



LONG-TERM RESIDENCE AND CITIZENSHIP BY NATURALISATION: A NECESSITY FOR INTEGRATION

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"I am a 54-year-old woman, who has had refugee status for more than four years in Malta. At the beginning I was so happy because I could live in peace without any persecution, but after a while came the problems that I had to face. It wasn't easy at all and it is not even now. For example, to find a decent job, even though I trained as a doctor, to have an identity, which is very important, are things that still I don't have

After five years, a refugee can apply for citizenship. After that, the Maltese government takes another five years to answer, so I should stay without a country, without an identity for 10 years—at that time I will be 65, at that age I am so tired and so old that I will not care about it. In the mean time, I have to live without my family, my child and my parents... no one. It is difficult living alone.

My challenges are: to find a secure and decent job, to get my citizenship and live as a Maltese citizen, to have a tranquil retirement and live my last days in peace. I am so sorry to say that, here in Malta, I am not the successful person I wanted to be, but I want to thank Malta for accepting me as a refugee guest... because this is what I am: just a guest."

Female refugee 2015

INTRODUCTION

Integration is an evolving process, which requires constant efforts and bold ideas in order to create favourable conditions for the economic, social and political participation of refugees in Maltese society. It is an ongoing process whereby refugees are granted rights and entitlements that are broadly commensurate with those enjoyed by its citizens. Over time the process should lead to permanent residence rights¹ and, in due course, citizenship².

The acquisition of Long-Term Residence (LTR) status, together with access to certain rights—such as education, employment and social assistance attached to such status—is a key element to the integration of refugees³ in Malta. In contrast to other migrants, refugees do not choose to leave their country of origin and, due to the forced nature of their migration, they have specific needs that need to be met in order to support their integration. The inclusion of refugees within the LTR framework serves to promote and realise the inclusion of those who are likely to settle permanently in Malta. The granting of LTR status is important as it allows refugees to take up residence in an EU Member State other than that in which they are recognised. This means that through mutual recognition of LTR status between Member States, refugees, together with their families, can move across the European territory, and settle in another European country. Although the LTR regime grants an extended set of rights to refugees residing in Malta for a number of years, and is considered to be a crucial tool for achieving refugee integration, it has had a relatively weak impact locally.

Access to citizenship can be seen as the ultimate indicator of integration, in that it closes an important legal gap between refugees and nationals. Malta has been found to have one of the most exclusionary citizenship acquisition practices in Europe, and most protection beneficiaries will never be eligible to become Maltese citizens unless a Maltese national marries, adopts or has given birth to them⁴. It should be noted that EU Member States have unfettered power to determine the scope of their own nationality laws, including the acquisition of citizenship by naturalisation. Nevertheless, every citizen of each Member State becomes a European Union citizen acquiring all the rights attached to it. The European Council acknowledged that, from a migrant's perspective, the prospect of acquiring Member State citizenship can be an important incentive for integration⁵. Conversely, a lack of access to citizenship can be seen as one of the barriers to the willingness of refugees to integrate locally.

Through this Project Integrated⁶ document, JRS Malta, aditus foundation and Integra Foundation aim to raise awareness on the key obstacles that refugees face in accessing LTR and citizenship. The paper outlines the legal and policy regimes regulating LTR and citizenship and the challenges that exist within both legal frameworks. Each thematic section concludes with a number of recommendations, and we are keen to engage in further discussions with Identity Malta in order to make LTR and citizenship for refugees more compressive, transparent and accessible.

¹ For more information on access to long-term residence see the paper on Long-Term Residence.

² UN High Commissioner for Refugees (UNHCR), Global Consultations on International Protection/Third Track: Local Integration, 25 April 2002, EC/GC/02/6.

³ Throughout this document, unless otherwise specified, the term 'refugee' includes all beneficiaries of international and national protection, and also asylum-seekers.

⁴ Migrant Integration Policy Index (2011), Huddleston T., et al., 2011.

