

Lausunto

07.03.2025

Asia: VN/7059/2024

Lausuntopyyntö luonnoksesta hallituksen esitykseksi laiksi ulkomaalaislain muuttamisesta (pysyvä oleskelulupa)

Lausunnonantajan lausunto

Voitte kirjoittaa lausuntonne alla olevaan tekstikenttään

UNHCR Observations on the proposal to amend the Finnish Aliens Act (permanent residence permit)

Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta (pysyvä oleskelulupa)

I. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) Representation for the Nordic and Baltic Countries appreciates the opportunity to provide observations on the “Government’s proposal to the parliament to amend the Aliens Act (permanent residence permit)” (Hallituksen esitys eduskunnalle ulkomaalaislain muuttamisesta (pysyvä oleskelulupa)) - hereafter the “Proposal”. [1]

2. UNHCR has a direct interest in law proposals related to asylum, as the agency entrusted by the United Nations (UN) General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees. [2] Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees, [3] whereas the 1951 Convention relating to the Status of Refugees [4] and its 1967 Protocol (hereafter collectively referred to as “1951 Convention”) oblige State Parties to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union (EU) law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the EU. [5] The UN General Assembly has also entrusted UNHCR with a global

mandate to provide protection to stateless persons world-wide and for preventing and reducing statelessness. [6]

3. The UN General Assembly has further entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and for preventing and reducing statelessness. [7] It has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”. [8]

4. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection (UNHCR Handbook). [9] UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions for forcibly displaced and stateless people.

5. UNHCR’s observations are structured as follows: Section II sets out the scope of the Proposal. Section III sets out specific observations to clarify UNHCR’s position. Section IV sets out the conclusions.

II. Scope of the Proposal

6. The Proposal introduces stricter requirements for both the permanent residency and the EU residence permits for third-country nationals who are long-term residents. The stated objective of the Proposal is to encourage integration and “provide for a prospect of a future in Finnish society”. [10] According to the Proposal, the same requirements will apply to all aliens, including refugees and beneficiaries of other forms of international protection, as well as stateless people. The Proposal is based on the Finnish Government Programme. [11]

Permanent residence permits

7. The current Aliens Act provides for eligibility for permanent residency when the applicant fulfils the requirement of four years of continuous residence [12] and detailed integrity requirements. [13] According to the Proposal, the eligibility requirements for permanent residency will be restricted through introduction of several different combinations of “integration” requirements, including continuous residence period, income requirement, language proficiency requirement, employment and education requirements as well as additional integrity requirements.

8. The proposed new requirements provide for different tracks to permanent residency:
 1. No requirement for continuous residence and all of the following requirements:
 - a. Completed higher education degree, a postgraduate degree or a lower university degree in Finland and
 - b. A “developing” (kehittyvä) Finnish or Swedish language proficiency
 2. Four (4) years of continuous residence and one of the following requirements:
 - a. Annual income of at least 40,000 euros or
 - b. A master's degree or postgraduate degree recognized by Finland, together with two years of employment history in Finland or
 - c. A “particularly good” (erityisen hyvä) Finnish or Swedish language proficiency and three years of work history
 3. Six (6) years of continuous residence and all of the following requirements:
 - a. Sufficient (riittävä) Finnish or Swedish language proficiency and
 - b. Two years of employment history in Finland. [14]
9. According to the Proposal, children are exempted from the “integration” requirements; however, their status is tied to the status of their guardian. [15] Where a child does not have a guardian in Finland or if the guardian is a Finnish citizen, a permanent residence permit will be granted after four years of continuous residence and the child is exempted from the other “integration” requirements.
10. According to the Proposal, where the requirement of continuous residence is set at six years, there are some exceptions to the “integration” requirements:
 1. One or more requirements could be waived if the individual is unable to meet the condition due to illness, injury or disorder. [16]
 2. Language proficiency requirements are waived for applicants aged 65 years and above.

Permit for Third Country Nationals who are Long-Term Residents

11. The Council Directive concerning the Status of Third Country Nationals who are Long-Term Residents grants a conditional right to permanent residency after five years’ residence on the territory of a Member State. [17] This is provided for under the current Section 56a of the Finnish Aliens Act. According to the Proposal, the eligibility requirements for granting an EU residence

permit to a long-term resident third-country national will be restricted through introduction of a requirement of “good” (hyvä) language proficiency in Finnish or Swedish.

12. The Proposal provides for a case-by-case exception to the language proficiency requirement. The requirement could be waived where there are exceptionally compelling reasons for the lack of the required language proficiency, taking into account the applications’ age, illiteracy, low level of education or similar individual circumstances. [18] In addition, children are exempted from the language proficiency requirement.

