



# UNHCR

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## UNHCR

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### **BY FACSIMILE & OVERNIGHT MAIL**

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Re: Cessation and Cancellation of Refugee Status

I am writing in response to your request for advice from the Office of the United Nations High Commissioner for Refugees ("UNHCR") on the issue of whether refugee status "ceases" or "terminates" once a refugee becomes a lawful permanent resident ("LPR") in his/her country of asylum. As explained in more detail below, LPR status does not "end" a person's refugee status. While LPR status is a positive and important step in the process of finding a durable solution for refugees, one's refugee status does not cease until one of the cessation clauses of the 1951 Convention relating to the Status of Refugees<sup>1</sup> ("the 1951 Convention") is implicated. Obtaining LPR status is not a basis for cessation of refugee status under the 1951 Convention. Similarly, refugee status is not "cancelled" unless there is some evidence of fraud or misrepresentation at the time that refugee status was recognized. Acquisition of LPR status would not be grounds for cancellation of refugee status.

### **The Office of the United Nations High Commissioner for Refugees**

UNHCR has been charged by the United Nations General Assembly with responsibility for providing international protection to refugees and other persons within its mandate and for seeking permanent solutions to the problem of refugees by assisting governments and private organizations.<sup>2</sup> As set forth in its Statute, UNHCR fulfills its international protection mandate by, *inter alia*, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."<sup>3</sup> UNHCR's supervisory responsibility is mirrored in Article II of the 1967 Protocol relating to the Status of Refugees<sup>4</sup>, to which the United States acceded in 1968. The Protocol incorporates the substantive provisions of the 1951 Convention.

The views of UNHCR are informed by over 50 years of experience supervising international refugee instruments. UNHCR is represented in 115 countries. UNHCR provides guidance in connection with the establishment and implementation of national procedures for refugee status determinations and also conducts such determinations under its mandate.

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<sup>1</sup> 19 U.S.T. 6259 (1951).

<sup>2</sup> See Statute of UNHCR, UN Doc. A/RES/428(V), Annex, at paras. 1, 6 (1950).

<sup>3</sup> *Id.*, at para. 8(a).

<sup>4</sup> 19 U.S.T. 6223 (1967), art. 2.

UNHCR's interpretation of the provisions of the 1951 Convention and Protocol are, therefore, integral to the global regime for the protection of refugees.

### Analysis

Under international refugee law, individuals can only lose their refugee status if they fall under one of the cessation clauses of the 1951 Convention or if their status is cancelled because of evidence of fraud or misrepresentation at the time that refugee status was initially recognized. Both of these grounds are considered below.

#### **I. Cessation of Refugee Status**

##### **A. Cessation Clauses of the 1951 Convention relating to the Status of Refugees**

###### *1. General*

Refugee status, as conceived in international law, is in most cases, a transitory phenomenon which lasts only as long as the reasons for fearing persecution in the country of origin persist. Once these reasons disappear, refugee status may be legitimately terminated.

The 1951 Convention contains six cessation clauses, which, when applied, will result in the termination of an individual's refugee status. These clauses apply only to persons who are refugees at the time of the clause's application. As noted in UNHCR's recently issued *Guidelines on Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention*,

[w]hen interpreting the cessation clauses, it is important to bear in mind the broad durable solutions context of refugee protection informing the object and purpose of these clauses. Numerous Executive Committee Conclusions affirm that the 1951 Convention and principles of refugee protection look to durable solutions for refugees. Accordingly, cessation practices should be developed in a manner consistent with the goal of durable solutions.<sup>5</sup>

Given that application of such clauses results in the loss of refugee status, they are to be applied restrictively.<sup>6</sup> The cessation clauses are not penal in nature, and are not to be utilized

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<sup>5</sup> UNHCR, *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, UN Doc. HCR/GIP/02/03 (10 February 2003), at para. 6, citing Executive Committee Conclusions No. 29 (XXXIV) (1983), No. 50 (XXXIX) (1988), No. 58 (XL) (1989), No. 79 (XLVII) (1996), No. 81 (XLVIII) (1997), No. 85 (XLIX) (1998), No. 87 (L) (1999), No. 89 (L) (2000), and No. 90 (LII) (2001). The UNHCR Executive Committee is an intergovernmental group currently consisting of 60 Member States of the United Nations (including the United States) and the Holy See that advises the UNHCR in the exercise of its protection mandate.

