

APPROVED
by the Resolution of the
Government
of the Kyrgyz Republic
on 4 April 2003 No. 188

REGULATIONS Governing the Work with Refugees in the Kyrgyz Republic

I. General Provisions

1. These Regulations Governing the Work with Refugees in the Kyrgyz Republic (hereinafter, "the Regulations") have been worked out in compliance with the Constitution of the Kyrgyz Republic, Law of the Kyrgyz Republic "On Refugees" (hereinafter, "the Refugee Law"), and universally accepted principles and norms of the international law.

2. A person who is a non-citizen of the Kyrgyz Republic applying to be recognised by the Kyrgyz Republic as a refugee, may be recognised as a refugee provided that he has been forced to flee from the place of his habitual residence on the territory of the other country owing to well-founded fear to become a victim of persecution for reasons of race, religion, nationality, political opinion, membership of a particular social group, or due to a real danger of being persecuted in armed or international conflicts and, owing to such fear, is unable or is unwilling to avail himself of the protection of his country.

3. These Regulations prescribe a procedure for submission of applications by persons claiming to be recognised as refugees in the Kyrgyz Republic (hereinafter, 'application'), procedure for registration of applications, procedure for considering such applications, and procedure for taking decisions on recognition as a refugee and loss of refugee status.

4. Authority, competent to take decision on recognition of a person as a refugee and his loss of the refugee status in the Kyrgyz Republic is Department of Migration Service under the Ministry of Foreign Affairs of the Kyrgyz Republic (further-Department).

5. State agencies of the Kyrgyz Republic cooperate with UNHCR and other organizations on refugee issues, performing on behalf of UNHCR, and provide them assistance in fulfilling their obligations on observance and application of international acts, related to asylum seekers and refugees.

II. Procedure for submission and registration of an application for refugee status in the Kyrgyz Republic

6. Application (1 attachment) is submitted by a person upon his arrival personally or through his representative, duly authorized for that purpose to Department or its territorial migration agencies or to the bodies, implementing

the immigration control at the ports of entry at the state border (further-immigration control agencies):

- persons, present on the territory of the Kyrgyz Republic should file their applications for refugee status with the Department or with its territorial migration agencies;

- persons, applying at the ports of entry at the state border when going through border control should file their applications for refugee status with immigration control bodies.

7. In order to file his application for refugee status, an applicant should possess identity documents for himself and members of his household. Should an applicant claim to have no identity papers, he ought to submit documents that would explain reasons for their absence, and his personal data would be written down according to his words.

Absence of the identity documents of the applicants is not a ground for denying in registration of the application.

8. In case of submission of the application by a person, who have arrived to the Kyrgyz Republic without proper entry permission, identity document, or with forged document, immigration control agencies, who have received an application, allocate him in a place of temporary allocation, **at the point of entry at the state border** with the purpose of:

- establishment and identification of a person;
- clarification of the circumstances, on which the application for refugee status is based;
- Carrying out of investigations, in cases of destruction of the identity documents or use of forged documents;
- Maintenance of national security and protection of public order.

At the same time, immigration control agencies inform Department or its territorial agency about allocation of a person, who have submitted an application, to a place of temporary allocation.

Tenure of the applicant in the places of temporary allocation should not exceed 72 hours.

9. Application for refugee status, submitted to immigration control agencies, with the copies of the documents shall be forwarded within ten working days upon receipt to Department or its closest territorial agency. Officers of the immigration control bodies should inform applicants of an address of the migration agency where their applications would be delivered and also the date when they would be delivered.

10. On the basis of documents submitted, the Department and territorial immigration agencies should register applications in a registry of persons requesting refugee status in the Kyrgyz Republic (Annex 2, hereinafter, 'the registry').

For the purposes of the following determination of refugee status, copies of passport and other identity documents are taken. Other presented documents and materials, confirming the validity of the application, shall be attached to the original application.

11. For each person who has filed his application for refugee status, the Department should fill out one copy, and territorial migration agencies two copies, of a registration card for records (Annex 3, hereinafter, 'record card'). One copy of record sheet is sent to Department by territorial agency.

