
A BILL FOR AN ACT

To further amend title 50 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 entitled "Refugee Act of 2005", and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title 50 of the Code of the Federated States of
2 Micronesia is hereby amended by enacting a new Chapter 3 entitled
3 "Refugee Act of 2005."

4 Section 2. Title 50 of the Code of the Federated States of
5 Micronesia is hereby amended by enacting a new section 301 to read
6 as follows:

7 "Section 301. Short Chapter. This chapter is known and
8 may be cited as the 'Refugee Act of 2005.'"

9 Section 3. Title 50 of the Code of the Federated State of
10 Micronesia is hereby amended by enacting a new section 302 to read
11 as follows:

12 "Section 302. Definitions.

13 (1) 'Asylum seeker' means a person who (i) is not a
14 citizen of the Federated States of Micronesia (ii) is
15 present in the territory of the FSM or at a port of
16 entry in the FSM and (iii) who seeks recognition and
17 protection as a refugee.

18 (2) 'Chief' means the Chief, Division of
19 Immigration, Department of Justice of the Federated

1 States of Micronesia, or designee.

2 (3) 'Country of origin' means the asylum seeker's
3 country of nationality, and in the case of more than one
4 country of nationality, each country of nationality; or
5 if the asylum seeker has no nationality, the asylum
6 seeker's country of former habitual residence.

7 (4) 'FSM' means the Federated States of Micronesia.

8 (5) 'Hearing Officer' means the Chief, during an
9 initial determination of refugee status, or any member
10 of the Refugee Committee, during any hearing before the
11 Refugee Committee.

12 (6) 'Refugee' means a refugee defined in Section
13 303 and includes spouses and minor children of persons
14 determined to be refugees.

15 (7) 'Refugee Committee' means the appellate
16 tribunal established under Section 318 of this Act.

17 (8) 'UNHCR' means the United Nations High
18 Commissioner for Refugees."

19 Section 4. Title 50 of the Code of the Federated States of
20 Micronesia is hereby amended by enacting a new section 303 to read
21 as follows:

22 "Section 303. Definition of refugee. A refugee is any
23 person who (i) is outside his country of origin, and
24 (ii) who is unable or unwilling to return to, and is
25 unable or unwilling to avail himself of the protection

1 of, that country (iii) because of a well-founded fear of
2 persecution on account of race, religion, nationality,
3 or membership of a particular social group or political
4 opinion. The term 'nationality' includes ethnic
5 identity and the term 'membership of a particular social
6 group' includes sex."

7 Section 5. Title 50 of the Code of the Federated States of
8 Micronesia is hereby amended by enacting a new section 304 to read
9 as follows:

10 "Section 304. Persons who shall be excluded from
11 refugee status. A person shall be excluded from refugee
12 status for the purpose of this Act if:

13 (1) he has committed a crime against peace, a war
14 crime or a crime against humanity, as defined in the
15 international instruments drawn up to make provision in
16 respect of such crimes;

17 (2) he has committed a serious non-political crime
18 outside the FSM prior to his entry as an asylum seeker."

19 Section 6. Title 50 of the Code of the Federated States of
20 Micronesia is hereby amended by enacting a new section 305 to read
21 as follows:

22 "Section 305. Principal of non-refoulement.

23 (1) Non refugee or asylum seeker shall be deported
24 from the FSM or returned in any manner whatsoever to a
25 place where there are reasons to believe his life or

1 freedom would be threatened on account of any of the
2 reasons set out in Section 303.

3 (2) The benefit of this provision may not be
4 claimed by a refugee or asylum seeker where there are
5 reasonable grounds for regarding him as a danger to the
6 security of the country or who has been convicted by a
7 final judgement of a serious crime in the FSM and
8 constitutes a danger to the community.”

9 Section 7. Title 50 of the Code of the Federated States of
10 Micronesia is hereby amended by enacting a new section 306 to read
11 as follows:

12 “Section 306. Confidentiality of Information. Under no
13 circumstances shall information about an asylum seeker
14 be disclosed to government officials of the country of
15 origin pending determination of refugee status.”

16 Section 8. Title 50 of the Code of the Federated States of
17 Micronesia is hereby amended by enacting a new section 307 to read
18 as follows:

19 “Section 307. Interpretation. The government shall
20 make all reasonable attempts to communicate with the
21 asylum seekers in the language in which they are most
22 fluent.”

