



**IMMIGRATION (REFUGEE PROCESSING) REGULATIONS 1999**

---

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 23rd day of August 1999

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 129Y of the Immigration Act 1987, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

---

ANALYSIS

1. Title and commencement
2. Interpretation

PART 1

PROCEEDINGS INVOLVING REFUGEE STATUS OFFICERS

*Claims to Refugee Status*

3. Confirmation of claim to refugee status
4. Information on claimant's rights
5. Other information to be provided to claimants
6. Request by officer for further information
7. Comment on prejudicial information
8. Failure to provide further information or to comment on prejudicial information

9. Request for production of document by third party
10. Notification of determination of claim

*Determinations Involving Loss of Refugee Status*

11. Notice of intended determination concerning loss of refugee status
12. Procedure in relation to possible loss of refugee status
13. Notification of final determination in relation to loss of refugee status

PART 2

PROCEDURES BEFORE REFUGEE STATUS APPEAL AUTHORITY

*Appeals*

14. Filing of appeals to Refugee Status Appeals Authority
15. Notice of consideration of appeal

*Applications Concerning Loss of Refugee Status*

16. Filing of application seeking loss of refugee status

17. Initial acceptance or referral back of application

18. Serving of notice of application

## PART 3

## MISCELLANEOUS MATTERS

19. Notification of interviews

20. Provision of independent interpreters at interviews

21. Withdrawal of claim or appeal

*Communications in Relation to Refugee Matters*

22. Methods of communication

23. Receipt of communications

24. Requirements to supply address include requirement to give facsimile number, where available

## SCHEDULE

Form of Request to Third Party to Produce Document

## REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Immigration (Refugee Processing) Regulations 1999.

(2) These regulations come into force on 1 October 1999.

**2. Interpretation**—In these regulations—

“The Act” means the Immigration Act 1987:

“Approved”, in relation to a form, means approved under section 132 of the Act:

“Loss of refugee status” means the situation where a person ceases to be recognised as a refugee by the Government of New Zealand in 1 of the following circumstances:

(a) The Refugee Convention has ceased to apply to a person who has previously been recognised as a refugee in terms of Article 1C of the Convention:

(b) Recognition of a person as a refugee has been procured by fraud, forgery, false or misleading representation, or concealment of relevant information:

(c) A person already recognised as a refugee is excluded from the protection of the Refugee Convention, in any case where the matters dealt with in Articles 1D, 1E, and 1F of the Convention were not properly considered for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information:

“Officer” means a refugee status officer.

Terms defined in the Act have the meanings so defined.

## PART 1

## PROCEEDINGS INVOLVING REFUGEE STATUS OFFICERS

*Claims to Refugee Status*

**3. Confirmation of claim to refugee status**—(1) The confirmation of a claim to refugee status must be lodged in writing in a form approved for the purpose and signed by the claimant.

(2) The confirmation of the claim is to be completed in English.

(3) The confirmation of the claim must also be accompanied by—

(a) The name of any representative; and

(b) A current address to which communications relating to the case may be sent, including a facsimile number if appropriate; and

(c) A current residential address for the claimant.

(4) In so far as reasonably obtainable, the following details and documents are also to accompany confirmation of the claim:

- (a) Evidence of identity (including a recent photograph of the claimant):
  - (b) Evidence of country of origin:
  - (c) Any evidence supporting the fact or likelihood of persecution:
  - (d) Where available, documents indicating by whom the persecution or potential persecution is alleged and the reason for that persecution:
  - (e) Details of persons who can be contacted to support or verify the claim (if any).
- (5) Where in a family group more than 1 person is claiming refugee status,—
- (a) A separate form confirming the claim is required to be completed for each claimant; but
  - (b) All those claims should be lodged together.

**4. Information on claimant's rights**—Once a claim reaches a refugee status officer, that officer is responsible for informing the claimant of the following rights:

- (a) The right to contact a representative of the Office of the United Nations High Commissioner for Refugees (with information also being given as to how to exercise that right):
- (b) The right to contact a lawyer:
- (c) The right to have an independent interpreter engaged by the Department of Labour present at any interview of the claimant by a refugee status officer.

**5. Other information to be provided to claimants**—Refugee status officers are also responsible for communicating to claimants the procedure for determining their claim, including the following matters:

- (a) The means by which contact will be maintained:
- (b) The possibility of requests for further information, and the right or ability of the claimant to provide further information up until the time that the claim is actually determined:
- (c) The availability of an independent interpreter, where appropriate:
- (d) The decision-making process, including information relating to the process for scheduling an interview:
- (e) The rights of appeal to the Refugee Status Appeal Authority in the event of the claim being unsuccessful:
- (f) The right to an interview before the Authority, if the claimant has not been interviewed by a refugee status officer for the purpose of determining the claim.

