

IMMIGRATION
NEW ZEALAND



Immigration New Zealand Operational Manual

Refugees

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See previous policy Refugees Effective 26/07/1999

Note: Refugees policy contained in this section of the Operational Manual is Immigration New Zealand operational policy and does not constitute Government immigration policy as described in section 13A(1) of the Immigration Act 1987.

Effective 28/11/2005

C1 OBJECTIVE

Immigration Act 1987 s 129A

The objective of New Zealand's refugee policy is to ensure that it meets its obligations under the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees ("the Convention").

Effective 01/10/1999

C2 REFUGEE STATUS IN NEW ZEALAND

C2.1 Refugee status to be determined under the Immigration Act 1987

Immigration Act 1987 ss 129A, 129C, 129ZA

See C2.1 Effective 01/10/1999

- a. The object of Part VIA of the Immigration Act 1987 is to provide a statutory basis for the system by which New Zealand ensures that it meets its obligations under the Convention.
- b. Whether or not a person should continue to be recognised as a refugee in New Zealand under the Convention must be determined in accordance with Part VIA of the Immigration Act 1987.
- c. Anyone who seeks recognition as a refugee in New Zealand under the Convention must have that claim determined in accordance with Part VIA of the Immigration Act 1987.
- d. Part VIA of the Immigration Act 1987 applies on and from 1 October 1999 to any claim or other matter relating to refugee status that had been made to Immigration New Zealand before that date but which had not been finally determined as at that date.
- e. Where any appeal was part-heard as at 1 October 1999, the rules relating to that appeal continue to be those that applied immediately before that date.
- f. C2.1(d) does not affect the period during which an appeal may be made in cases where a person had an existing right to appeal a decision on a claim as at 1 October 1999.

Effective 28/11/2005

C2.5 New Zealand's obligations under the 1951 Convention Relating to the Status of Refugees

Immigration Act 1987 ss 129D(1), 129X(2)

See C2.5 Effective 01/10/1999

- a. New Zealand acceded to the 1951 Convention Relating to the Status of Refugees on 30 June 1960 and to the 1967 Protocol Relating to the Status of Refugees on 6 August 1973.
- b. In carrying out their functions under Part VIA of the Immigration Act 1987 in determining claims or matters involving the possible loss of refugee status, **refugee status officers** must act in a manner consistent with New Zealand's obligations under the Convention.
- c. In carrying out their functions under the Immigration Act 1987 in relation to a refugee or refugee status claimant, **immigration officers** must take into account the provisions of Part VIA of the Immigration Act 1987 and of the Convention.

C2.5.1 Who is a refugee

Immigration Act 1987 Sixth Schedule Convention Relating to the Status of Refugees Article 1A(2)

Refugees are persons who are outside the country of their nationality or former habitual residence and have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and are unable or, owing to such fear, unwilling to return to that country.

Note: for the official definition of a refugee see Article 1A(2) of the Convention.

C2.5.5 Country of nationality

Immigration Act 1987 Sixth Schedule Convention Relating to the Status of Refugees Article 1A(2)

- a. In the case of a person who has more than one nationality, "country of nationality" means each of the countries of which they are a national.
- b. If a person has the protection of one of their countries of nationality, New Zealand's obligations under the Convention are not activated.

C2.5.10 Refugee or refugee status claimant not to be removed or deported

Immigration Act 1987 ss 114Q, 129X, Sixth Schedule Convention Relating to the Status of Refugees Articles 32, 33

- a. No person who is a refugee status claimant may be removed or deported from New Zealand until their claim to refugee status has been finally determined.
- b. No person who has been recognised as a refugee in New Zealand and no refugee status claimant may be removed or deported from New Zealand unless Article 32(1) or 33(2) of the Convention allows their removal or deportation.
- c. Under Article 32(1), Governments undertake not to expel a refugee lawfully on their territory except on grounds of national security or public order.
- d. Article 33(1) of the Convention provides for the obligation of "non-refoulement", by which Governments undertake not to return a refugee to a country where the refugee's life or freedom would be threatened for a reason accepted under the Convention.
- e. Article 33(2) states however that the prohibitions against "non-refoulement" no longer apply if:
 - i there are reasonable grounds for regarding a refugee as a danger to the security of the country in which they are (i.e. in our case, New Zealand); or
 - ii a refugee, having been convicted of a particularly serious crime in the receiving country, poses a danger to the community of that country (i.e. New Zealand).
- f. Because a determination to apply Article 32(1) or 33(2) of the Convention to a refugee or refugee status claimant involves highly sensitive issues and potential conflict with New Zealand's obligations under the Convention, such a determination may only be made:
 - i by an immigration officer with Schedule 1 delegations; and
 - ii following:
 - legal advice; and
 - if appropriate, following consultation with the Ministry of Foreign Affairs and Trade.
- g. Articles 32(1) and 33(1) do not apply to people to whom the exclusion provisions in Article 1F have been applied. Such persons are considered unworthy of protection because of their conduct. However such persons should only be removed from New Zealand after the steps in C2.5.10(f)(i) and (ii) have been followed.

Effective 28/11/2005

C2.10 Completed claims may not be challenged

See C2.10 Effective 01/10/1999

Immigration Act 1987 s 129Z

No determination on a person's refugee status in New Zealand made before 1 October 1999 by an employee of Immigration New Zealand or by the Refugee Status Appeals Authority ("RSAA") may be challenged on the ground that the employee or the Authority had no legal or statutory authority to make the determination in question.

Effective 28/11/2005

C2.15 Legal aid for refugees or refugee status claimants

Legal services Act 1991 ss 19(1)(ja) and (jb), 19(3)

- a. Refugees or refugee status claimants are eligible for civil legal aid on or after 1 October 1999 in relation to:
 - i processing any claim for refugee status made on or after 1 April 1999; and
 - ii processing any other matter arising under *C3.10* (See: "C3.10 Additional functions of refugee status officers" on page 5)(a) and (b) that first arose on or after 1 April 1999; and
 - iii any judicial review proceedings in relation to matters arising under C2.15(a)(i) or (ii); and
 - iv any application for a review by the Inspector-General of Intelligence and Security of a decision of the Director of Security to make a security risk certificate under section 114D of the Immigration Act 1987.
- b. Refugees or refugee status claimants are eligible for civil legal aid in relation to the matters in C2.15(a) whether they are in New Zealand lawfully or unlawfully.
- c. Refugees and refugee status claimants who wish to apply for civil legal aid in relation to the matters in C2.15(a) should be advised to contact a lawyer.

Effective 28/11/2005

C3 REFUGEE STATUS OFFICERS

C3.1 Refugee status officers

See C3.1 Effective 01/10/1999

Immigration Act 1987 ss 129B, 129E(2) and (3), 129W

- a. Every refugee claim must be determined by a refugee status officer. Refugee status officers are Immigration New Zealand employees whom the Chief Executive has designated to undertake refugee status determinations.
- b. No person who is currently employed to consider applications for permits or to administer the removal provisions of the Immigration Act 1987 may be designated as, or act as, a refugee status officer.

