

2015-08-24

Fråga-svar

Filippinerna. Asylsystemet

Fråga

- Hur ser asylsystemet ut i Filippinerna? Är det möjligt att överklaga ett beslut? Kan en verkställighet inhiberas?
- Respekteras principen om non-refoulement?

Svar

Nedan följer en sammanställning av information kring asylsystemet i Filippinerna. Sammanställningen gör inte anspråk på att vara uttömmande. Refererade dokument bör alltid läsas i sitt sammanhang.

Lagar, föreskrifter m.m.

Nedan följer utdrag från relevanta lagtexter m.m. Observera att det i respektive text rör sig om ett urval paragrafer och att annan relevant information kan finnas i andra paragrafer.

Department Circular No. 058 - Establishing the Refugees and Stateless Status Determination Procedure (2012):

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.

(s. 5-8)

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.

(s. 12-13)

I samband med att Filippinerna utfärdade Department Circular No. 058, publicerade Department of Justice följande uttalande av justitieminister Leila M. De Lima:

...under the present rules, the DOJ's Refugee Protection Unit (RPU), renamed to Refugee and Stateless Persons Protection Unit ("RSPPU"), will help ensure that this highly vulnerable group of refugees and stateless persons will have access to a facilitated, prompt and efficient process application for the granting of a refugee or a stateless status. The said rules and mechanisms also provide for the standard of proof to establish such status and, more importantly, allow for the suspension of deportation proceedings pending consideration of the application. She underscored, further, that recognition of stateless or refugee status will directly benefit both the applicant and his or her family members, entitling them the enjoyment and exercise of rights and privileges provided for by the United Nations Conventions on refugees and stateless persons subject to Philippine laws and regulations.

Anti-Torture Act of 2009:

SEC. 17. *Applicability of Refouler*. — No person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including, where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.

I december 2010 utfärdades "Implementing Rules and Regulations of the Anti-Torture Act of 2009", där paragraf 32 rör *Applicability of Refouler*.

Commonwealth Act no. 613 / Philippine Immigration Act of 1940:

SPECIAL PROVISIONS

Sec. 47.

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(b) For humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe.

Kommentarer kring det filippinska asylsystemet

Enligt en rapport från US Department of State (2015) saknar landet heltäckande lagstiftning för att bevilja flyktingstatus eller asyl, men har ett system som tycks ge grundläggande rättssäkerhet:

No comprehensive legislation provides for granting refugee status or asylum. The Department of Justice's Refugee and Stateless Persons Protections Unit (DOJ-RSPPU) determines which asylum seekers qualify as refugees in accordance with an established, accessible system that appeared to provide basic due process. From January to August, the department received 51 new asylum applications and reopened three old cases. Of these, the department approved 13 cases while 38 remained pending. The UNHCR estimated there were 173 refugees residing in the country as of August.

En UD-rapport (2013) verifierar ovanstående:

Filippinernas geografiska belägenhet bidrar till att antalet externa asylsökande är begränsat. År 2013 fanns 142 flyktingar registrerade i Filippinerna. Landet har undertecknat 1951 års flyktingkonvention, men nationell lagstiftning på området saknas. Justitieministeriets flyktingenhet beslutar om vilka asylsökanden som ska tillerkännas flyktingstatus.

Landet erbjuder möjlighet till tillfälligt skydd enligt 1951 års konvention liksom 1967 års protokoll. Den filippinska staten uppmuntrar frivillig återflyttning och motsätter sig som regel tvångsåtgärder såsom avvisning och utvisning.

(s. 18)

Flera UNHCR-rapporter kommenterar asylsystemet i Filippinerna samt de förbättringar vad gäller skydd som skett under senare år:

UNHCR (2014):

Refugees and Asylum-Seekers

- The Philippine Government provides a favourable protection environment for refugees. Functioning national systems for registration and refugee status determination

processes are in place, with the Department of Justice as the state agency responsible for the adjudication of asylum claims, and coordinating policy to implement refugee rights.

- An emergency transit mechanism (ETM) operates for at-risk refugees who are unable to remain in their country of first asylum but are awaiting resettlement. Since 2009, 316 at-risk refugees have benefited from the ETM in the Philippines.

(s. 3)

UNHCR Standing Committee (2014):

Philippines

NGOs commend the continuing protection environment provided by the Philippine Government for refugees. NGOs also welcome the initiative to map stateless populations in the country and efforts to merge the RSD and statelessness procedures. NGOs also applaud the issuance of provisional work permits for asylum seekers.

