EMN Ad-Hoc Query on Practical impediments of enforcement and residence for TCNs

Requested by SE EMN NCP on 22nd May 2017

Miscellaneous

Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Spain, Sweden, United Kingdom, Norway (19 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

The Swedish EMN NCP wishes to gather information on practical impediments of enforcement and residence for TCNs
- to whom international protection has been rejected and
- there are no medical or other humanitarian grounds for residency and
- they have declared themselves willing to return.

On behalf of the Swedish government an enquiry is currently being conducted in Sweden about cases where rejected asylum-seekers are left in a limbo-situation due to impediments to enforcement. An example of one affected group are stateless Palestinians from Iraq or the Gulf states. We do not know for certain how many people are afflicted, but their number is expected to rise and the situation has become urgent for non-returnable persons because of a change in the Swedish Act on the reception of asylum seekers [Lagen om mottagande av asylsökande] in the summer of 2016. This implies that rejected asylum seekers, regardless of whether their decision can be enforced or not, lose all economic support and accommodation. Nor is there a right to work in Sweden for people in this situation. Possibly, the inquiry will lead to legislative changes through clarifications in the Aliens Act about residence permits for persons who have declared themselves willing to return and for whom there are practical impediments to enforcement. The investigative work is especially focused on the effects of some judgments from the Swedish Migration Court of Appeal regarding the possibility of granting a residence permit when a decision on expulsion cannot be enforced. The effect that these court decisions seems to have – we have not yet made a detailed analysis – is that the Swedish Aliens Act's provision that a possible inability to execute an expulsion order shall be considered in the overall assessment of whether residency should be granted in the first place (because of particularly distressing circumstances, Aliens Act 5: 6). According to the current application of the law, a person must prove, through concrete actions and efforts that s/he cannot return. But, the Aliens Act and international refugee law also stipulate that a person seeking refuge, before an expulsion order has an absolute right to have their protection grounds assessed in a legally secure process. Here, a Catch-22 situation could occur where applicants must seek to 'enforce themselves' before their protection grounds are assessed, and hence one could accordingly question whether the Swedish legislator's intentions are respected. In other words, it could be interpreted as if one has to prove impediments of enforcement assessed, and this can only be done after one's asylum grounds have been rejected after a thorough assessment.

An important question is whether there is legislation in other countries that we can find and analyse, in order to put forward constructive suggestions. If there are countries where non-enforceable expulsion decisions routinely lead to the granting of a residence permit and then in the next step to regularization after a certain period of time, we would like to take part of such provisions.

Questions

1. Does your national legislation provide for residence status to third country nationals, because of practical impediments to enforcement, i.e. residence permit for persons whose application for international protection has been rejected and whom have declared themselves willing to return and for whom there are no humanitarian grounds for residency?
2. If yes, what legal status is granted to these persons and what are the possibilities according to your national legislation for naturalization?
3. How many people in this situation are currently residing in your country, according to your sources or estimations?

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	**1.** Yes (see question 2). **2.** The stay of such persons may be officially tolerated (see in more detail the Austrian national report of the EMN study on the return of rejected asylum seekers of 2016, Section 6.1). However, the stay of tolerated foreigners in Austria is still illegal (Art. 31 para 1a subpara 3 Aliens Police Act). If the stay is tolerated for at least one year and the requirements for tolerated stay are still met, third-country nationals may be issued a Residence Permit for Individual Protection, unless they constitute a danger for the community or the security of the Republic of Austria or have been sentenced for a crime. A Residence Permit for Individual Protection renders the stay legal and entitles the holder to pursue self-employed activities or employment after having obtained a work permit. A Residence Permit for Individual Protection is valid for 12 months. Afterwards, the third-country national may obtain a settlement permit (Red-White-Red Card Plus) with free access to the labour market (see the Austrian national report of the EMN study on the return of rejected asylum seekers of 2016, Section 6.1). In general, foreigners may obtain the Austrian citizenship after ten years of legal and continuous residence in Austria. In the 10 years of legal and continuous stay, the foreigner must have been settled in Austria for at least five years (Art. 10 para 1 Citizenship Act). **3.** A determination of the exact number of tolerated foreigners currently residing in Austria is not possible for technical reasons. Currently, 149 tolerated persons are entitled to basic welfare support. In 2017, so far 161 persons have been issued a Card for Tolerated Stay after a decision granting tolerated stay (2014: 316; 2015: 289, 2016: 270). Source: Federal Ministry of the Interior.