⁵ Common Basic Principles for Immigrant Integration Policy in the European Union, established by the 2618th Council Meeting, Justice and Home Affairs, 2004, 14615/04.

⁶ Project Integrated is a UNHCR-funded project implemented by JRS Malta, aditus Foundation and Integra Foundation, aimed at facilitating the integration of beneficiaries of protection in Malta through the provision of services, as well as through advocacy and capacity-building

LONG-TERM RESIDENCE

“Refugees and beneficiaries of subsidiary protection who reside lawfully in Member States for many years will be able to enjoy at least the same rights under EC law as other legally residing third-country nationals... This security of residence status is of utmost importance, as it will enable beneficiaries of international protection to focus unequivocally on a future in the European Union and to work towards integration in their host communities on an equal basis with other legally residing third-country nationals”

UNHCR Observations on proposed amendment to Directive 2003/109/EC on Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection, 2008⁷



Credit: oditus foundation

⁷ UNHCR Observations on the Commission Proposal for a Council Directive Amending Directive 2003/109/EC establishing a Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection, 2008 <https://www.refworld.org/pdfid/47cc017a2.pdf>

LAWS RELATING TO LONG-TERM RESIDENCE

The Status of Long-term Residents (Third Country Nationals) Regulations⁸ implements the EU's Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents⁹ into national law. The Directive recognises that integration of third-country nationals who are long-term residents is a key element in promoting economic and social cohesion of the European Union and of individual Member States. The Directive was amended in 2011 in order to include the right of refugees, but not asylum-seekers, to obtain LTR status and to be entitled to the same rights under the Directive, subject to certain conditions.

In terms of the Directive, refugees who are holders of an LTR permit should, under certain conditions, enjoy equality of treatment with Maltese citizens in a wide range of economic and social matters. LTR status therefore constitutes a genuine instrument for the integration of refugees.

Status of Long-term Residents (Third Country Nationals) Regulations

The LTR permit is a residence permit that is valid for five years and is renewable automatically for further five-year periods upon application for renewal. Once an application is approved, Identity Malta will issue the permit holder with a uniform residence permit with the words “Long-term resident – EU” under the type of permit and “International protection granted by Malta on [date]” inserted under the heading “Remarks”, where applicable. Where international protection was granted by another Member State, the text should indicate the Member State which granted the protection, upon confirmation that the individual in question is still a beneficiary of international protection.

Eligibility

In order to be eligible for LTR, a person must have resided legally and continuously in Malta for five years immediately prior to the submission of the application. The calculation of the five-year period for applications submitted by refugees is calculated by taking into account half of the period between the date of lodging the asylum application, and the date of the granting of the status, or the whole of that period if it exceeds 18 months.

An applicant must submit the CEA Form L¹⁰ to Identity Malta, together with the following evidence of:

- Stable and regular resources, for a period of two years prior to the application, which is equivalent to at least the national minimum wage¹¹ plus 20% of that figure for each member of the family. However, benefits or assistance payable under the Social Security Act or any other national legislation which the third country national is entitled to claim as special assistance in order to meet exceptional, individually determined essential living costs, tax refunds granted on the basis of income, or other income-support measures, such as pensions, must be considered as part of stable resources.

In relation to the requirement of showing stable and regular resources, Regulation 7(5) of the LTR Regulations state that “where the conditions concerning stable resources...are not met by the third country national, the Director shall consider all relevant circumstances and if there are justified reasons to do so, the Director shall accept the relative amount declared by the said third country national as satisfying the conditions stipulated therein”.

⁸ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9560&l=1>

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02003L0109-20110520&from=EN>

¹⁰ <https://identitymalta.com/wp-content/uploads/2014/07/CEA-Form-L.pdf>

¹¹ National Minimum Wage National Standard Order: <http://www.justiceservices.gov.mt/downloaddocument.aspx?app=lom&itemid=11205>

In practice, it is not clear what is taken into consideration in the examination of an application of LTR: does the applicant have to show a lump sum in their bank account and, if so, for how long should these funds be in the account? Is evidence of an employment contract sufficient? Will spouses' earnings be taken into consideration together? If an applicant is receiving maintenance from an ex-spouse, is this taken into consideration? There are no clear guidelines on what applicants have to submit as proof of stable and regular resources.

