

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review:

3rd Cycle, 38th Session

DENMARK

I. BACKGROUND INFORMATION

Denmark is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter collectively referred to as the *1951 Convention*). Denmark also ratified the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1956 and acceded to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 1977. While a Member State of the European Union, Denmark has opted out of the EU *acquis* on asylum and is therefore not bound by the legal framework established by the EU in this area.

In 2019, 2,716 asylum applications were lodged in Denmark, including by Syrians (493), Eritreans (486), Somalis (166) and stateless persons (204). By comparison, the total number of asylum applications lodged in 2015 was 21,316¹ and in 2018 a total of 3,599 cases were lodged. A decrease in asylum applications made by unaccompanied and separated children (UASC), primarily from Morocco, Afghanistan and Somalia, was also noted in 2019, with 217 applications from UASC, compared to 2,144 in 2015. By 1 April 2020, an estimated 8,395 stateless persons were residing in Denmark.²

UNHCR welcomes the restart of Denmark's resettlement program, which was announced by the Minister of Immigration and Integration, Mr. Tesfaye, on 11 July 2019, after the resettlement program had been paused since 2016. For 2019, a small group of Syrian refugees with medical needs was resettled under the 'twenty-or-more'-program.³ Resettlement quota for 2020 has been announced as 200 persons.

Denmark has a well-established asylum system in place and enacted its first *Aliens Act* in 1983. The competent authorities for asylum decision-making are the Danish Immigration Services (at first instance) and the Refugee Appeals Board (at second instance). Decisions from the Refugee Appeals Board are final and cannot be appealed to the court.⁴ By decree several functions have been transferred from the Ministry of Justice to the Ministry of Immigration and Integration in 2019.⁵

Domestic legal provisions regulating the right to asylum are primarily contained in the *Aliens Act*.⁶ Amendments to the *Aliens Act* introduced since 2002 include restrictions concerning the right to family reunification, issuing of temporary refugee status, lower benefits, and the right to permanent residency, and have lowered the threshold for expulsion of foreigners.

¹ The number of cases to be processed in Denmark was although only 10,472 in 2015

² See: <https://www.statistikbanken.dk/statbank5a/default.asp?w=1920>

³ Departure for some were delayed due to COVID-19 but are expected to arrive in July.

⁴ Danish Aliens Act §56:8.

⁵ Agreement dated 16 September 2019, see <https://uim.dk/nyheder/2019/2019-09/opgaver-pa-udlaendingeomradet-flyttes-til-udlaendinge-og-integrationsministeriet>

⁶ Denmark: Aliens Act of 2003 [Denmark], 24 July 2003, available at: <http://www.refworld.org/docid/3ae6b5634.html>. The latest amendments (in Danish) are available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=164258>. A newer translation is not available.

The main legal instrument concerning the acquisition and loss of Danish nationality is the *2018 Nationality Act*.⁷ Naturalization of stateless persons in Denmark is based on the conditions stipulated in a *Circular Letter on Naturalization* (hereafter the *Circular*).⁸ Applicants for naturalization who fulfil the conditions will be listed in a *Naturalization Bill* to be adopted by the Danish Parliament twice a year. The Ministry of Immigration and Integration administers the applications for citizenship and submits the processed applications to the Naturalization Committee in Parliament, who approves also dispensations from requirements before submitting the *Naturalization Bill* to Parliament.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendations, inter alia, nos. 120.164 and 120.175⁹

UNHCR also welcomes the many positive initiatives by the Government aimed at strengthening refugees' abilities to successfully integrate into Danish society, including the introduction of the 'integration at the workplace' program (in Danish: 'IGU') introduced in 2016 for a three-year period, and extended in 2019 for additionally three years. In the period July 2016 to February 2019, 1,955 refugees joined the program, and statistics show that approximately 45% obtained ordinary jobs after the completion of the program.

