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Immigration (Reform) (Regularisation of Residency Status) Bill 2014

Author: Dr Liam Thornton (UCD)

Bill post Parliamentary Drafting is available here.

The Seanad Debate on the Bill is available here. The Bill did not move past 2nd stage.

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Immigration (Reform) (Regularisation of Residency Status) Bill 2014

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BILL

entitled

AN ACT TO PROVIDE FOR THE REGULARISATION OF THE RESIDENCY STATUS OF PERSONS WHO HAVE APPLIED FOR REFUGEE STATUS AND/OR SUBSIDIARY PROTECTION AND FOUR YEARS FOLLOWING THE SUBMISSION OF SUCH AN APPLICATION THE APPLICATION REMAINS UNDETERMINED AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement
1.— (1) This Act may be cited as the Immigration (Reform) (Regularisation of Residency Status) Bill 2014.

(2) This Act comes into operation three months after the date of its passing.
Interpretation
2. — (1) In this Act -

“asylum” has the meaning assigned to it in the Refugee Act 1996;

“child” means a child of the applicant, or a child of his or her spouse, or a child of his or her civil partner;

“deportation order” means a deportation order which has been issued under section 3 of the Immigration Act 1999 and such deportation order is subsisting;

“immediate family member” means a spouse, civil partner or any child of an applicant under section 6;

“Minister” means the Minister for Justice and Equality;

“subsidiary protection” has the meaning assigned to it in regulation 2 of European Communities (Eligibility for Protection) Regulations 2006 (SI No 518 of 2006) and regulation 2 of European Union (Subsidiary Protection) Regulations 2013 (SI No 426 of 2013).

Regulations
3.—(1) The Minister may make regulations -

(a) prescribing any matter which is referred to in this Act as prescribed or to be prescribed, or

(b) for the purposes of enabling any provision of this Act to have full effect.

(2) Every regulation or order made by the Minister shall be laid before each House of the Oireachtas as soon as practicable after they are made and, if a resolution annulling the regulation, order or rules is passed by either House within the next subsequent 21 days on which that House has sat after the regulation, order or rules are laid before it, the regulation, order or rules shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(3) Regulations made under this Act may—

(a) include such consequential, incidental, transitional or supplementary provisions as may be considered by the Minister, as the case may be, to be necessary or appropriate for the purposes of this Act, and

(b) apply, either generally or by reference, to a specified class or classes of persons or category or categories of licensees or to any other matter as may be considered by the Minister to be appropriate.
PART 2

IMMIGRATION REFORMS

Application of this Act.

4. - (1) This Act shall only apply to a person who satisfies the requirements specified in subsection (2) and (3), or is part of the applicable group provided for in subsection (4).

(2) The requirements specified by this subsection are as follows -

   (a) the person has submitted an application for asylum under section 8 of the Refugee Act 1996, or

   (b) the person has submitted an application for subsidiary protection under regulation 4 of European Communities (Eligibility for Protection) Regulations 2006 (SI No 518 of 2006) or regulation 3 of European Union (Subsidiary Protection) Regulations 2013 (SI No 426 of 2013), or

   (c) the person has made an application for leave to remain under section 3 of the Immigration Act 1999.

(3) The requirements specified by this subsection are that a period of four years or more has elapsed since the application referred to in subsection (2) was submitted to the Minister and no decision has yet been made and communicated to the applicant in respect of that application.

(4) The applicable group -

   (a) includes any immediate family member of an applicant irrespective of whether that immediate family member meets the requirements provided for in subsection (2) or (3),

   (b) but does not include any person in respect of whom a deportation order has been issued on or before the date of the commencement of this Act, subject to section 5, and to whom subsection (3) does not apply.

(5) In this section –

"applicant" means a person who has made an application referred to in subsection (2);

"decision" refers to a final determination in respect of an application for asylum or subsidiary protection.