- Appropriate accommodation: the standards to be met are published every five years in the Government Gazette by the Ministry responsible for housing;
- Valid travel document;
- Sickness insurance in respect of all risks for applicant and family members.

Under the Family Reunification Regulations, refugees are exempt from having to satisfy the conditions of regular and stable resources, appropriate accommodation and also sickness insurance. It can therefore be said that, in the context of LTR, the requirement for refugees to satisfy the economic, accommodation and insurance criteria fails to take into account their particular circumstances, such as persons who have had to flee persecution and may have suffered physical harm or traumatising experiences, with the possible consequence of suffering from PTSD and/or physical or mental illness¹². As a result, refugees may not always be able to meet these requirements, and they may in effect act as a barrier to accessing LTR¹³. Furthermore, although the LTR Directive allows for requiring proof of stable and regular resources, and stipulates that Member States may take into account the level of minimum wages and pensions, it does not make reference to added revenue for each family member.

It should also be noted that the proof of appropriate accommodation is not a condition required by the LTR Directive, and although Member States are entitled under the Directive to require evidence that they satisfy certain conditions, the lack of evidence of such accommodation cannot result in an automatic refusal of the application.

The applicant also has to fulfil a number of integration conditions prior to submitting any application. These are the following:

- Evidence of participation, for at least 100 hours, in an integration course in the 12 months prior to application, and a 75% pass mark in the exam.
- A pass mark of 65% in the equivalent of Malta Qualifications Framework Level 2 in Maltese language.

The integration and language courses are being offered by the Integration Unit of the Human Rights and Integration Directorate within the Ministry for European Affairs and Equality. In order to be eligible for LTR, an applicant must satisfy a two-stage process: the Pre-Integration Certificate and the Integration Certificate. The Pre-Integration Certificate comprises basic Maltese and English language courses, and a basic cultural and societal orientation course (delivered by MCAST), and is a pre-requisite for registration for the Integration Certificate. The pre-requisite of obtaining the Pre-Integration Certificate may be waived depending on the individual candidate's standing.

The Integration Certificate is a requisite for LTR, and consists of a cultural orientation course and a Maltese language for integration course. All LTR applicants must be in possession of the Integration Certificate, with a pass mark of 75% for cultural orientation, and 65% for the Maltese language course.

¹² UNCHR, Updated UNHCR Observations on the Proposal for a Directive of the European Parliament and of the Council Amending Directive 2003/109/EC Establishing a Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection, 2010 <https://www.unhcr.org/4c6017189.pdf>

¹³ ECRE, Comments from the European Council on Refugees and Exiles on the Proposal for a Council Regulation amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection, 2008.

In practice, the above integration conditions can be seen as one of the main barriers to accessing LTR status. This is also particularly true of refugees who, besides having to fulfil the economic conditions, also have to attend 100 hours of cultural orientation classes, sit and pass the exam, and also follow Maltese language classes and pass the exam with above-average grades. The combination of working long hours in order to satisfy the economic conditions whilst simultaneously following two courses and achieving the required results constitutes a hurdle that, for many, is impossible to overcome.

In this regard, a recent judgement of the Court of Justice of the European Union (CJEU) should be highlighted. In P and S¹⁴ the Court held that, although the obligation to pass orientation and language courses does not breach the Directive, “the means of implementing **that obligation also must not be liable to jeopardise those objectives**, having regard, in particular, to the level of knowledge required to pass the civic integration examination, to the accessibility of the courses and material necessary to prepare for that examination, to the amount of fees applicable to third-country nationals as registration fees to sit that examination, or to the consideration of specific individual circumstances, such as age, illiteracy or level of education”.



¹⁴ Case C-579/13 P and S v Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen, 4 June 2015.