**6. Request by officer for further information**—(1) An officer may make a written request for further information from a claimant by either—

- (a) Giving that request at an interview; or
  - (b) Sending it to the claimant.
- (2) Any such request must specify the date (being a date that is reasonable in all the circumstances) by which the claimant has to provide the additional information, although the officer may subsequently extend that time period at the officer's discretion.

(3) Any such request must include a statement to the effect that, if the requested further information is not received within the time period specified, the officer may proceed to determine the claim on the basis of the information that the officer has available.

**7. Comment on prejudicial information**—(1) A refugee status officer must disclose to a claimant any material or information obtained by the officer that is or may be prejudicial to the claimant or the claim if—

- (a) The material or information was not obtained from the claimant, and is not material or information that is publicly available; and
- (b) The claimant has not previously been afforded an opportunity to comment on the material or information; and
- (c) The officer proposes to take the material or information into account in determining the claim.

(2) When material or information that is or may be prejudicial to a claimant is disclosed under this regulation, the claimant must be given a reasonable opportunity (whether within a specified time period or at an interview) to comment on or rebut that material or information. The claimant must also be notified that, if the claimant fails to respond within the specified time period or (where reasonable) at the interview, the officer may proceed to determine the claim on the basis of the material and information that the officer has available.

(3) Nothing in subclause (1) requires the disclosure to a claimant of any material or information whose disclosure would be likely to endanger the safety of any person, but the fact of non-disclosure must be notified to the claimant.

**8. Failure to provide further information or to comment on prejudicial information**—If a person to whom a request for further information is made, or who is invited to comment on any potentially prejudicial material or information, fails to respond within any appropriate time frame set for the purpose under regulation 6 or regulation 7, the refugee status officer concerned may proceed to determine the claim.

**9. Request for production of document by third party**—(1) A request by a refugee status officer under section 129H (1) (d) of the Act for the production of a document by a person other than the claimant (including a person who is a representative of a body corporate) must be made in the form set out in the Schedule, and must be signed by the officer making the request.

(2) The request must be served personally on the person to whom it is addressed, or on a representative of the body corporate to which the request is addressed.

**10. Notification of determination of claim**—(1) A refugee status officer must notify a claimant in writing of the decision on their claim to refugee status, and must give the reasons for that decision.

(2) In the case of a person whose claim has been declined, the person must be notified in writing of—

- (a) Their right to appeal the decision in terms of regulation 14; and
- (b) The time limits within which an appeal must be filed; and
- (c) The address where an appeal may be filed; and

- (d) If the person has not already been interviewed by a refugee status officer for the purpose of determining the claim, their right to an interview if they appeal.
- (3) The determination, the reasons for it, the right of appeal, and matters relating to the exercise of appeal rights must be notified, to the last address or facsimile number supplied by the claimant, by way of—
  - (a) Personal service; or
  - (b) Registered post; or
  - (c) Facsimile copy.
- (4) Where in a family group more than 1 person has claimed refugee status, each family member must be notified separately of the decision on their claim and, if appropriate, their right of appeal.

*Determinations Involving Loss of Refugee Status*

- 11. Notice of intended determination concerning loss of refugee status**—(1) If a refugee status officer intends to make a determination under section 129L of the Act to the effect that a person's refugee status may be lost, the officer must notify the person concerned of that intention and the matter it involves, including the reasons for it and any evidence relating to it, in an approved form, which must be signed by the officer.
- (2) The notice must be served personally on the person to whom it relates.
- (3) At the same time as the person is served with the notice,—
- (a) The person must also be given a copy of all relevant information from any departmental file about the person; and
  - (b) The person must be informed of their right—
    - (i) To contact a representative of the Office of the United Nations High Commissioner for Refugees (with information also being given as to how to exercise that right); and
    - (ii) To contact a lawyer; and
    - (iii) Within 20 working days, to request an interview and to provide written submissions in relation to the proposed loss of refugee status; and
    - (iv) To have an independent interpreter present at any interview by the officer; and
    - (v) To appeal to the Refugee Status Appeal Authority, in the event that the officer decides to make a determination involving loss of refugee status.
- (4) A person who is served with a notice under this regulation must provide to the person serving the notice an address, including a facsimile number if appropriate, to which communications regarding the matter may be made.
- (5) Nothing in subclause (3)(a) requires the disclosure to the person of any material or information whose disclosure would be likely to endanger the safety of any person, but the fact of the non-disclosure must be notified to the person.

