persecution. The possibility to withdraw the residency permit shall remain for ten years after the issuance of the original permit.

UNHCR welcomes the comments to the Act regarding the administration of cessation of refugee status, which will be applied in accordance with Article 1 C of the *1951 Refugee Convention*. UNHCR also welcomes the comments to the Act with regards to the application of the guidelines on cessation from *UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status* and Denmark's international obligations in general.

However, the Office regrets that the proposed changes will include persons under international protection, who have been granted indefinite residence permit and have had residency in Denmark up to 10 years. UNHCR recommends that beneficiaries of international protection are given the possibility to visit family members in their country of origin at an earlier stage. UNHCR would like to reiterate that the grounds identified in Art 1 C of the 1951 Convention are exhaustive; that is, no additional grounds would justify a conclusion that international protection is no longer required[6]. Operation of the cessation clauses should, in addition, be distinguished from other decisions that terminate refugee status, such as, cancellation and revocation of refugee status.

UNHCR notes the comments with regards to application of Art. 1 C (5), which provides for the cessation of a person's refugee status where "the circumstances in connection with which he [or she] has been recognized as a refugee have ceased to exist. UNHCR would like to reiterate that to assist assessment of how and to what extent conditions in the country of origin must have changed before these "ceased circumstances" clauses can be invoked, UNHCR's Executive Committee has developed guidance in the form of *Executive Committee Conclusion No. 69 (XLIII) (1992)*, which reads:

[I]n taking any decision on application of the cessation clauses based on "ceased circumstances", States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist.

... [A]n essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect, inter alia, from relevant specialized bodies, including particularly UNHCR.

UNHCR would further like to note that for cessation to apply, the changes need to be of a fundamental nature, such that the refugee "can no longer ... continue to refuse to avail himself of the protection of the country of his nationality" (Article 1C(5)) or, if he

[6] See, i.a, UNHCR Handbook, para 116, ExCom Conclusion, "Cessation of Status", 9 October 1992, No. 69 (XLIII) - 1992, available at: http://www.unhcr.org/refworld/docid/3ae68c431c.html [accessed 16 April 2010].

has no nationality, is "able to return to the country of his former habitual residence" (Article 1C(6)). Cessation based on "ceased circumstances" therefore only comes into play when changes have taken place that address the causes of displacement which led to the recognition of refugee status.

In determining whether circumstances have changed so as to justify cessation under Article 1C (5) or (6), another crucial question is whether the refugee can effectively re-avail him- or herself of the protection of his or her own country. Such protection must therefore be effective and available. It requires more than mere physical security or safety. It needs to include the existence of a functioning government and basic administrative structures, as evidenced for instance through a functioning system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood. An important indicator in this respect is the general human rights situation in the country.[7]

Factors which have special weight for its assessment are the level of democratic development in the country, including the holding of free and fair elections, adherence to international human rights instruments, and access for independent national or international organisations freely to verify respect for human rights. There is no requirement that the standards of human rights achieved must be exemplary. What matters is that significant improvements have been made, as illustrated at least by respect for the right to life and liberty and the prohibition of torture; marked progress in establishing an independent judiciary, fair trials and access to courts: as well as protection amongst others of the fundamental rights to freedom of expression, association and religion. Important, more specific indicators include declarations of amnesties, the repeal of oppressive laws, and the dismantling of former security services[8].

UNHCR recommends that the Act reflects the fact that in cases where Denmark is deciding on the application of the cessation clauses, UNHCR may be consulted in evaluating the impact of changes in the country of origin or in advising on the implications of cessation of refugee status in relation to large groups of refugees on Danish territory. Such an involvement of UNHCR would be in line with the Office's supervisory role under its Statute in conjunction with Article 35 of the 1951 and would be consistent with the views of the Executive Committee as noted in its Conclusion No. 69 (1992).

Proposal to make the requirement for self-support in case of family reunification for spouses more stringent

[7] UNHCR, "The Cessation Clauses: Guidelines on Their Application", 26 April 1999, available at: http://www.unhcr.org/refworld/docid/3c06138c4.html [accessed 16 April 2010], UN High Commissioner for Refugees, *Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention and Article I.4 of the 1969 OAU Convention [Global Consultations on International Protection/Second Track]*, 1 May 2001, available at: http://www.unhcr.org/refworld/docid/3bf925ef4.html [accessed 16 April 2010]

[8] UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 10 February 2003, HCR/GIP /03/03, available at: http://www.unhcr.org/refworld/docid/3e50de6b4.html [accessed 16 April 2010]

The proposal is that the family reunification for spouses should be made conditional on whether the spouse in Denmark is part of the Danish labour market and not benefiting from social welfare.

The right of the family to live as an integral whole, is protected by a variety of internationally recognized rights under both international and European human rights law. The core of the right to family reunification in international human rights law is found in the Convention on the Rights of the Child, Article 10(1) of which codifies the right to family reunification for minor children and their parents. The formal recognition of family unity in the refugee context is based on the Final Act of the Conference of Plenipotentiaries that adopted the 1951Convention relating to the status of Refugees.

According to the EC Family Reunification Directive, refugees may be exempted from the requirement to establish conditions of support for family members, namely evidence of adequate accommodation, sickness insurance and economic resources. It is UNHCR's recommendation that this exemption also be made in the Danish Law to ensure that refugees are provided with effective protection due to their and their family members', additional vulnerability. Considering that the humanitarian needs of persons benefiting from subsidiary protection are analogous to those of Convention refugees, UNHCR submits further that there is no valid reason to treat these two categories of persons differently as regards their entitlement to family reunification. Refugees or persons receiving subsidiary protection are both in need of international protection as they are not able to return to their countries of origin because of a well-founded fear of persecution, torture or inhuman or degrading treatment or punishment. To deny family reunification to a beneficiary of subsidiary protection is therefore to deny the individual his/her fundamental right to respect for family life, as it would be for a Convention refugee.

Although this category is not covered by the EC Family Reunification Directive, there is ample evidence of this principle in other European fora. 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. The Committee of Ministers of the Council of Europe, moreover, specifically recommends that the same family reunion provisions relating to refugees should apply to persons under complementary forms of protection in their Recommendation No.R(99) 23, 15 Dec. 1999, on family reunion for refugees and other persons in need of international protection.

UNHCR therefore recommends that refugees and other beneficiaries of international protection be exempted from this requirement.

UNHCR Regional Office for the Baltic and Nordic countries
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