Entitlements

The LTR permit entitles the holder to remain in Malta permanently, and gives access to a specific set of rights on an equal footing to nationals. It should be noted that the principle of equality of treatment of refugees under the LTR regulations should be without prejudice to the rights and benefits granted to them under the Qualifications Directive¹⁵ and the Refugee Convention.

Any person with LTR status enjoys equal treatment as Maltese nationals in relation to the following entitlements:

- Access to employment and self-employed activity, as long as such activities do not entail even occasional involvement in the exercise of public authority, and are not reserved by law for Maltese nationals in terms of the Public Administration Act;
- Conditions of employment and working conditions, including conditions regarding dismissal and remuneration;
- Education and vocational training, including study grants, in accordance with the Education Act;
- Recognition of professional qualifications, certificates and other qualifications;
- Social security and core benefits as regards social assistance and social protection;
- Tax benefits;
- Access to goods and services, and the supply of goods and services made available to the public and to procedures for obtaining housing;
- Freedom of association and affiliation and membership of an organisation representing workers or employers, of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations; and
- Free access to the entire territory of Malta.

In relation to the above, the requirement of equal treatment in relation to “social security and core benefits as regards social assistance and social protection” creates certain problems due to the ambiguous wording of the provision. The Maltese Regulation does not give a specific definition of the terms “social security”, “core benefits”, “social assistance” and “social protection”. These terms are elaborated within the Social Security Act, in particular Part VI of the Second Schedule of the Social Security Act that deals with Social Assistance. However, the Social Security Act does not explicitly provide that the social security and core benefits as regards social assistance and social protection are to apply in an equal manner to LTRs and therefore this may hamper the enjoyment of such.

Residence in Malta of persons granted LTR in another Member State

A person with LTR from another Member State may reside in Malta for over three months, and may do so to exercise an economic activity¹⁶, for the pursuit of studies or vocational training, and other purposes. This right also applies to refugees granted protection and LTR in other Member States. It is important to underline that, since this right allows refugees to reside in Member States other than the one which granted them international protection, it is necessary to ensure that the receiving Member States are informed of the protection background of the persons concerned, to enable them to comply with their obligations regarding the principle of non-refoulement. It is important to note, however, that unlike the transfer of LTR status, the transfer of responsibility for the protection refugees is outside the scope of the LTR framework.

A third-country national who has been granted long-term resident status in another Member State and who wishes to reside in Malta must apply with Identity Malta for a residence permit no later than three months after entering Malta. The person must send the application after entering Malta, and submit the application in person at the Department in view of the requirement to capture biometric data.

The applicant must provide evidence of stable and regular resources, sickness insurance, a valid travel document and appropriate accommodation. In relation to stable and regular resources, the Regulations set a minimum threshold in relation to the average gross wage and not the national minimum wage. This is not compliant with the Directive. Family members of third-country nationals having acquired the long-term resident status in another Member State are also allowed to reside in Malta.

Furthermore, the Regulations stipulate that the applicant also needs to fulfil the above-mentioned integration conditions. Whilst integration courses attended in the original Member State will be taken into account, attendance of Maltese language classes and the 65% pass mark in the relevant exam are nonetheless required.

The practical aspects of these provisions are unclear, particularly in relation to the integration conditions. It is not clear whether LTR status holders from other Member States may move to Malta and be recognised as such pending fulfilment of the integration criteria, or whether the required pass mark must be obtained prior to the application to Identity Malta for recognition of LTR status.

Non-refoulement

The Regulations allow for the expulsion of persons with LTR when they constitute an actual and sufficiently serious threat to the public policy or public security of Malta. This is also true of refugees who have LTR and who have been granted protection in another Member State. These LTR refugees must still be granted the protection against refoulement guaranteed under the Geneva Convention and the Refugees Act, and may only be expelled from Malta to the Member State that granted them protection once that state confirms that the person concerned is still a beneficiary of international protection.

However, Malta retains the right to remove the LTR-holder to a country other than the Member State and outside the territory of the Union which granted international protection where the person is considered to be a danger to the security of Malta, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community, as specified in article 14(2) of the Refugees Act. However, when doing so, Malta is still bound by the principle of non-refoulement as well as its obligations under EU law and the ECHR.