**12. Procedure in relation to possible loss of refugee status**—(1) A person to whom a notice regarding the possible loss of refugee status is given is entitled to be interviewed and to make written representations in relation to the matter.

(2) Before making any decision involving loss of refugee status, the relevant officer must take into account any representations (including any

personal interview), documents, or other evidence produced by the person in respect of whom the loss of refugee status is proposed.

(3) In no case may a decision on the matter specified in the notice be made sooner than 20 working days after the date on which the notice is received by the person.

**13. Notification of final determination in relation to loss of refugee status**—(1) Where a refugee status officer has notified a person of the officer's intention to make a determination involving loss of refugee status under section 129L of the Act, the officer must notify the person in writing of the officer's final decision on the determination, and the reasons for that decision.

(2) If the decision was to make a determination that would lead to loss of refugee status, the officer must, at the same time as notifying the person of the decision, also notify the person in writing of—

- (a) Their right to appeal the decision in terms of regulation 14; and
- (b) The time limits within which an appeal must be filed; and
- (c) The address where an appeal may be filed; and
- (d) If the person has not already been interviewed by a refugee status officer for the purpose of determining the issue relating to the loss of refugee status, their right to such an interview if they appeal.

(3) The decision, the reasons for it, the right of appeal, and matters relating to the exercise of appeal rights must be notified, to the last address or facsimile number supplied by the person, by way of—

- (a) Personal service; or
- (b) Registered post; or
- (c) Facsimile copy.

## PART 2

### PROCEDURES BEFORE REFUGEE STATUS APPEAL AUTHORITY

#### *Appeals*

**14. Filing of appeals to Refugee Status Appeals Authority**—(1) An appeal to the Refugee Status Appeal Authority under section 129O of the Act must be made in writing.

(2) The appellant must ensure that the notice of appeal is lodged with the Authority at the Authority's address (being PO Box 90251, Auckland), or is filed at its street address, within the appropriate time period specified in section 129O (3) of the Act.

(3) A notice of appeal must contain a current address in New Zealand to which communications relating to the appeal may be sent. This may be the address of the appellant's representative, and must include the representative's facsimile number where appropriate. The notice must also include the appellant's current residential address.

(4) If no address for communication is provided with the notice of appeal, the Authority may rely on the most recent address provided to the Department of Labour, including any facsimile number which has been provided.

**15. Notice of consideration of appeal**—(1) The Authority must give to an appellant at least 5 working days' notice of the date on which the appeal is to be considered, and of the date of any interview of the appellant.

(2) A refugee status officer or the Authority must ensure that an appellant is provided with a copy of any departmental file or other material or information relevant to the appeal at least 5 working days before the date on which the appeal is to be considered or the appellant is to be interviewed.

(3) If an appellant is being detained in custody the Authority may, despite subclauses (1) and (2), give a shorter period of notice than the 5 working days required by those subclauses, but in no case may the Authority shorten the 5 working day period referred to in subclause (2) unless the appellant consents to that shortening.

*Applications Concerning Loss of Refugee Status*

**16. Filing of application seeking loss of refugee status**—(1) An application by a refugee status officer under section 129L (1) (f) of the Act for a determination that may result in loss of a person's refugee status must be made by the officer in an approved form. The application must be signed by the officer and lodged with the Secretariat of the Authority.

(2) At the time of filing the application, the officer must also lodge with the Authority—

- (a) A copy of any part of any departmental file about the person that is relevant to the recognition of the person as a refugee; and
- (b) Any other information in the officer's possession that is relevant to the determination of the application.

**17. Initial acceptance or referral back of application**—The Authority may accept for consideration the application seeking loss of refugee status, or may refer the application back to the officer concerned for further particulars to be specified before deciding to accept the application.

**18. Serving of notice of application**—(1) If an application for loss of refugee status is accepted for consideration, the Authority must arrange for a copy of the application to be served personally on the person to whom it relates.

(2) At the same time as the person is served with a copy of the application,—

- (a) The person must also be given a copy of any part of a departmental file or other information lodged with the Authority under regulation 16 (2); and
- (b) The person must be informed of their right—
  - (i) To contact a representative of the Office of the United Nations High Commissioner for Refugees (with information also being given as to how to exercise that right); and
  - (ii) To contact a lawyer; and
  - (iii) To request and be granted an interview, and to provide written submissions in relation to the determination of the application; and
  - (iv) To have an independent interpreter present at any interview by the Authority.

