

***D**oJISSUANCES*

DOJ ISSUANCES

Department Circular No. 010

ESTABLISHING THE PROCEDURE FOR PROCESSING APPLICATIONS UNDER THE 1980 CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, AND FOR OTHER PURPOSES

(approved on February 22, 2022)

....

WHEREAS, the Philippines, as a State Party to the Convention on the Rights of the Child, is obliged to ensure, among others, that a Child shall not be separated from his or her parents against his or her will, except when competent authorities, subject to judicial review, determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the Child;

WHEREAS, in Resolution No. 116, dated 01 February 2016, the Senate concurred in the accession of the Philippines to the 1980 Convention on the Civil Aspects of International Child Abduction or the Hague Child Abduction Convention (HCAC), which obliges State Parties to: (a) secure the prompt return of children wrongfully removed from or retained in any Contracting State; and (b) ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States;

WHEREAS, as a State Party to the HCAC, the Philippines is obliged to take all appropriate measures to secure within its territory the implementation of the objectives of the HCAC using the most expeditious procedure available

I. PRELIMINARY PROVISIONS

SECTION 2. Coverage. - The procedure under this Circular shall apply to both

incoming and outgoing HCAC applications received by the HCAC Unit for the return of, or access to, a Child who was wrongfully removed from his or her country of habitual residence, or who was wrongfully retained in a country other than his or her country of habitual residence.

....

II. HCAC PRINCIPLES

SECTION 4. *Basic Principles.* — This procedure shall be governed by the following basic principles:

- a. The HCAC is based on the principle that, save in exceptional circumstances, the wrongful removal or retention of a Child across international borders is not in the best interests of the Child.
- b. A decision under the HCAC concerning the return of the Child shall not be taken to be a determination on the merits of any custody issue.
- c. The return of the Child to his or her country of habitual residence is to restore the *status quo* that existed prior to the wrongful removal or wrongful retention.

...

III. PHILIPPINE HCAC CENTRAL AUTHORITY

SECTION 5. *Philippine HCAC Central Authority.* - The Department of Justice, through the Legal Staff (Office of the Chief State Counsel), is the designated Philippine HCAC Central Authority.

It shall cooperate with the Central Authorities of other HCAC Contracting States to secure the prompt return of children covered by the HCAC and to achieve the other objects of the HCAC.

....

IV. PROCESSING OF HCAC APPLICATIONS

Under this section, applications shall be filed with the Legal Staff of the DOJ, but may also be filed by the “Left Behind Parent” directly before the Philippine courts. Section 10 and 11 respectively specify the contents of the HCAC Application and mandatory requirements, as well as the supplementary requirements

required.

Upon receipt of the application, the Bureau of Immigration shall be tapped by the HCAC Unit to verify the entry and exit of the Taking Parent and the Child. If not in the country, the application shall be transmitted to the Contracting State in which the Child is believed to be.

The HCAC Unit has discretionary power to determine whether to accept or refuse the application. Section 14 specifies the grounds for refusal, some of which are the following— the child having reached 16 at the time of filing or pendency, lack of sufficient proof showing a relationship between a Left Behind Parent and Child, no proof of evidence or wrongful removal or retention, etc.

The Taking Parent may discuss the situation on return of the child with the Left Behind Parent, and may be given a duly accredited mediator if necessary. If they fail to agree, a case may be filed before the appropriate court.

From Section 20, a Left Behind Parent whose child is habitually residing in the Philippines (and has been wrongfully removed or retained) may file an HCAC application with the PH HCAC Central authority as well. The same procedure shall follow.

Department Circular No. 024

STRENGTHENING THE REFUGEES AND STATELESS PERSONS PROTECTION UNIT, ENHANCING THE RULES FOR REFUGEE AND STATELESS STATUS DETERMINATION, AND FOR OTHER PURPOSES

(approved on June 22, 2022)

....