Furthermore, UNHCR would like to highlight the high standards maintained in Danish reception centers,¹⁰ including the reception centers for unaccompanied children seeking asylum in Denmark, as well as the efforts to improve the conditions for families in a return position by transferring them to better facilities at Center Avnstrup.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Right to family reunification

Linked to 2nd cycle UPR recommendations, inter alia, nos. 120.187, 120.189, 120.191, and 120.192¹¹

Amendments to the *Aliens Act* passed in February 2015 introduced a "temporary subsidiary protection status" for persons - without an individual risk profile - originating from countries undergoing conflict and other situations of violence, as set out in Article 7.3 of the *Aliens Act*.¹² Beneficiaries of the subsidiary status will not be allowed to initiate family reunification proceedings during a period which initially was set to one year, but with amendment of the *Aliens Act* in 2016 this was changed to a three-year waiting period. UNHCR submitted Comments on the amendment in January 2016.¹³ The delay of family reunification was tried at the Danish Supreme Court, which in November 2018 ruled that it did not violate

⁷ *Consolidated Act on Danish Nationality, Consolidation Act No. 1029 of 10 July 2018*, available at: <https://www.retsinformation.dk/eli/ta/2018/1029>

⁸ In 2018, *Circular Letter no 9,779 of 14 September 2018*, available at: <https://www.retsinformation.dk/eli/retsinfo/2018/9779>

⁹ 120.164 Strengthen the employment and education rate among refugees and migrants (South Africa); 120.175 Review and improve the practices related to the care of asylum seekers (Costa Rica)"

¹⁰ During the high influx 2015-2016, tent camps were used, also in situation where beds were available at ordinary asylum centers.

¹¹ 120.187 Allow persons originating from countries in conflict and other situations of violence and thus granted temporary subsidiary protection status to initiate family reunification proceedings during their first year in Denmark (Portugal); 120.189 Take the necessary legal measures to ensure the right to family reunification of children aged over 15 years (Argentina); 120.191 Grant expedited family reunification to refugees who are entitled to asylum due to the general situation in their home country, in particular "war refugees" (Brazil); 120.192 Ensure that persons with temporary protection status have the right to immediately initiate family reunification proceedings, and that the age limit for family reunification for children be raised from 15 to 18 (Ireland).

¹² The changes have mostly affected Syrian refugees, as approximately 4,500 have been granted an art. 7:3 status.

¹³ Available at: <https://www.refworld.org/country,LEGAL,UNHCR,,DNK,,5694ed3a4,0.html>

art. 8 in the European Human Rights Convention (ECHR). The case has been submitted to the European Court of Human Rights (ECtHR), which heard oral arguments on 18 June 2020.¹⁴

While acknowledging that family reunification for refugees in Denmark is granted on more lenient terms than for others migrants, UNHCR is concerned that the definition of family is too limited, e.g. children may be denied family reunification if they are above 15 years of age¹⁵, and that the discretionary possibility for extended family members contained in art. 9 c (1) of *the Aliens Act* is interpreted too restrictive with regard to 'the dependencies' requirement.

Recommendations:

UNHCR recommends that the Government of Denmark:

- a) Ensure family reunification for all beneficiaries of international protection, including those covered by the new temporary subsidiary protection status under Article 7:3 of the *Aliens Act*, by allowing them to reunite with their family without a waiting-period;
- b) Ensure that all children between 15 and 18 are entitled to family reunification, in line with Article 1 of the *Convention on the Rights of the Child*; and,
- c) Apply flexible and humane criteria for family reunification and allow other dependents beyond the nuclear family to reunite with their family members.