<sup>6</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees ("the Handbook")* (1979), at para. 116 (cessation clauses "are negative in character and ... should ... be interpreted restrictively"). The *Handbook* was prepared by UNHCR in 1979 at the request of Member States of the Executive Committee of the High Commissioner's Programme, including the US, to provide guidance to governments in applying the terms of the Convention and Protocol. The US Supreme Court in *INS v. Cardoza-Fonseca*, 480 U.S. 421, 439, n.22; 107 S.Ct. 1207, 1217 (1987), determined that, although the *Handbook* is not legally binding on US officials, it nevertheless provides "significant guidance" in construing the 1967 Protocol and in giving content to the obligations established therein. This position was reiterated by the Supreme Court in *INS v. Aguirre-*

for purposes of “punishing” a refugee otherwise found to meet the refugee definition under Article 1(A)(2).

The cessation clauses are found at Article 1(C) of the 1951 Convention. The first four cessation clauses "reflect a change in the situation of the refugee that has been brought about by himself,"<sup>7</sup> whereas the last two clauses address the situation where international protection is no longer justified due to changes in the country where persecution was feared. The cessation clauses are as follows:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to a fear of persecution; or He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality ...
- (5) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence ...

## 2. *Cessation under Article 1C(3)*

In considering whether acquisition of LPR status results in cessation of refugee status, particular reference should be made to Article 1C(3) of the 1951 Convention. Article 1C(3) makes clear that cessation based on effective protection in the country of refuge occurs only once a person has obtained a new nationality.<sup>8</sup> Once a refugee naturalizes, s/he should, in principle, be in a position to benefit from the protection afforded by that country to its citizens. International protection would therefore no longer be necessary and a durable solution will have been achieved.<sup>9</sup>

Naturalization alone, however, is not enough to trigger cessation under the 1951 Convention. Article 1C(3) requires that the person also "enjoys the protection of his new country of nationality." "This means that the refugee must secure and be able to exercise all the rights and benefits entailed by possession of the nationality of the country."<sup>10</sup> This carries particular importance, for example, in cases where the new nationality has been acquired through marriage. In such cases, the available protection "will depend on whether a genuine

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*Aguirre*, 526 US 415, 427 (1999), where it stated that, while not binding on the Attorney General, the BIA or the US courts, the *Handbook* is a useful interpretative aid.

<sup>7</sup> *Handbook*, at para. 114.

<sup>8</sup> The analogous provision to Article 1C(3) under US law is found at INA Section 208(c)(2)(E) ("Asylum...may be terminated if the Attorney General determines that - ... (E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.").

<sup>9</sup> See Atle Grahl-Madsen, *The Status of Refugees in International Law*, Vol. I (1972), at 396 ("If a refugee is naturalized in his country of refuge, he will immediately get all rights and benefits which the possession of that country entails, and it is only natural that he ceases to be a refugee.")

<sup>10</sup> UNHCR, *Note on the Cessation Clauses*, Executive Committee of the High Commissioner's Programme, Standing Committee, 8<sup>th</sup> meeting, UN Doc. EC/47/SC/CRP.30 (1997), at para. 15.

link has been established with the spouse's country."<sup>11</sup> As noted in UNHCR's *Guidelines on the Application of Cessation Clauses*, "two conditions therefore must be fulfilled in order to consider that a person who has acquired a new nationality enjoys the protection of new nationality: (1) the new nationality must be effective, in the sense that it must correspond to a genuine link between the individual and the State; and, (2) the refugee must be able and willing to avail himself or herself of the protection of the government of his or her new nationality. Only with effective national protection has a durable solution to the refugee's situation been achieved."<sup>12</sup>

### 3. *Acquisition of Lawful Permanent Resident Status*

It is clear from the text of the 1951 Convention, and its underlying rationale, that LPR status is not a sufficient basis for the cessation of refugee status. As noted in the *Handbook*, the circumstances under which refugee status cease are "exhaustively enumerated...and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status."<sup>13</sup> This strict approach is important since refugees should not be subjected to constant review of their refugee status. Acquisition of LPR status is not one of the enumerated grounds and should not be applied by way of analogy to Article 1C(3). On the basis of the 1951 Convention's text alone, acquisition of LPR status is insufficient for purposes of cessation.