WHEREAS, the Republic of the Philippines is a State Party to the 1951 United Nations Convention Relating to the Status of Refugees, its 1967 Protocol Relating to the Status of Refugees (1967 Protocol), 1954 United Nations Convention Relating

to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness (1961 U.N. Convention). As such, the Philippines is under a legal obligation to comply in good faith with all the provisions of the Conventions and other relevant international instruments to which the Philippines is a State Party to;

WHEREAS, Section 2, Article II of the 1987 Constitution provides, in part, that the Philippines adopts the generally accepted principles of international law as part of the law of the land;

WHEREAS, Section 47(b) of Commonwealth Act (C.A.) No. 613, as amended, otherwise known as "The Philippine Immigration Act of 1940", provides that the President is authorized, "for humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons" in such classes of cases and under such conditions as he or she may prescribe;

WHEREAS, Section 13 of C.A. No. 613 allows the admission of persons "without nationality" as immigrants;

WHEREAS, it is essential to strengthen the procedure to determine the eligibility and protection of refugees and stateless persons consistent with the aforementioned laws, rules, regulations and Conventions, as well as other relevant international instruments, to ensure that POC are provided protection and assistance in the Philippines;

...

RULE 1. PRELIMINARY PROVISIONS

SECTION 1. *Definition of Terms.* — As used in this Circular, the following terms are hereby defined:

- p. "Refugee" refers to a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it;

- q. "Stateless Person" refers to a person who is not considered a national by any State under the operation of its law.

SECTION 3. *Basic Principles.* — This refugee and stateless status determination procedure shall be governed by the following basic principles:

- a. Non-refoulement is a core principle of the 1951 U.N. Convention, that prohibits States from returning refugees and asylum seekers in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of non-refoulement, pursuant to customary international law, may also apply to other individuals whose lives or freedom may be threatened;
- b. Non-detention on account of being an Applicant, a refugee, or a stateless person;
- c. Non-deprivation of refugee or stateless status, and nondiscrimination in the application of the Conventions, including on account of race, religion, political opinion, or Country of Origin or habitual residence;
- d. An Applicant for refugee and/or stateless status shall not be penalized on account of illegal entry or presence in the country, provided he or she presents himself or herself without delay to the authorities and/or shows good cause for his or her illegal entry or presence; and
- e. Preservation and promotion of family unity

...

RULE II. PRELIMINARY PROVISIONS

An application may be filed with the Refugees & Stateless Persons Person Unit (a unit from the DOJ). Some documents to be submitted with this are travel documents, IDs, and other documents to support the claim of refugee or stateless status. If they are unable to do so physically, this may also be done through electronic means.

Section 4 states that upon submission of the application, deportation proceedings of the applicant and their family members shall be suspended until a final determination of their status has been reached.

In cases wherein there are large groups arriving across international borders, wherein individual determination of claims are impracticable, group-based

applications are possible.

Refugee claims, as per Section 8, shall be given priority if such a claim exists while recognition as a stateless person is processing. The determination of this stateless status shall be suspended first pending the refugee claim.

Decisions shall be rendered by the RSPPU within 90 days from their last interview, and if denied, a request of reconsideration may be filed.

RULE III. ACCELERATED REFUGEE STATUS DETERMINATION

SECTION 1. Coverage. — The Accelerated RSD shall apply to situations wherein the Applicant is: (i) at the airport or seaport and is the subject of an exclusion proceedings by the Bureau; (ii) detained at a government detention facility and is subject of deportation proceedings by the Bureau; or (iii) other analogous circumstances as may be determined by the RSPPU wherein the threat of refoulement is imminent.

The proceedings under this Rule shall be summary in nature.

...

Once an arriving alien arrives at the port of entry (airport or seaport), and declares that they seek asylum in the Philippines, an application is initiated. An application may be filed by the applicant or their counsel, personally or through electronic means. The same procedure follows if they are detained in any government detention facility.

Soon after the receipt of their Application, a protection officer shall interview the applicant. Within 5 working days from the interview, a written decision shall be rendered. If this is denied with finality, an Exclusion Order shall be issued and the parties shall be turned over to the airline or vessel.

...

RULE IV. PROVISIONS COMMON TO REGULAR AND ACCELERATED STATUS DETERMINATION

Applicants are granted certain rights from the time they file the Application

until the finality of the decision on the Application. This includes the rights to counsel, to be informed and have access to the procedure, and to have his or her interview conducted in a private, secure, and appropriate location, and in a confidential manner. In addition, they have the right participate in the procedure in a language and manner they understand and to have access to the services of an interpreter, if necessary, access to the UNCHR and most importantly, to have protection from any forcible return in any manner whatsoever, to a country where he or she may face persecution on account of his or her race, religion, nationality, membership of a particular social group or political opinion

If they are recognized as a refugee or stateless person, this recognition may inure to their other family members in the Philippines. They shall have the right to residence, gain visas, freedom from registration fees, and gain pertinent immigration documents. They shall also be entitled to rights and privileges accorded by the Convention subject to national laws, rules, and regulations.

