

Convention Refugees in New Zealand: Being Trapped in Immigration Limbo without the Right to Obtain a Visa

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Abstract : Multiple Convention Refugees in New Zealand are stuck in a state of immigration limbo due to a lack of defined immigration policies. The Refugee Convention of 1951 does not give the right to be issued a permanent right to live and work in the country of asylum. A gap in New Zealand's immigration law and policy has left Convention Refugees without the right to obtain a resident or temporary entry visa. The significant lack of literature on this topic suggests that the lack of visa options for Convention Refugees in New Zealand is a widely unknown or unacknowledged issue. Refugees in New Zealand enjoy the right of non-refoulement contained in Article 33 of the Refugee Convention 1951, whether lawful or unlawful. However, a number of rights contained in the Refugee Convention 1951, such as the right to gainful employment and social security, are limited to refugees who maintain lawful immigration status. If a Convention Refugee is denied a resident visa, the only temporary entry visa a Convention Refugee can apply for in New Zealand is discretionary. The appeal cases heard at the Immigration Protection Tribunal establish that Immigration New Zealand has declined resident and discretionary temporary entry visa applications by Convention Refugees for failing to meet the health or character immigration instructions. The inability of a Convention Refugee to gain residency in New Zealand creates a dependence on the issue of discretionary temporary entry visas to maintain lawful status. The appeal cases record that this reliance has led to Convention Refugees' lawful immigration status being in question, temporarily depriving them of the rights contained in the Refugee Convention 1951 of lawful refugees. In one case, the process of applying for a discretionary temporary entry visa led to a lawful Convention Refugee being temporarily deprived of the right to social security, breaching Article 24 of the Refugee Convention 1951. The judiciary has stated a constant reliance on the issue of discretionary temporary entry visas for Convention Refugees can lead to a breach of New Zealand's international obligations under Article 7 of the International Covenant on Civil and Political Rights. The appeal cases suggest that, despite successful judicial proceedings, at least three persons have been made to rely on the issue of discretionary temporary entry visas potentially indefinitely. The appeal cases establish that a Convention Refugee can be denied a discretionary temporary entry visa and become unlawful. Unlawful status could ultimately breach New Zealand's obligations under Article 33 of the Refugee Convention 1951 as it would procedurally deny Convention Refugees asylum. It would force them to choose between the right of non-refoulement or leaving New Zealand to seek the ability to access all the human rights contained in the Universal Declaration of Human Rights elsewhere. This paper discusses how the current system has given rise to these breaches and emphasizes a need to create a designated temporary entry visa category for Convention Refugees.

Keywords : domestic policy, immigration, migration, New Zealand

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