Effective 28/11/2005

C3.5 Functions of refugee status officers considering claims

Immigration Act 1987 s 129F

- a. If a refugee status officer receives a claim that is not a subsequent claim (see C4.35), it is their function, as appropriate, to determine whether:
 - i the claimant is a refugee within the meaning of the Convention; or
 - ii the claimant should be excluded from the protection of the Convention because any of the Articles 1D, 1E or 1F of the Convention apply.
- b. If a refugee status officer receives a subsequent claim, it is their function:
 - i to determine whether, since the most recent claim by the claimant, circumstances in the claimant's home country have changed to such an extent that the subsequent claim is based on significantly different grounds from the previous claim; and
 - ii only if the officer is satisfied that circumstances have so changed, to determine any matter specified in C3.5(a).

Effective 01/10/1999

C3.10 Additional functions of refugee status officers

See C3.10 Effective 01/10/1999

Immigration Act 1987 ss 129L, 129M

Immigration (Refugee Processing) Regulations 1999 regs 11, 12, 13

- a. Refugee status officers also have the following functions:
 - i determining whether the Convention has ceased to apply to a person who has previously been recognised as a refugee by a refugee status officer (but not by the RSAA) in terms of Article 1C of the Convention; and
 - ii determining whether the decision to recognise a person as a refugee was properly made in any case where it appears that the recognition given by a refugee status officer (but not by the RSAA) may have been obtained by fraud, forgery, false or misleading representation or by concealing relevant information, and determining to cease to recognise the person as a refugee if appropriate; and
 - iii determining whether a person already recognised as a refugee should subsequently be excluded from the protection of the Convention in any case where a refugee status officer (but not the RSAA) may not have been able to properly consider matters dealt

- with in Article 1D, 1E and 1F of the Convention for any reason, including fraud, forgery, false or misleading representation, or concealment of relevant information; and
- iv determining whether, in the light of any relevant international arrangement or agreement, a person who may have lodged, or had the opportunity to lodge, a claim for refugee status in another country may have a claim for refugee status accepted for consideration in New Zealand; and
 - v determining, in the case of a person who had already been recognised as a refugee by a country other than New Zealand, whether that person may avail themselves of the protection of that country; and
 - vi applying to the RSAA for a determination as to whether:
 - the Convention has ceased to apply, in terms of Article 1C, to a person whom the Authority has previously recognised as a refugee; or
 - the Authority should cease to recognise a person as a refugee, in any case where that recognition may have been obtained by fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - any of Articles 1D, 1E and 1F of the Convention should be applied to exclude a person from the protection of the Convention, in any case where the Authority has recognised the person as a refugee but may not have properly considered the matters dealt with in those Articles for any reason, including fraud, forgery, false or misleading representation, or concealment of relevant information.
- b. Refugee status officers also have the functions specified in C3.10(a)(i) to (iii), as if an appropriate person or body other than a refugee status officer had recognised refugee status, in relation to:
- i persons who before 1 January 1991 were recognised as refugees after the Interdepartmental Committee on Refugees had considered their claim; and
 - ii persons recognised as refugees outside New Zealand who have travelled to New Zealand as mandated refugees.
- c. When carrying out any function under C3.10(a) or (b), a refugee status officer must notify the person concerned personally in the prescribed manner of the matter under consideration.
- d. In proceedings involving the loss or potential loss of refugee status, a refugee status officer has those powers which they would have as if the proceedings were a refugee claim.
- e. A refugee status officer does not have jurisdiction to make determinations on applying Article 32(1) or Article 33(2) (see *C2.5.10* (See: "C2.5 New Zealand's obligations under the 1951 Convention Relating to the Status of Refugees" on page 2)(f)). However, if circumstances come to light during the determination process which indicate that considerations may arise under Article 32(1) or Article 33(2), the officer making the determination should bring this fact to the attention of the Branch Manager, Refugee Status Branch, who in turn should notify the Manager, Border Security & Compliance Operations, Border Security Group, of the fact.

Effective 28/11/2005

C3.15 Powers of refugee status officers

See C3.15 Effective 01/10/1999

Immigration Act 1987 s 129H
Immigration (Refugee Processing) Regulations 1999 reg 9 and Schedule

- a. In carrying out their functions a refugee status officer may require a claimant:

- i to supply any information, and within the times, that the officer reasonably requires; and
 - ii to produce any documents the claimant possesses or is able to obtain that the officer requires; and
 - iii to consent to any other person releasing any relevant documents or information relating to the claimant; and
 - iv to provide or allow any fingerprints or photographs of the claimant to be taken that are reasonably necessary for the purpose of ascertaining or confirming the claimant's identity or nationality; and
 - v to attend an interview.
- b. If an officer has good cause to suspect that a person other than the claimant has possession or control of any of the claimant's documents (including any passport or travel document), the officer may request the person in the prescribed manner to produce the document (see *C5.30* (See: "C5.30 Request for document to be produced by third party" on page 15)).
- c. The person who is requested to produce the document may not refuse to comply with the request only because that person has a lien over the document.
- d. If a claimant is detained in custody, a refugee status officer may require the relevant member of the Police, Superintendent or other officer in charge of the penal institution, or other person having custody of the claimant, to:
- i provide the officer with access to the place where the claimant is being detained, and to the claimant; and
 - ii produce the claimant for interview.
- e. The member of the Police, Superintendent or other officer concerned must comply with any such requirement, and make appropriate facilities available for an interview.
- f. If a claimant who is required to attend an interview fails to attend at the appointed time and place, the officer may determine the claim without conducting the interview.
- g. Immigration New Zealand may decide the order in which claims are to be handled, and no decision on a claim may be called into question on the basis that it ought to have been handled earlier or later than any other claim or category of claim.

Effective 28/11/2005

C3.20 Immigration matters not within functions of refugee status officers

Immigration Act 1987 s 129W

The following are matters for the Minister or appropriate immigration or visa officer only, and are outside the functions, powers or jurisdiction of refugee status officers:

- a. granting or issuing or giving any visa, permit, exemption or special direction; and
- b. revoking or cancelling any visa, permit, exemption or special direction; and
- c. the conditions to be attached to any visa, permit, exemption or special direction; and
- d. removing or deporting any person from New Zealand; and

- e. any issue of a humanitarian nature that arises outside the context of a decision relating to the recognition of refugee status in New Zealand.