12. When registering an application, appropriate marks should be made in the registry and in the record card, and a certificate of registration of the application should be issued to the applicant (hereinafter, 'certificate'), which would certify the identity of the person requesting refugee status and **serve as a basis for registration of this person during 5 days in Interior bodies of the Kyrgyz Republic.** The certificate should be signed by a Director of the Department or by a head of the territorial migration agency, and confirmed by a seal of the agency.

13. A certificate is issued for a period of three months. ***In case if identity of an applicant or determination of facts, which require confirmation, are not finished, decision on recognition as a refugee is postpones until such is known, certificate is porlonged, but no longer than for 1 year.***

14. In the event of an emergency mass influx of persons claiming the refugee status, immigration control bodies should immediately notify the Department or a territorial migration agency. Following such notification, officers of the Department or the territorial migration agency should set out for such immigration control body in order to register the said applicants on the spot and issue **certificate** or registration card of a refugee. (Government Decree No. 61 from 15.10.01)

15. Upon the registration of the application and issuance of the certificate, the Department or the territorial migration agency should inform the applicant of a general procedure for consideration of his application, and with rights and duties.

16. Whenever due to certain physical disabilities, sickness, or any other reasons an applicant for refugee status may not sign the application personally, it may be signed, by his order, by another person in the presence of the applicant and the officer with whom the application is being filed. The officer shall make a note in the application that it has been signed by another person on behalf of the applicant, and he should specify the reasons owing to which the applicant was not able to sign his application personally and the proxy's passport data and address of his residence.

17. Every member of the household who has attained to the age of eighteen years and who has arrived together with the applicant should file a separate application. Information about persons who has not attained to the age of eighteen years and who have arrived as a member of the household of the persons requesting refugee status, should be included in the application of either parent; should there be no parents - information about the minor should be included in the application of his lawful representative or in the application of any of the members of his household who has attained to the age of eighteen years and who has voluntarily assumed the responsibility for the behaviour, care, and upbringing of the member of the household, who has not attained to the age of eighteen. Application materials of all members of the same household should go on the same file.

18. Should a spouse or an unmarried underaged child who are members of the household of the person, whose application has already been registered or who has already been granted the refugee status, enter the Kyrgyz Republic separately and file their applications for the purpose of family unity, the applicants should present documentary proof of them being

members of the same household. On their applications, such applicants should state 'family unity' as the reason for leaving their country.

19. Persons who have not attained to the age of eighteen years, but who are married, should file their applications for refugee status on the general grounds.

20. Should a person be unable, due to the state of his health or on another valid excuse, to personally file his application for refugee status, his authorised representative may file the application on his behalf. In this case, the application should be accompanied with a medical or other justifying document of the represented person that would certify the impossibility for the applicant to personally file his application, and a properly formalised power of attorney that would confirm the credentials of the representative. In the registry, below the applicant's name, there should be written down, as a note, data about the authorised representative (last name, name, citizenship, address of his place of residence, telephone, and who has certified his credentials). The application so filed by the applicant's representative should be considered in proper manner only following the appearance of the applicant in person before the Department or the territorial migration agency.

III. Consideration of Applications for Refugee Status

21. The procedure of consideration of an application includes:

- ***interview with the applicant;***
- ***assessment of results of the interview;***
- ***verification of authenticity of documents presented and validity of information provided;***
- ***Preparation of conclusion on results of the consideration of the application;***
- ***Taking decision on recognition as a refugee.***

22. Applications of unaccompanied minors are considered taking into account their best interests.

Department and its territorial agencies jointly with UNHCR assist in protection of unaccompanied minors and provide them assistance in establishment of place of residence of their parents or other family members with the purpose of family re-unification with his family.

23. Should a person who has not attained to the age of eighteen years and who has entered the Kyrgyz Republic unaccompanied by his lawful representatives (parents, adoptive parents, trustees, guardians) qualify for refugee status, there shall be taken measures in order to assign such applicant to guardianship and trusteeship authorities. The guardianship and trusteeship authorities should provide for the staying of the minor in the Kyrgyz Republic in compliance with a statutory procedure envisaged for children left without care of the parents, and they should directly participate in the consideration of the application and promote a decision that will be in the applicant's best interests.