	**Belgium**	Yes	**1.** No, there is no official or specific status granted to third country nationals because of practical impediments to enforcement of return, even if the third country nationals cannot return to their country of origin due to "no fault of their own". When TCNs cannot return to their country of origin for a limited period of time (e.g. a few months) due to specific circumstances, the order to leave the territory can be extended by the Immigration Office, at the request of the TCN (see article 74/14 of the Immigration Act). The TCNs who can no return due to "no fault of their own" can however apply for regularization (based on article 9bis of the Immigration Act). The decision making on such applications (individual assessment) by the Belgian authorities is discretionary. Regularisation for these "no-fault" cases happens relatively rarely, and only after the person concerned proved that he did everything in his power to return. **2.** N/A **3.** There are no statistics specifically targeting people in this situation in Belgium.
	**Bulgaria**	Yes	**1.** According to the Bulgarian legislation third-country nationals who have been refused international protection, who have declared their will to return and for whom there are no humanitarian reasons of stay are not granted the right to legal residence on the territory of the Republic of Bulgaria. **2.** N/A **3.** N/A
	**Croatia**	Yes	**1.** The current Croatian legislation does not provide residence permit to third-country nationals whose application for international protection has been rejected and who have declared themselves willing to return and for whom there are no humanitarian grounds for residency. However, the Foreigners Act Article 136 states that Deportation shall be temporary postponed if there are grounds for the prohibition of deportation: where a foreigner's identity was not established, where transport is not possible, where serious difficulties would arise due to the foreigner's health condition or if there are other reasons why the foreigner cannot be deported. There is no special residence permit in these situations, but the person cannot be expelled due to the principle of non-refoulement or for other humanitarian reasons. **2.** In Croatia, a tolerated stay is not technically considered legal and therefore couldn’t lead to residence/citizenship.

			3. Currently in Croatia there are 15 migrants in the tolerated stay position.
	Czech Republic	Yes	**1.** Not specifically. The Aliens Act lays down the so-called „tolerated stay“, which is a national type of long-term visa. This type of visa can be granted among others also in situations where there is an obstacle for return not depending on the will of the foreigner. The provision is very vague on purpose in order to cover various types of situations. **2.** See above, it is a national form of the long-term visa, the foreigner is allowed to ask for long term residence permit after 1 year. It is also possible to apply for different residence permit (e.g. for the purpose of employment) from this type of visa on the territory however the new act pending approval in the Senate minimizes this option. **3.** N/A.
	Estonia	Yes	**1.** Currently Estonian legislation does not provide a specific residence permit to TCNs whose application for international protection has been rejected and who have declared themselves willing to return and for whom there are no humanitarian grounds for residency. If a third-country national who does not need International protection, has no legal basis to stay in the country and wishes to return to the country of origin, a return decision is issued with a deadline for voluntary leave, which can be prolonged if necessary. The rejected asylum seeker has the possibility to join the voluntary return programme. The TCN also has the possibility to apply for a residence permit according to the Aliens Act provided that the relevant conditions are met. **2.** N/A **3.** N/A
	Finland	Yes	**1.** Yes. **2.** They will be granted a temporary residence permit according to Section 51 of the Aliens Act. According to it, foreigners are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence in practice. Section 51 continues to state that residence permit is not issued if the reason behind not being able to enforce the return decision is the unwillingness of the returnee or if s/he hampers the return. A person who resides in Finland on a temporary residence permit cannot acquire Finnish citizenship. Instead, a person must have a continuous residence permit in order to acquire Finnish citizenship. A person must have resided in Finland on