(3) A person who is served with a copy of the application concerning loss of their refugee status must provide to the person serving the copy an address, including a facsimile number if appropriate, to which communications regarding the matter may be made.

(4) Nothing in subclause (2) (a) requires the disclosure to the person of any material or information whose disclosure would be likely to endanger the safety of any person, but the fact of the non-disclosure must be notified to the person.

### PART 3

#### MISCELLANEOUS MATTERS

**19. Notification of interviews**—(1) Where a claimant, appellant, or other person is to be interviewed by a refugee status officer or the Authority, they must be notified in advance of the date, time, and place of the interview.

(2) The notice must inform the person to whom it relates of their right to request an independent interpreter for the interview, and their right to have a representative (including legal counsel) at the interview.

(3) The person must be informed that, despite a failure to attend the interview, the relevant matter may still be determined by a refugee status officer or the Authority, as the case may require.

**20. Provision of independent interpreters at interviews**—(1) It is the responsibility of the relevant refugee status officer or the Authority, as the case may require, to arrange for the attendance of an independent interpreter at an interview where the first language of the claimant or appellant or person whose refugee status is in question is not English.

(2) An independent interpreter may be dispensed with at an interview only upon the request or application of the claimant or appellant or person whose refugee status is in question, and then only in such circumstances as are agreeable to the officer or member or members of the Authority determining the claim or appeal or matter involving the potential loss of refugee status.

**21. Withdrawal of claim or appeal**—A claimant or an appellant may at any time withdraw a claim to refugee status or an appeal to the Authority by giving written notice to a refugee status officer or the Authority, as the case may require.

#### *Communications in Relation to Refugee Matters*

**22. Methods of communication**—Unless otherwise specified in these regulations, any matter that is to be communicated between a refugee status officer or the Authority and a claimant or appellant or person whose refugee status is in question, as the case may be, may be communicated in the ordinary course of post, by registered post, by personal service, or by facsimile copy.

**23. Receipt of communications**—(1) Where a document is conveyed in the ordinary course of post or by registered post to a claimant, an appellant, or other person whose refugee status is in question, the document is to be treated as having been received by the person 5 working days after its posting or dispatch.

(2) Where any document is conveyed by way of facsimile copy, the document is to be treated as having been received as soon as the machine sending the facsimile prints a report indicating that the transmission has been received by the machine intended to receive the facsimile.



**24. Requirements to supply address include requirement to give facsimile number, where available**—(1) When notifying an address or addresses to a refugee status officer or the Authority as required by sections 129G (4) and 129P (3) of the Act, a person must also notify the officer or the Authority of any facsimile number (including the facsimile number of a representative), if available, to which communications can be sent.

(2) The requirement to inform a refugee status officer or the Authority of changes of address also includes the obligation to inform the officer or Authority of changes of facsimile number, where appropriate.

(3) Where, pursuant to Part VIA of the Act or these regulations, reliance may be placed on, or a notification may be addressed to, the latest address provided to a refugee status officer or the Authority for the purpose of communication under the Act, reliance may also be placed on, or a notification addressed to, the latest facsimile number provided to either an officer or the Authority.

---

SCHEDULE

Reg. 9

FORM OF REQUEST TO THIRD PARTY TO PRODUCE DOCUMENT

Section 129H (1) (d), Immigration Act 1987

To: ..... [Name or organisation]

Of: ..... [Address]

Pursuant to section 129H (1) (d) of the Immigration Act 1987 I have good cause to suspect that you are in possession or control of a document, namely, ..... [Specify document]

....., who has claimed refugee status. [Name of claimant]

If you are in possession of the above document, I require you to surrender it to me by either delivering it personally or posting it to the following address:

..... [Office]

..... [Street and number or PO Box]

..... [Town]

Signed: ..... Refugee status officer

Name: .....

Date: .....

MARIE SHROFF, Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 October 1999, set out various procedural matters in relation to—

- (a) Claims for refugee status under the Refugee Convention and Part VIA of the Immigration Act 1987; and
(b) Appeals to the Refugee Status Appeal Authority; and
(c) Determinations and applications involving loss of refugee status.

Issued under the authority of the Acts and Regulations Publication Act 1989. Date of notification in Gazette: 26 August 1999. These regulations are administered in the Department of Labour.