Issue 2: The temporariness of refugee status

Linked to 2nd cycle UPR recommendation no 120.39¹⁶

In February 2019, Parliament adopted the so-called *Paradigm Shift Law*,¹⁷ which contained several changes, and most significantly introduced a temporariness of all beneficiaries of refugee status, also for 1951 *Convention* refugees and resettled refugees,¹⁸ and furthermore changed the focus from integration to temporariness of refugee protection and return, including renaming the 'Integration Benefits' to 'Self-sufficiency and return-benefit'. With regard to the temporariness of the status, UNHCR would like to highlight that Individuals granted refugee status and subsidiary protection status are issued only temporary residence permits, which are renewable and valid for a period of one to two years. Furthermore, beneficiaries of international protection have access to a permanent resident permit only when several requirements are met, including a minimum of eight years¹⁹ of legal stay.²⁰

Short-term residence permits and frequent reviews thereof - are counter-productive to integration objectives²¹. As the situation in the refugee's home countries is often unstable and dangerous for a longer period of time, the timely grant of a secure legal status and residency rights are essential factors in the integration process. Notably, in 2015, the UNHCR Executive Committee (ExCom), including Denmark, called on States to support refugees' ability to attain local integration through the timely grant of a secure legal status and residency rights, and to facilitate their naturalization. Should temporary residence permits nevertheless be considered in certain circumstances, UNHCR recommends that they

¹⁴ UNHCR provided a Submission in the case, dated 21 January 2019, available here: https://www.refworld.org/country/LEGAL_UNHCR,,DNK,,5c4591164,0.html; the Commissionaire of Human Rights also intervened during the oral hearing.

¹⁵ In 2018, 500 children were denied FRU to a refugee family member out of 1,243 application, and in 2009, 103 children were denied FRU out of 528 applications.

¹⁶ "120.39 Consider amending the Aliens Act in order to ensure that refugees and other beneficiaries of international protection and their family members can exercise their right to long term residence (Plurinational State of Bolivia)"

¹⁷ See: https://www.ft.dk/ripdf/samling/20181/lovforslag/l140/20181_l140_som_vedtaget.pdf

¹⁸ UNHCR submitted its Comments on 18 January 2019 after a very short hearing period, available at: https://www.refworld.org/country/LEGAL_UNHCR,,DNK,,5c6bccf16,0.html

¹⁹ It is possible to secure permanent residency after four years, if several very strict criteria are met, such a fulltime employment at a minimum of DKK 292,000 per year.

²⁰ Legal stay does not include time in Denmark during the asylum process.

²¹ UNHCR has consistently underlined that refugees and beneficiaries of subsidiary protection are entitled to a secure and stable status, which should not be subject to regular review. UNHCR has called on States to support the ability of people in need of international protection to attain local integration through the timely grant of a secure legal status and residency rights, and to facilitate their naturalization. Short-term residence permits and regular review of status creates legal uncertainty and is likely to impact on the integration prospects of refugees, See UNHCRs Comments on the European Commission Proposal for a Qualification Regulation, available at <https://www.refworld.org/pdfid/5a7835f24.pdf>.

be issued for a minimum period of five years.²² Refugees should also have a possibility to access naturalization in line with Article 34 of the *1951 Convention*.

UNHCR recommends that the same type and length of permits should be granted to both persons holding subsidiary protection status as well as those recognized as *1951 Convention* refugees, to avoid discrimination and ensure equal treatment.²³ According to international and European standards, a differentiated treatment according to immigration status is only permitted when the grounds therefore are objectively and reasonably justified.²⁴ In UNHCR's experience, these different categories of beneficiaries of international protection have the same protection needs²⁵ and face the same integration opportunities and challenges, as well as similar return prospects. In practice, beneficiaries of subsidiary protection are generally not able to return home earlier than refugees.

Recommendations:

UNHCR recommends that the Government of Denmark:

- a) Align the length of permits for refugees and beneficiaries of subsidiary protection²⁶, given the similar nature and duration of their protection needs.
- b) Ensure all beneficiaries of international protection receive a residence permit for a minimum period of five years which is renewable for periods of five years or more; and that access to naturalization is facilitated

Issue 3: Prevention of statelessness - avoidance of statelessness at birth

Linked to 2nd cycle UPR recommendations nos. 120.193 and 120.194²⁷

Renewed attention to statelessness in Denmark has led to a number of positive changes since 2011. These improvements including a statelessness registration procedure, automatic acquisition of nationality by children born to a Danish parent,²⁸ and a right to nationality by declaration for descendants born outside Denmark before they turn 19.