Persons with a subsisting deportation order
5. - Where a person is subject to a deportation order he or she shall be precluded from deriving any entitlement or benefit under this Act, unless each of the following conditions are met -

(a) the deportation order was not effected within one year of its initial issuance, and

(b) there is no reasonable degree of likelihood that the deportation order will be effected within six months of the submission of an application under section 6(1) or an application for renewal under section 6(3).

Automatic recognition of residency status
6. - (1) Once a person satisfies the requirements of section 4 and the person is not precluded under section 5, the Minister shall, on foot of an application made to him or her under this section, issue a residence permit to that person and also to immediate family members of that person.

(2) An application which is made under subsection (1) shall be processed and a final decision issued within six months of the date on which a duly completed application has been received.

(3) A residence permit which is issued under this section shall be–

(a) valid for a period of not less than three years, and

(b) be renewable, subject to the provisions of section 5.

(4) An application under subsection (1) or an application for renewal under subsection (3) shall be made using the prescribed form.

Rights of regularised persons
7. – (1) A person who is the holder of a current valid residence permit which has been issued under section 6 shall be entitled to the same rights and privileges as those conferred by law on persons generally who are not Irish citizens (as distinct from such rights or privileges conferred on any particular person or group of such persons).

(2) Without prejudice to the generality of subsection (1), a person who is the holder of a current valid residence permit which has been issued under section 6 shall -

(a) be entitled to reside in the State,

(b) enjoy the same rights of travel within, or to or from the State as those to which Irish citizens are entitled,
(c) have the same freedom to practise religion and the same freedom as regards the religious education of his or her child as those to which Irish citizens are entitled,

(d) be entitled to seek and enter into employment or to carry on any business, trade or profession in the like manner and to the like extent in all respects as an Irish citizen,

(e) the right to form and be a member of any association or trade union in the like manner and to the like extent in all respects as an Irish citizen.

(f) have access to the courts in the like manner and to the like extent in all respects as an Irish citizen,

(g) have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen,

(h) be entitled to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services as those to which Irish citizens are entitled, and

(i) be entitled to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same social welfare benefits as those to which Irish citizens are entitled.

(3) Without prejudice to the generality of subsection (1), or section 3 of the Aliens Act 1935, and notwithstanding anything contained in section 45 of the Land Act 1965, section 16 of the Mercantile Marine Act 1955, or an order under the Air Navigation and Transport Act 1946, a person issued with a residence permit under section 6(3) of this Act shall be entitled to acquire, hold, dispose or otherwise deal with real or personal property or an interest in such property in the like manner, to the like extent and subject to the like obligations and limitations as an Irish citizen.

(4) In this section “social welfare benefits” includes any payment or services provided for in or under the Social Welfare (Consolidation) Act 2005, the Health Acts 1947 to 2007, and the Housing Acts 1966 to 2009.

**Exclusions**

8. – (1) In respect of a residence permit which has been granted under section 6, the Minister may –

   (a) revoke the residence permit, and

   (b) issue a deportation order,

where one or more of the following circumstances arise -
(i) the person has been ordered by a court in the State to serve a term of imprisonment of one year or more,

(ii) the deportation of the person has been recommended by a court in the State before which such person was convicted of any crime or offence which carries a term of imprisonment (effected or suspended) of more than one year,

(iii) the deportation of the person would in the opinion of the Minister, be conducive to the common good,

(iv) the person was committed to prison in a former country of origin or previous country of residence for a period of one year or more, provided that-

   I. such an offence is also a criminal offence in this country;

   II. the decision to impose a term of imprisonment was taken by an independent judicial authority;

   III. the person had benefit of legal advice and legal representation or had declined an opportunity to accept such advice or representation;

   IV. the court in which this sentence was delivered was one that, in the specifics of the particular case, was seeking to uphold the rule of law,

(v) the person has falsified or concealed information in an application made under section 6, or in an application for asylum, an application for subsidiary protection, or an application for leave to remain.