Family Members

The law is silent as to the status and rights of the family members of a person granted LTR status in Malta, and only regulates the rights of family members of LTRs who settle in Malta as a second Member State. In this regard, there is a need to clarify the relationship between the LTR Regulations and the Family Reunification Regulations and the rights attached to dependant family members of long-term residents, such as the right to employment, social security, healthcare and education.

Timelines and appeals

The Regulations state that Identity Malta must give a written decision within six months from the date of the application. The period of six months can be extended by another six months in exceptional circumstances which must be linked to the complexity of the case, and in such cases, the Director must notify the applicant in writing. The written notification must include information relating to the rights and obligations of the applicant under the Regulations. In the event that Identity Malta fails to give a decision within the specified timeframe, the application will automatically be passed on for appeal to the Immigration Appeals Board.

Identity Malta must give reasons in writing for any decision rejecting, withdrawing or not renewing long-term residence status, and it must inform the applicant regarding the redress procedures available. The applicants have the right to appeal to the Immigration Appeal Board within three working days.

In practice, it is noted that often the staff at Identity Malta refuse to accept applications without opening a file or granting a file number to the applicant. Many times, the applicant is requested verbally to bring additional documentation, and this process may be repeated over a number of months with different desk officers requesting different supporting documentation. The fact that no file is opened means that the procedural guarantees, such as timelines and the right to a reasoned decision, are not adhered to. In addition, no record is kept of documents submitted, refused, or additionally requested. This results in the applicants not having the right to appeal or contest any “decision” by desk officers refusing to accept their application.

¹⁵ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011L0095>.

¹⁶ In order to undertake an economic activity, the person concerned should be in possession of an employment licence that has been issued after the situation of the labour market in Malta has been examined by the competent authorities.

CONCLUSIONS AND RECOMMENDATIONS

1. Publish clear and public guidelines on what is considered to be “stable and regular resources” and what documents may be provided to demonstrate fulfilment of this criterion.

2. Review the “stable and regular resources” requirement and exempt refugees from having to satisfy the conditions of regular and stable resources, appropriate accommodation and also sickness insurance.

3. Amend the “stable and regular resources” requirement for persons settling in Malta as a second Member State from “average gross wage” to the “national minimum wage” in order to ensure compliance with the LTR Directive.

4. Remove the requirement to provide evidence of appropriate accommodation in order to ensure compliance with the LTR Directive.

5. Clarify that LTR holders are to enjoy to the same treatment as Maltese nationals in relation to entitlements under the Social Security Act.
6. Remove the requirement that the integration course should have been attended in the last 12 months immediately prior to the application, as the applicants might still not satisfy the other requirements under the Regulations within this timeframe.

7. Lower the pass-mark requirements for the cultural orientation exam and language exam and ensure that exam procedures are inclusive of different learning and assessment methodologies.

8. Clarify the rights of family members of persons granted LTR in Malta.

9. Require that all desk officers open a file, issue a receipt and allocate a file number to every application that they receive, whether or not they consider it complete.



Credit: Darin Zammit Lupi

CITIZENSHIP

“Everything has changed! My life has changed! I was so happy, getting citizenship was the best day of my life. It makes me a Maltese citizen but also an EU citizen, so I can travel. Now as a Maltese citizen, I found a new job, I am really happy. Things changed a lot, although I am still being judged by certain people, because for many, I am still from Libya and not from Malta.”

Excerpt from an interview held with a 22-year-old naturalised Libyan refugee, October 2018 ser

Law and policy on access to citizenship

The modes of acquisition of citizenship in Malta are regulated by the Constitution¹⁷ and the Citizenship Act¹⁸. The primary mode in which one acquires Maltese citizenship is by birth, through parents or ascendants that are Maltese citizens. Maltese law follows the doctrine of ius sanguinis, which determines that citizenship is acquired through parents or ascendants who are citizens of a state, as opposed to ius soli that grants citizenship to persons born on the territory of a state. Citizenship can also be acquired through adoption, through marriage after five years of marriage, by registration¹⁹ and acquisition by naturalisation.