23 Section 9. Title 50 of the Code of the Federated States of
24 Micronesia is hereby amended by enacting a new section 308 to read
25 as follows:

1 "Section 308. Regulations. The President may pass
2 regulations to give effect to the provisions of this
3 Act."

4 Section 10. Title 50 of the Code of the Federated States of
5 Micronesia is hereby amended by enacting a new section 309 to read
6 as follows:

7 "Section 309. UNHCR. The national government shall not
8 prohibit or restrict contact between UNHCR and any
9 asylum seeker or refugees in the FSM. UNHCR shall be
10 permitted to submit comments for the consideration of
11 the Refugee Committee on any matter before the Refugee
12 Committee and UNHCR may be invited to participate as an
13 observer on the Refugee Committee. The national
14 government shall provide the UNHCR with information
15 concerning the conditions of refugees, the
16 implementation of the Convention, and the laws,
17 regulations and policies of the FSM relating to refugees
18 and asylum seekers."

19 Section 11. Title 50 of the Code of the Federated States of
20 Micronesia is hereby amended by enacting a new section 310 to
21 read as follows:

22 "Section 310. Asylum entry permit. A person who meets
23 the definition of an asylum seeker and makes a claim for
24 asylum shall be granted an asylum entry permit.

25 (1) A claim for asylum is a clear indication from

1 a person that they are fleeing persecution, that they
2 seek asylum in the FSM and that they intend to apply to
3 become a refugee.

4 (2) An asylum entry permit may be issued to a
5 person without the travel documents required by other
6 immigration laws and regulations, if it appears that
7 such travel documents are missing due to circumstances
8 related to the claim for asylum and not due to an intent
9 to defraud or mislead authorities.

10 (3) An asylum entry permit shall not permit the
11 asylum seeker to work in the FSM and may have terms and
12 conditions as the Chief determines to be necessary.

13 (4) The spouse and minor children of the asylum
14 seeker are eligible for dependent asylum entry permits,
15 unless they have a separate claim for asylum, in which
16 case they are eligible for an asylum entry permit.

17 (5) An asylum entry permit shall be issued for 6
18 months and shall be renewable while the asylum seeker is
19 in the process of having their application for refugee
20 status considered. The asylum entry permit shall be
21 revoked pursuant to Section 323.

22 (6) An asylum entry permit may be denied to a
23 person who meets the criteria of Section 305(2)."

24 Section 12. Title 50 of the Code of the Federated States of
25 Micronesia is hereby amended by enacting a new section 311 to

1 read as follows:

2 "Section 311. Rights and duties of asylum seekers.

3 (1) Asylum seekers have the right to be informed of
4 their rights and obligations as asylum seekers, the
5 procedure for applying for refugee status, and their
6 right be in contact with UNHCR and other human rights
7 organizations.

8 (2) Asylum seekers will be treated without
9 discrimination as to race, religion, country of origin,
10 gender, political or other opinion, or status.

11 (3) Asylum seekers must conform to all the laws of
12 the FSM.

13 (4) Asylum seekers must approach the authorities
14 without delays, unless duly justified, to apply for
15 asylum or somehow express a need for protection.

16 (5) Asylum seekers must co-operate with the
17 relevant authorities throughout the assessment of their
18 claims, including disclosing information and documentary
19 evidence that may be relevant to their claims and
20 providing a truthful account of their stories."

21 Section 13. Title 50 of the Code of the Federated States of
22 Micronesia is hereby amended by adding a new section 312 to read
23 as follows:

24 "Section 312. Assistance for asylum seekers. The
25 national government shall make reasonable attempts to

1 provide assistance to asylum seekers and shall work with
2 foreign nations, non-governmental organizations, and
3 members of the community to meet the needs of asylum
4 seekers. Assistance may include access to emergency and
5 basic health care, access to primary education for
6 children, and provision of food, accomodation and
7 financial assistance. Failure to provide assistance
8 shall not be grounds for anu action against the national
9 government, nor shall any cause of action be valid
10 against the national government for incidents related to
11 the provision of assistance or lack thereof."

12 Section 14. Title 50 of the Code of the Federated States of
13 Micronesia is hereby amended by enacting a new section 313 to
14 read as follows:

15 "Section 313. Detention of asylum seekers.