(2) Where the Minister proposes to exercise the power provided for in subsection (1), he or she shall -

(a) inform the person who it is proposed will be subject of that decision, and

(b) shall have regard to the following -

   (i) any representations made by the individual in response to the proposal;

   (ii) the length of residence of the individual in the State;

   (iii) employment record (if any) in the State;

   (iv) the right of that individual to enjoy family life, and in particular the right of any children to the care and company of parent(s) or guardians;
(v) humanitarian considerations;
(vi) the common good; and
(vii) considerations of public policy or national security.

(3) Where a person has been informed under subsection (2)(a) of the proposal by the Minister to exercise his or her power under subsection (1), a final decision on the exercise of that power shall be notified to the person within six months of the initial communication by the Minister under subsection (2)(a).

(4) For the avoidance of doubt, the power contained in subsection (1) –

(a) is in addition to any other power of the Minister,
(b) is exercisable at any time any time after an application has been submitted under section 6, and
(c) is exercisable at any time any time after a residence permit has been granted

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Immigration (Reform) (Regularisation of Residency Status) Bill 2014

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EXPLANATORY MEMORANDUM

Background

States have a right under international law to control entry, exit and the conditions upon which a non-citizen may remain in the State. With an estimated 50,000 Irish immigrants in the United States with an irregular migration status, it is important that Irish law deals compassionately with issues relating to migration status. This Bill seeks to provide a workable and limited solution to persons who may have made refugee, subsidiary protection and/or leave to remain applications, which have been under consideration for a period of four years or more. This Bill also seeks a humane solution for those with deportation orders outstanding, but not effected for a significant period of time.

In recent months, there have been significant concerns relating to the effectiveness of the protection system in Ireland. For example, 2,441 persons are currently
residing in direct provision centres for a period of four years or more. The proposed introduction of the single protection procedure for those seeking protection is very welcome. In addition, the appointment of respected independent experts to the Working Group on the Protection System and Direct Provision, chaired by Judge Bryan McMahon may also result in positive changes to the protection system overall.

There are many complex reasons why individuals have not had final determination of status over many years or why deportation orders may not have been implemented. This Bill seeks to ensure that when the newly reformed protection process is introduced, a line can be drawn under some of the outstanding applications in the Irish immigration system.

**Purpose of the Bill**

The *Immigration (Reform) (Regularisation of Residency Status) Bill 2014* seeks to deal with significant issues relating to regularisation of residency status for those who have been in Ireland for a significant period of time. Where persons have applied for, but not received a definitive determination on applications for refugee status and/or subsidiary protection and/or leave to remain in Ireland within 4 years, then such individuals will be entitled to a residence permit. The Bill places time-limits as regards the issuance of this residence permit. This residence permit will be valid for a period of not less than three years, and may be renewable. Once a residence permit is issued, then the regularised applicant will a number of key rights, including the right to work, travel, religious freedom, access to education and training, the right to medical treatment and the right to access social welfare benefits. Significant protections remain in this Bill to ensure that the Minister may refuse such a residence permit or revoke this residence permit on specified grounds. These grounds generally relate to the common good, maintenance of public order, prevention of crime and security in the State.

The *Immigration (Reform) (Regularisation of Residency Status) Bill 2014* also seeks to deal with the practice of deportation orders being issued, but not effected. Where the Minister issues a deportation order, this must be capable of being carried out effectively and in a human rights compliant manner. Where this is not the case, and where a deportation order has not been effected for 1 year after its issuance and there is no reasonable degree of likelihood that it will be effected within a further 6 months, then this individual will be entitled to a residence permit valid for a period of not less than three years, and may be renewable. The residence permit will grant an individual who satisfies all conditions to enjoy the rights of residence permit holders described above. The powers of the Minister to revoke the residence permit are as described above.

**Provisions of the Bill Explained**

Section 1 sets out the short title of the Bill and provides that the Act comes into operation three months after the date of its passing.
The purpose of this delayed commencement is to afford a reasonable time period so that the necessary administrative arrangements can be put in place to facilitate the smooth operation of the new approach which is provided for in this Bill.

Section 2 defines six key terms which are used in the Bill.

