

Act II of 2007 on the Entry and Stay of Third-Country Nationals

Section 29

(1) In the absence of the requirements for a residence permit specified in this Act the following persons shall be granted a residence permit on humanitarian grounds:

a) the person recognized by the Republic of Hungary as a stateless person;

b) the person who has been granted the status of exile by the Republic of Hungary;

c) any third-country national who applied to the refugee authority for asylum, or who applied to the refugee authority for any subsidiary form of protection or temporary protection;

d) any third-country national who was born in the territory of the Republic of Hungary who has been removed from the custody of his guardian having custody according to Hungarian law, and also unaccompanied minors;

e) for substantial national security or law enforcement reasons - by initiative of the national security or law enforcement agency - to any third-country national, or other affiliated third-country nationals on his/her account, who has cooperated with the authorities in a crime investigation and has provided significant assistance to gather evidence.

(2) The validity period of a residence permit granted on humanitarian grounds:

a) shall be one year in the cases referred to in Paragraphs *a)*-*d)* of Subsection (1), that may be extended by maximum one year at a time;

b) shall be six months in the case referred to in Paragraph *e)* of Subsection (1), that may be extended by maximum six months at a time.

(3) By way of derogation from Subsection (1) of Section 18, a residence permit granted on humanitarian grounds may not be extended, or it shall be withdrawn if:

a) any requirement for issue is no longer satisfied;

b) the third-country national in question has disclosed false information or untrue facts to the competent authority in the interest of obtaining the right of residence;

c) withdrawal is requested by the authority or body on whose initiative it was issued on the grounds specified in Paragraph *a)* or for some other reason.

(4) Where a residence permit was granted on humanitarian grounds by the initiative of a duly authorized authority or body, the withdrawal, extension or refusal of extension of such residence permit shall be subject to the initiative or consent of the aforesaid duly authorized authority or body.

(5) The residence permit of a third-country national referred to in Paragraph *d*) of Subsection (1) may be withdrawn, or extension of the duration specified in his/her residence permit may be refused only if family reunification in the country of origin or in any other country liable to accept him/her is ensured, or if state or other institutional support is ensured.

(6) Exiles shall be entitled to the rights afforded to persons with residence permits and to the rights granted to exiles in specific other legislation. The exile shall provide assistance for having his identity established, however, failure to establish his identity shall not justify refusal of a residence permit.

(7) Exiles, and the third-country nationals to whom a residence permit had been issued under Paragraph *e*) of Subsection (1), who are victims of trafficking in human beings shall be provided aid and support specified under specific other legislation.

Certificate of Temporary Residence

Section 30

(1) A certificate of temporary residence shall be issued to any third-country national:

a) who has filed an application for a residence permit, and whose long-term visa, national visa or previous residence permit has already expired before the permit is issued, or shall be granted residence permit in accordance with this Act, furthermore, if the applicant has submitted an application for a residence permit under Subsection (5) of Section 1;

b) who has submitted an application for a long-term visa or interim permanent residence permit in the territory of the Republic of Hungary;

c) who remained in the territory of the Republic of Hungary beyond the duration of lawful residence due to humanitarian reasons or reasons in connection with his/her gainful employment, or for personal or some other unavoidable reasons beyond his/her control;

d) who was born in the territory of the Republic of Hungary and whose parent is a third-country national lawfully residing in the territory of the Republic of Hungary, and whose lawful residence cannot be ensured by any other permit that may be granted under this Act;

e) who is a victim of trafficking in human beings, if initiated by the victim support authority, for the duration of support;

f) whose entry is authorized under Subsection (2) of Section 13, if he/she does not have any form of authorization to reside in the territory of the Republic of Hungary;

g) whose travel document had been confiscated, and he/she does not have any form of authorization to reside in the territory of the Republic of Hungary;

h) who is subject to any immigration related proceeding for unlawful entry and residence pending;

i) who has applied for stateless status, for the duration of such proceedings, if he/she does not have any form of authorization to reside in the territory of the Republic of Hungary;

j) who is subject to an order of compulsory confinement under Paragraph *a), b), c), d)* or *f)* of Subsection (1) of Section 62.