III. Observations

13. UNHCR is concerned that the current Proposal may diminish the prospects of durable solutions for refugees [19] and stateless people. In combination with the recently enacted amendments to the Finnish legislation that shorten the length of the fixed-term residence permits and increase the number of years of residence required to qualify for Finnish citizenship, these developments could have a further negative impact on refugees’ sense of security and stability, which the international protection regime is intended to provide. In UNHCR’s view, these proposals represent a reduced set of standards and safeguards as compared to the solid legal protection framework which Finland has developed and administered in the past.

14. In the following observations, UNHCR will focus its comments on its most urgent concerns regarding the Proposal, that is a) stringent “integration” requirements and b) situation of people with specific needs.

A. Stringent “integration” requirements

15. UNHCR agrees that it is important to clearly define the conditions for granting a permanent residence permit. At the same time, it is important to allow for explicit exceptions and give due regard to the vulnerable situation of refugees and stateless persons. Many refugees will have fled from communities that have been torn apart by conflict and may have spent years in displacement. Stateless people often face a lifetime of barriers to access basic rights and services. [20] The 1951 and 1954 Conventions clearly establish a duty for States to accord to refugees and stateless people treatment, which is “as favourable as possible”. However, the Proposal is silent on the special circumstances of refugees and stateless people, as well as the overall impact the proposed amendments may have on them.

16. Refugees, stateless people and others in need of international protection are entitled to a secure status. UNHCR recalls that the 1951 Convention foresees a gradual attainment of rights.

UNHCR's Executive Committee, "ExCom", which Finland is a member of, has confirmed that "the ultimate goal of international protection is to achieve durable solutions for refugees" [21], which is achieved by granting refugees "a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalizing". [22] The ExCom further emphasized the need to "facilitate durable solutions for refugees at the earliest possible stage". [23] In UNHCR's view, the current Proposal is not in line with these commitments.

17. UNHCR wishes to reiterate its position that the timely grant of a secure legal status and residency rights are essential factors in the inclusion and integration process. [24] UNHCR has long advocated for refugees and stateless people to have access to secure status as soon as possible, at the latest, after a three-year residence period. [25] UNHCR has observed that the duration of residence permits has a considerable impact on refugees' and stateless people's abilities to integrate, and that short-term residence permits can be detrimental to refugees' and stateless people's security and stability in the host country. [26] Whilst the aim of the current proposal by the Finnish Government is to improve the integration process, UNHCR is concerned that that the proposed measures will further undermine the ability of refugees to integrate in Finland.

18. Language learning is fundamental for integration and social cohesion. Therefore, refugees, their family members and those granted other protection statuses, should be given the opportunity to learn Finnish and/or Swedish as soon as possible following their arrival in Finland. At the same time, the language requirements imposed on refugees and their family members should take into consideration refugees' special circumstances. Studies have shown that experiences of war, torture, assault, and other extreme events that cause harm and lead to insecurity, can create significant barriers to learning a second language. [27]

19. Similarly, education requirements should also take into consideration the specific individual circumstances of refugees and stateless people. In many situations, refugees are unable to provide documentary evidence of previous studies. They may have had to leave their personal belongings and papers behind, and there may be no way to communicate safely with the institution(s) where their qualifications were earned. Relevant files and archives may have been destroyed in acts of war or violence, and information may also be withheld for political or other reasons. [28] European institutions responsible for recognition of qualifications have acknowledged the specific problems of certifying previous studies by refugees and highlighted the lack of documentary evidence as the main challenge. [29] In addition, ongoing studies may have been interrupted by the refugees' flight history.

20. In the area of employment history, in addition to the qualification challenges identified above, refugees and stateless people may face other challenges in accessing the labour market, such as bureaucratic challenges, lack of information and skills, language, networks, trauma, discrimination or xenophobia. [30]

21. In UNHCR's view, the proposed measures may stand in the way of a progressive realization of rights and attaining the durable solution in the host country. Taking into consideration the above, the combined requirements for obtaining permanent residency in Finland may be very difficult for many refugees and stateless people to fulfill, due to their specific situation. UNHCR would therefore recommend that the Proposal provides for exceptions to the strict integration requirements for refugees and stateless people in recognition of their particular circumstances.

B. Situation of people with specific needs

22. UNHCR welcomes that children are exempted from the requirements for permanent residence permits with respect to language skills, income, education and employment. UNHCR further appreciates the language proficiency waiver for older persons in regard to permanent residency where the residence duration is set at 6 years. However, UNHCR regrets the strict and generally limited nature of the provision for exceptions based on specific needs, especially for permanent residence permits. Furthermore, as the Proposal currently stands, there may be a risk of excluding categories of persons who cannot meet the requirements due to reasons beyond their control, and who are in a vulnerable position. For example, as per UNHCR's understanding of the Proposal, older persons, having arrived in Finland just before or after the age of retirement, would not be able to meet the eligibility criteria for permanent residency.