It is notable that, in the drafting of the 1951 Convention, a proposal to cease refugee status based on lengthy residence (ten years) in the country of asylum due to either refusal to avail oneself of the possibility of naturalization or ineligibility for naturalization due to "misbehaviour," was withdrawn after other delegates expressed serious reservations about it. Delegates noted that some refugees may be unable to naturalize or may be unwilling to abandon hopes of returning to their country of origin and retaining their citizenship there.<sup>14</sup>

LPR status also does not confer the degree of effective national protection that is necessary to ensure that international protection is no longer necessary. While the benefits of lawful permanent residence in the US are many, LPR status is not equivalent to US citizenship in important respects. Most notably, LPR status does not ensure protection from deportation, expulsion or extradition. For purposes of cessation of refugee status under Article 1C, this distinction is critical.<sup>15</sup>

## B. Co-Existence of Refugee Status with Other Forms of Immigration Status

### 1. *General*

As noted earlier, and as made clear from the cessation clauses of the 1951 Convention, the ultimate goal for refugees is to find a durable solution to their situation. For purposes of cessation, the durable solution of effective national protection in the country of refuge occurs at the point of naturalization. It is understood, however, that a process of assimilation and

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<sup>11</sup> UNHCR, *Guidelines on the Application of Cessation Clauses*, Inter-Office Memorandum No. 17/99, Field Office Memorandum No. 17-99 (1999), at para. 17.

<sup>12</sup> *Id.*, at para. 17.

<sup>13</sup> *Handbook*, at para. 116. *See also*, Grahl-Madsen, Vol. I, at 369 ("It is generally agreed that the enumeration of cessation clauses in Article 1C of the Refugee Convention...is exhaustive. In other words, once a person has become a refugee as defined in Article 1 of the Convention...he continues to be a refugee until he falls under any of those cessation clauses.").

<sup>14</sup> *See* UN Doc. A/Conf.2/SR23 (1951), at 21-25.

<sup>15</sup> Under appropriate circumstances, expulsion based on Articles 32 and 33(2) may be possible.

integration will occur before a refugee is naturalized. This process envisions a strengthening of the links between the refugee and the country of refuge, most notably through the acquisition of more permanent forms of legal status, such as lawful permanent residence.

As the connection between refugee and country of refuge strengthens, however, the individual's underlying status as a refugee remains constant, given that the particular needs of the refugee, be they protection-related (*e.g.*, from deportation) or otherwise (*e.g.*, family reunification)<sup>16</sup> will continue. The maintenance of refugee status better ensures that refugees will not refrain from integrating more fully in their host society for fear of losing the benefits that accompany refugee status. It also ensures that should the additional legal status granted them ever be rescinded, their refugee status will continue to provide protection. In this manner, refugee status and other forms of legal status in the country of refuge are co-extensive, not mutually exclusive. The additional legal status is, in effect, layered over the underlying refugee status that the individual continues to enjoy.