(2) The validity period of a certificate of temporary residence:

a) shall be three months in the cases specified in Paragraphs *a)-c)* and *f)-h)* of Subsection (1), and it may be extended by three additional months at a time;

b) shall correspond to the duration of residence of the parent in the case specified in Paragraph *d)* of Subsection (1);

c) shall be one month in the case specified in Paragraph *e)* of Subsection (1), and it may not be extended;

d) shall be six months in the cases specified in Paragraphs *i)* and *j)* of Subsection (1), and it may be extended by six additional months at a time.

(3) The third-country nationals to whom a certificate of temporary residence had been granted under Paragraph *a)* of Subsection (1) may engage in gainful employment if having submitted an application for a residence permit for the purpose of gainful employment in possession of a long-term visa or residence permit that was issued for the purpose of gainful employment.

(4) A certificate of temporary residence may not be extended, or it shall be withdrawn if any requirement for issue is no longer satisfied.

(5) A certificate of temporary residence constitutes the right of residence in the territory of the Republic of Hungary, it may not be used for exit or reentry, it shall become void upon the third-country national's departure, when it shall be surrendered. The certificates surrendered shall be returned to the issuing authority.

Provisions relating to the Entry and Residence of the Civilian Personnel, and their Relatives, under the Convention between the Parties to the North Atlantic Treaty on the Status of their Forces, signed in London on 19 June 1951

Section 45

(1) The immigration authority shall have regard for the following factors before adopting an expulsion order under immigration laws:

a) any threat to national security, public security, public policy or public health, in view of the gravity and nature of the actionable conduct;

b) the duration of stay;

c) the age and family status of the third-country national affected, possible consequences of his/her expulsion on his/her family members;

d) links of the third-country national to the Republic of Hungary, or the absence of links with the country of origin.

(2) Any third-country national who:

a) resides in the territory of the Republic of Hungary under immigrant or permanent resident status;

b) is bound to a third-country national residing in the territory of the Republic of Hungary under immigrant or permanent resident status by marriage or is a family member of such person, and has a residence permit,

may be expelled only if his/her continued residence represents a serious threat to national security, public security or public policy.

(3) The provisions of Subsection (2) shall also apply to the immediate family members - defined in specific other legislation - of a third-country national who has applied to the refugee authority for refugee status for the duration of the application pending, and those with refugee status or to whom any subsidiary form of protection or temporary protection was granted.

(4) Third-country nationals who are victims of trafficking in human beings may only be expelled during the time of deliberation they are afforded only if their residence in the territory of the Republic of Hungary constitutes any threat to national security, public security or public policy.

(5) An unaccompanied minor may only be expelled if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care.

(6) The immigration authority may abstain from ordering expulsion under immigration laws on the grounds specified in Paragraphs *a)*, *b)* and *d)* of Subsection (2) of Section 43, if the third-country national affected agrees to leave the territory of the Republic of Hungary on his/her own accord. The immigration authority - having regard to Subsection (2) of Section 42 - shall prescribe the time limit for voluntary exit, and this decision may not be appealed.

(7) Expulsion may not be ordered under immigration laws, and entry ban may not be ordered independently against a third-country national who was convicted for a crime in the court of the law, yet the sentence did not include expulsion in any form, neither as a principal punishment nor as an ancillary punishment.