			a continuous residence permit for the last five years without interruption (continuous period of residence) or a total of seven years after having reached the age of 15 (accumulated period of residence). However, if a person has first resided in Finland on a temporary residence permit and later acquired continuous residence permit, half the time s/he lived in Finland with a temporary residence permit will be counted as residential time. A person must have had a continuous residence permit for at least one year just before a decision is made on the application. **3.** We do not have a stock number available of the persons who are currently residing in Finland in this situation. However, to get some indication we can see from the registers of the Finnish Immigration Service that 5 persons were granted a residence permit on the grounds laid out in Section 51 of the Aliens Act in 2016, and 2 persons have so far been granted this status in 2017 (from 1 January to 26 May, 2017). NB: These figures are only indicative.
	Germany	Yes	**1.** Yes. **2.** Pursuant to Section 25 subsection 5 of the Residence Act (Aufenthaltsgesetz), a foreigner who is enforceably required to leave the federal territory may be granted a temporary residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. If the deportation has been suspended for eighteen months, a residence permit is to be issued. After a foreigner has been in possession of any such residence permit for five years and he or she meets the additional conditions, they are to be granted a permanent settlement permit (Section 26 subsection 4 of the Residence Act). On this basis, foreigners may be eligible for naturalisation if they meet the other conditions. The residence permit granted in accordance with Section 25 subsection 5 of the Residence Act in itself is not sufficient for naturalisation (Section 10 subsection 1 sentence 1 para. 2 of the National Act (Staatsangehörigkeitsgesetz). **3.** As at 30 April 2017, there were 49.929 persons with a residence permit granted pursuant to Section 25 subsection 5 of the Residence Act residing in Germany. 162.519 persons were in possession of a settlement permit pursuant to Section 26 subsection 4 of the Residence Act.
	Hungary	Yes	**1.** No. According to Section 30 Subsection (1) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals a certificate of temporary residence shall be issued to any third-country national: h) who is subject to any immigration related proceeding for unlawful entry and residence pending; j) who is subject to an order of compulsory confinement under point a), b), c), d) or f), g) of Subsection (1) of Section 62 (reasons of compulsory confinement). The certificate of temporary residence does not confer any rights to the third-country national apart from staying in the territory of Hungary in compulsory confinement when detention cannot be applied.

			2. See answer above. **3.** N/A
	Ireland	Yes	**1.** No. General regularisations are not possible under Irish law. The commitment in the European Pact on Immigration and Asylum of 2008 for Member States: "to use only case-by-case regularisations rather than generalised regularisations, under national law, for humanitarian or economic reasons", underlies Ireland's policy in respect of regularisations of rejected asylum seekers or other irregular migrants. The Report to Government on Improvements to the Protection Process, including Direct Provision and supports to Asylum Seekers, published in June 2015, recommended exceptional measures for persons who had been in the system for five years or more. These Recommendations were that the deportation orders of persons in the protection system for five years or more from the date of initial application be revoked subject to certain conditions and that such persons should then be granted leave to remain. Further detail of these Recommendations 3.134 and 3.135 are available in the published Report at:http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf The Department of Justice and Equality has published two audit reports of progress on implementation of Recommendations in the Report. The fact that implementation of these recommendations is not an amnesty or blanket regularisation has been repeatedly emphasised. In the Second Audit, the Department of Justice and Equality has said that: "blanket revocations without due process are not considered appropriate notwithstanding length of time considerations." CONTEXTUAL INFORMATION ON IRISH LEGAL FRAMEWORK FOR RETURN OF REJECTED PROTECTION APPLICANTS UNDER THE INTERNATIONAL PROTECTION ACT 2015 (ENTERED INTO FORCE FROM 31 DECEMBER 2016): If a rejected protection applicant also receives a final negative decision regarding permission to remain (on humanitarian grounds, for example) the applicant is then without permission to remain in the State. The applicant is eligible for voluntary return and must notify the Minister for Justice and Equality of their decision to return voluntarily to the country of origin within 5 days of receipt of the final negative decision relating to permission to remain. If the applicant does not return voluntarily, or is not seen to be making reasonable efforts to depart voluntarily, the Minister for Justice issues a deportation order, following consideration of the prohibition on refoulement. Voluntary return is an option for protection applicants and rejected protection applicants who have not had a deportation order made against them. Voluntary return is no longer possible once a deportation order has been made.

