

RUSSIA

Russian legislation divides migrants fleeing their home country into two classes: forced migrants—*i.e.*, migrants from the countries of the Commonwealth of Independent States (CIS)¹ and the Baltic States,² who are in large part displaced Russian citizens; and refugees—*i.e.*, non-Russian citizens from the rest of the world. The two groups are subject to different laws and procedures in determining their status and rights.

The Russian Federation acceded to the UN Refugee Convention and Protocol in 1992 and enacted national legislation to implement the Convention in 1993.³ It is also a state party to the International Covenant on Civil and Political Rights, and to its First, but not Second, Optional Protocol. At the end of 2001, the Russian Federation hosted about 28,200 refugees and asylum seekers in need of protection,⁴ including 21,141 refugees registered with the Ministry of Interior (MOI);⁵ 79 mandate refugees recognized by the UNHCR; 742 asylum seekers with cases pending before the MOI; some 5,900 asylum seekers from outside the CIS who were registered with UNHCR; and 330 Afghans granted temporary protection during 2001.⁶ The MOI recognized only 126 persons as refugees in 2001, of whom 111 were from Afghanistan.⁷

The MOI operates Points of Immigration Control (PIC) at around 114 entry points along the border of the Russian Federation which process refugee applications.⁸ Asylum seekers may be detained by border guards for up to three days if they have not entered the country legally—*i.e.*, they do not have a valid travel document or visa.⁹ Though entitled

¹ Presently comprised of Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

² Estonia, Latvia and Lithuania.

³ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 193, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

⁴ *Id.* at 189.

⁵ By an order of President Putin in 2001, the Ministry of Federal Affairs, National and Migration Policy was dissolved and the MOI was put in charge of all matters related to refugees and asylum seekers.

⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 3, at 189.

⁷ *Id.*

⁸ *Id.* at 194.

⁹ DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN CENTRAL AND EASTERN EUROPEAN COUNTRIES, *available at*

to apply for asylum at the border while detained, the vast majority of foreign nationals whom border authorities apprehend are deported before they can gain access to the asylum procedure, and no PIC has ever accepted an asylum applicant.¹⁰ According to one study, “because of the difficulty of border monitoring, no credible independent estimates exist of the number of asylum seekers deported or rejected at Russia’s land borders...[U]ndocumented asylum seekers are often deported without the opportunity to address their asylum claim to the PIC...In 2000, the Federal Border Service reported that 69,000 foreigners were turned away at Russia’s borders.”¹¹

Applicants from within the Russian Federation are accorded relatively more rights. Refugees who have entered the country, whether legally or illegally, may submit their applications to regional MOI offices. According to one study, the majority of applications that have been submitted to regional MOI offices are from foreigners within the country who have entered illegally.¹² Article 5, Paragraph 1 (7) of the Russian Federation Law “On Refugees”¹³ states that those who are forced to cross Russian borders illegally must apply to the MOI within 24 hours of their entry. If the applicant fails to comply with the 24-hour deadline, her application may be summarily denied, an extreme measure that is reputedly mostly applied to persons who arrive with no documents.¹⁴

The Russian government does not have a policy to detain registered asylum seekers, although the penal code allows the government to imprison “illegal immigrants,” including unregistered asylum seekers. The penal code also provides that detention should not apply if a person enters the Russian Federation illegally to apply for asylum.¹⁵ Once an individual is in the asylum procedure—*i.e.*, registered with the MOI and has an application filed with them—she is placed in a Temporary Accommodation Center

<http://www.english.drc.dk/publications/> (Apr. 1999) [hereinafter DRC E. EUR. REPORT 1999], *Russian Federation*.

¹⁰USCR WORLD REFUGEE SURVEY 2002, *supra* note 3, at 194.

¹¹ *Id.*

¹² *Id.*

¹³ Russian Federation Law No. 95 F-3 “On Refugees,” February 19, 1993, as amended (Law on Refugees), *available in Russian at* <http://black.inforis.nnov.su> (last accessed Sept. 16, 2002) [hereinafter Law on Refugees].

¹⁴ Olga Osipova, *Work With Undocumented People*, paper presented at the conference Refugee Status Determination: Standard of Proof and Status Determination of Undocumented Asylum Seekers, Prague (December 3-4, 1999), *available at* <http://refugees.memo.ru> (last accessed Sept. 16, 2002).

¹⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 3, at 194.