Stateless children born in Denmark are not entitled to Danish nationality by birth in accordance with the Nationality Act. However, they can acquire Danish nationality through naturalization without meeting the usual requirements for naturalization. This process was introduced through Section 17 of the *Naturalization Circular* in 1992, in order to comply with the obligation of States under Article 7 of the *CRC* to ensure that children enjoy their right to acquire a nationality. To be eligible for naturalization, the child must be registered in the Central Office of Civil Registration as a Danish resident, that is, lawfully resident. The requirement of lawful residence for a child born stateless in the country to acquire

²² In line with the practice in a number of EU Member States, and coherent with the timeframes foreseen under the EU Long-Term Residence Directive.

²³ UNHCR, Comments on the European Commission Proposal for a Qualification Regulation –COM (2016) 466, February 2018, <https://www.refworld.org/docid/5a7835f24.html>.

²⁴ Charter of Fundamental Rights of the EU, Art.21; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Art.14. For jurisprudence, see e.g. *Niedzwiecki v. Germany*, European Court of Human Rights (ECtHR), 25 October 2005, <http://www.refworld.org/docid/4406d6cc4.html>; *Okpiz v. Germany*, ECtHR, 25 October 2005, <http://www.unhcr.org/refworld/docid/4406d7ea4.html>; *Biao v. Denmark* (Grand Chamber), ECtHR, 24 May 2016, <http://www.refworld.org/cases,ECHR,574473374.html>; *Hode and Abdi v. The United Kingdom*, ECtHR, 6 November 2012, <http://www.refworld.org/cases,ECHR,509b93792.html>

²⁵ European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, recital 13, available at: <http://www.refworld.org/docid/4f197df02.html>.

²⁶ UNHCR maintains that distinctions between beneficiaries of international protection are often neither necessary nor objectively justified in terms of flight experience and protection needs (...) UNHCR considers that there is no reason to expect the protection needs of subsidiary protection beneficiaries to be of a different nature or shorter duration than the need for protection as refugees

²⁷ 120.193 Continue to implement the measures necessary to find solutions for stateless persons (Colombia); 120.194 Take further measures to ensure that its national citizenship legislation complies fully with the 1961 Convention on the Reduction of Statelessness (Finland).

²⁸ The acquirement has been limited for those born in an area labeled under the Travel Ban Law, e.g. Syria.

a nationality is in line with the conditions allowed under Article 6(2)(b) of the *1997 European Convention on Nationality*.²⁹

However, this requirement is not in line with the conditions allowed under Article 1(2)(b) of the *1961 Convention on the Reduction of Statelessness*,³⁰ which only requires “habitual residence” and does not imply a legal or formal residence requirement. For States, such as Denmark, bound by both the *1997 European Convention on Nationality* and the *1961 Convention*, the Convention affording the strongest protection must prevail. Thus, a requirement of lawful residence is not a permissible condition.

Furthermore, UNHCR would like to note that under the *1961 Convention* the goal of reducing statelessness can also be promoted by providing for automatic acquisition of nationality by children born in the territory who would otherwise be stateless, at least for those whose parents are permanent residents.³¹

Recommendations:

UNHCR recommends that the Government of Denmark:

- a) Incorporate the right to acquire Danish nationality by children born in the country who are otherwise stateless into the Nationality Act;³² or at minimum in the case of children who are born to parents who are permanent residents
- b) Establish “habitual residence,” rather than lawful residence, as the requirement for qualifying for acquisition of nationality for children born stateless in Denmark who are under the age of 18 years at the time of application; and.

Additional protection challenges

Issue 4: Regularly review of protection status and use of cessation

One of the *Paradigm Shift Law's* most significant changes is the introduction of regular mandatory review of the protection status upon extension of the residence permits granted also to resettled refugees. UNHCR considers that frequent periodic reviews of individuals' international protection needs often undermine the individuals' sense of security and, thus, do not help facilitate the integration process and may harm the employment prospects, which conflicts with the Government's goal to ensure effective and non-discriminatory access to labor markets for refugees.