23. UNHCR wishes to remind Finland that, as noted by the Court of Justice of the EU ("CJEU"), conditions for granting a permanent residence permit need to take into consideration individual circumstances, such as specific needs, age, level of literacy and education. Furthermore, in accordance with the principle of proportionality, the detailed rules for such residency requirements must be suitable for achieving the objective of integration and must not go beyond what is necessary to attain them. [31]

24. The introduction of strict language, education and employment requirements, as provided for by the Proposal, may limit, and even preclude access to secure status for refugees and stateless people with specific needs, such as torture and trauma survivors, older persons, and persons with low level of literacy. UNHCR urges Finland to apply requirements for permanent residency for refugees and stateless persons flexibly, taking into account specific needs, and expand the scope of the exceptions provided for in the Proposal.

IV. Concluding remarks

25. Based on the above observations, UNHCR invites Finland to consider amendments to the Proposal in order to:

- a) Provide for exceptions to the strict integration requirements for refugees and stateless people in recognition of their particular circumstances;
- b) Apply requirements for permanent residency for refugees and stateless persons flexibly, taking into account their specific needs, and broaden the scope of exceptions to ensure access to secure status for refugees and stateless people with specific needs, including but not limited to older persons, survivors of torture and violence, persons with serious medical conditions, persons with low level of literacy.

UNHCR Representation for Nordic and Baltic Countries

March 2025

ENDNOTES:

[1] The full presentation of the Proposal by the Ministry of the Interior, including explanatory notes and proposed legislative text (in Finnish): Pysyvien oleskelulupien myöntämistä koskevan lainsäädännön uudistaminen, Hankenumero SM007:00/2024, <https://intermin.fi/hankkeet/hankesivu?tunnus=SM007:00/2024>.

[2] UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V) <https://www.refworld.org/docid/3ae6b3628.html> (“the Statute”).

[3] Ibid, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002, <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

[4] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189 <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) UNHCR has the “duty of supervising the application of the provisions of the Convention”.

[5] EU, Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L. 326/47-326/390, <https://www.refworld.org/docid/52303e8d4.html>.

[6] UN General Assembly Resolution A/RES/50/152, 9 February 1996, <http://www.unhcr.org/refworld/docid/3b00f31d24.html>, reiterated in subsequent resolutions, including A/RES/61/137 of 25 January 2007, <http://www.unhcr.org/refworld/docid/45fa902d2.html>, A/RES/62/124 of 24 January 2008 <http://www.unhcr.org/refworld/docid/47b2fa642.html>, and A/RES/63/148 of 27 January 2009 <http://www.unhcr.org/refworld/docid/4989619e2.html>.

[7] UNGA resolution A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1955, Prevention and Reduction of Statelessness and the Protection of Stateless Persons, <https://www.refworld.org/docid/3ae68c443f.html>.

[8] UN General Assembly Resolution A/RES/50/152, para. 15.

[9] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, <https://www.refworld.org/docid/5cb474b27.html>.

[10] Proposal, p. 1.

[11] Finnish Government, "A strong and committed Finland – the Government's vision" Programme of Prime Minister Petteri Orpo's Government, 2023:60, 20 June 2023, <https://urn.fi/URN:ISBN:978-952-383-818-5>.

[12] For refugees and beneficiaries of subsidiary protection, the counting of the continuous residence will start from the date of entry. Finnish Aliens Act, Section 56. <https://www.finlex.fi/fi/lainsaadanto/2004/301>.

[13] Covered in detail under Section 57 of the Finnish Aliens Act.

[14] The two-year employment history could include employment prior to retirement. However, if an applicant has arrived in Finland immediately before or after the age of retirement, and has not been employed, the applicant will not fulfil the requirement. Proposal p. 56.

[15] According to the proposed subsection 1 of Section 56b, an applicant under 18 years old can only receive a permanent residence permit if their guardian has been granted one. A permanent residence permit is granted on the basis of paragraph 1 regardless of whether the person under 18 years of age meets any requirements set for permanent residency. Proposal p. 39.

[16] This waiver is applicable where fulfilling the requirements related to language skills and/or work history would be permanently impossible or at least extremely difficult due to a medical reason. The applicant claiming a waiver would have to present a medical certificate to this effect. Proposal pp. 74-75.