24. Applications of persons duly recognised incapable that have been filed by their lawful representatives should be considered with an allowance for a medical report concerning mental examination of the applicant, which should provide information on the nature and degree of mental disturbance and should assess the applicant's mental ability to furnish evidence and

represent data and facts pertaining to his application in a conscious and reliable manner.

25. Where there are indications that the fear of persecution expressed by the applicant may be clinical symptoms of mental illness, in arriving at a decision, other sources of information should be examined and available witnesses should be interviewed: relatives, friends, or his lawful representative, if one has been appointed.

26. Where in the course of mental examination of the applicant by a specialised medical institution the latter concludes that the applicant suffers mental illness (disturbance) which makes him incapable of being responsible for his actions and for his behaviour, and where it is impossible to use other sources of information in order to assess whether the applicant's fear of persecution is well-founded, the Department or the territorial migration agency should take a reasoned decision to terminate the consideration process in respect of the applicant's request until his recovery. Where the applicant is unaccompanied by his lawful representative, the Department or the territorial migration agency should notify the guardianship and trusteeship authorities of the decision to terminate the consideration process in respect of the applicant's application and should send them a copy of the medical report concerning the mental examination of the applicant so that the guardianship and trusteeship authorities would provide for a further protection of rights of such person in the territory of the Kyrgyz Republic.

27. During the consideration of the application for refugee status, applicant is supposed to be situated on the territory of the Kyrgyz Republic until the final decision on his application.

If an applicant during the consideration process informs of his intention to leave the territory of the Kyrgyz Republic for the purpose of taking up a permanent residence, he is supposed to lodge a notice of waiver of a further consideration of his application. On exceptional cases, the applicant can leave the territory of the Kyrgyz Republic for temporary residence **up to 6 months**, after he applies with corresponding application to Department or its territorial agencies. ***Period of temporary residence out of the Kyrgyz Republic is not included into general term of consideration of the application. Upon departure of an applicant for temporary residence, Department or its territorial agency suspends consideration of an application until arrival of the applicant to the Kyrgyz Republic.***

28. Having analysed all available materials and documents, the [examining] officer of the Department or of the territorial migration agency should prepare a well founded conclusion on whether it is possible or impossible to satisfy the application with reference to pertinent articles of the Refugee Law.

29. Case materials, which were processed by a territorial migration agency in accordance with office protocol, shall be sent during three days to the Department so that the latter could undertake a further consideration process and take a decision on whether to accord the status of refugee to the applicant or to refuse him such. The date when the materials were sent to the Department should be indicated in the record card. Then, the record card should be placed into a card folder of applicants whose cases are under consideration of the Department.

30. A structural division of the Department on working with refugees should perform an overall analysis of presented materials on an applicant's case and draft decision on recognition as a refugee or rejection to recognise as a refugee. Prepared draft decision with the case materials are presented to the Director of Department for his approval, and in case of his absence- to a person, carrying out his duties.

31. The Department should send the considered case file of the person accorded the status of refugee (hereinafter, 'refugee') along with the decision and refugee card to the territorial migration agency by courier or special means of communication.

32. The Department or the territorial migration agency should inform the applicant in writing of according him the status of refugee.

33. The Department or the territorial migration agency should issue a refugee certificate to the person who has been recognised as a refugee. Simultaneously, the refugee should turn in his application registration certificate, which should be enclosed in his personal file.

34. Where a decision to refuse the status of refugee for the applicant is taken, the Department should fax a copy of such decision to the territorial migration agency in order to comply with the terms of notifying the applicant of the decision taken. The personal file of the applicant along with the decision to refuse the status of refugee for the applicant should be sent to the territorial migration agency by courier or special means of communication.

35. Within three days following the day when the decision to refuse the status of refugee for the applicant was taken, the Department or the [pertinent] territorial migration agency should hand such a notice to the applicant himself against receipt.

36. Where the applicant has been refused the status of refugee, the Department or the territorial migration agency should indicate, in the notice, grounds for the refusal and procedure for appealing against the decision taken.

IV. Interviewing an Applicant for Refugee Status

37. An interview with an applicant is purposed to determine the well foundedness of his application for refugee status, to obtain information for the assessment of statements and reliability of data provided by the applicant.