## 2. *Articles 2-34 of the 1951 Convention*

The structure of the 1951 Convention reflects this "layering" of rights. Articles 2-34 detail the various rights and obligations of refugees under the 1951 Convention. These include, *inter alia*, the right to non-discrimination, religion, personal status, association, access to courts, and so forth. These rights, however, are not equally available to all refugees. Rather, many depend on the status, and the degree of integration, of the individual in the country of refuge.<sup>17</sup> For example, about half of the substantive provisions of the 1951 Convention refer to "refugees" without any distinction or qualification.<sup>18</sup> Other provisions, however, categorize the refugees to whom they apply, including refugees "in the territory" of the Contracting State<sup>19</sup>, who have entered or are present "without authorization"<sup>20</sup>, who are "lawfully" in the territory of a Contracting State<sup>21</sup>, who are "lawfully staying" in the territory of a Contracting State<sup>22</sup>, who are "lawfully resident" in the Contracting State,<sup>23</sup> who are "habitually resident",<sup>24</sup> and who can claim a "right of establishment."<sup>25</sup>

Those provisions of the 1951 Convention which detail the rights of refugees "lawfully" in the country of refuge, "lawfully staying" in the country of refuge, "lawfully residing" in the

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<sup>16</sup> See *Handbook*, Chptr. VI, Principle of Family Unity.

<sup>17</sup> For a general discussion of this continuum of rights based on degree of connection between refugee and country of refuge, see James Hathaway and Anne Cusik, "Refugee Rights Are Not Negotiable," 14 *Geo. Immigr. L.J.*, 481, 491-98 (2000). See also Guy Goodwin-Gill, *The Refugee in International Law* (1996), at 307-309.

<sup>18</sup> See, *e.g.*, Articles 2 (general obligations), 3 (non-discrimination), 5 (rights granted apart from this Convention), 7 (exemption from reciprocity), 9 (provisional measures), 10 (continuity of residence), 13 (movable and immovable property), 16 (access to courts), 20 (rationing), 22 (public education), 29 (fiscal charges), 30 (transfer of assets), 33 (prohibition of expulsion or return), and 34 (naturalization).

<sup>19</sup> See, *e.g.*, Article 4 (religion), 27 (identity papers), and 28(1) (travel documents).

<sup>20</sup> Article 31 (refugees unlawfully in the country of refuge).

<sup>21</sup> See, *e.g.*, Articles 18 (self-employment), 26 (freedom of movement), and 32 (expulsion).

<sup>22</sup> See, *e.g.*, Articles 15 (right of association), 17 (wage-earning employment), 19 (liberal professions), 21 (housing), 23 (public relief), 24 (labor legislation and social security), and 28(1) (travel documents).

<sup>23</sup> See, *e.g.*, Paragraphs 6(1) and (3) and 11 of the Schedules to the 1951 Convention.

<sup>24</sup> See, *e.g.*, Articles 14 (artistic rights and industrial property), 16(2) (access to courts) and 16(3) (access to courts).

<sup>25</sup> As noted by Grahl-Madsen, "[t]he term 'right of establishment' is not used in any of the provisions of the Refugee Convention..., but the concept is found in the *travaux préparatoires* for the Refugee Convention, and it has got some expression in paragraph 6(1) and 11 of the two Schedules....". Grahl-Madsen, Vol. II, at 334.

country of refuge, and so forth, envision that the refugee may have a legal status in the country of refuge in addition to, and distinct from, his/her refugee status. For some of these provisions, mere admission as an asylum-seeker or admission on a temporary visitor's visa may be sufficient to invoke the corresponding rights of the 1951 Convention.<sup>26</sup> Those refugees who enjoy some form of permanent or indefinite residence in the Contracting State, however, would be eligible for most, if not all, of the rights under the 1951 Convention, including those which require the greatest degree of connection between refugee and country of refuge, such as "habitual residence" or "right of establishment."<sup>27</sup> This would equally apply to refugees who obtain lawful permanent residence in the United States.

Consistent with the language and purpose of the substantive provisions of the 1951 Convention, therefore, refugees who acquire lawful permanent residence do not lose their refugee status, but rather benefit from an expanded range of rights under the 1951 Convention. In this regard, refugee status and LPR status co-exist. They are not mutually exclusive.