			2. If a person were granted a legal status under national law, the normal rules for naturalisation under the Irish Nationality and Citizenship Act 1956 (as amended) would apply. **3.** Not possible to quantify.
	Latvia	Yes	**1.** No, the Immigration Law does not provide residence permit to third-country nationals whose application for international protection has been rejected and who have declared themselves willing to return and for whom there are no humanitarian grounds for residency. **2.** Although answer to the first question is no, it does not exclude possibility to grant residence permit to non-removable third-country national according to other provisions prescribed in the Immigration Law and to give rights for naturalisation procedure in future. According to the Citizenship Law a person is eligible for naturalisation procedure if his/her permanent place of residence, as on the day of submitting an application for naturalisation, has been in Latvia for not less than the last five years of which an interruption of one year in total is permitted but which cannot be during the last year before the day of submitting the application for naturalisation (for a citizen of another country or stateless person the five-year period shall be counted from the day of receipt of the permanent residence permit or permanent residence certificate). **3.** In Latvia there are few third-country nationals in a limbo situation. Some of them have been granted stateless persons status and a travel document according to the Law on Stateless Persons.
	Lithuania	Yes	**1.** Yes. If the expulsion decision cannot be enforced immediately on the ground that a foreign state has refused to accept the alien or cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.), a decision to suspend the enforcement of expulsion is taken. It is only one year after taking of the decision to suspend the enforcement of expulsion and if the mentioned grounds have not disappeared that the alien is issued a temporary residence permit valid for a period of one year. One year later, when the alien applies for renewal of a temporary residence permit, it is re-assessed whether it is possible to expel the alien. **2.** Residence permit for aliens whose expulsion is not possible. In such cases general conditions for naturalization would apply: 10 years continuous residence, possession of the permanent residence permit, passing Lithuanian language exam and exam on basics of constitution as well as other general requirements.

			3. According to Aliens' Register (on 2017-06-13), 17 aliens have a temporary residence permit issued on the ground that an unaccompanied minor alien is not returned to a foreign state, an alien cannot be returned to a foreign state or expelled from the Republic of Lithuania or the expulsion of the alien from the Republic of Lithuania is suspended.
	Luxembourg	Yes	**1.** No. Article 125bis (1) of the amended law of 29 August 2008 on free movement of persons and immigration establishes that where a foreigner shows that he/she is unable to leave the territory for reasons not of his/her own making, or if he/she is unable either to return to his/her country of origin or to travel to any other country, the Minister may postpone the removal of the foreigner for a period determined in accordance with the circumstances peculiar to each case and until such time as there exists a reasonable prospect of performance of his/her obligation. The foreigner may remain on the territory on a provisional basis, without being authorised to reside there. The decision to postpone the removal may be accompanied by an order for house arrest pursuant to Article 125 (1). **2.** N/A. **3.** N/A.
	Netherlands	Yes	**1.** Yes **2.** If it is found that a third-country national does not succeed in leaving independently and with assistance from the Repatriation and Departure Service (DT&V), then that could lead to legal residency on grounds of the special policy for third-country nationals who cannot leave the Netherlands through no-fault of their own. The IND is responsible for assessing this on intercession of the Repatriation and Departure Service (DT&V) who renders a critical recommendation. For that purpose the third-country national must comply with a number of conditions: 1. The third-country national has independently tried to accomplish his departure. He has demonstrated or made it plausible that he has turned to the representation of the country or countries of his nationality, or to the country or countries where, as a stateless person he has previously had his regular place of residence, and/or to other countries of which, on the basis of all the facts and circumstances, it can be assumed that the third-country national will be granted admission there; 2. There is no reasonable doubt about his nationality and identity; and 3. The third-country national has requested the DT&V to submit an application on his behalf for a (replacement) travel document to the authorities of his country of origin or another country of which, based on all the facts and circumstances, can be assumed that admission will be granted to him there (a request for mediation) and this request has not resulted in the desired outcome; and 4. On grounds of objective, verifiable facts and circumstances regarding the person concerned and which must be substantiated with documents, in its treatment of this request for assistance, the DT&V has established that there is a question of a coherent whole of facts and circumstances from which it is apparent that the party concerned

