



MINISTRY FOR HOME AFFAIRS
AND NATIONAL SECURITY

Policy regarding Specific Residence Authorisation

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PARLIAMENTARY SECRETARIAT FOR REFORMS, CITIZENSHIP
AND SIMPLIFICATION OF ADMINISTRATIVE PROCESSES

Background and Introduction

Malta's asylum and immigration policy framework has developed over the years, albeit incongruently and at times in a sporadic manner. This was due to various reasons, including the lack of long-term planning in the area of migration and asylum. The practical reality of this approach has led to several persons living a life of uncertainty, often at the margins of society. Government wants to change this, for many good reasons. It is time to revise the so-called Temporary Humanitarian Protection N (THPN) policy and to provide solutions for a number of persons whose asylum claim has been rejected and who, for some reason or another, have not or cannot be returned to their country of origin.

Apart from the two forms of international protection found in law (*Refugee Status* and *Subsidiary Protection*), Malta's protection system also includes a national form of protection called *Temporary Humanitarian Protection* (commonly referred to as THP). THP was established in 2008 and is given to asylum applicants who do not satisfy the criteria for Refugee Status or Subsidiary Protection, but who nevertheless need to be protected either because they are unaccompanied minors; or because the person concerned should not be returned to his/her country of origin on medical grounds; or because the person should not be returned on other humanitarian grounds. These rules were set out in policy, but Government believes that such forms of protection should also be included in the law. Hence, Government will be proposing amendments to the Refugees Act to include this national form of protection in the law.

In 2010, the policy of granting *Temporary Humanitarian Protection* to former asylum seekers (sometimes referred to as "rejected asylum seekers") who fulfilled a number of other criteria was adopted, thus extending the application of the THP status established in 2008. These criteria, which were assessed by the Office of the Refugee Commissioner, included:

- Having lodged their application for international protection at least 4 years prior to the date of submission of an application for Temporary Humanitarian Protection under the present procedure; and
- Providing evidence that they have been staying in Malta.

Applicants for this type of status could also be required to provide relevant documentary evidence in relation to their integration efforts (e.g. attendance of Maltese or English language courses); their employment history in Malta upon renewal of Temporary Humanitarian Protection, and other matters as necessary. The acronym used to distinguish cases of former asylum seekers from other persons granted Temporary Humanitarian Protection either because they are unaccompanied minors, or because of medical or humanitarian grounds, was "THPN" (Temporary Humanitarian Protection New). A THPN certificate was valid for one year with the possibility of renewal.

In 2016, a decision to reform the granting of THPN was taken, particularly because this was a form status did not deal with matters relating to asylum, and such a process must be administered and managed by the competent authorities and not by the Office of the Refugee Commissioner, whose mandate according to law is to assess applications for international protection. The need was felt to organise and streamline a system which developed as a result of a piecemeal approach towards migration.

Government, through this policy document, is therefore establishing a new system aimed at:

- a) Addressing the situation of a number of THPN certificate holders and other persons who do not have international protection and who cannot be or have not been returned to their country of origin;
- b) Reducing social exclusion amongst migrant communities and recognising the efforts of those migrants who are actively contributing to our society;
- c) Taking action to implement the principles set out in the Migrant Integration Strategy and Action Plan Vision 2020.¹

This new policy addresses a specific situation for a defined category of persons and does not mean that all persons whose asylum claim has been rejected are, or will be, entitled to a regular status in Malta. Government's position remains that those persons who are not in need of international protection should return to their country of origin. Nevertheless, Government is recognising that a number of persons have been actively contributing to Maltese society for several years, have learnt Maltese or English, have built relationships with Maltese citizens and a life on our island. Government is not insensitive to these situations and acknowledges the need to have a predictable system in place which treats such persons humanely and with dignity.

When drafting this policy, Government has consulted with a number of civil society organisations who work in the field of migration, and more importantly, has also consulted with various individual migrants and migrant communities who will be affected by this policy. While it is acknowledged that this policy will not be able to address all the issues and concerns raised, it is a good first step towards mending a system which has been broken for far too long.

Government thanks everyone who took the time to share their experiences and give their valuable feedback.