## **II. Cancellation of Refugee Status**

The other manner by which individuals can lose their refugee status, albeit *ab initio* or *ex tunc*, is through cancellation of refugee status.<sup>28</sup> Loss of refugee status through application of the cessation clauses must be clearly distinguished from loss of status as a result of annulment or cancellation. While the 1951 Convention does not specifically address cancellation, the *Handbook* provides the following:

Article 1C does not deal with the cancellation of refugee status. Circumstances may, however, come to light that indicate that a person should never have been recognized as a refugee in the first place: *e.g.*, if it subsequently appears that refugee status was obtained by a misrepresentation of material facts, or that the person concerned possesses another nationality, or that one of the exclusion clauses would have applied to him had all of the relevant facts been known. In such cases, the decision by which he was determined to be a refugee will normally be cancelled.<sup>29</sup>

General principles of law, including that of *res judicata*, provide guidance on the cancellation of refugee status under the circumstances described in the *Handbook*. The principle of *res judicata* dictates that once a matter is judicially determined, it should not be subsequently reopened by the same parties.<sup>30</sup> However, on occasion, a decision may lose its final character due to new facts that indicate that the decision should never have been taken in the first place.

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<sup>26</sup> See, *e.g.*, Grahl-Madsen, Vol. II, at 357 (refugees are 'lawfully' in territory if they possess proper travel documents, have observed frontier control formalities, and have not overstayed period and conditions of authorized stay, and are 'lawfully staying' in territory if they have been lawfully present for three months or are in possession of a residence permit authorizing stay for more than three months); Hathaway and Cusick, at 495 ("Where the laws of a state authorize the direct arrival of refugees who submit to a status determination or comparable procedure, it cannot sensibly be argued that refugees who avail themselves of this legal option are not lawfully present.")

<sup>27</sup> "[The 'right of establishment'] denotes a right to remain indefinitely in a territory (subject only to the provisions of Article 1C, 32 and 33 of the Refugee Convention). Such a right might be granted explicitly - by issuing an establishment permit or a residence permit valid for an indefinite period, etc. - or implicitly." Grahl-Madsen, Vol. II, at 358.

<sup>28</sup> The analogous "cancellation" provision under US law is found at 8 Code of Federal Regulations (CFR) Sections 207.9 ("Termination of Refugee Status") and 208.24(a)(1) ("Termination of asylum or withholding of removal or deportation").

<sup>29</sup> *Handbook*, at para. 117.

<sup>30</sup> UNHCR, *Note on Loss of Refugee Status through Cancellation* (1989), at para. 3.

UNHCR's *Note on Loss of Refugee Status through Cancellation*, states that the "circumstances that may call for an exception to the principle of *res judicata* include: (1) newly discovered evidence; (2) fraud, including concealment of material facts that there was a duty to disclose; and, (3) other misconduct in the proceedings."<sup>31</sup>

The principle of *res judicata* should be adhered to closely, and any exceptions should be applied restrictively. This is especially important given that the cancellation of refugee status could deprive individuals of acquired rights and interfere with legitimate expectations.<sup>32</sup> "The newly discovered evidence, fraud or other misconduct must, for example, be sufficiently material to have affected the outcome" and "must normally be intentional and manifest."<sup>33</sup> It should also be demonstrated "that the evidence could not readily have been discovered earlier, *i.e.*, at the time the decision was taken."<sup>34</sup> Any fraud or misconduct should be judicially determined.

Based on the above criteria, acquisition of LPR status would not be a basis for cancellation of refugee status. Acquisition of LPR status does not constitute newly discovered evidence, fraud, or other misconduct in the refugee status determination proceedings indicating that the person never should have been recognized as a refugee in the first instance.

### Conclusion

Based on the above analysis, it is UNHCR's opinion that an individual's refugee status does not cease if s/he becomes a lawful permanent resident. Similarly, acquisition of lawful permanent residence is not a basis for cancellation of refugee status.

We hope this information is useful. Please do not hesitate to contact our Office in writing should you wish to discuss this matter further.

Sincerely,



R. Andrew Painter  
Senior Protection Officer

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<sup>31</sup> *Id.*, at para. 4.

<sup>32</sup> *Id.*, at para. 9.

<sup>33</sup> *Id.*, at paras. 5-6.

<sup>34</sup> *Id.*, at para. 5.