

NOTE ON LOSS OF REFUGEE STATUS
THROUGH CANCELLATION

1. Loss of refugee status comes about principally through application of one of the so-called cessation clauses. These clauses, which are contained in Article 1C(1) through (6) of the 1951 UN Convention Relating to the Status of Refugees and paragraph 6 A (ii)(a-f) of the Statute of the Office of the High Commissioner for Refugees, spell out the conditions under which a refugee ceases to be a refugee. They are based on the premise that international protection may no longer be justified or required because the reasons for a person becoming a refugee have ceased to exist as a result of changes in the country of origin or habitual residence. A strict approach is taken to their application, motivated by the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes - not of a fundamental character - in the situation prevailing in their country of origin.

2. Loss of refugee status through application of the cessation clauses must be clearly distinguished from loss of status as a result of annulment or cancellation. The 1951 Convention does not specifically address cancellation. Para. 117 of the Handbook on Procedures and Criteria for Determining Refugee Status states:

"117. Article 1 C does not deal with the cancellation of refugee status. Circumstances may, however, come to light that indicate that a person should never have been recognized as a refugee in the first place; e.g. if it subsequently appears that refugee status was obtained by a misrepresentation of material facts, or that the person concerned possesses another nationality, or that one of the exclusion clauses would have applied to him had all the relevant facts been known. In such cases, the decision by which he was determined to be a refugee will normally be cancelled."

Res Judicata and Cancellation

3. Cancellation under the circumstances envisaged in para. 117 of the Handbook follows from general principles of law, including that of res judicata. According to the principle of res judicata once a matter is judicially determined, that matter may not subsequently be reopened by the same parties.

4. However, in some rare circumstances, a decision may lose its final character when new facts appear indicating that the decision should never have been taken in the first place. The circumstances that may call for an exception to the principle of res judicata include the following:

- a) newly discovered evidence;
- b) fraud, including concealment of material facts that there was a duty to disclose;
- c) other misconduct in the proceedings.

5. Exceptions to the principle of res judicata must be approached and applied restrictively. The newly discovered evidence, fraud or other misconduct must, for example, be sufficiently material to have affected the outcome. In principle, it also has to be proved that the evidence could not readily have been discovered earlier, i.e. at the time the decision was taken. Moreover, it is usually required that the fraud or misconduct be judicially determined.

6. Regarding the specific examples given in para. 117 of the Handbook, it also follows that misrepresentation of material facts must normally be intentional and manifest. If the misrepresentation is not manifest there should, at least, be serious doubts as to the plausibility and credibility of statements made. Furthermore, the subsequently emerging circumstances (possession of another nationality or activity to bring the person under one of the exclusion clauses) must not have been clearly evident or readily discoverable at the time of the first decision.

7. In this connection, reference should be made to Executive Committee Conclusion No. 12 (XXIX). Although this conclusion does not deal with cancellation, but rather with extra-territorial recognition of refugee status, it is of relevance in that it sets out the conditions required before the extra-territorial effect of refugee status can be denied. Para. (g) of this Conclusion recognizes:

"that refugee status as determined in one Contracting State should only be called into question when it appears that the person manifestly does not fulfil the requirements of the Convention, e.g. if facts become known indicating that the statements initially made were fraudulent, or showing that the person concerned falls within the terms of a cessation or exclusion provision of the 1951 Convention."

The Protection of Acquired Rights and Legitimate Expectations

8. That cancellation of refugee status can only be an exceptional measure follows from a proper application of the principle of res judicata outlined above. It follows, moreover, from the fact that a positive determination of refugee status, while declaratory of a particular state of affairs, is also constitutive of rights. Once recognized, refugee status brings with it certain rights under international and municipal law on the basis of which recognized refugees are able to act and live their lives. It is also probable that refugees, especially long-term residents, will acquire material rights, property and other, that must be respected by States pursuant to the doctrine of acquired rights. Moreover, the overall situation of resident aliens gives rise to what may loosely be called "legitimate expectations" as to the continuance of their status. The responsibility to respect and protect these expectations in the case of long-term resident aliens is increasingly recognized by States.

9. As cancellation of refugee status could have the effect of depriving individuals of their acquired rights and interfering with legitimate expectations, it is all the more a decision to be approached restrictively.

Examples of Cases Where the Question of Cancellation of Refugee Status has Arisen

10. In March 1985 one of UNHCR's Branch Offices withdrew the previously accorded refugee status of an IC on the ground that his wife and child visited his country of origin after the grant to him of refugee status. Headquarters determined that, as the visit followed the decision on status, it was not a material fact on the basis of which refugee status had been recognised. It was also not a fact which threw serious doubt on the applicant's credibility, having in mind that the wife was from a country other than her husband's country of origin and could, therefore, visit the latter country without exposing herself to danger.

11. In September 1985, one Branch Office raised the possibility of cancellation of the status of three ICs on the ground that they had had their passports easily renewed by the embassy of their country of origin. Headquarters was of the opinion that, since there was no reliable way of determining the significance of being able to renew the passports, the fact that the ICs managed to do so did not give rise to sufficiently serious doubt as to their credibility.

12. In early 1986, one Branch Office sought the advice of Headquarters concerning the continuing status of a recognized refugee, described by the Branch Office as an alcoholic criminal known to be a dangerous person. In June 1985 he had wounded a UNHCR guard and was subsequently sentenced to two months in prison. There were rumours that he had committed a murder in his country of origin and that this had been the sole reason for his flight. The Branch Office felt that the refugee's continuing presence was a serious threat to the security of UNHCR personnel and suggested that appropriate action to be taken against those who use violence against staff should include a systematic reassessment of their dossier. After having studied the case, Headquarters concluded that the rumours and contradictions involved in the case, as well as the personality problems of the IC, were not of such a character as to justify cancellation in accordance with paragraph 117 of the Handbook.

13. In another recent case, an IC was accorded refugee status in country X. A couple of months later it was revealed that he had previously taken up residence in country Y where not only had he been recognized by the authorities as having the same rights and obligations as a national of that country, but also he had been prosecuted for robbery with violence and sentenced to two years imprisonment. The IC had managed to escape to country Y and had claimed a well-founded fear of persecution in his country of origin, not mentioning his status in country Y which only came to light later. After a careful review of the IC's dossier, UNHCR requested the authorities in country X to reconsider recognition of his refugee status. Status was then cancelled and he was sent back to country Y.

Conclusion

14. The practice is consistent with the conclusion that cancellation must be approached restrictively. In the case of misrepresentation of facts, vague suspicions are not sufficient. There must be substantial facts that cast serious doubt on the credibility of the person. The misrepresentation must, of course, be intentional. Further, to justify cancellation all subsequently

revealed facts have to be material, i.e. decisive to the outcome. Facts that could have readily been discovered, or were known, at the time of the first decision cannot, as a rule, serve this purpose. As a decision to cancel refugee status can have serious consequences for the individual, it is recommended that all cases involving possible cancellation of status should be referred to Headquarters.