			cannot leave the Netherlands through no-fault of his own; 5. The third-country national stays without a residence permit in the Netherlands. The third-country national who cannot leave the Netherlands through no fault of his/her own on grounds of the criteria mentioned above, will be eligible for a (temporary) regular residence permit under the restriction of 'provisional humanitarian grounds' (in Dutch: buitenschuld vergunning). The legal basis for granting a no-fault residence permit on grounds of the national admissions policy, is provided for in Article 3.4(1) preamble and under p, in conjunction with Article 3.48(2) under a of the Aliens Decree 2000 (Vb 2000). The conditions of the no-fault policy are incorporated in chapter B8/4 of the Aliens Act Implementation Guidelines 2000. Third-country nationals who are in possession of such a residence permit are given an employment status on the residence document on grounds of Article 3.1(3) preamble and under a of the Aliens Regulations: 'No employment restrictions. Work permit (TWV) not required'. This means that this third-country national may undertake all kinds of employment without being in possession of a work permit (TWV). The residence permit for a fixed-term is granted for the duration of 1 year on grounds of the no-fault policy pursuant to Article 3.58(11) of the Aliens Decree. It seldom occurs that such a residence permit is issued. Possibilities according your national legislation for naturalization A third country national who is in possession of a (temporary) regular residence permit is not applicable for naturalization since such a license is temporary. Please note that a third-country national must have had five years of admission and main residence in general to file an application for naturalization. If a holder of a temporary regular residence permit (buitenschuld vergunning) has been in possession of such a residence permit for 3 years, he may also be eligible for a residence permit under the ''non-temporary restriction'' (if he/she fulfills other conditions). With such a permit, a third country national fulfills the conditions for naturalization (he/she possesses a residence permit with a non-temporary character), however this does not imply that an application for naturalization is successful, because a third country national also needs to have five years of admission and main residence. In general, the applicant must claim with his/her application for naturalization, that: - He/she can identify his identity by means of objective evidence such as a (legalized) birth certificate and passport. - He/she must be 18+-years old - He/she must be in possession of a non-temporary license and have 5 years of admission and principal residence in the Netherlands. - He/she must be no danger to public order; - He/she must be integrated (integration certificate) - In principle, he/she must be prepared to waive his original nationality - Finally, he/she must make a ''statement of commitment'' Please also see attached document for explanation and sources. **3.** Numbers from the Immigration- and Naturalization Service show that it can be concluded that the number of applications that have been filed for a ''buitenschuld vergunning'' (the temporary residence permit mentioned under Q2) have been in 2014 (80), 2015 (50) and 2016 to October (50). Source: Tweede Kamer der Staten-Generaal, Aanhangsel van de Handelingen. Vragen van het lid Sjoerdsma (D66) aan de Staatssecretaris van Veiligheid en Justitie