(TAC), until she finds someplace else to live.¹⁶ Few asylum seekers, however, choose to live in TACs, the majority of applicants sharing apartments with other members of their community in the outskirts of cities like St. Petersburg and Moscow.¹⁷ The UNHCR also operates two accommodation centers outside of Moscow. Because of the strict housing registration regime of the Russian Federation, requiring individuals to register their place of domicile with the appropriate authorities, these asylum seekers are often harassed, arrested and detained by the police who routinely check their documents.¹⁸

Once an application has been denied and the applicant does not appeal such decision, the individual is excludable under the Law on Refugees. The Department of Passport and Visa Registration of the Ministry of Internal Affairs (DPVR) then takes over the task of deporting the individual and sets out the term the applicant must leave the country (typically six months); if the individual does not leave within the specified time period, the DPVR makes a decision whether to detain the individual.¹⁹

Detention centers in Russia differ little from the country's prisons, according to one specialist; for example, features of a detention center in St. Petersburg, include two sq. meters of space per person, permanent isolation from the outer world, and a 20-minute walk per day.²⁰

Is there independent review of the detention decision? No.

In practice, there is no meaningful independent review of the decision to detain an asylum seeker.²¹ No formal system is in place for reviewing detention decisions which technically fall under the Administration Code of the Russian Federation. Detained asylum seekers are free to appeal the denial of their asylum application, if they submitted one, but will continue to be detained for the duration of their appeal.²²

¹⁶ Law on Refugees, Art. 8, ¶ 1(4).

¹⁷ Danish Refugee Council, *Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern European Countries*, available at <http://www.flygtning.dk/publikationer/rapporter/legalandsocialeast/rus3/index.php> (last accessed Sept. 9, 2002).

¹⁸ Law on Refugees, *supra* note 13.

¹⁹ Osipova, *Legal Problems Concerning the Detainment and Deportation of Asylum Seekers*, *supra* note 14.

²⁰ Law on Refugees, *supra* note 13.

²¹ *See id.* for a discussion on the difficulty of appealing the decision on detention.

²² *Id.*

Are there limits on the period of detention? No.

In general detention for an asylum seeker not apprehended at the border only occurs if: a) she fails to register her application and the authorities choose to detain her pending deportation proceedings: or b) her asylum claim is denied and 1) she does not appeal such decision and 2) the DPVR chooses to detain her pending deportation proceedings. Once detained pending deportation, the asylum seeker is subject to Article 31 of the USSR Law “On the Legal Status of Foreign Citizens in the RF” (1981),²³ still in force in the Russian Federation, which states that “the decision on extradition belongs to competent Soviet bodies. A foreign citizen should leave the Soviet Union within the period the decision specifies. Those who try to avoid extradition will be deported according to the prosecutor’s sanction.” The law is silent on the duration of detention and does not specify a minimum or maximum period of detention. The corresponding legal act states that the cost of deportation is to be paid by the deportee.²⁴

Many undocumented persons (many of whom applied for refugee status) reputedly spend years in detention centers, despite a provision in Russian Law that a person may not be held in detention for a period of more than 48 hours without a court ruling and a Russian Constitutional Court Ruling proscribing prolonged detention.²⁵ The court ruling is really nothing more than a document signed by the court at the instruction of the DPVR. There is no formal trial per se, as the detainee does not participate in the proceedings. When the DPVR wants to detain someone, it simply applies to the court for an extension of the detention period, and the court duly signs an order. Sometimes, this process is repeated indefinitely as the DPVR raises problems such as lack of flights to the detainee’s home country, or an inability to acquire the documents needed to return the detainee to his home country, etc.²⁶ There is no independent review of this decision to extend the detention term.

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

²³ Law on Refugees, *supra* note 13.

²⁴ *Id.*

²⁵ *Id.* (discussing a Russian Constitutional Court Ruling from February 17, 1998, which held “...the term necessary to perform the exclusion from the country must not be regarded as a ground for the detention of a person for an undefined period of time even when the deportation of a stateless person can be delayed because no state agrees to receive the person being deported. Otherwise the detention as a measure necessary for the execution of the decision on deportation would transform into an independent form of punishment not envisaged by the legislation of the Russian Federation and contradicting to the said standards of the Constitution of the Russian Federation.”).

²⁶ *Id.*

According to the Law on Refugees, asylum seekers are entitled to receive information on the refugee determination procedure, but there is no mention of government-funded legal aid. In 1993, the UNHCR established a Refugee Reception Center in Moscow to register arriving asylum seekers from outside the former Soviet Union and provide them with basic legal assistance. In addition, the non-governmental Migration and Law organization, founded in 1996, operates centers in 46 cities in Russia that offer legal support to refugees and migrants in the form of consultation and representation in courts. Besides providing legal assistance, the centers also help refugees in obtaining medical services, pensions and education.²⁷

Vulnerable groups: There are no special laws for vulnerable groups.

²⁷ Information about this organization is available at <http://refugees.memo.ru>.