¹ *Integration = Belonging – Migrant Integration Strategy and Action Plan Vision 2020*, Ministry for European Affairs and Equality, December 2017, available here: <https://meae.gov.mt/en/Documents/migrant%20integration-EN.pdf>

Specific Residence Authorisation

Definition and Content

Persons whose application for international protection has been finally rejected by the relevant asylum determination authorities may be granted a Specific Residence Authorisation after an assessment based on the criteria and guidelines outlined below has been carried out by Identity Malta in cooperation with the immigration authorities.

Persons who are granted a Specific Residence Authorisation shall receive:

- A residence permit valid for two years with the possibility of renewal;
- Access to core welfare benefits in the same manner as beneficiaries of subsidiary protection granted in terms of the Refugees Act, Chapter 420 of the Laws of Malta;
- An employment licence;
- Access to State education and training;
- Access to State medical care; and
- A travel document.

Eligibility Criteria

Identity Malta and the immigration authorities shall consider the following criteria during their assessment of an application for a Specific Residence Authorisation:

1. Applicant must have entered Malta in an irregular manner prior to the 1 January 2016 (i.e. by the 31 December 2015) and been physically present in Malta for a period of 5 years preceding the date of application;
2. Applicant must have his/her application for international protection finally rejected by the relevant asylum determination authorities;
3. Applicant must be of good conduct;
4. Applicant must demonstrate that she/he has been in employment on a frequent basis, that is, having worked a minimum of 9 months per year during the 5 years preceding the application for a Specific Residence Authorisation;
5. Applicant must demonstrate integration efforts by participating in integration programmes.

Disqualification Criteria

Persons who have been convicted of serious crimes, or are otherwise considered to be a threat to national security, public order and/or the public interest shall not be granted a Specific Residence Authorisation.

Assessment Guidelines

When conducting an individual assessment of an application for a Specific Residence Authorisation, Identity Malta, in cooperation with the immigration authorities, shall take into account the following guidelines when considering the eligibility criteria.

Guidelines on the assessment of the criteria

1. *Applicant must have entered Malta in an irregular manner prior to the 1 January 2016 (i.e. by the 31 December 2015) and been physically present in Malta for a period of 5 years preceding the date of application*

In assessing this criterion, authorities shall take into account the date of arrival as recorded by immigration authorities and identity documentation issued by immigration authorities during the 5-year period preceeding the date of application.

Where the applicant is not in possession of an up-to-date identification document issued by the immigration authorities, other elements (e.g. medical records) may be taken into account when assessing presence in Malta for the preceeding 5 years. These elements may include other forms of documentary evidence showing that the applicant was present in Malta during the preceding 5 years.

2. *Applicant must have his/her application for international protection finally rejected by the relevant asylum determination authorities*

When assessing this criterion, authorities shall take into account whether there is a final decision given by the relevant authorities, as applicable, regarding the applicant's application for international protection.

3. *Applicant must be able to demonstrate that she/he is of good conduct*

When assessing this criterion, authorities shall take into account whether the applicant has been convicted of serious crimes, or is otherwise considered to be a threat to national security, public order and/or the public interest.

4. *Applicant must demonstrate that she/he has been in employment on a frequent basis, that is, having worked a minimum of 9 months per year during the 5 years preceding the application for SRA*

When assessing this criterion, authorities shall take into account the following elements:

- Employment need not necessarily be for a continuous 9 months, but an accumulation of 9 months within a year is sufficient;
- The period of employment may also be an aggregate of 45 months over a period of 5 years;
- Employment need not necessarily be with the same employer.

Employment shall be assessed using documentation, including:

- Payslips issued by the employer;
- Jobs Plus employment record;
- FSS Payee Statement of Earnings (FS3).

Preference shall be given to applicants who can prove legal employment. However, applicants who do not have sufficient elements to satisfy this criterion shall endeavour to make efforts to seek legal employment immediately, if the request is acceded to. Such efforts shall be taken into consideration for the renewal of the status.

Furthermore, in the assessment of this criterion, due consideration shall be given to the situation of persons in a vulnerable situation, such as single parents with no family or community support; pregnant women; persons who have suffered a partial or permanent disability and are, consequently, unable to work; persons with physical and/or mental health issues; persons in situations of domestic violence and/or abuse.