			over het bericht dat het bed, bad en brood overleg is geklapt (ingezonden 23 november 2016). Antwoord van Staatssecretaris Dijkhoff (Veiligheid en Justitie) (ontvangen 30 november 2016).
	Slovak Republic	Yes	**1.** Rejected asylum seekers in the Slovak Republic, for whom there are obstacles to their administrative expulsion, shall be granted tolerated stay if all required conditions laid down are fulfilled. However, it should be noted that tolerated stay is not a standard stay in relation to the practical impediments to enforcement. This stay is granted only for the period during which the reasons for its grating still persist, maximum for the period of 180 days. It can be prolonged, only if there are still reasons for its granting. Tolerated stay shall be granted due to the following reasons: • if there is an obstacle to the administrative expulsion • if the departure is not possible and the detention is purposeless • if the person is a minor found in the territory of the Slovak Republic • if it is necessary for the respect of his/her private and family life and it does not threaten state security or public order • if the person is a victim of human trafficking (and at least 18 years of age) Tolerated stay may be also granted: • if the person has been illegally employed under particularly exploitative working conditions or to an illegally employed minor person, if the presence of this third country national in the Slovak Republic territory is necessary for the purpose of criminal proceedings Following periods are also considered as tolerated stay: • provision of institutional care • duration of quarantine measures • evaluation of applications for the granting of tolerated residence, prison sentence execution or period of imprisonment; this shall not apply, if the residence of a third country national in the Slovak Republic territory is authorised maximum 90 days from the filing of a written application by a third country national for assisted voluntary return until leaving of the country; or until taking back of this application • the period of maximum 90 days during which a third country national, who is the victim of human trafficking and at least 18 years old, decides whether s/he would cooperate with prosecuting authorities **2.** During the period for which the tolerated stay is granted, the foreigner cannot do business and enter a labour agreement. Foreigners with tolerated stay who cannot be employed are not entitled to public health insurance but can obtain a commercial insurance. Persons with granted tolerated stay can apply for citizenship in specific cases e.g. if they are stateless and they have a continuous residence in Slovakia for at least three years prior to submitting their application for Slovak citizenship. **3.** According to the statistics of the Bureau of Border and Alien Police of the Police Force Presidium, as for 31 December 2016 there were 295 persons with granted tolerated stay. However, this number include also other categories of persons with granted tolerated stay apart from those not entitled international protection and there is an obstacle to their administrative expulsion (see 1).

	Spain	Yes	**1.** Spanish legislation specifically contemplates the possibility that persons whose application for international protection has been rejected may be authorized to stay or reside in Spain on the grounds of humanitarian reasons. However, later on, there is a possibility of obtaining a residence status on the grounds of special bonds with Spain if certain conditions are complied with (a certain period of time remaining in Spain, a work contract, family ties…) **2.** There is no other residence status category for these cases. In such cases general conditions for naturalization would apply. **3.** n/a
	Sweden	Yes	**1.** Chapter 5, Section 6 of the Swedish Aliens Act states: "If a residence permit cannot be awarded on other grounds, a permit may be granted to an alien if on an overall assessment of the alien's situation there are found to be such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden. In making this assessment, particular attention shall be paid to the alien's state of health, his or her adaptation to Sweden and his or her situation in the country of origin. Children may be granted residence permits under this Section even if the circumstances that come to light do not have the same seriousness and weight that is required for a permit to be granted to adults." Chapter 12 Section 18:s states: "If, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, new circumstances come to light that mean /…/ 2. there is reason to assume that the intended country of return will not be willing to accept the alien /…/ "the Swedish Migration Board may grant a permanent residence permit if the impediment is of a lasting nature. If there is only a temporary impediment to enforcement, the Board may grant a temporary residence permit. The Swedish Migration Board may also order a stay of enforcement." Chapter 8 Section 7 states: "When a question of refusal of entry or expulsion is examined, account shall be taken of whether the alien cannot be sent to a certain country on account of the provisions in Chapter 12, or whether there are any other special impediments to enforcing the order." Chapter 12 Section 22 states: "A refusal-of-entry or expulsion order that has not been issued by a general court expires four years after the order became final and non-appealable. If the order has been combined with a prohibition for the alien to return to Sweden which is valid for a longer period, the refusal-of entry or expulsion order expires when the period of the prohibition on return to Sweden ends. An expulsion order issued by a general court expires when the period of the prohibition on return to Sweden ends. If a permanent residence permit is issued, a refusal-of-entry or expulsion order expires." **2.** See answer to question 1. Temporary or permanent residency is possible but increasingly rare.