Effective 01/10/1999

C3.25 Refugee status officer may sign certificate as evidence in proceedings

Immigration Act 1987 s 143(1A) and (5)

- a. In any proceedings relating to any matter under Part VIA of the Immigration Act 1987, whether before the RSAA or any court, a refugee status officer may sign a certificate containing any statement in relation to any person to the effect that:
 - i the person has or has not, at any material time, claimed to be a refugee in New Zealand (or elsewhere); or
 - ii the person has or has not, at any material time, been recognised as a refugee in New Zealand (or elsewhere); or
 - iii the person, while in New Zealand, produced or surrendered to a refugee status officer any passport, certificate of identity, or any other document that was forged or obtained fraudulently; or
 - iv the person has, or has not, lodged an appeal to the RSAA, or a matter is or is not before a refugee status officer under section 129L, or before the RSAA under section 129R, of the Immigration Act 1987.
- b. A certificate signed by a refugee status officer under section 143(1A) of the Immigration Act 1987 must be treated as proof of the truth of the statement in the absence of proof to the contrary established on the balance of probabilities.
- c. Every refugee status officer signing such a certificate is, in the absence of proof to the contrary, presumed to be duly authorised to sign it.

Effective 01/10/1999

C4 CLAIMING REFUGEE STATUS

C4.1 Who may not make a claim for refugee status

A person who is outside New Zealand may not make a claim for refugee status in New Zealand.

Effective 01/10/1999

C4.5 Who may make a claim for refugee status

Immigration Act 1987 ss 114G(4)(b), 114K

- a. To be eligible to claim refugee status, a person must be in New Zealand at the time of making a claim.
- b. People who are in New Zealand either lawfully or unlawfully may make a claim for refugee status.
- c. A person about whom the Minister has made a preliminary decision or final decision to rely on a security risk certificate may make a claim for refugee status.

Effective 01/10/1999

C4.10 Whose claim for refugee status may not be considered

Immigration Act 1987 ss 129K, 129J

- a. A refugee status officer may not consider a claim for refugee status by a person who is:
 - i the holder of a residence permit; or
 - ii a New Zealand citizen; or
 - iii exempt under section 12 of the Immigration Act 1987 from having to hold a permit.
- b. An officer may determine any question of such a person's continued refugee status arising under *C3.10* (See: "C3.10 Additional functions of refugee status officers" on page 5)(a)(i) to (iii).
- c. An officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in that person's home country have changed to such an extent that the subsequent claim is based on significantly different grounds from the previous claim.

C4.10.1 Subsequent claims for refugee status

Immigration Act 1987 s 129J

- a. To be eligible to make a subsequent claim for refugee status, a claimant must be in New Zealand, whether lawfully or unlawfully.
- b. A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in that person's home country have changed to such an extent that the subsequent claim is based on significantly different grounds from the previous claim.

- c. In any such subsequent claim, the officer may rely on any finding of credibility or fact made in relation to a previous claim, and the claimant may not challenge any such finding.

Effective 01/10/1999

C4.15 How refugee claim to be made

See C4.15 Effective 01/10/1999

Immigration Act 1987 ss 129G(1), 148A(3)

- a. A refugee claim is made as soon as a person expresses an intention, either orally or in writing, to a representative of the Department of Labour or to a member of the Police that they wish to seek refugee status in New Zealand.
- b. People may express an intention to seek refugee status in a variety of ways, including, but not limited to, statements of the following kind:
- i they have been persecuted; or
 - ii they are in fear of being persecuted; or
 - iii they have been imprisoned for political reasons; or
 - iv they are afraid of being imprisoned in their home country; or
 - v they want to "see the United Nations" (i.e. the United Nations High Commissioner for Refugees ("UNHCR") office in New Zealand; or
 - vi they want to know if there is a United Nations (i.e. the United Nations High Commissioner for Refugees, "UNHCR") office in New Zealand; or
 - vii they are "stateless" or "homeless" persons; or
 - viii they are afraid to return to their home country; or
 - ix they will be killed if they are returned home; or
 - x they simply "do not want to return".
- c. A written claim for refugee status may be:
- i received at any office of the Department of Labour in New Zealand; and
 - ii delivered either in person or by mail.
- d. There is no fee for making a claim for refugee status.

Effective 28/11/2005

C4.20 Refugee claim to be confirmed in writing in the prescribed manner

See C4.20 Effective 01/10/1999

Immigration Act 1987 s 129G(2)

Immigration (Refugee Processing) Regulations 1999 reg 3

- a. Once a claim is made, the claimant must, on request by a refugee status officer, confirm the claim in writing in the prescribed manner.
- b. A claim for refugee status must be:
- i lodged in writing using the approved form *Confirmation of Claim to Refugee Status in New Zealand*; and
 - ii completed in English; and

- iii signed by the claimant; and
- iv accompanied by:
 - the name of any representative; and
 - a street address, as well as a facsimile number, if appropriate, at which the claimant may be contacted; and
 - a current residential address for the claimant.

Effective 28/11/2005

C4.25 Claims for refugee status on arrival in New Zealand

- a. Under the guidelines set down by the UNHCR, New Zealand has a general obligation to admit people who make a claim for refugee status on arrival in New Zealand.
- b. Officers should give due consideration to such people because they may be tired, disoriented, distressed, and incapable of communicating in English, either orally or in writing.
- c. Immigration officers must not take any action to remove the claimant.
- d. Unless a preliminary assessment of the claim made by an immigration officer indicates that the claim appears to be "abusive" or "manifestly unfounded", an officer may grant a visitor's permit in accordance with E8.5.
- e. A refugee status claim is abusive or manifestly unfounded if:
 - i it is clearly fraudulent or unrelated to the criteria for granting refugee status laid down in the Convention; or
 - ii the claimant is claiming refugee status in an attempt to evade normal immigration requirements.
- f. If a permit is not granted, the claimant must be treated as a person to whom section 128 of the Immigration Act 1987 applies, except that they may not be removed from New Zealand until their refugee status has been finally determined.

Effective 01/10/1999

C4.30 Further requirements

See C4.30 Effective 01/10/1999

C4.30.1 Evidence of identity to be supplied with application form

Immigration (Refugee Processing) Regulations 1999 reg 3(4)

- a. When lodging the form *Confirmation of Claim to Refugee Status in New Zealand* claimants must as far as reasonably possible supply evidence of their:
 - i identity (including a recent photograph of the claimant); and
 - ii country of origin.
- b. Evidence of identity may include, but is not limited to, the following:
 - i a travel document (e.g. a passport, certificate of identity or refugee travel document); or
 - ii (if no travel document is available) a birth certificate or other identity document; or

- iii (if neither a travel document nor an identity document is available) a statutory declaration outlining the claimant's personal details.

C4.30.5 Claimant to provide all information relevant to claim

Immigration Act 1987 s 129G(3)

Immigration (Refugee Processing) Regulations 1999 reg 3(4)

- a. A claimant must as soon as possible try to provide an officer with all information relevant to their claim, including a written statement, at least five working days prior to the interview.
- b. The written statement must as far as reasonably possible include:
 - i any evidence supporting the fact or likelihood of persecution; and
 - ii if available, documents indicating the alleged agent of persecution or potential persecution and the reason for that persecution; and
 - iii details of persons (if any) who can be contacted to support or verify the claim.