Citizenship by Naturalisation – Eligibility

Article 10 of the Citizenship Act lays down that in order to be eligible for naturalisation, any applicant:

- (i) must have resided in Malta for 12 months immediately preceding the date of application;

(ii) must have resided in Malta during the six years immediately preceding the 12-month period and in aggregate for a period of not less than four years;

(iii) must have an adequate knowledge of the Maltese or the English language;

(iv) must be of good character; and

(v) would be a suitable citizen of Malta.

The eligibility criteria, apart from the objective time-periods required, are drafted in extremely broad and vague terms, such as “good character”, “suitable citizen” and “adequate knowledge” of Maltese or English. There are no further legal definitions or eligibility requirements to guide applicants or their legal advisors. In addition, there are no clear public policy guidelines on what these terms mean, how assessments are made or how to prove such in an application. It follows that it is extremely difficult to assess the likelihood of the successful outcome of an application.

¹⁷ Chapter III of the Constitution of Malta, 1964.

¹⁸ Maltese Citizenship Act, Chapter 188 of the Laws of Malta.

¹⁹ This applies to former citizens who lost their citizenship, or persons born outside Malta before 1989 whose parents are Maltese.

Citizenship by Naturalisation – Process and Documentation

In order to apply for citizenship by naturalisation, the applicant must first request the Principal Immigration Officer to issue a residence certificate to confirm the applicant's periods of residence in Malta. Once the Department of Citizenship and Expatriate Affairs (DCEA) assesses the certificate and confirms eligibility based on residency, the applicant is informed that they are eligible to submit a FORM CEA/6 application²⁰.

The applicant must submit the FORM CEA/6, together with copies of birth certificate, passport, identity card, proof of ownership or rental of property, and a clean police conduct certificate. Furthermore, applicants are obliged to submit evidence of the entire period they have resided in Malta; such evidence may include work permits, FS3s, payslips, utility bills or bank statements.

It is also recommended to have a legal advisor submit a cover letter with the application to further explain the details of the application. The applicant's application form must be signed by two non-naturalised Maltese sponsors who have known the applicant for at least two years. If the sponsors have known the applicants for more than two years, it is recommended to put the exact number of years. In the case of refugees, the requirement to present certain documentation relating to birth certificates and passports can be dispensed with if the applicants are not in a possession of the original document. The application fee is not steep and amounts to only €34.94. Furthermore, once approved, the applicant must pay €23.29 on the issue of the certificate of citizenship and €2.33 for taking the oath of allegiance.

Citizenship by Naturalisation – Ministerial Discretion

Article 19 of the Citizenship Act lays down that the Minister responsible for matters relating to citizenship is not required to give any reasons for the granting or refusal of any application, and decisions are not subject to appeal or review in any court.

This provision seems to fall foul of the general principles of law relating to the right to an effective remedy, which holds that decisions should be motivated, and must give, in a clear manner, the reasons on which they are based. The duty to give reasons is essential to any decision, including those decisions taken by judicial, quasi-judicial, and administrative bodies. The lack of judicial scrutiny makes it impossible for applicants to hold the department accountable for any possible misapplication of the law or breaches of procedure.

In addition to the above, the fact that applicants are not given a reasoned decision for the refusal of their application precludes them from improving or clarifying any issue that may have been a deciding factor in the refusal. Further, the lack of a reasoned decision removes any opportunity for the applicant to verify whether any identified shortcomings were in fact true and in accordance with the law.

This absolute discretionary power of the Minister leaves applicants uncertain about the outcome of their application and leaves them without the possibility of any judicial review of decisions which they may consider unjust, discriminatory, erroneous or illegal.