Section 111

(1) The Government is hereby authorized to decree:

a) the authorities vested with competence in connection with immigration proceedings, with the registration of accommodations and home addresses, and the data of third-country nationals that may be processed on the strength of this Act, their scope of jurisdiction and the detailed regulations for their proceedings;

b) the immigration related tasks and duties and the powers and authorizations of visa authorities, the

detailed regulations for the issue of visas, the type of documents evidencing the right of entry and residence without a visa, and the prescribed form of visas;

c) the conditions for issuing residence permits, certificates of temporary residence, interim permanent residence permits, national residence permits and EC residence permits, and the formal requirements for these documents;

d) the travel documents recognized;

e) the detailed regulations concerning the issue, renewal and withdrawal of residence permits granted on humanitarian grounds, and the detailed regulations for cooperation between the immigration, national security and law enforcement agencies;

f) the conditions for providing official certificates for letters of invitation, and the detailed regulations for such proceedings;

g) the regulations concerning detention prior to expulsion or ordered under immigration laws, and for setting up and the designation of a compulsory place of confinement, and the detailed regulations for the provision of healthcare services and other assistance to third-country nationals in detention;

h) the detailed public health regulations pertaining to the entry and residence of third-country nationals in Hungary, and the financial requirements for health care services and the means of certification;

i) the amount limits of the financial penalties to be imposed on carriers and employers under this Act, and the procedure for levying them;

j) the rules of conduct for persons placed under compulsory confinement;

k) the regulations for the provisions to third-country nationals ordered to stay in the airport transit zone;

l) the regulations for the provisions and support granted to exiles and persons residing in community hostels and refugee centers, and to third-country nationals who are victims of trafficking in human beings;

m) the requirements set out for community hostels and the house rules of community hostels;

n) the detailed regulations for the entry and stay in Hungary of civilian personnel under the NATO-SOFA Agreement and of the relatives of such personnel;

o) the detailed regulations for recognition and enforcement of expulsion orders adopted by Member States;

p) the detailed regulations concerning the proceedings for the recognition of stateless status;

q) the detailed regulations for the issue of travel documents to third-country nationals.

(2) The minister in charge of immigration is hereby authorized to decree, in agreement with the ministers concerned:

- a)* the content specifications and enclosures of the forms and documents prescribed by this Act;
- b)* the fees for the procedures relating to the entry, exit and residence of third-country nationals, and for the procedures relating to the issue of travel documents to third-country nationals;
- c)* the financial resources deemed adequate for entry and residence;
- d)* the rules for covering the costs of immigration related procedures;
- e)* the form of travel documents issued to third-country nationals.

(3) The minister in charge of foreign policies is hereby authorized to decree, in agreement with the minister in charge of immigration, the detailed regulations concerning the entry and exit and the right of residence of persons enjoying diplomatic or other type of immunity.

(4) The minister in charge of immigration and the minister in charge of the judicial system are hereby authorized to decree, in agreement with the ministers concerned, the regulations for the execution of detention and deportation by order of the immigration authority.

(5) The minister in charge of the healthcare system is hereby authorized to decree, in agreement with the minister in charge of immigration, the types of diseases which are potentially dangerous to public health.

(6) The minister in charge of immigration, the minister in charge of foreign policies, and the minister in charge of supervising the national security services are hereby authorized to decree the cases where the central visa authority is required to consult with the central authorities of other Schengen States requesting consultation prior to granting consent for the issue of a visa for a stay not exceeding three months for reasons of public security and national security.

Compliance with the Acquis

Section 120

(1) This Act serves the purpose of partial compliance with the following legislation of the Communities:

- a)* Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985;
- b)* Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- c)* Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents;
- d)* Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the

purposes of removal by air;

e) Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

f) Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data;

g) Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;

h) Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research;

i) Council Decision of 30 November 1994 on a joint action adopted by the Council on the basis of Article K. 3 (2) of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State;

j) Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons;

k) Council Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control;

l) Council Recommendation of 4 March 1996 relating to a common position in connection with airport transit zone measures;

m) Council Recommendation of 4 March 1996 relating to local consular cooperation regarding visas;

n) Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries;

o) Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience.

(2) This Act contains provisions necessary for the implementation of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).