C4.30.10 Other family members applying for refugee status

Immigration Act 1987 s 129G(3)

Immigration (Refugee Processing) Regulations 1999 Reg 3(5)

- a. A claimant must as soon as possible try to indicate to an officer whether any other members of their immediate family who are in New Zealand are also seeking refugee status and, if so, whether any such claim is on different grounds.
- b. If more than one person in a family group is claiming refugee status:
 - i each claimant must complete a separate *Confirmation of Claim to Refugee Status in New Zealand* form; but
 - ii all those claims should be lodged together.

C4.30.15 Claimant to provide current address

Immigration Act 1987 s 129G(4)

- a. A claimant must provide an officer with:
 - i a current address in New Zealand at which they may be contacted; and
 - ii a current residential address.
- b. A claimant must notify the officer as soon as possible of a change in either of those addresses.
- c. The officer may assume that the latest address so provided is correct.

Effective 28/11/2005

C5 DETERMINING CLAIMS FOR REFUGEE STATUS

C5.1 Confidentiality to be maintained

Immigration Act 1987 s 129T

- a. Refugee status officers, other persons who administer the Immigration Act 1987, and persons to whom details are disclosed under C5.1(c)(i) or (ii) must keep confidential the identity of a refugee status claimant or other person whose status is being considered, as well as the details of their case, at all times, both during and after the determination of the claim or other matter.
- b. Compliance with C5.1(a) may require confidentiality about the very fact or existence of a claim or case, if disclosing its fact or existence could identify the person concerned or endanger anyone.
- c. C5.1(a) does not apply to prevent the disclosure of details:
 - i to a person necessarily involved in determining the relevant claim or matters; or
 - ii to an officer or employee of a New Zealand Government department or other Crown agency whose functions in relation to the claimant or other person require knowledge of those details; or
 - iii to the UNHCR; or
 - iv in dealings with other countries for the purpose of determining the matters in *C3.10* (See: "C3.10 Additional functions of refugee status officers" on page 5)(a)(iv) and (v); or
 - v if the details are published in a way that is unlikely to identify the person concerned; or
 - vi if there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure in the particular circumstances of the case.
- d. C5.1(a) does not apply to prevent the disclosure of details about a particular claimant or other person if the claimant or person has, whether expressly or impliedly, by their words or actions waived their right to confidentiality.
- e. Anyone who without reasonable excuse breaches C5.1(a) or publishes information released in breach of C5.1(a) commits an offence and, if convicted, is liable to a fine.

Effective 01/10/1999

C5.5 Information on claimant's rights

Immigration (Refugee Processing) Regulations 1999 reg 4

See C5.5 Effective 01/10/1999

Once a refugee status claim has been assigned to a refugee status officer for processing, that officer must inform the claimant of the following rights:

- a. the right to contact a representative of the UNHCR, together with information on how to exercise that right; and
- b. the right to contact a lawyer; and
- c. the right to have an independent interpreter engaged by Immigration New Zealand present at any interview of the claimant by a refugee status officer.

C5.5.1 Other information to be provided to claimants

Immigration (Refugee Processing) Regulations 1999 reg 5

Refugee status officers must inform claimants of the procedure for determining their claim, including the following matters:

- a. how contact will be maintained; and
- b. possible requests for further information;
- c. the claimant's right to provide further information up to the time that the claim is actually determined; and
- d. the availability of an independent interpreter, if appropriate; and
- e. the decision-making process, including information about the process for scheduling an interview; and
- f. the right of appeal to the RSAA if the claim is unsuccessful; and
- g. the right to an interview before the RSAA if the claimant has not been interviewed by a refugee status officer for the purpose of determining the claim.

Effective 28/11/2005

C5.10 Officer may determine procedures on claim

Immigration Act 1987 ss 129G(7), 129H(6)

See C5.10 Effective 01/10/1999

- a. Subject to Part VIA of the Immigration Act 1987 and to any regulations made under it, and to the requirements of fairness, officers may determine their own procedures on a claim.
- b. Immigration New Zealand may decide the order in which claims are to be handled, and no decision on a claim may be called into question on the basis that it ought to have been handled earlier or later than any other claim or category of claim.

Effective 28/11/2005

C5.15 Request by officer for further information

Immigration (Refugee Processing) Regulations 1999 reg 6

- a. An officer may make a written request for further information from a claimant by:
 - i giving that request at an interview; or
 - ii sending it to the claimant.
- b. Any such request must specify the date (which must be reasonable in all the circumstances) by which the claimant should provide the extra information, although the officer may grant further time at their discretion.
- c. Any such request must include a statement to the effect that if the officer does not receive the requested further information within the given time period, the officer may proceed to determine the claim on the basis of the information available.

Effective 01/10/1999

C5.20 Comment on prejudicial information

Immigration (Refugee Processing) Regulations 1999 reg 7

- a. A refugee status officer must disclose to a claimant any material or information obtained by the officer that is or may be prejudicial to the claimant or the claim if:
 - i the material or information:
 - was not obtained from the claimant; and
 - is not publicly available material or information; and
 - ii the claimant has not previously had an opportunity to comment on the material or information; and
 - iii the officer intends to take the material or information into account in determining the claim.
- b. If an officer discloses potentially prejudicial material or information to a claimant under regulation 7, they must give the claimant a reasonable opportunity to comment on or rebut that material or information, whether:
 - i within a specified time period; or
 - ii at an interview.
- c. The officer must also advise the claimant that if they fail to respond within the given time period or (where reasonable) at the interview, the officer may proceed to determine the claim on the basis of the material and information available.
- d. Nothing in C5.20(a) requires an officer to disclose to a claimant any material or information whose disclosure would be likely to endanger any person, but the officer must advise the claimant of the non-disclosure.

Effective 01/10/1999

C5.25 Failure to provide further information or to comment on prejudicial information

Immigration (Refugee Processing) Regulations 1999 reg 8

If a refugee status officer asks a claimant to provide further information or invites a claimant to comment on potentially prejudicial material or information, and the claimant fails to respond within any appropriate time frame set for that purpose, the officer may proceed to determine the claim.

Effective 01/10/1999

C5.30 Request for document to be produced by third party

Immigration Act 1987 s 129H(1)(d)

Immigration (Refugee Processing) Regulations 1999 reg 9 and Schedule

- a. A refugee status officer who asks a person other than the claimant (including a person who is a representative of a body corporate) to produce a document must make the request in the form set out in the Schedule to the Immigration (Refugee Processing) Regulations 1999 and must sign the request.
- b. The request must be served personally on the person concerned or on a representative of the body corporate to which the request is addressed.

Effective 01/10/1999

C5.35 Interviews

Immigration (Refugee Processing) Regulations 1999 regs 19, 20

See C5.35 Effective 01/10/1999

- a. If a claimant or a person whose refugee status is in question is to be interviewed by a refugee status officer, they must be notified in advance of the date, time and place of the interview.
- b. The notice must advise the claimant or person of:
 - i (if the first language of the claimant or person is not English) the fact that an independent interpreter will be present at the interview unless:
 - the claimant or person requests otherwise; and
 - this request is acceptable to the officer; and
 - ii their right to have a representative, including legal counsel, at the interview.
- c. The notice must advise the claimant or person that if they do not attend the interview, the officer may still determine the relevant matter.