16 (1) The Chief may decide to detain an asylum
17 seeker, through a written decision with reasons, in the
18 following cases only:

19 (a) to verify indentity, when in dispute and
20 when the asylum seeker is not co-operating;

21 (b) for the preliminary interview, to determine
22 the basis of the asylum claim;

23 (c) in cases where the asylum seeker has
24 destroyed travel and/or identity documents or has used
25 fraudulent documents in order to mislead government

1 authorities;

2 (d) to protect national security and public
3 order, when there is evidence that the asylum seeker has
4 a criminal record and/or affiliations which are likely
5 to pose a risk to public order or national security.

6 (2) When a need has been identified for detaining
7 an asylum seeker, the Chief will first consider
8 alternatives which may reach the same objective. These
9 include, but are not limited to, bail, reporting
10 requirements, obligation of residence at a specific
11 address, provision of a guarantor or community sponsored
12 accommodation.

13 (3) The decision to detain an asylum seeker shall
14 be initially reviewed by a judicial authority as soon as
15 possible (and in any event not later than fourteen
16 days), and if the need is confirmed, periodically
17 reviewed by the same, at least every two months, in
18 order to determine whether the necessity of the
19 detention still exists.

20 (4) Children under 18 years old shall not be
21 detained, unless it is determined by the Chief as a
22 measure of last resort or unless the parents of the
23 children request that the children be kept in detention
24 with the parents. In that case it shall be for the
25 shortest period of time as possible. Pregnant women,

1 nursing mothers, unaccompanied elderly persons, torture
2 or trauma victims and persons with a mental or physical
3 disability shall also be detained only as a last resort
4 and for the shortest period of time as possible.

5 (5) In case of detention, asylum seekers shall be
6 kept separated from convicted criminals or prisoners on
7 remand, and shall be treated humanely. Women shall be
8 separated from male detainees not part of their family.
9 Asylum seekers in detention will be given high priority
10 in assessing their claim for asylum."

11 Section 15. Title 50 of the Code of the Federated States of
12 Micronesia is hereby amended by enacting a new section 314 to read
13 as follows:

14 "Section 314. Unaccompanied minor children.

15 Unaccompanied minor children shall be appointed an
16 independent legal guardian as soon as possible after it
17 is determined that the child is seeking asylum. Such
18 children shall be provided with care and services to
19 meet their basic needs, including food, shelter, health
20 care and safety. The national government shall work
21 with international agencies to locate family members of
22 unaccompanied minor children. Claims of unaccompanied
23 minor children shall be given priority."

24 Section 16. Title 50 of the Code of the Federated States of
25 Micronesia is hereby amended by enacting a new section 315 to read

1 as follows:

2 "Section 315. Determination of refugee status.

3 (1) The asylum seeker must make an application to
4 the Chief for recognition as a refugee, in a manner to
5 be established in regulations.

6 (2) An asylum seeker claiming refugee status shall
7 be entitled to a hearing before the Chief within thirty
8 days of submitting the application for refugee status.
9 However, the Chief may suspend determination of a claim
10 for refugee status made by an asylum seeker who has been
11 charged with a criminal offense under the laws of the
12 FSM until those charges have been resolved. Notice of
13 suspension shall be provided to the asylum seeker.

14 (3) No later than 15 days after the hearing, the
15 Chief shall issue a written decision to the asylum
16 seeker, setting forth the findings relevant to the
17 determination, specifying the evidence on which those
18 findings were based and giving the reasons for the
19 decision.

20 (4) An application for refugee status shall be
21 granted if the asylum seeker satisfies the definition of
22 a refugee as set forth in Section 303. An application
23 for refugee status shall be denied on the following
24 basis: (I) failure to satisfy the definition of refugee
25 as set forth in Section 303; (ii) exclusion from the

1 definition of refugee, pursuant to Section 304; or (iii)
2 ineligibility for refugee status, pursuant to Section
3 316.”

