



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

LML-DC-01J12____

DEPARTMENT CIRCULAR No. 058

**ESTABLISHING THE
REFUGEE AND STATELESS STATUS
DETERMINATION PROCEDURE**

Whereas, the Republic of the Philippines has acceded to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1954 United Nations Convention Relating to the Status of Stateless Persons;

Whereas, Section 47(b) of Commonwealth Act No. 613, as amended, otherwise known as "the Philippine Immigration Act of 1940", allows the admission of aliens "for humanitarian reasons, and when not opposed to the public interest, xxx who are refugees for religious, political, or racial reasons";

Whereas, Section 13 of said Commonwealth Act No. 613 allows the admission of persons "without nationality" as immigrants;

Whereas, pursuant to Letter of Implementation No. 47 dated August 18, 1976, the President has delegated to the Department of Justice the authority over immigration matters including the admission of aliens;

Whereas, under Title III, Section 7 of the Administrative Code of 1987, the Legal Staff of the Department of Justice may perform such functions as may be assigned by the Secretary of Justice;

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Whereas, it is essential to strengthen the procedure to determine eligibility of protection for refugees and establish a procedure to determine eligibility of protection for stateless persons consistent with these Conventions;

WHEREFORE, the following procedure is hereby adopted in the determination of the status of refugees and stateless persons:

I. PRELIMINARY PROVISIONS

SECTION 1. *Definition of Terms.* - As used in this procedure, the following terms are hereby defined:

- a. "1951 U.N. Convention" refers to the 1951 United Nations Convention relating to the Status of Refugees;
- b. "1967 Protocol" refers to the 1967 Protocol Relating to the Status of Refugees;
- c. "1954 U.N. Convention" refers to the 1954 United Nations Convention relating to the Status of Stateless Persons;
- d. "Refugee" is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence".
- e. "Stateless Person" is one "who is not considered a national by any State under the operation of its law".

- f. "Application" refers to the formal written claim to refugee or stateless status, as the case may be, and initiates the status determination procedure.
- g. "Applicant" refers to a person who has submitted the Application, or in the case of a child or incapacitated person, the person on whose behalf the application was submitted;
- h. "Family Members" refer to the spouse and children below 18 years of age who accompany the Applicant. The term also includes any person who is dependent socially, economically or emotionally upon the Applicant;
- 1. "Secretary" refers to the Secretary of the Department of Justice;
- J. "Bureau" refers to the Bureau of Immigration;
- k. "Commissioner" refers to the Commissioner of the Bureau;
- 1. "RSPPU" refers to the Refugees and Stateless Persons Protection Unit;
- m. "Protection Officer" is an officer of the RSPPU who evaluates the claim of the Applicant to refugee or stateless status and their eligibility for protection;
- n. "DFA" refers to the Department of Foreign Affairs; and
- o. "UNHCR" refers to the United Nations High Commissioner for Refugees.
- p. "Exclusion" refers to any grounds warranting disqualification from recognition as a Refugee under the 1951 U.N. Convention or Stateless Person under the 1954 U.N. Convention.



SECTION 2. *Objective.* - This circular establishes a fair, speedy and non-adversarial procedure to facilitate identification, treatment, and protection of refugees and stateless persons consistent with the laws, international commitments and humanitarian traditions and concerns of the Republic of the Philippines.

SECTION 3. *Basic Principles.* - This procedure shall be governed by the following basic principles:

- a. Preservation and promotion of family unity;
- b. Non-detention on account of being stateless or refugee;
- c. Non-deprivation of refugee or stateless status, and non-discrimination in the application of the Conventions, on account of race, religion, political opinion, or country of ongm.
- d. An applicant and/or his or her dependents during the pendency of his or her application, or a refugee shall not be expelled or returned to a country where there are valid reasons to believe that his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group or political opinion.
- e. An applicant for refugee status and/or his or her dependents shall not be punished on account of his or her illegal entry or presence in the country, provided he or she presents himself or herself without delay to the authorities and/or shows good cause for his or her illegal entry or presence.

SECTION 4. *Obligation of Refugees and Stateless Persons.* - Refugees and stateless persons have the obligation to abide by the laws and regulations of the Republic of the Philippines as well as measures for the maintenance of public order and national security.



SECTION 5. *Refugees and Stateless Persons Protection Unit.* - There is hereby created the RSPPU in the Legal Staff of this Department to facilitate identification, determination and protection of refugees and stateless persons under the terms of the 1951 U.N. Convention, the 1967 Protocol and the 1954 U.N. Convention, respectively.

The RSPPU may also assist and coordinate with government agencies, non-government organizations, and the UNHCR in order to consider and facilitate means and measures aimed at reducing and preventing statelessness, finding durable solutions for refugees and stateless persons, and ensuring their protection.

The RSPPU shall be headed by the Chief State Counsel who shall be assisted by such number of personnel of this Department and officers of the Bureau, as may be necessary, to enable it to effectively and efficiently execute its mandate.