[17] European Union: Council of the European Union, Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who are Long-Term Residents, OJ L. 16-44; 23. 1. 2004, 2003/109/EC, 23 January 2004, <https://www.refworld.org/legal/reglegislation/council/2004/en/98525>.

[18] Illiteracy or economic reasons alone would not constitute an exemption. Proposal, p. 96.

[19] Including holders of subsidiary protection or other international protection statuses.

[20] The consequences of statelessness can be severely debilitating, and stateless people are often unable to fully participate in society. Their lack of nationality frequently prevents them from accessing education or employment, creating and perpetuating generational cycles of poverty. Language proficiency and educational requirements may therefore disproportionately disadvantage stateless people, effectively barring them from acquiring permanent residence and naturalization. See further, for instance, UNHCR, Addressing Statelessness through the Rule of Law, December 2022, <https://www.refworld.org/policy/polrec/unhcr/2022/en/124187>.

[21] Executive Committee of the High Commissioner's Programme, Conclusion No. 104 (LVI): Local Integration - Adopted by the Executive Committee (2005), No. 104 (LVI) 2005, 7 October 2005, <https://www.refworld.org/policy/exconc/excom/2005/en/114429>.

[22] ExCom Conclusion on local integration No. 104, para (I).

[23] ExCom, Conclusion No. 117 (LXXV): Durable Solutions and Complementary Pathways - Adopted by the Executive Committee (2024), No. 117 (LXXV), October 2024, <https://www.refworld.org/policy/exconc/excom/2024/en/148870>.

[24] See e.g. previous observations for Finland, UNHCR Observations on the Government Proposal to the Parliament for the law amending the Citizenship Act, March 2024, <https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/147702> and UNHCR Observations on the proposal to amend the Finnish Aliens Act, March 2024, <https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/147701>.

[25] UNHCR, Note on the Integration of Refugees in the European Union, May 2007, <http://www.refworld.org/docid/463b24d52.html>, para. 20. UNHCR has reiterated this recommendation in commentaries to the EU acquis, for example in relation to the three-year residence period established by the EU Qualification Directive. See further UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009), <http://www.unhcr.org/4c5037f99.pdf>.

[26] UNHCR, Note on the Integration of Refugees in the European Union, May 2007, <http://www.refworld.org/docid/463b24d52.html>, para. 18. Furthermore, for example, a survey report in the frames of the RESPOND project presented the migration and integration experiences of Syrians in Sweden and found that their legal status seemed to have an impact on their mental health, and those with temporary permits were more likely to declare poor mental health. Cetrez, Ö., Maluk, A., & Rajon, M. A., Syrian Migrants in Sweden – A Survey on Experiences of Migration and Integration. Global Migration: Consequences and Responses, 2021, March, https://www.academia.edu/45678879/Syrian_Migrants_in_Sweden_A_Survey_on_Experiences_of_Migration_and_Integration.

[27] See e.g. Heather Borrow Finn, 'Overcoming Barriers: Adult Refugee Trauma Survivors in a Learning Community' (2010) 44 (3) Migration and Adult Language Learning 586; Adkins, M.A, Birman, D. and Sample, B Mental health and the adult refugee: The role of the ESL teacher, (1999) Washington DC: National Clearing house for ESL Literacy Education; Janet Isserlis, Trauma and the Adult English Language Learner, (2000) Washington DC: National Clearing house for ESL Literacy Education. See also UNHCR, Proposed Decree of ..., containing integration requirements for the granting of Dutch citizenship (Naturalization Test Decree 2021), 30 November 2020, <https://www.refworld.org/legal/natlegcomments/unhcr/2020/en/123463>.

[28] Explanatory Report to the Council of Europe/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region, adopted in Lisbon on 11 April 1997 (ETS No. 165), Article VII, <https://rm.coe.int/16800ccde6>.

[29] See, for instance, the introduction to the Council of Europe Working Party on Refugee Qualifications, Guidelines for the recognition of refugees' qualifications (1999) http://www.aic.lv/ace/ace_disk/Recognition/leg_aca/ref_guid.pdf.

[30] See, for instance, UNHCR, GRF Fact Sheet – Jobs and Livelihoods, <https://globalcompactrefugees.org/media/grf-fact-sheet-jobs-and-livelihoods>.

[31] CJEU, C-257/17, C, A v. Staatssecretaris van Veiligheid en Justitie, 7 November 2018,

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=207423&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2104961>, paras. 60-65; and CJEU, C-484/17, K v. v.

Staatssecretaris van Veiligheid en Justitie, 7 November 2018,

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=207427&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2104852>. CJEU, C-579/13, P and S v. Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen, 4 June 2015,

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=164725&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=16641050>.

Leino Maiju
UNHCR Representation for Northern Europe