4 Section 17. Title 50 of the Code of the Federated States of
5 Micronesia is hereby amended by enacting a new section 316 to read
6 as follows:

7 “Section 316. Ineligibility. An application for
8 refugee status may be denied on grounds of ineligibility
9 if:

10 (1) a claim made by the asylum seeker for refugee
11 status has been denied by a final decision of the
12 Refugee Committee or of the UNHCR and there is no
13 showing of new or changed circumstances justifying a
14 reconsideration;

15 (2) a prior claim for refugee status to the FSM or
16 any other nation or the UNHCR was withdrawn or abandoned
17 and there is no sufficient explanation as to the reasons
18 for the withdrawal or abandonment;

19 (3) the asylum seeker has been recognized as a
20 refugee by another country and can be sent or returned
21 to that country;

22 (4) the asylum seeker came directly or indirectly
23 to FSM from a country other than a country of their
24 nationality or their former habitual residence, that is
25 (i) a party to the Convention or (ii) not being a party,

1 complies with the principal of non-refoulement and has
2 policies and practices with respect to claims under the
3 Refugee Conventions and a human rights record which is
4 acceptable to the FSM;

5 (5) there are reasonable grounds for regarding the
6 asylum seeker as a danger to the security of the country
7 or the asylum seeker has been convicted by a final
8 judgment of a serious crime in the FSM and constitutes a
9 danger to the community;

10 (6) the asylum seeker is subject to extradition if
11 such extradition would not violate Section 305."

12 Section 18. Title 50 of the Code of the Federated States of
13 Micronesia is hereby amended by enacting a new section 317 to read
14 as follows:

15 "Section 317. Hearings. All hearings under this
16 Chapter shall be conducted as inquisitorial rather than
17 adversarial hearings. The hearing officer shall have
18 all the powers necessary to decide the matter and shall
19 have the aid and advice of any person. The rules of
20 evidence shall not apply. The hearing shall be public
21 unless the asylum seeker requests otherwise and a record
22 shall be made of the proceedings. The asylum seeker
23 shall receive notice of the hearing and shall be
24 expected to present his claim. The asylum seeker may be
25 assisted by counsel, the UNHCR or any other persons in

1 the hearing. Other procedures for hearings shall be as
2 set forth in regulations.”

3 “Section 19. Title 50 of the Code of the Federated States of
4 Micronesia is hereby amended by enacting a new section 318 to read
5 as follows:

6 “Section 318. Refugee Committee.

7 (1) A Refugee Committee is hereby established as
8 the appellate authority and final decision maker on
9 applications for refugee status. The Refugee Committee
10 shall consist of the Secretary of Justice or designee,
11 but not the Chief; the Secretary of Foreign Affairs or
12 designee, and a designee of the President. The members
13 of the Committee shall not receive any financial
14 consideration for their participation on the Committee
15 apart from pay and benefits received in the ordinary
16 course of their government employment.

17 (2) The Committees deliberations may be observed
18 and assisted by up to three observers conversant with
19 refugee matters or regarded as good decision makers,
20 such as a representative from UNHCR, local
21 organizations, the state governments, the national
22 Congress or traditional leaders. The observers shall
23 not be acting members of the Committee but may provide
24 comments on the Committees deliberations. The observers
25 shall be selected by consensus of the Refugee Committee

1 based on application to the Committee. The observers
2 shall not receive any financial consideration for their
3 participation on the Committee apart from pay and
4 benefits received in the ordinary course of their
5 government employment. The Committees deliberations may
6 not be delayed due to lack of observers.

7 (3) The Refugee Committee shall hear the following
8 matters: (a) an appeal of a determination on refugee
9 status by the Chief; (b) a petition to cancel refugee
10 status on the grounds of material fraud; (c) a petition
11 for cessation of refugee status due to change in
12 circumstances.

13 (4) The Refugee Committee may review all matters
14 denovo and shall have all powers necessary to determine
15 a matter, including holding hearings.

16 (5) If the asylum seeker is not granted refugee
17 status by the Chief, the asylum seeker may appeal the
18 decision to the Refugee Committee. The appeal must be
19 made within 15 days of the asylum seekers receipt of the
20 decision of the Chief; however, this time limit may be
21 waived by the Refugee Committee upon a showing of good
22 cause.

23 (6) Within sixty days of receiving an appeal or
24 petition, the Refugee Committee shall issue a written
25 decision setting forth the findings relevant to the

1 determination, specifying the evidence on which those
2 findings were based and giving the reasons for the
3 decision.