II. PROCEDURE

SECTION 6. *Application.* - The Application may be filed directly with the RSPPU, or in the central office or any field office of the Bureau in the port of entry/admission of the Applicant. In the latter case, the Commissioner or the immigration officer concerned shall forward the application to the RSPPU within ten (10) days from the date of receipt thereof. To be submitted with the application are the Applicant's travel document, identification document including proof of relationship to any accompanying family members, and such other documents to support the claim to refugee or stateless status, where available.

SECTION 7. *Suspensive Effect of the Application.* - The RSPPU shall notify the Commissioner of the receipt of the application. Following receipt of the notice, any proceeding for the deportation or exclusion of the Applicant and/or his or her dependents shall be

suspended. If the Applicant and/or his or her dependents is/are in detention, the Secretary, subject to the conditions that he or she may impose, may direct the Commissioner to order his or her and/or their release. The Commissioner shall furnish the RSPPU a copy of the Release Order.

SECTION 8. *Priority of Refugee Status Determination.* - Where in the Application- for recognition as a stateless person or in the processing thereof, a refugee claim appears to exist, the stateless status determination shall, with the consent of the Applicant, be suspended and the application shall be considered first for refugee status determination. If the claim to refugee status is denied with finality, the stateless status determination shall recommence automatically.

SECTION 9. *Burden of Proof.* - The responsibility of proving a claim to refugee or stateless status is a shared and collaborative burden between the Applicant and the Protection Officer.

The Applicant has the obligation to provide accurate, full and credible account or proof in support of his/her claim, and submit all relevant evidence reasonably available.

A finding that the Applicant is a refugee is warranted where he or she has met the definition of the refugee.

The finding that the Applicant is stateless is warranted where it is established to a reasonable degree that he or she is not considered a national by any State under the operation of its laws. This involves the examination of the nationality laws of the country with which the Applicant has a relevant link (by birth, descent, marriage or habitual residence).

SECTION 10. *Rights of an Applicant.* - The Applicant has the right to legal counsel. He is entitled to have the services of an interpreter, if necessary, at all stages of the refugee status

determination and for the purposes of the preparation of the written application and for the interview. The Applicant shall not be denied access to the UNHCR.

SECTION 11. *Interview.* - The Protection Officer shall interview the Applicant to receive evidence, oral and/or documentary, to substantiate the claim. The Applicant has the right to have the interview conducted in private.

SECTION 12. *Decision.* - A written decision on the application shall be rendered by the Secretary of Justice. The RSPPU shall notify the Applicant of the decision in writing recognizing refugee or stateless status. In case the application is disapproved, the decision shall state the reasons supporting the same, a copy of which shall be furnished the Applicant.

SECTION 13. *Request for Reconsideration.* - In case the application is disapproved, the Applicant may request reconsideration of the decision. Only one (1) request shall be allowed to be filed within thirty (30) days from receipt of the decision. The Secretary shall issue a written resolution on the reconsideration within a reasonable time.

SECTION 14. *Finality of Decision.* - Where the application is denied with finality, the Applicant shall be afforded sufficient time to leave the country unless he/she holds another immigration status or the Commissioner has authorized his/her continued stay. Any immigration proceeding that has been suspended pursuant to Section 7 hereof may be reactivated.

SECTION 15. *Effects of Recognition* - The RSPPU shall notify the Commissioner of the recognition of the Applicant as a refugee or stateless person, as the case may be. The benefits of recognition, as



appropriate, shall automatically inure to the accompanying Family Members.

Refugees and stateless persons including their Family Members have the right to residence. They are entitled to the appropriate visas and such other immigration documents appurtenant thereto as may be provided by immigration laws and regulations. No renewal of visa shall be allowed by the Bureau without the endorsement of the RSPPU.

Refugees and stateless persons may enjoy and exercise such rights and privileges accorded by the Conventions subject to Philippine laws and regulations.

SECTION. 16. *Non-Suspension of the Stateless Status Determination.* - In the case of application for stateless status, this procedure shall proceed notwithstanding the Applicant seeking acquisition or reacquisition of nationality, resettlement in another country, readmission to former country of residence, or is subject of ,deportation or extradition.

SECTION 17. *Termination of the Procedure.* - The procedure shall terminate on any of the following grounds:

- a. Withdrawal of the application;
- b. Abandonment of the application; or
- c. Death of the applicant.

In case of death of the Applicant, the application shall survive in respect to the accompanying family members who are included in the application.

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SECTION 18. *Unaccompanied Minor Applicants.* - The RSPPU shall ensure that unaccompanied minors are referred to the appropriate government agencies and/or non-government organizations for their care, welfare, and access to legal services including the filing of the appropriate application.

III. EXCLUSION

SECTION 19. *Persons Excluded from the 1951 U.N. Convention and the 1954 U.N. Convention.* - The 1951 U.N. Convention and the 1954 U.N. Convention do not apply to persons:

- a. already receiving from organs or agencies of the United Nations other than the UNHCR protection or assistance so long as they are receiving such protection or assistance;
- b. already recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; and
- c. if there are serious reasons for considering that:
 1. they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 2. they have committed a serious non-political crime outside the Philippines prior to their admission to the Philippines; and
 3. they have been found guilty of acts contrary to the purposes and principles of the United Nations.