ACCESS TO CITIZENSHIP FOR BENEFICIARIES OF INTERNATIONAL PROTECTION

*“I have being living in Malta
14 years working and pay the
taxes, my police conduct clean all
this period. I speak English and
Maltese language good, right now
I am studying Maltese language
to enable how to write and read. I
have private work of construction
so I depend of my self... I want
citizenship to passport to enable
travel see my parents... 13 years
didn't see them . How can stay
all my life without future by
temporary protection, renew it
every three years ...*

*... it is very hard to be refugee 14
years without future or small light
end of the tunnel.”*

Sudanese refugee, March 2019

Although there are no specific legislative provisions on access to citizenship for persons with international protection, internal policy guidelines are followed by the DCEA staff which concern the specificities of the refugee population. These policies were the subject of a series of meetings between the DCEA and UNHCR Malta, JRS and aditus foundation, explained below.

- **Length of residence in Malta:** Although the law states that a person is eligible for citizenship by naturalisation if that persons has been living in Malta for at least five years, according to current Government policy, applications from persons with refugee status will only be considered after a 10-year residence period in Malta, whilst applications from persons with subsidiary protection will only be considered after 20 years. These stricter time frames are not laid down in law, and are part of internal policy measures adopted by the DCEA.

It is a fact that many beneficiaries of subsidiary protection have been living in Malta for a number of years and cannot return to their country of origin, potentially indefinitely. We feel that a 10-year period is long, whilst a 20-year residence requirement grossly disproportionate to the immense human investment made by this group of persons in integrating into Maltese society, an investment that is nowhere acknowledged or appreciated.

In this regard, the residence period should be calculated from when the person is granted international protection status in Malta.

²⁰ FORM CEA/6 – Application for Naturalisation as a Citizen of Malta <https://identitymalta.com/wp-content/uploads/2016/09/CEA6-Form-E.pdf>.

²¹ A.B. v. Kummissarju tat-Taxxi Interni, Appell Nru. 2/07, 28 January 2008, Qorti ta' l-Appell (Sede Inferjuri). See also Alfred Sant vs Kummissarju tat-Taxxi Interni, 4 March 1992, Qorti tal-Appell Civili, Cauchi Ltd vs Kummissarju tat-Taxxa fuq il-Valur Mizjud, Appell, 6 October 2000, Michael Gatt vs L-Awtorita' ta' l-Ippjanar, Appell, 19 November 2001 u Mary Zarb vs- Emma Azzopardi nomine, Appell mit-Tribunal ghal Talbiet talKonsumaturi, 28 March 2007, Teshome Tensea Gebremariam sive Teshome Berhanu Asbu vs Bord tal-Appelli dwar ir-Rifugjati, Avukat Generali, 10 July, 2012, Prim Awla.

- **Family units:** Applications are only accepted from individuals and not from family units. This practice can be seen as not being conducive to family unity, and is potentially discriminatory against those people who spent years bearing primary family responsibilities, instead of working. This also creates an imbalance within the family unit that could lead to a vulnerable partner or parent—in the majority of cases, women—being at the mercy of the more financially stable applicant.
- **Employment:** The DCEA takes into consideration the periods of employment of the applicant and, in general, will not consider favourably any applications from persons who have been unemployed for long periods of time. This presents itself as a significant barrier for women who are stay-at-home parents, or who do not have the opportunity or necessary qualifications for employment. It also penalises persons who were unable to work due to other personal circumstances, such as disability, mental health problems, etc.
- **Children:** Applications for citizenship by naturalisation cannot be submitted by minors in their own name. Any application for naturalisation of a minor child can only be submitted by a parent who is also a Maltese citizen²². However, in specific circumstances, and in those cases where a child was born in Malta and has only lived in Malta as a country of residence, the legal advisor of the minor child can submit an application, together with a letter of recommendation containing supporting arguments as to why the child should be naturalised, highlighting any humanitarian issues. Furthermore, an application can be submitted by an individual after reaching majority, without them having to wait for the passing of the required residency periods after reaching eighteen.



Credit: Kristof Hübner

²² FORM J – Application for Naturalisation as a Citizen of Malta of a Minor Child <https://identitymalta.com/wp-content/uploads/2016/09/CEA10-Form-J.pdf>.

