



Australian Government
Refugee Review Tribunal

Country Advice

South Korea

South Korea – KOR35971 – North Koreans
– Right of entry – Residence – Citizenship –
Legal provisions – Entry restrictions

17 February 2010

The RRT asked DFAT to answer the following questions:

- 1. Do persons who are born in North Korea have a right to enter and reside in South Korea? If so, what is the legal source/basis of this right?**
- 2. Are there exceptions or limitations to the right of a North Korean to enter and reside in South Korea? If so, what are they and what is the legal source/basis of these exceptions?**
- 3. What is the relevance or effect of *The Act on the Protection and Settlement Support of Residents escaping from North Korea* on the right of a North Korean to enter and reside in South Korea?**

On 17 February 2010, the Department of Foreign Affairs and Trade (DFAT) provided the following advice in response to three questions requested by the RRT:

DFAT provides the following response to the questions contained in MRT/RRT Information Request KOR35971. The response has been prepared after consultation with Korean authorities.

A. Do persons who are born in North Korea have a right to enter and reside in South Korea? If so, what is the legal source/basis of this right?

Yes. The legal basis of that right is the Constitution of the Republic of Korea (ROK). Article 3 of the Constitution states: "The territory of the Republic of Korea shall consist of the Korean Peninsula and its adjacent islands". North Korea is located on the Korean Peninsula. On this basis, citizens of the DPRK are treated as citizens of the ROK automatically by virtue of their residence on the Korean peninsula. Provisions of the *Nationality Act* governing acquisition of ROK nationality by birth therefore apply equally to people of South and North Korea.

On 12 November 1996 (in decision no. 96 Nu 1221) the ROK Supreme Court made the following ruling: "given that North Korea is part of the ROK's sovereign territory, holding North Korean citizenship does not adversely affect a person's right to acquire and hold South Korean citizenship".

B. Are there exceptions or limitations to the right of a North Korean to enter and reside in South Korea? If so, what are they and what is the legal source/basis of these exceptions?

A person who is born in North Korea, but then acquires the citizenship of another country after leaving North Korea will not be entitled to enter and reside in South Korea as a South Korean citizen. Such persons may enter and reside in South Korea only to the extent that persons of their new nationality are entitled to. South Korea does not at this stage permit dual citizenship, but may do so in future.

The source of that limitation is the *Nationality Act*. Article 15 of the Act provides that "A national of the Republic of Korea who has voluntarily acquired the nationality of a foreign country shall lose the nationality of the Republic of Korea at the time of acquisition of the foreign nationality."

The Act on the Protection and Settlement Support of Residents escaping from North Korea, which governs the protection and support provided to North Koreans, also excludes from its scope North Koreans who have acquired foreign citizenship. It defines “residents escaping from North Korea” for the purposes of the Act as “persons who have their residence, lineal ascendants and descendants, spouses, work-places etc. in North Korea, and who have not acquired foreign nationality after escaping North Korea”.

DFAT is not aware of any other exceptions or limitations to the right of a North Korean to enter and reside in South Korea.

Persons claiming to be North Korean who ask to come to South Korea will first be subject to a process of scrutiny by South Korean authorities to assess whether they are genuinely from North Korea. Once South Korean authorities are satisfied that they are from North Korea, they will be permitted to enter and reside in South Korea. This is not a limitation on the right to enter, but a procedural step necessary to verify that the person in question is North Korean and therefore entitled to that right.

C. What is the relevance or effect of the *Act on the Protection and Settlement Support of Residents escaping from North Korea* on the right of a North Korean to enter and reside in South Korea?

The *Act on the Protection and Settlement Support of Residents escaping from North Korea* provides South Korean agencies with authority to provide protection and various forms of settlement support to “North Koreans residents who desire protection from the Republic of Korea”, and specifies the procedures for applying for protection and for deciding on such applications, amongst other things. The Act provides that certain categories of North Koreans, including those guilty of serious crimes (e.g. aircraft high-jacking, terrorism, drug trafficking, genocide, murder) are not entitled to the “protection” provided under the Act (Article 9(1) 1-6). But this provision is interpreted by South Korean authorities as meaning that such persons would be denied the various forms of settlement support provided for in the Act, not the right to enter and reside in South Korea.

For example, Article 9(1) 4 provides that persons who have earned their living for not less than ten years in countries of sojourn cannot be given protection under the Act. Such persons are, however, entitled to enter and reside in South Korea, but are not entitled to the welfare privileges available to other defectors. Similarly, 9(1) 5 provides that persons who have applied for protection more than one year after entering South Korea are not entitled to protection. But this means they are denied welfare privileges, not the right to stay in South Korea. As North Koreans, they are automatically regarded as South Korean citizens (unless they acquire another citizenship), and have the right to enter and reside in the country.¹

The request to the Department of Foreign Affairs and Trade (DFAT) made on 13 January 2010 is provided in Attachment 2.²

List of Attachments:

1. Department of Foreign Affairs and Trade 2010, *DFAT Report No.1103 – South Korea: RRT Information Request: KOR35971*, 11 February.
2. RRT Research & Information 2010, Email to DFAT: ‘Refugee Review Tribunal Information Request: KOR35971’, 13 January.

¹ Department of Foreign Affairs and Trade 2010, *DFAT Report No.1103 – South Korea: RRT Information Request: KOR35971*, 17 February - Attachment 1.

² RRT Research & Information 2010, Email to DFAT: ‘Refugee Review Tribunal Information Request: KOR35971’, 13 January – Attachment 2.