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IV. JUDICIAL APPEAL

SECTION 20. *Judicial Review.* - In accordance with the Rules of Court, the Applicant may seek judicial review of the decision or resolution on the request for reconsideration of the decision within the period prescribed.

SECTION 21. *Finality of the Decision Denying Recognition.* - The decision denying recognition is deemed final where the Applicant did not request reconsideration of the decision denying recognition or seek judicial review. Thereafter, Section 13 herein applies.

V. CANCELLATION, REVOCATION AND CESSATION OF REFUGEE STATUS

SECTION 22. *Cancellation of Refugee Status.* - The refugee status shall be cancelled if the recognition was granted erroneously as a result of:

- a. intentional misrepresentation or concealment by the Applicant or a third party of facts that were material to the refugee status; or
- b. new evidence shows that the Applicant ought not to have been recognized as a Refugee.

SECTION 23. *Revocation of Refugee Status.* - The refugee status shall be revoked where recognition has been obtained through intentional misrepresentation of material facts.

SECTION 24. *Cessation of Refugee Status.* - The refugee status shall cease if a Refugee:

- a. voluntarily re-availed himself or herself of the protection of the country of his or her nationality;
- b. voluntarily re-acquired his or her lost nationality;
- c. voluntarily acquired a new nationality and enjoys the protection of the country of his or her nationality;
- d. voluntarily re-established himself or herself in the country he or she left, or in a country where he or she remained owing to fear of persecution;
- e. enjoys the protection from the country of his or her nationality, because the reasons in connection with which he or she was granted refugee status have ceased to exist; Provided, that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her nationality; or
- f. not having a nationality, returned to his or her country of habitual residence due to changed circumstance; Provided, that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her former habitual residence.

SECTION 24. *Re-instatement of Stateless Status Determination Procedure.* - If the refugee status has been cancelled or revoked or has ceased for any of the foregoing grounds, except under subsections "b" and "c" of Section 24 herein, and the application includes a claim to stateless status which has been suspended under Section 8 herein, the procedure to determine stateless status shall then proceed.

SECTION 26. *Cancellation of Stateless Status.* - The stateless status shall be cancelled where the stateless person has obtained a nationality or reacquires his or her former nationality.

SECTION 27. *Revocation of Stateless Status.* - The stateless status shall be revoked where:

- a. recognition was granted on mistake of fact or law;
- b. recognition was obtained by means of fraud or intentional misrepresentation; or
- c. new evidence indicates that the stateless person ought not to have been recognized as such.

SECTION 28. *Reconsideration of Decision and Judicial Review.* - A refugee or stateless person may seek reconsideration or judicial review of the cancellation, revocation or cessation of the status as provided herein.

SECTION 29. *Notification to the Bureau.* - The RSPPU shall notify the Bureau when the cancellation, revocation or cessation of the refugee or stateless status has become final.

VI. REMOVAL

SECTION 30. *Removal of a Refugee or a Stateless Person.* - A Refugee or a Stateless Person may be removed from Philippine territory:

- a. where he or she has been convicted with finality of a serious offense and is considered a danger to the community after having served his or her sentence; or

b. on grounds of national security or public order.

The expulsion shall only be in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security require, the refugee or stateless person shall be allowed to submit evidence to clear himself or herself, and to appeal and be represented by legal counsel for that purpose before a competent authority.

The refugee or stateless person subject of removal shall be allowed a reasonable period within which to seek admission into another country.

VII. MISCELLANEOUS PROVISIONS

SECTION 31. *Duties of the Protection Officer.* - The Protection Officer may request the DFA to contact foreign States only with the consent of the Applicant. In no case shall there be contact with the authorities of a foreign State where there is a claim of persecution.

He shall ensure the translation of the decision and resolution where necessary.

He shall ensure respect the right of a child applicant or a dependent child to be heard where he or she has the capacity to form or express a View.

He shall evaluate the application or the request for reconsideration and eligibility of protection after considering all relevant evidence. He shall issue the findings in writing within ninety (90) days from date of the application or the request for reconsideration, unless there are reasonable grounds for an extended period.



SECTION 32. *Coordination with the UNHCR.* - The RSPPU may seek the good offices of the UNHCR for its expertise, technical guidance and assistance. It shall advise the UNHCR of any action on the application and any measures pursued by the Philippine Government toward ensuring the implementation and compliance with the Conventions.

SECTION 33. *Confidentiality of Information.* - The information provided by an applicant in this procedure shall be confidential and may only be used to make a determination of the veracity of the factual statements in the application. The information may, however, be available to UNHCR.


VIII. REPEALING CLAUSE AND EFFECTIVITY

SECTION 34. *Repealing Clause.* - Department Orders No. 115, (March 4, 1998), No. 94 (March 4, 1998) and Ministry of Justice Circular No. 01 (February 12, 1981) are hereby repealed.


All other circulars, orders, regulations and issuances or part thereof, which are inconsistent with this Circular, are hereby repealed or modified accordingly.

SECTION 35. *Effectivity.* - This procedure shall take effect after fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

APPROVED: _____


LEILA M. DE LIMA
Secretary

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