C5.35.1 Procedure for interviews

- a. In conducting an interview a refugee status officer is not bound by any rules of evidence but may make any inquiries they see fit.
- b. If the claimant has a representative at the interview, the representative must be given the opportunity to make any comments or submissions on the case to the officer. Subject to the discretion of the officer, such comments and submissions will normally be made at the start or finish of the interview.
- c. A record of the interview must be made either in writing or by tape recording.
- d. If possible, potentially prejudicial information should be put to the claimant at the interview.
- e. A refugee status officer may consider whether or not an interview report needs to be completed and sent to the claimant.

Effective 28/11/2005

C5.40 Claimant to establish claim

See previous policies:
C5.40 Effective 28/11/2005
C5.40 Effective 01/10/1999

Immigration Act 1987 s 129G(5)

- a. A claimant has the responsibility of establishing their claim.
- b. The claimant must ensure that all information, evidence and submissions that they wish to have considered in support of the claim are provided to the refugee status officer before the officer determines the claim.

C5.40.1 Documents submitted in support of claim

- a. Any documents submitted in support of the claim that are not written in English must be accompanied by a full English translation.

- b. Translations must:
- i not be made by a claimant's family member or a person with an interest in the outcome of the claim, or an immigration adviser assisting with the application; and
 - ii be certified as a correct translation made by a person familiar with both languages and competent in translation work; and
 - iii be prepared and certified by a recognised private or official translation service; and
 - iv be on the official letterhead of the translation service; and
 - v bear the stamp or signature of the translator; and
 - vi bear the full name of the translator,
 - vii be accompanied by the original documents or certified copies.
- c. Officers may
- i request a translation of the complete document where the translation is of a selected part(s) of the document, and
 - ii request a translation by a different (specified) translation service where they are not satisfied by the initial translation.
-
- Note:** If a translation by a different (specified) translation service is requested the reason(s) behind the request must be clearly documented and conveyed to the applicant by INZ.
-
- d. All written statements, submissions and any other documents produced with the assistance of an interpreter must bear the name of the interpreter used.

Effective 28/07/2008

C5.45 Determining a claim

Immigration Act 1987 s 129G(6)

In determining a claim, a refugee status officer may seek information from any source, but:

- a. is not obliged to seek any information, evidence or submissions other than that provided by the claimant; and
- b. may determine the claim on the basis of the information, evidence and submissions provided by the claimant.

Effective 01/10/1999

C5.50 Decisions on claims

Immigration Act 1987 s 129I

Immigration (Refugee Processing) Regulations 1999 reg 10

- a. The decision of a refugee status officer on a claim is final, unless the claimant appeals to the RSAA and the RSAA allows their appeal.
- b. An officer must notify a claimant, in the prescribed manner, of:
 - i the officer's decision on the claim; and
 - ii the reasons for that decision; and
 - iii if the decision is to decline the claim, the claimant's right of appeal to the RSAA.

- c. Notification must be made, to the last address or facsimile number supplied by the claimant, by:
 - i personal service; or
 - ii registered post; or
 - iii facsimile copy.
- d. If in a family group more than one person has claimed refugee status, each family member must be notified separately of the decision on their claim and, if their claim is declined, their right of appeal.
- e. Once the decision has been made and notified to the claimant, the officer may not re-open the claim for further consideration.

Effective 01/10/1999

C5.55 Declining claims or refusing to consider subsequent claims

Immigration (Refugee Processing) Regulations 1999 regs 10, 14

- a. If a refugee status officer declines to recognise a claim for refugee status or refuses to consider a subsequent claim for refugee status, the officer must notify the claimant in writing of:
 - i their right to appeal the decision by filing with the RSAA a written notice of appeal, which must contain:
 - a current address in New Zealand at which they may be contacted; and
 - a current residential address; and
 - ii the time limits within which to appeal; and
 - iii the address where an appeal may be filed; and
 - iv if they have not already been interviewed by a refugee status officer for the purpose of determining the claim, their right to an interview before the RSAA if they appeal.

C5.55.1 Appeal to the Refugee Status Appeals Authority

Immigration Act 1987 ss 129B(2), 1290

- a. The claimant may appeal to the RSAA against a decision not to recognise their claim or to consider their subsequent claim, but must do so within 10 working days of being notified of the decision.
- b. If the claimant is detained in custody when they are notified, they must appeal within 5 working days of being notified.
- c. A claim may not be treated as finally determined at any time before the appropriate appeal period expires.

Effective 01/10/1999

C5.60 Recognition of claimant as refugee

See C5.60 Effective 01/10/1999

- a. If a refugee status officer recognises a claimant as a refugee, the officer informs the claimant or their representative of this by letter.

- b. The letter also states that if the claimant wishes to apply for residence, they should apply to the nearest Immigration New Zealand branch that processes applications for visas and permits (see S3.15 for requirements).

C5.60.1 Eligibility to apply for residence

- a. All claimants who are recognised as having refugee status may apply for residence on the basis of that recognition (see S3.10).
- b. Such claimants may include dependants in the residence application in accordance with residence policy (see S3).

C5.60.5 Residence not automatically granted on recognition of refugee status

- a. The grant of residence does not automatically follow the recognition of refugee status.

Examples:

- if section 7(1) of the Immigration Act 1987 applies to the claimant, and the Minister is not prepared to authorise granting a permit under section 7(3)(a); or
- if Article 33(2) applies (see *C2.5.10e* (See: "C2.5 New Zealand's obligations under the 1951 Convention Relating to the Status of Refugees" on page 2)).

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- a. If it is not appropriate to grant residence to a person recognised as a refugee because they do not meet character or security requirements, officers must take into account the principle of "non-refoulement" under Article 33 of the Convention (see *C2.5.10* (See: "C2.5 New Zealand's obligations under the 1951 Convention Relating to the Status of Refugees" on page 2)), and consider granting a temporary permit.
 - b. It is also necessary to determine whether considerations exist under Article 32(1) or 33(2). In such cases New Zealand may lawfully expel a refugee because they represent a threat to national security or public order, or because they represent a danger to the community (see *C2.5.10*).

Effective 28/11/2005

C5.65 Withdrawal of claim for refugee status

Immigration Act 1987 ss 129K, 129V
Immigration (Refugee Processing) Regulations 1999 reg 21

- a. Claimants who wish to withdraw their claim for refugee status before a determination is made may do so at any time by notifying a refugee status officer in writing.
- b. In such cases, the refugee status officer will give the claimant or their representative written confirmation of the withdrawal.
- c. A refugee status claim will be treated as withdrawn if, without giving notice to a refugee status officer and before a determination is made on the claim, the claimant:
 - i leaves New Zealand; or
 - ii is granted a residence permit.