SPECIFIC CONSIDERATIONS IN RELATION TO STATELESSNESS

“Being stateless wherever in the world is not good, not only in Malta . . . I think it is better, to just put me in a coffin and bury me, or, put me in a place that I can just kill myself, or, take me back to where I say I come from. . . I can’t go and work. How do you expect me to have money? You want me to be a criminal, a drug dealer? ... I don’t want to be a criminal on the street. But if I have no help, no hope, what choice do I have? That’s why you find all my brothers in prison. . . But what do I do when I don’t have a job, I don’t have money, I have nowhere to go? I go to the street, I am homeless, I sleep outside, because I don’t want to go into the street and do drugs. I have been sleeping in the garden, I know that people do what they want in the street. I won’t go, I don’t want to be like that.”

Excerpt from an interview held with a 33-year-old stateless person, October 2018.

According to international law, a stateless person is anyone who is not considered a national by any State under the operation of its law. Although Maltese legislation contains some safeguards against statelessness, serious concerns remain. These mainly relate to the lack of safeguards for children born stateless in Malta, including those born or found at sea, a lack of identification procedures of stateless persons in Malta and the lack of a dedicated protection framework for such persons.

Malta is not party to the 1954 Convention relating to the Status of Stateless Persons²³ nor to the 1961 Convention on the Reduction of Statelessness²⁴. Furthermore, Malta is a signatory to the European Convention on Nationality of 1997²⁵, and although such has not been ratified, Malta is still bound by the intentions of the Convention, specifically the obligation to refrain from acts which would defeat the object and purpose of such Convention.

It has been noted that Malta does not have any form of stateless determination procedure (SDP), which is crucial to identify such persons, and, in turn, to safeguard their rights once identified. In the absence of a statelessness determination procedure, stateless persons are almost automatically streamlined into the asylum procedure. It has been shown that whilst the asylum procedure has offered a solution to some persons, notably where statelessness gives rise to an international protection claim, it is not specifically geared or mandated to identify and assess statelessness. Stateless persons are at risk of detention once more at the end of an unsuccessful asylum claim.

²³ Convention Relating to the Status of Stateless Persons, 1954, https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf.

²⁴ Convention on the Reduction of Statelessness, 1964, https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

²⁵ European Convention on Nationality, 1997, <https://rm.coe.int/168007f2c8>.

CONCLUSIONS AND RECOMMENDATIONS

In view of the above, the main concerns shared by the organisations presenting this paper are the lack of clarity and consistency in granting citizenship by naturalisation, a restrictive approach in the interpretation of the legislative provisions and strict internal policies. Furthermore, the delay in deciding applications is also noted, however it is also generally agreed that these delays are often due to the DCEA relying on feedback from other departments, such as Jobsplus and Immigration Police.

We would therefore like to recommend the following, either as part of a revision of the current legal and policy regime, or as a new procedure for access to citizenship specifically by international protection beneficiaries:

1. Amend the Citizenship Act to include clear and specific criteria which applicants are required to fulfil in order to be eligible for naturalisation.
2. Amend the Citizenship Act to remove the unfettered discretionary power of the Minister responsible for Citizenship with a view to making the process more transparent.
3. Amend the Citizenship Act to include procedural guarantees that provide for clear timeframes within which a decision must be taken, provision of reasons for the refusal of an application based on clear provisions at law, and possibility to appeal any such decision in the Courts.
4. Shorten the current eligibility timeframes to a maximum of seven years.
5. Give value to individual integration efforts when assessing applications.
6. Do not require financial self-sufficiency and/or employment as an obligatory criterion for eligibility²⁶.
7. Accept applications for family units.
8. Establish and publicise an objective and transparent assessment method to be adopted by the authorities in processing applications, at both admissibility and substantive stages.

²⁶ Input to the Ministry for European Affairs and Equality on the Migrant Integration Strategy and Action Plan, A Project Integrated 2018 publication, August 2018.