			3. We have no estimates at the moment. From the present enquiry it is difficult to estimate numbers. It seems to be the case the Migration Agency and migration courts assess the individual's attempt to leave the country rather than the actual impediments to enforcement.
	United Kingdom	Yes	**1.** Those who do not need international protection and have no other basis to remain in the UK are expected to leave voluntarily and take the necessary steps to enable them to do so. Where they do not leave it is Home Office policy to enforce their removal and where an individual cannot be immediately removed we will continue to pursue enforcement action to facilitate their removal. However, it is possible that a person who cannot be returned to their country of origin or former habitual residence may be given leave to remain on a discretionary basis. However, this is not automatic and will depend upon a number of conditions being met, including: 1. there has been a significant delay by the Home Office in reaching a decision on their claim 2. there are no concerns about the person's character, conduct or associations, 3. they have been unable, through no fault of their own, to leave the UK voluntarily 4. there is no realistic prospect of removal **2.** Those granted discretionary leave are allowed to remain lawfully in the UK until their limited leave expires and they can apply to extend their stay. This is only granted where there are exceptional circumstances and there is no realistic prospect of removal – it is beneficial as it negates the need to continue to pursue removal action or pay asylum support where there is no practical means to enforce removal and the person cannot leave of their own accord through no fault of their own. They have recourse to public funds, unrestricted access to the labour market so are able to contribute and integrate into society. Consideration is given as to whether removal is viable when any further leave application is considered. A person will normally become eligible to apply for settlement after completing a continuous period of 120 months' (10 years') limited leave. The application will be considered in light of the circumstances prevailing at that time. All settlement applications must be made on the appropriate form no more than 28 days before existing leave expires. Any time spent in prison in connection with a criminal conviction will not count towards the 10 years. Where a person has held DL for a continuous period of 10 years and continues to qualify for DL under the policy, they should be granted settlement unless there are any criminality or exclusion issues. **3.** Statistics on the number of people in this situation are not published.
	Norway	Yes	**1.** Section 8-7 of the Immigration Regulations provides the Immigration Appeals Board with competence to grant residence permit under section 38 of the Immigration Act («strong humanitarian considerations or a particular connection with Norway») in the event of practical obstacles to return that are beyond the control of an asylum seeker whose application for protection has been finally rejected. A number of conditions must be met: • Three years must

			have gone since the case was opened without the rejection having been implemented (enforced), and it must be unlikely that implementation (enforcement) will be possible to carry out. • There must be no doubt as to the identity of the applicant. As a general rule, the applicant must have assisted in clarifying his/her identity during the period as asylum seeker. • The applicant must have contributed to making his/her return possible, including helping to procure a travel document issued by his/her country of origin. • If legal proceedings have been instituted for expulsion, no permit may be granted until the question of expulsion has been clarified, except in cases where the ground for expulsion is an overstay of the time limit for departure • A permit shall not be granted until one year after the the final rejection and the processes of clarifiying the claimants identity and issuing a travel document have been completed, unless special grounds warrant doing so. • Before a permit is granted, a statement shall be procured from the police. The statement shall contain an assessment of whether the applicant has assisted in clarifying his/ her identity and contributed to making his/her return possible, and whether the process of clarifying his/her identity and issuing travel documents has been completed. **2.** A permit under Immigration Regulations section 8-7 may form the basis for a permanent residence permit and thus provide possibilities for Norwegian Citizenship. Naturalization is dependent on the legal status in Norway. According to The Act of Norwegian Nationality, section 7, letter d, the foreigner will have to meet the requirements for a permanent residence permit before being eligible for Norwegian citizenship. Hence, as a general rule, the applicant will not be granted Norwegian citizenship unless he or she has been residing in Norway for three years as a minimum, with a residence permit that may form the basis for å permanent residence permit. There is also requirements regarding length of stay in Norway with a residence permit of at least one year's duration. Seven year is the main rule, see letter e, below. Stateless persons born in Norway are excepted from these requirements, and may apply for Norwegian citizenship after three years of staying in Norway. The stay does not have to be legal or with a permit to stay in Norway. An applicant is not entitled to Norwegian nationality if this is contrary to the interests of national security or to foreign policy considerations. **3.** No statistics have been produced on the number of residence permit that has been granted on this basis during a the last years, but the order of magnitude is likely to be less than 10. Statistics are not available on the number who still are living in Norway.