Identity Malta and the immigration authorities shall use their discretion when applying this criterion so as not to exclude from eligibility those persons mentioned above or who might have valid and justified reasons for not fully complying with this criterion.

Furthermore, persons who are in full-time education shall be exempt from this criterion until such time as they complete their full-time education.

5. Applicant must demonstrate integration efforts by participating in integration programmes

This criterion shall apply to renewals of the Specific Residence Authorisation. When assessing this criterion, authorities shall take into account the applicant's integration efforts. Such efforts may include, but are not limited to:

- Whether the applicant has submitted an integration request to the Integration Unit within the Human Rights and Integration Directorate, MEAE;
- Certification in the Maltese or English languages obtained in Malta;
- Certification for other specific integration courses, for example Lifelong Learning Courses such as *Living and Working in Malta*;
- Proven volunteering initiatives undertaken regularly and consistently by the applicant over a period of time;
- Proven participation by the applicant on a frequent basis in social/cultural initiatives, e.g. participation in artistic and cultural activities, vocational training, language courses, and other self-development activities.

The assessment of the applicant's integration efforts should be a holistic and a comprehensive one, taking into account the applicant's initiatives and individual challenges over a period of time. The applicant's personal and individual circumstances, including his/her physical and mental health situation, specific vulnerabilities and/or disabilities should be given due consideration. Such an assessment should not place unreasonable expectations upon the applicant, but should aim towards assessing whether the applicant has made a genuine effort to integrate into Maltese society.

Guidelines on the modalities of assessment

Family Unity and the best interests of the child

All members of the family unit are to be assessed jointly, taking into account who is the main household provider, the situation of the spouse or partner, as well as the education of their children, and Specific Residence Authorisation is to be granted to all the members of the family. Partner means a person who is in a stable relationship for at least 2 years, unless they are recognised as a registered partner in Malta.

The best interest of the child shall be taken into account at all times, and minors who become of age (18 years) should not automatically be treated as adults. The assessment of their situation must be

considered within the context of their family situation, taking into account their educational needs and aspirations.

The situation of dependent family members shall also be taken into account and Specific Residence Authorisation shall not be automatically revoked because of death of the main household provider, divorce, situations of domestic violence and/or abuse etc. Such dependent family members should be allowed sufficient time to adapt to their new situation and referred to the appropriate support services where required, and shall be considered to be eligible for the autonomous qualification for the Specific Residence Authorisation.

Transition from Temporary Protection N (THPN) to Specific Residence Authorisation (SRA)

Persons who hold a valid Temporary Humanitarian Protection New (THPN) certificate issued by the Office of the Refugee Commissioner shall, for the first time only, be granted a Specific Residence Authorisation for a period of 2 years without the need for an individual assessment so as to avoid gaps in a person's status, provided that the applicant has not been convicted of serious crimes, or is not otherwise considered to be a threat to national security, public order and/or the public interest. After 2 years, and upon application for renewal of the Specific Residence Authorisation, Identity Malta and the immigration authorities shall assess the individual case on the basis of the established criteria and guidelines for the granting of the Specific Residence Authorisation. If such person fulfils the criteria as described above, Specific Residence Authorisation shall be renewed for two years, and be subsequently renewable according to the procedures set out in this document.

ANNEX 1



Information Leaflet – Specific Residence Authorisation

Persons, whose application for international protection has been finally rejected by the relevant asylum determination authorities, may apply for the immigration status entitled *Specific Residence Authorisation* (SRA). The eligibility for the said status shall be assessed on the basis of the criteria and guidelines outlined below. The assessment shall be carried out by Identity Malta in cooperation with the pertinent Immigration authorities.

Eligibility Criteria

Applicant must have entered Malta in an irregular manner prior to the 1 January 2016 (i.e. by the 31 December 2015) and have been physically present in Malta for a period of 5 years preceding the date of application and must have his/her application for international protection finally rejected by the relevant asylum determination authorities.

Applicant must demonstrate that she/he has been in employment on a frequent basis, that is, having worked a minimum of 9 months per year during the 5 years preceding the application for SRA; however,

- Employment need not necessarily be for a continuous 9 months, but an accumulation of 9 months within a year is sufficient;
- The period of employment may also be an aggregate of 45 months over a period of 5 years;
- Employment need not necessarily be with the same employer.