- d. In such cases, after verifying the claimant's departure or residence permit the refugee status officer will notify the claimant or their representative in writing of the withdrawal, except if the claimant has no representative and has left New Zealand.

Effective 01/10/1999

C5.70 Communications on refugee matters

C5.70.1 Methods of communication

Immigration (Refugee Processing) Regulations 1999 reg 22

Unless otherwise specified, any matter that is to be communicated between a refugee status officer and a claimant or person whose refugee status is in question may be communicated by:

- a. ordinary post; or
- b. registered post; or
- c. personal service; or
- d. facsimile copy.

C5.70.5 Receipt of communications

Immigration (Refugee Processing) Regulations 1999 reg 23

- a. If a document is sent by ordinary post or registered post to a claimant or other person whose refugee status is in question, the document is to be treated as having been received by the person 5 working days after it is sent.
- b. If any document is sent by facsimile copy, the document is to be treated as having been received as soon as the machine sending the facsimile prints a report indicating that the machine intended to receive the facsimile has received the transmission.

C5.70.10 Requirements to supply address include requirement to give facsimile number, if available

Immigration (Refugee Processing) Regulations 1999 reg 24

- a. When notifying an address or addresses to a refugee status officer under *C4.30.15* (See: "C4.30 Further requirements" on page 11), a person must also notify the officer of any facsimile number (including that of a representative), if available, by which they may be contacted.
- b. The requirement to inform a refugee status officer of changes of address also includes the obligation to inform the officer of changes of facsimile number, if appropriate.
- c. In cases where an officer may assume that the latest address supplied is correct, the officer may also assume that the latest facsimile number supplied is correct.

Effective 01/10/1999

C6 REFUGEE STATUS CLAIMS BY DETAINED PEOPLE

C6.1 Person claiming refugee status may already be detained

A person claiming refugee status may already be detained as a result of:

- a. being placed into custody under section 128 or section 128B of the Immigration Act 1987 on arrival in New Zealand; or
- b. being in custody to await removal or deportation from New Zealand; or
- c. being the subject of a security risk certificate issued under Part IVA of the Immigration Act 1987; or
- d. being otherwise in custody according to law; or
- e. being imprisoned in a penal institution.

Effective 01/10/1999

C6.5 Detained claimant's right to contact lawyer etc.

Immigration Act 1987 s 140(4)

Immigration (Refugee Processing) Regulations 1999 reg 4

- a. Under regulation 4 of the Immigration (Refugee Processing) Regulations 1999 (see C5.5 (See: "C5.5 Information on claimant's rights" on page 13)), the detained claimant has the right (and a refugee status officer must inform them of this right) to contact:
 - i a representative of the UNHCR; and/or
 - ii a lawyer.
- b. If the claimant is being detained under the Immigration Act 1987, in addition to their rights under regulation 4 (see C6.5 (a) above), they have the right (and the person responsible for the claimant's custody must inform them of this right) under section 140(4) of the Immigration Act 1987 (see Y4.25) to contact the following (who must be able to visit the claimant and communicate with them in private):
 - i a lawyer; or
 - ii if the claimant is under 17 years of age, a parent, guardian or responsible adult.

Effective 01/10/1999

C6.10 Time limit for detained claimant to confirm claim

See C6.10 Effective 01/10/1999

- a. If a detained person indicates that they wish to claim refugee status, they should, without delay and preferably within two calendar days, confirm their claim in writing in the prescribed manner (see C4.20 (See: "C4.20 Refugee claim to be confirmed in writing in the prescribed manner" on page 10)).
- b. This period of time may be shorter if the person is making a subsequent claim for refugee status (see C6.20) (See: "C6.20 Subsequent claims by detained people" on page 23) or if the person is to be interviewed without a written statement.

- c. In setting a time limit for the detained person to confirm their claim, a refugee status officer must ensure that the person is given reasonable opportunity to exercise their right under regulation 4 of the Immigration (Refugee Processing) Regulations 1999 and (if applicable) section 140(4) of the Immigration Act 1987 (see C6.5 (See: "C6.5 Detained claimant's right to contact lawyer etc." on page 21)) to contact:
- i a lawyer; and/or
 - ii a representative of the UNHCR; and/or
 - iii a parent, guardian or responsible adult (if applicable).

Effective 28/11/2005

C6.15 Interviewing detained claimants

See C6.15 Effective 01/10/1999

- a. Although a refugee status officer is not obliged to interview a claimant (except under C7.10 (See: "C7.10 Procedure for possible cancellation of refugee status" on page 26), if requested to do so), the officer may choose to conduct an interview, even if the claim is a subsequent claim.
- b. An interview should normally be scheduled 15 working days after receiving the completed *Confirmation of Claim to Refugee Status in New Zealand* form, but may be scheduled earlier if necessary.
- c. In scheduling the interview, a refugee status officer must ensure that the claimant is given reasonable opportunity to exercise their right under regulation 4 of the Immigration (Refugee Processing) Regulations 1999 and (if applicable) section 140(4) of the Immigration Act 1987 (see C6.5 (See: "C6.5 Detained claimant's right to contact lawyer etc." on page 21)) to contact:
- i a lawyer; and/or
 - ii a representative of the UNHCR; and/or
 - iii a parent, guardian or responsible adult (if applicable).
- d. If appropriate, the officer may tape-record the interview.

C6.15.1 Interview reports where claimant is detained

- a. If an interview report is to be prepared (see C5.35.5 (See: "C5.35 Interviews" on page 16)), it should if possible be completed within 10 working days of the interview.
- b. Whether or not the claimant has a representative, the claimant may be given 10 working days in which to comment on an interview report, and the covering letter should draw attention to the amended time given for comment.
- c. If the claimant has a representative, any interview report should be faxed to them and the time of transmission noted on the file.
- d. If the claimant has no representative, an immigration officer or refugee status officer should personally deliver any interview report to the claimant. If necessary, an interpreter should accompany the officer in order to translate the report and assist the claimant in commenting on it.

Effective 28/11/2005

C6.20 Subsequent claims by detained people

- a. If a detained person makes a subsequent claim for refugee status, the refugee status officer conducting the interview should first ascertain whether, since the final determination of the previous claim, circumstances in the claimant's home country have changed to such an extent that the subsequent claim is based on significantly different grounds from the previous claim.
- b. If the officer considers that circumstances have not changed sufficiently, they should conclude the interview at that point.
- c. If the officer considers that circumstances have so changed, they should continue the interview to enable the claimant to present their case in full.

Effective 01/10/1999

C6.25 Determining the claim of a detained claimant

See C6.25 Effective 01/10/1999

Because the claimant is being detained, the refugee status officer should determine the claim as speedily as possible, ideally within 20 weeks from the date of lodgement of the *Confirmation of Claim to Refugee Status in New Zealand* form. The refugee status officer will make a decision after:

- a. receiving submissions or comments on the interview report; or
- b. if there are no submissions or comments on the interview report:
 - i being notified that there are no submissions or comments on the interview report; or
 - ii the time limit for making submissions or comments on the interview report has expired, or
- c. the interview itself, if there is no interview report.