While there is a relatively strong protection environment, NGOs encourage the Philippine Government to consider strengthening refugee protection by starting the process for enacting a domestic refugee law. In addition, NGOs encourage the Philippine Government to continue supporting the IDP Bill and see it through to its conclusion into a domestic IDP law.

(s. 8-9)

UNHCR (2012):

The Department of Justice of the Philippines recently published a circular that enhanced its current system of determining refugee status and put in place a procedure to know whether a person is stateless. The new procedure takes effect today and is an important step to ensure the Philippines meets its obligations under the 1954 Convention relating to the Status of Stateless Persons, which it ratified last year, the first ASEAN member state to do so.

The new mechanism is a testament to the genuine humanitarian spirit in the Philippines, said Bernard Kerblat, UNHCR Representative in the Philippines. This unified approach provides the widest possible protection net for refugees and the stateless in the most effective way.

Refugees and stateless people are protected under Philippine law. With the new procedure, there is a way to unify refugees with extended family members such as grandparents. Asylum-seekers have the right to a lawyer and interpreter during the process, and they cannot be deported while undergoing the procedure, ensuring respect for international law.

Other safeguards to protect asylum-seekers and refugees were integrated in the procedure, such as special measures for unaccompanied children.

UNHCR (2011a):

The Philippines acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter referred to as the Refugee Conventions) on 22 July 1981. The Philippine Immigration Act of 1940 (Commonwealth Act No.613), which pre-dates the Refugee Convention, contains provisions for the favourable treatment of refugees and asylum-seekers in the Philippines. The provisions of the 1951 Refugee Convention are implemented in the domestic legal framework through the Department Order No. 94 in 1998 issued by the Department of Justice of the Philippines, which establishes a refugee status determination procedure.

The refugee status determination procedure includes the possibility for review and appeal of first instance decisions. The Government of the Philippines carries out refugee status determination and decides cases on appeal.

(s. 1)

UNHCR commends the Government of the Philippines for the establishment of a functioning asylum and refugee status determination system. The Refugee Processing Unit under the Department of Justice has been recently reconstituted to accommodate the demands and requirements of the work of the office.

Notwithstanding the above, the Committee on the Rights of the Child has expressed concern about the lack of domestic legislation addressing the specific needs of asylumseeking and refugee children.

(s. 2)

Kommentarer kring non-refoulment

I en rapport från Committee against Torture - CAT (2015) har följande information getts angående non-refoulment:

With reference to the Committee's previous concluding observations (para. 14) please provide information on the measures taken to ensure that the State party fully implements article 3 of the Convention and, in particular, provides all procedural guarantees to and considers all elements of the case of non-citizens who claim they will face a risk of torture if expelled, returned or extradited to another State. Has Article 3 of the Convention been directly applied by the courts in any such cases?

123. Under the Anti-Torture Act, Section 32, on Applicability of Refouler, it is expressly stated that "no person shall be expelled, returned or extradited to another State where there are substantial

grounds to believe that such person shall be in danger of being subjected to torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including, where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.”

124. Corollary, under Section 32 of the IRR of the Anti-Torture Act, states that “no person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including, where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.”

125. Common provision in the Philippine extradition treaties is the refusal of extradition for an offense punishable by the death penalty in the Requesting State if the same offense is not punishable by the death penalty in the Requested State, unless the Requesting State gives assurances satisfactory to the Requested State that the death penalty will not be imposed or carried out.

126. Majority of the bilateral extradition treaties, particularly with Australia, Canada, HKSAR, Korea and Micronesia, provide as one of the discretionary grounds for refusal of a request for extradition the fact that “if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.”

127. The State Party through the DOJ, as the central authority for extradition, has requested for an undertaking that no torture may be carried out against the extraditee upon his return and surrender to the Requesting State.

(s. 33-34)

Enligt en rapport från UNHCR (2011b) förefaller principen om non-refoulment respekteras även om lagstiftning verkar tillåta utlämning (”extraordinary rendition”) till andra länder så länge landet ifråga lämnar försäkran om rättvis behandling:

Non-refoulement

14. The Committee take note of the statement by the delegation that the State party has neither engaged nor participated in any form of “extraordinary renditions” or refoulement and that there has been no instance where it has received a request indicating that the person to be extradited would be in danger of being subjected to torture. Notwithstanding the proscription included under Section 57 “Ban on Extraordinary Rendition” of the 2007 Human Security Act, the Committee is concerned that the Act appears to permit persons apprehended in the Philippines to be rendered to countries that routinely commit torture, as long as the receiving State provides assurances of fair treatment.

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

Länkar hämtade 2015-08-24.

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