Applicant must demonstrate integration efforts by participating in activities and/programmes such as, but not limited to:

- Having submitted an integration request to the Integration Unit within the Human Rights and Integration Directorate, MEAE (when such Integration Unit and measures are established);
- Certification in the Maltese or English languages obtained in Malta;
- Certification for other specific integration courses, for example Lifelong Learning Courses such as *Living and Working in Malta*;
- Proven volunteering initiatives undertaken regularly and consistently by the applicant over a period of time;
- Proven participation by the applicant on a frequent basis in social/cultural initiatives, e.g. participation in artistic and cultural activities, vocational training, language courses, and other self-development activities.

Processing of application

Following the submission of the documents shown hereunder to the Expatriates Unit within Identity Malta Agency, the application (Form H) shall be processed by the said Unit by means of the examination of the relative documentation and referring the request to the Police Immigration Authorities and other Authorities as the need may be.

Applicants may be required to apply for an interview at Identity Malta Agency.

The relative decision shall be communicated to the applicant by means of a letter of confirmation. The beneficiary shall then submit an application for a residence permit to the Expatriates Unit, which permit shall reflect the status of SRA.

Special Provisions for persons who hold the status of Temporary Protection (THPN)

Persons who hold a valid Temporary Humanitarian Protection New (THPN) certificate issued by the Office of the Refugee Commissioner shall, for the first time only, be granted a Specific Residence Authorisation without having to satisfy the above-mentioned eligibility requirements, provided that such persons have not been convicted of serious crimes, or are not otherwise considered to be a threat to national security, public order and/or the public interest. They shall be granted a residence permit with a validity period of 2 years.

After 2 years, and upon application for the renewal of the Specific Residence Authorisation, Identity Malta and the pertinent Immigration Authorities shall assess the individual case on the basis of the above-mentioned eligibility criteria and guidelines for the granting of the Specific Residence Authorisation. Where the applicant fulfils the criteria as described above, Specific Residence Authorisation shall be renewed for two years. Subsequently, the said status shall, however, be renewable according to the procedures set out in this document.

Renewal of the SRA Status

For the status to be renewed, applicant should apply 2 months prior to the expiry date.

Provisions concerning Family Units

All members of the family unit who are present in Malta, shall be assessed jointly, taking into account who is the main household provider. This also applies to cases where the children attain adulthood, and if acceded to, Specific Residence Authorisation shall be granted to all the members of the family. In the case of family unit, "partner" means a person who is in a stable relationship for at least 2 years, unless they are recognised as a registered partner in Malta.

List of documentation to be submitted

- Identification/travel document/s;
- Birth certificate and/or Marriage Certificate;
- Last 3 payslips issued by the employer (if applicable);
- Jobs Plus employment record;
- FSS Payee Statement of Earnings (FS3);
- Letter giving background regarding residence in Malta following arrival in Malta and proof of continuous residence in Malta;
- Lease Agreement and Rental Declaration Form.

All documentation must be presented in the English language or a translation thereof. All translations need to be apostilled from the MFTP. Identity Malta Agency reserves the right to request additional documents before the application could be presented.

ANNEX 2



CEA Form H /V1
Non EU nationals

Application for a Specific Residence Authorisation

I am hereby applying for a Specific Residence Authorisation on the grounds that my application for Asylum has been rejected. (Tick the box hereunder which is applicable).

I hold / held / never held (delete as applicable) Temporary Humanitarian Protection National (THPN).

Ref.Com. Number (if applicable):	
Date of Issue (DD/MM/YY):	Valid Until (DD/MM/YY):

I hold / held / never held (delete as applicable) a Police Identification Document.

Police Identification Number (if applicable):	
Date of Issue (DD/MM/YY):	Valid Until (DD/MM/YY):

Personal Details of Applicant

Surname:	
Name:	
Middle Name (if applicable):	
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Other	Date of Birth (DD/MM/YY):
Current Nationality:	Nationality at Birth:
Country of Birth:	Place of Birth:
Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widow/er	

For further information and documentation that needs to be submitted, kindly consult information leaflet entitled "Specific Residence Authorisation" available at: <https://identitymalta.com/citizenship-expatriates>