Effective 28/11/2005

C6.30 Decision on claim of detained claimant

See C6.30 Effective 01/10/1999

- a. The provisions of *C5.50* (See: "C5.50 Decisions on claims" on page 17) (Decisions on claims) and *C5.55* (See: "C5.55 Declining claims or refusing to consider subsequent claims" on page 18) (Declining claims or refusing to consider subsequent claims) apply to refugee status claims made by people who are detained.
- b. If the decision is to recognise the claimant as a refugee:
 - i the refugee status officer must notify Compliance Operations, as well as the claimant or their representative, of this; and
 - ii Compliance Operations will then arrange for the claimant to be released from custody, if the claimant is being detained:
 - under section 128 or 128B of the Immigration Act 1987; or
 - to await removal or deportation from New Zealand (unless their removal or deportation under Article 32(1) or 33(2) of the Convention is being considered); or
 - under Part VIA of the Immigration Act 1987 (unless their removal or deportation under Article 32(1) or 33(2) of the Convention is being considered)

- c. If the decision is to decline the claim, the notification of the decision to the claimant must contain the following 2 paragraphs, either (if there is a representative):
- i "The Refugee Status Appeals Authority will only consider an appeal lodged within 5 working days of the date your client receives this decision.
If your client fails to appeal within the appeal period, they may be removed from New Zealand on the first available flight after the appeal period expires."
- or (if there is no representative):
- ii "The Refugee Status Appeals Authority will only consider an appeal lodged within 5 working days of the date you receive this decision.
If you fail to appeal within the appeal period, you may be removed from New Zealand on the first available flight after the appeal period expires."
- d. A detained claimant whose claim has been declined may be removed from New Zealand earlier than the end of the appeal period if, understanding the implications of what they are doing, they formally waive their right of appeal, and ask to be removed forthwith, in writing.

Effective 28/11/2005

C7 LOSS OR CANCELLATION OF REFUGEE STATUS

See C7 Effective 01/10/1999

C7.1 Definition of "loss or cancellation of refugee status"

See C7.1 Effective 01/10/1999

Immigration (Refugee Processing) Regulations 1999 reg 2

"Loss or cancellation of refugee status" means the situation where a person ceases to be recognised as a refugee by the Government of New Zealand in one of the following circumstances:

- a. the Convention has ceased to apply to a person who has previously been recognised as a refugee in terms of Article 1C of the Convention;
- b. recognition of a person as a refugee is cancelled following a determination that refugee status may have been obtained by fraud, forgery, false or misleading representation, or by concealment of relevant information;
- c. a person already recognised as a refugee is excluded from the protection of the Convention, in any case where the matters dealt with in Articles 1D, 1E and 1F of the Convention were not properly considered for any reason, including fraud, forgery, false or misleading representation, or by concealment of relevant information.

Effective 28/11/2005

C7.5 Notice of intended determination involving cancellation of refugee status

See C7.5 Effective 01/10/1999

Immigration (Refugee Processing) Regulations 1999 reg 11

- a. In any case where a person has been recognised as a refugee by a refugee status officer, and an officer intends to make a determination under section 129L(1)(b) or (1)(c) of the Immigration Act 1987 to the effect that a person's refugee status may be cancelled, the officer must notify the person concerned in the approved form of:
 - i that intention; and
 - ii the matter it involves, including:
 - the reasons for it; and
 - any evidence relating to it.
- b. The officer must sign the notice, and the notice must be served personally on the person to whom it relates.
- c. At the same time as the person is served with the notice they must be given a copy of all relevant information from their departmental file. Any material or information whose disclosure would be likely to endanger any person may be withheld from the person, but the person must be notified of that non-disclosure.
- d. At the same time as the person is served with the notice they must also be informed of their right:

- i to contact a representative of the UNHCR, together with information on how to exercise that right; and
 - ii to contact a lawyer; and
 - iii within 20 working days, to request an interview and to provide written submissions on the intended cancellation of refugee status; and
 - iv to have an independent interpreter present at any interview by the officer; and
 - v to appeal to the RSAA if the officer should make a determination under section 129L of the Immigration Act 1987 involving cancellation of refugee status.
- e. A person who is served with a notice under regulation 11 of the Immigration (Refugee Processing) Regulations 1999 must provide the person serving the notice with an address, including a facsimile number if available, at which they may be contacted about the matter.
- f. In any case where a person has been recognised as a refugee by the Refugee Status Appeals Authority, and a refugee status officer intends to make an application to the Authority, the officer may do so under s129L(f)(ii) or (iii) of the Immigration Act 1987. Such applications are made to the Secretariat of the Authority and must be submitted with a copy of any information relevant to the recognition of the person as a refugee and the determination of the application.
- g. If an application for cancellation of refugee status is accepted for consideration, the Authority must take reasonable steps to arrange for a copy of the application to be served personally on the person to whom it relates.
- h. At the same time as the person is served with a copy of the application the person must be given a copy of all relevant information from their departmental file or other information lodged with the Authority. Any material or information disclosure of which would be likely to endanger any person may be withheld from that person, but that person must be notified of that non-disclosure.
- i. At the same time as the person is served with a copy of the application, they must also be informed of their right:
- i to contact a representative of the Office of the United Nations High Commissioner for Refugees, together with information as to how to exercise that right; and
 - ii to contact a lawyer and to request and be granted an interview, and to provide written submissions in relation to the determination of the application; and
 - iii to have an independent interpreter present at any interview by the Authority.
- j. A person who is served with a copy of the application concerning cancellation of their refugee status must provide to the person serving the copy an address, including a facsimile number if appropriate, to which communications regarding the matter may be made.

Effective 28/11/2005

C7.10 Procedure for possible cancellation of refugee status

See C7.10 Effective 01/10/1999

Immigration (Refugee Processing) Regulations 1999 reg 12

- a. A person who receives notice of the possible cancellation of refugee status is entitled:

- i to make a written submission on the matter of the possible cancellation of their refugee status, and any reasons why they should continue to be recognised as a refugee; and
 - ii to be interviewed on the matter of the possible cancellation of their refugee status, and any reasons why they should continue to be recognised as a refugee.
- b. Within the requirements of fairness, written responses to a notice received must be provided within 20 working days, or before any interview is held, whichever is first.
 - c. If an interview is requested, the officer will schedule an interview in accordance with the Immigration (Refugee processing) Regulations 1999 regs 19, 20 and C5.35 (See: "C5.35 Interviews" on page 16).
 - d. Timeframes for final written submissions following any interview will be provided by the interviewing officer and will depend on whether an interview report is completed. Such a timeframe will usually be 20 working days following either the last interview or, if produced, the interview report.
 - e. If the refugee status officer determines that refugee status may have been recognised due to fraud, forgery, false or misleading representation, or by concealment of relevant information, then the officer will consider whether there is any further, new or other reason why that person should continue to be recognised as a refugee.
 - f. Before making any decision involving the cancellation of refugee status, the relevant officer must take into account any submissions (including any personal interview), documents or other evidence produced by the person affected.
 - g. A decision on the matter specified in the notice may not be made sooner than 20 working days after the date on which the person receives the notice.