Section 3 empowers the Minister to make regulations so as to enable the Bill to have full effect. The making of regulations is also envisaged by section 6(4).

Section 4(1) states that this Bill will only apply to a person who meets certain specified conditions. The conditions which a person must satisfy are then set out in section 4(2), 4(3) and 4(4).

Section 4(2) stipulates the first set of conditions which a person must comply with in order to be eligible to avail of the entitlements which are conferred under this Bill. Specifically, it requires that a person must have submitted either, (a) an application for asylum, or an application for subsidiary protection, or (c) an application for leave to remain.

Section 4(3) stipulates the second condition which a person must comply with in order to be eligible to avail of the entitlements which are conferred under this Bill. Specifically, that a person must have submitted their application (for asylum, subsidiary protection or leave to remain) at least four years previously and has still not been informed of the Minister's decision.

Section 4(4) stipulates the immediate family members of an applicant (for asylum, subsidiary protection or leave to remain) may be able to avail of the entitlements which are conferred under this Bill irrespective of whether they themselves meet the conditions which are set down in section 4(2) or 4(3). However, any immediate family members who are the subject of a deportation order cannot avail of such entitlements.

Section 4(5) defines two terms which are used in this section.

Section 5 states that a person who is subject to a deportation order is expressly precluded from deriving any entitlement or benefit under this Act, unless two conditions are met, firstly the deportation order was not effected within one year of its initial issuance, and secondly, there is no reasonable degree of likelihood that the deportation order will be effected within six months.

Section 6 is the key provision of the Bill as it is this section which provides for the regularisation of the residency status of applicants for asylum, applicants for subsidiary protection and applicants for leave to remain (and their immediate family members) provided that they meet the conditions set out in section 4. Once a person satisfies the requirements of section 4, he or she may apply to the Minister for Justice for a residence permit and the Minister is obliged to grant a permit within six months. The residence permit will be valid for at least three years and is also renewable at the end of that period.
Section 7(1) states that the holder of a residence permit, which has been issued under section 6, will be entitled to the same rights and privileges as those conferred by law on persons generally who are not Irish citizens.

Section 7(2) sets out the various rights which the holder of a residence permit, which has been issued under section 6, will enjoy. Those specified rights include: an entitlement to reside in the State; the right to travel; religious freedom; the right to work; the right to join a trade union; the right to have access to the courts; the right to access education and training; the right to medical care; and the right to social welfare benefits.

Section 7(3) confirms that notwithstanding the terms of certain other pieces of legislation, a person who has been issued with a residence permit under this Bill will be entitled to acquire, hold, dispose of real or personal property in the same way as an Irish citizen currently can.

Section 7(4) defines one term which is used in section 7(2).

Section 8 addresses circumstances in which a person might be expelled from the State. Section 8(1) empowers the Minister for Justice to revoke residence permit, and issue a deportation order where certain circumstances arise, such as where the person has been ordered to serve a term of imprisonment of one year or more, or their deportation has been recommended by a court, or where the Minister believes that the deportation would be conducive to the common good, or the person served a prison term in another country in certain specified circumstances, or the person has falsified or concealed information in an application made under section 6 of this Bill, or in an application for asylum, an application for subsidiary protection, or an application for leave to remain.

Section 8(2) requires that where the Minister proposes to exercise the power to remove a person from the State, the Minister must first inform the person who it is proposed will be subject of that decision. The Minister must also adhere to a number of other requirements, including a requirement to have regard to any representations made by the individual, as well as the length of residence of the individual in the State, his or her employment record, his or her right to family life, humanitarian considerations, the common good, and considerations of public policy or national security.

Section 8(3) requires that a proposed decision to expel a person from the State under section 8(1) must be finalised within six months of the initial notice of the proposed decision.

Section 8(4) states that the power to expel which is contained in subsection is in addition to any other power of the Minister, is exercisable at any time after an application for a residence permit has been submitted under section 6, and that it is exercisable at any time after a residence permit has been granted or renewed under section 6.
or renewed under section 6.