38. An interview should be conducted in a separate room where no outsiders should be admitted. Where the applicant does not have a command of the state or official languages and the interviewer does not have a command of a language understandable for the applicant; issue on inviting an interpreter should be decided.

39. The Department or the territorial migration agency may invite an interpreter, or, if the applicant does not trust the interpreter, which was invited by the Department or the territorial migration agency, by the applicant himself. In the presence of the officer, conducting the interview, and the interpreter, the applicant should fill in a request form for an interpreter (Annex 5).

40. Information obtained in the course of the interview may not be subject to disclosure and it may not be communicated to authorities of the country of the applicant or to other persons without his prior consent.

41. The applicant should present full and objective information. He should present reasons, which became grounds to look for asylum. Information about the place of residence, route, places and duration of staying in other countries shall be deemed mandatory.

42. Where an applicant who has no identity documents is interviewed, he should furnish facts and evidence that would prove his identity.

43. The interviewing officer of the Department or the territorial migration agency should record data obtained in the course of the interview in a questionnaire form.

44. Having filled out the questionnaire, the interviewing officer of the Department or of the territorial migration agency should let the applicant read it personally, interpreter's assistance or with representative of guardianship agency's assistance. The filled-out questionnaire should be signed by the applicant, interpreter, if he has been involved into the interview, a representative of the guardianship and trusteeship authorities, if present, and the interviewing officer of the Department or the territorial migration agency, and the date of the interview should be indicated.

45. Where a person who has not attained to the age of eighteen years and who has entered the Kyrgyz Republic unaccompanied by his lawful representatives (parents, adoptive parents, trustees, guardians) is to be interviewed, the Department or the territorial migration agency should invite a representative of the guardianship and trusteeship authorities to participate in the interview.

46. In case of necessity, additional interview is conducted. During the interview protocol of an additional interview is filled, each page of which is signed by an applicant, officer of the Department or the territorial agency. Protocol of an additional interview is attached to case materials.

VI. Loss/Revocation of Refugee Status

47. A person may lose his refugee status, in the event of occurrence of any of the circumstances, envisaged in Article 10 of "Law on Refugees".

48. Decisions of loss/revocation of refugee status may be initiated by the structural division of the Department for working with refugees, its territorial migration agencies, national security bodies, and by bodies of the interior, should they detect, in respect of refugees, circumstances that fall within the terms for loss/revocation of refugee status **in accordance with the article 10 of the Refuge Law**, they may lodge an appropriate proposal in the Department.

49. Upon receiving such proposal, the Department should request the territorial migration agency for the personal file of the refugee. If necessary, the Department may request for additional documents or for information from the body that has lodged such proposal.

50. Having examined furnished materials, but no later than one month prior to the date when a decision of loss/revocation is to be taken, the Department should notify the refugee in writing of the submitted proposal and

should indicate grounds that may cause his refugee status be terminated in the Kyrgyz Republic. The notice should contain a description of the right of the refugee to present the Department with his reasoned petition, in writing, against unlawful actions by the body that has lodged the proposal to revoke his refugee status and the right to furnish documents which, in his opinion, should be taken into account when considering the proposal to revoke his refugee status.

51. The structural division of the Department on working with refugees should prepare a draft of the decision to revoke the refugee status with taking into account the refugee's petition. The so prepared draft of the decision should be presented to the Director of the Department for his signature or, in case of his absence, by an acting director.

52. The Department should notify the body that has initiated the revocation of the refugee status of the decision taken and, within three days following the day when the decision was taken, should hand or send a notice of its decision and of the invalidation of the refugee card to the person who has been deprived the refugee status. The notice should contain information on grounds for such decisions and on procedure for appealing against it.

VII. Closing Provisions

53. A person who chooses to use his right to appeal to the courts against the decision on refusal of the status of refugee for him, or against the loss/revocation of the refugee status may stay in the territory of the Kyrgyz Republic pending a final judgement to be taken by the appeal courts.

55. On the basis of a court ruling to accept the person's appeal for consideration, bodies of the interior should suspend arrangements for the exit of the person mentioned in Point 53 from the territory of the Kyrgyz Republic and should extend a term of the person's stay in the Kyrgyz Republic pending consideration of his appeal by the courts.