Effective 28/11/2005

C7.15 Notice of final determination on cancellation of refugee status

See C7.15 Effective 01/10/1999

Immigration (Refugee Processing) Regulations 1999 reg 13

- a. If a refugee status officer has notified a person of their intention to make a determination involving cancellation of refugee status, the officer must notify the person in writing of the officer's final decision on the determination, and the reasons for that decision.
- b. If the decision was to make a determination that involves cancellation of refugee status, at the same time as notifying the person of the decision the officer must notify the claimant in writing of:
 - i their right to appeal the decision by filing with the RSAA a written notice of appeal, which must contain:
 - a current address in New Zealand at which they may be contacted; and
 - a current residential address; and
 - ii the time limits within which to appeal; and
 - iii the address where an appeal may be filed; and
 - iv if they have not already been interviewed by a refugee status officer for the purpose of determining the issue relating to the cancellation of refugee status, their right to an interview before the RSAA if they appeal.
- c. Notification must be made, to the last address or facsimile number supplied by the person, by:

- i personal service; or
- ii registered post; or
- iii facsimile copy.

Effective 28/11/2005

C8 SPECIAL CASES

C8.1 Claims for refugee status by minors

See C8.1 Effective 01/10/1999

C8.1.1 Definition of a 'minor'

Immigration act 1987 s 141B

A minor is an unmarried, dependent child who is under 17 years of age.

C8.1.5 Nomination of responsible adult

Immigration Act 1987 s 141B

- a. If one or more of the minor's parents are also seeking refugee status in New Zealand or are appealing against a decision of a refugee status officer to the RSAA, that parent:
 - i must represent the minor's interests; and
 - ii is the responsible adult for the minor.
- b. If a minor who is seeking refugee status does not have a responsible adult to represent their interests, a refugee status officer must take steps to ensure that a responsible adult is nominated, including making the nomination, if necessary.
- c. A person may be nominated as a responsible adult only if:
 - i the person is 20 or more years of age; and
 - ii except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or the holder of a residence permit; and
 - iii the person is any of the following:
 - a parent, guardian or relative of the minor; or
 - a person suggested by the minor; or
 - any other person having responsibility for the minor or who is otherwise suitable to represent the minor's interests; or
 - if no other suitable person is available, a person designated by the chief executive of the Ministry of Social Development; and
 - iv (except in the case of a parent or guardian of the minor) the person agrees in writing to be nominated as a responsible adult.
- d. Should the need arise, and after reasonable consultation, a substitute responsible adult may be nominated.
- e. A responsible adult who is representing the interests of the minor in any refugee status claim must supply a refugee status officer with an address in New Zealand at which they may be notified of any matter concerning the minor.

C8.1.10 Roles and rights of responsible adult

Immigration Act 1987 ss 141B, 141C

- a. The role of a responsible adult relates to those matters or proceedings for which the nomination was made.
- b. The role of responsible adult finishes when the minor leaves New Zealand.
- c. The responsible adult may appeal to the RSAA on the minor's behalf.

- d. To the extent practicable given the level of maturity and understanding of the minor, the responsible adult must try to find out the views of the minor and make them known on behalf of the minor, where appropriate.
- e. Any document that must served on or notified to the minor must instead be served on or notified to the responsible adult, and such service or notification is presumed to be service on or notification to the minor.

C8.1.15 Views of minor to be considered

Immigration Act 1987 s 141D

- a. In any claim to be recognised as a refugee, as far as practicable, the minor must be given an opportunity to express their views on the matter, whether personally or through a responsible adult.
- b. The refugee status officer must give due weight to those views, taking into account the minor's age and level of maturity and understanding.

Effective 28/11/2005

C8.5 Cases involving security concerns

Immigration Act 1987 ss 114G, 114K, 114Q

- a. If the Minister of Immigration gives notice to the chief executive of the Department of Labour that he or she has made a preliminary decision to rely on a security risk certificate about a refugee status claimant:
 - i the processing of the refugee status claim continues; and
 - ii the officer processing the claim must determine the claim; or
 - iii if the claim has not been allocated to an officer for processing, it must be allocated as soon as possible to an officer, who must determine the claim; and
 - iv the claimant continues to have the right to appeal to the RSAA against a decision to decline the refugee claim.
- b. If the Minister has given notice to the chief executive of the Department of Labour that he or she has made a preliminary decision or, as the case may be, a final decision to rely on a security risk certificate about a person who is not a refugee status claimant, that person still has the right to claim refugee status.
- c. If such a person claims refugee status:
 - i a refugee status claim must be processed; and
 - ii the claim must be allocated as soon as possible to a refugee status officer for processing, and the officer must determine the claim; and
 - iii the claimant continues to have the right to appeal to the RSAA against a decision to decline the refugee claim.
- d. No refugee status claimant about whom the Minister has made a final decision to rely on a security risk certificate may be removed or deported from New Zealand until their refugee status has been finally determined.

- e. Considerations under Article 32(1) or 33(2) of the Convention (see *C2.5.10* (See: "C2.5 New Zealand's obligations under the 1951 Convention Relating to the Status of Refugees" on page 2)) may arise concerning a refugee about whom the Minister has made a final decision to rely on a security risk certificate.

Effective 01/10/1999

C8.10 Cases involving deportation of persons threatening national security or of suspected terrorists

Immigration Act 1987 ss 72, 73

- a. If the Governor-General by Order in Council under section 72, or the Minister of Immigration by written order under section 73, orders a refugee status claimant to be deported from New Zealand:
 - i the refugee status officer processing the claim must determine the claim; or
 - ii if the claim has not been allocated to an officer for processing, it must be allocated as soon as possible to an officer, who must determine the claim; and
 - iii the claimant continues to have the right to appeal to the RSAA against a decision to decline the refugee claim.
- b. If the Governor-General by Order in Council, or the Minister of Immigration by written order, orders the deportation from New Zealand of a person who is not a refugee status claimant, that person still has the right to claim refugee status.
- c. If such a person claims refugee status:
 - i the claim must be allocated as soon as possible to a refugee status officer for processing, and the officer must determine the claim; and
 - ii the claimant continues to have the right to appeal to the RSAA against a decision to decline the refugee claim.
- d. If the Governor-General by Order in Council, or the Minister of Immigration by written order, orders a refugee status claimant to be deported from New Zealand, that claimant may not be deported from New Zealand until their refugee status has been finally determined.
- e. Considerations under Article 32(1) or 33(2) of the Convention (see *C2.5.10* (See: "C2.5 New Zealand's obligations under the 1951 Convention Relating to the Status of Refugees" on page 2)) may arise concerning a refugee whom the Governor-General by Order in Council, or the Minister of Immigration by written order, has ordered to be deported from New Zealand.

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