...

RULE V. APPEAL

An administrative appeal may be appealed to the Office of the President under the principle of exhaustion of administrative remedies, as long as in accordance with the rules and regulations governing appeals to their office.

...

RULE VI. EXCLUSION

SECTION 1. *Persons Excluded from the 1951 U.N. Convention and the 1954 U.N. Convention (Excluded Application).* —The 1951 U.N. Convention and the 1954 U.N. Convention do not apply to persons:

- a. Who are at present receiving from organs or agencies of the United Nations other than the UNHCR protection or assistance so long as they are receiving such protection or assistance;
- b. Who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or
- c. If there are serious reasons for considering that the person:
 - a. Has committed a crime against peace, a war crime, or a crime

against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

- b. Has committed a serious non-political crime outside of the Philippines prior to his or her admission to the Philippines; or
- c. Has been found guilty of acts contrary to the purposes and principles of the United Nations.

...

RULE VII. CANCELLATION, REVOCATION, AND CESSATION OF REFUGEE AND STATELESS STATUS

SECTION 1. *Cancellation of Refugee or Stateless Status.* — The refugee or stateless status shall be cancelled if the recognition was granted erroneously as a result of:

- a. Intentional misrepresentation or concealment by the Applicant or a third party of facts that were material to the determination of the claim;
- b. New evidence shows that the Applicant ought not to have been recognized in the first place;
- c. Recognition was granted on the basis of a material mistake of fact or law; or
- d. Misconduct of the Applicant (such as threats or bribery) being the motivating reason for the recognition of refugee or stateless status.

SECTION 2. *Revocation of Refugee Status.* — The refugee status shall be revoked where, following recognition, the refugee engages in conduct coming within the scope of Section 1(c)(1), Rule VI or Section 1(c)(3), Rule VI, in that there are serious reasons for considering that he or she has:

- a. Committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes; or,
- b. Been found guilty of acts contrary to the purposes and principles of the United Nations.

SECTION 3. *Revocation of Stateless Status.* — The stateless status shall be revoked if there are serious reasons to believe that, after recognition, the stateless person engages in conduct that would bring him or her within the exclusion grounds under Rule VI of this Circular.

SECTION 4. *Cessation of Refugee Status.* — Refugee status shall cease if a refugee:

- a. Voluntarily re-availed himself or herself of the protection of the country of his or her nationality;
- b. Voluntarily re-acquired his or her lost nationality;
- c. Acquired a new nationality and enjoys the protection of the country of his or her new nationality;
- d. Voluntarily re-established himself or herself in the country he or she left, or outside which he or she remained owing to fear of persecution;
- e. Enjoys protection from the country of his or her nationality, because the circumstances in connection with which he or she was recognised as a refugee have ceased to exist; Provided, that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her nationality; or,
- f. Not having a nationality, is able to return to his or her country of former habitual residence because the circumstances in connection with which he or she was recognised as a refugee have ceased to exist; Provided, that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her former habitual residence.

...

Stateless status may cease if the concerned stateless person has obtained a nationality, or reacquired their former nationality. If their refugee status was cancelled, revoked or ceased under the aforementioned grounds (with some exceptions), if their application also includes a claim to stateless status which has been suspended, the procedure to determine stateless status shall proceed.

...

RULE VIII. REMOVAL**SECTION 1. *Removal of a Refugee or a Stateless Person.*** — A refugee or a stateless person may be removed from Philippine territory:

- a. Where he or she has been convicted with finality of a particularly serious offense and is considered a danger to the community after having served his or her sentence; or

- b. In respect of whom there are reasonable grounds for regarding him or her as a danger to the security of the country

...

For one to be removed, the decision must be reached in accordance with due process of the law. Generally, the applicant may submit further evidence, file one (1) motion for reconsideration or letter-request, or appeal the decision to the Office of the president. The refugee or stateless person subject of removal shall be allowed a reasonable period within which to seek admission into another country.