Furthermore, UNHCR is concerned about the standard introduced in the *Law Proposal no. 87 (2015)* which allows withdrawal or denial of renewal of a subsidiary protection status in cases when the changes in the country of origin have not been fundamental, durable and effective, and even when the security situation remains fragile and unpredictable. The changes led to a reassessment of approximately 1,200 permits granted to Somalis in accordance with art. 7:2 of the *Aliens Act*³³ and some 900 Syrians from Damascus granted an art. 7:3 status are currently undergoing reassessment³⁴.

UNHCR is concerned that *Law Proposal no. 87 (2015)* does not fully reflect the need for cessation of status to be subject to extensive legal safeguards. UNHCR considers that any review and possible withdrawal of status and residence permits always needs to be subject to rigorous scrutiny³⁵ and follow established criteria, whether those under review are refugees or beneficiaries of subsidiary protection. Acknowledging that they often flee for similar reasons and have similar needs, Denmark is also urged to use the same or similar criteria for the non-renewal or ending of the subsidiary protection status and permits, as those which apply to *1951 Convention* refugees.

²⁹ Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, available at: <http://www.refworld.org/docid/3ae6b36618.html>.

³⁰ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.refworld.org/docid/3ae6b39620.html>.

³¹ See UNHCR's Guidelines on Statelessness No 4, available at: <https://www.refworld.org/docid/50d460c72.html>

³² See The Nationality Act, available in Danish at <https://www.retsinformation.dk/eli/lta/2020/1191>

³³ Of the 1,200 reassessed cases in 2017 and 2018, 349 were ceased effecting further 534 family members whose permit was withdrawn as well.

³⁴ The Refugee Appeals Board addressed 6 test cases in 2019, and since then Syrians have had their status withdrawn/denied extended.

³⁵ A person granted international protection in Denmark is not granted access to the original fill prior to being interviewed by DIS in the review process.

Even when reasons for cessation or ending other forms of protection can be invoked, States should consider allowing refugees to remain who, due to compelling reasons arising out of previous persecution cannot be expected to return to their country of origin, as well as individuals who due to a long stay in that country have developed strong family, social and economic links there.³⁶

Furthermore, UNHCR noted with concern that the *Paradigm Shift Law* envisages the regular mandatory review to apply to resettled refugees as well, even though resettlement should be seen as a durable solution allowing the resettled refugee security for a permanent solution in Denmark. Resettlement was initially construed to ensure protection against refoulement, and to provide a durable solution to refugees for whom this could not be secured through either voluntary repatriation or local integration. The nature of resettlement as a durable solution is further confirmed in a number of UNHCR ExCom Conclusions.³⁷

Recommendations:

UNHCR recommends that the Government of Denmark:

- a) Apply cessation and other policies ending international protection with all due safeguards (including a rigorous scrutiny of the applicable criteria as well as a holistic consideration of other compelling reasons to remain) to minimize disruptive effects for persons granted refugee status or subsidiary forms of protection in recognition of the importance to preserve the refugee's sense of stability as much as possible; and,
- b) Ensure that reviewing or ending international protection is limited to situations where the standards established in the *1951 Convention* are clearly present or where the circumstances which led to the granting of subsidiary protection have ceased to exist or changes have occurred of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm.

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³⁶ See further, UNHCR Guidelines on International Protection No. 3 on the "Ceased Circumstances" Clauses (2003) and UNHCR Guidelines on Exemption Procedures in respect of Cessation Declarations (2011).

³⁷ See, ExCom Conclusion No. 99 (2004), available at: <https://www.unhcr.org/excom/exconc/41750ef74/general-conclusion-international-protection.html>; see also, ExCom Conclusion No. 109 (2009), available at: <https://www.unhcr.org/excom/exconc/4b332bca9/conclusion-protracted-refugee-situations.html>.