4 (7) Actions taken under this chapter are not
5 subject to judicial review until all proceedings in this
6 chapter are exhausted. Judicial review of actions take
7 under this chapter are limited to review for action
8 which is in violation of law or regulation.”

9 Section 20. Title 50 of the Code of the Federated States of
10 Micronesia is hereby amended by enacting a new section 319 to read
11 as follows:

12 “Section 319. Refugee entry permit. Every person who
13 is determined to be a refugee shall be issued a refugee
14 entry permit, granting them the right to live and work
15 in the FSM, to be valid as long as the refugee
16 determination remains valid; however, the entry permit
17 shall expire upon resettlement of the permit holder in
18 another in another country, subject to issuance of a new
19 entry permit as long as the refugee determination
20 remains valid.”

21 Section 21. Title 50 of the Code of the Federated States of
22 Micronesia is hereby amended by enacting a new section 320 to read
23 as follows:

24 “Section 320. Rights and duties of refugees. Every
25 refugee, so long as he remains within the FSM, shall

1 have the right to receive the treatment as is accorded
2 to refugees under the Convention on the Status of
3 Refugees (1951)."

4 Section 22. Title 50 of the Code of the Federated States of
5 Micronesia is hereby amended by enacting a new section 321 to read
6 as follows:

7 "Section 321. Persons who shall cease to be refugees.

8 (1) The determination of refugee status shall cease
9 if

10 (a) the refugee has voluntarily reavailed
11 himself of the protection of his or her country of
12 nationality;

13 (b) the refugee had lost his or her nationality
14 and has voluntarily reacquired his or her nationality;

15 (c) the refugee has acquired a new nationality
16 and enjoys the protection of the country of that new
17 nationality;

18 (d) the refugee has voluntarily become re-
19 established in the country that the person left or
20 remained outside of owing to fear of persecution; or

21 (e) the reasons for which the refugee sought
22 refugee protection have ceased to exist, unless the
23 refugee is able to invoke compelling reasons arising out
24 or previous persecution for refusing to return to the
25 refugee's country of nationality or former habitual

1 residence.

2 (2) A determination of refugee status may be found
3 to be ceased by the Refugee Committee upon a petition
4 for cessation and a hearing on the petition. A petition
5 for cessation of refugee status may only be brought by
6 the Chief."

7 Section 23. Title 50 of the Code of the Federated States of
8 Micronesia is hereby amended by enacting a new section 322 to read
9 as follows:

10 "Section 322. Cancellation of refugee determination.
11 A determination of refugee status may be cancelled by
12 the Refugee Committee upon a petition for cancellation
13 and a hearing on the petition. The only grounds for
14 canceling a determination shall be a finding that the
15 decision was obtained without certain withheld
16 information or as a result of information that was
17 fraudulent, forged, false, or misleading, where the
18 information is sufficiently material to have affected
19 the outcome of the decision on the refugee status, had
20 it been known earlier. A petition for cancellation may
21 only be brought by the Chief."

22 Section 24. Title 50 of the Code of the Federated States of
23 Micronesia is hereby amended by enacting a new section 323 to read
24 as follows:

25 "Section 323. Removal of asylum seekers not determined

1 to be refugees and refugees whose status ceases or
2 status is cancelled.

3 (1) Fifteen days after a decision of the Chief
4 denying refugees status which has not been appealed; or
5 immediately after a decision of the Refugee Committee
6 denying an appeal by the asylum seeker, the asylum
7 seeker's entry permit shall be revocable and the asylum
8 seeker shall be obliged to immediately leave the FSM.

9 (2) Immediately after a decision of the Refugee
10 Committee determining that a refugee's status has ceased
11 or is canceled, the refugee's entry permit shall be
12 revocable and the refugee shall be obliged to
13 immediately leave the FSM.

14 (3) The government may assist the asylum seeker or
15 former refugee to obtain travel documents and arrange
16 travel out of the country. If the asylum seeker or
17 former refugee refuses to depart voluntarily, the Chief
18 shall take whatever measures necessary to remove the
19 asylum seeker or former refugee from the FSM.
20 Deportation proceedings shall not be required prior to
21 removing the asylum seeker or former refugee. Should a
22 forcible removal be necessary, it shall be carried out
23 in a humane and dignified manner.

24 (4) If an asylum seeker or former refugee cannot be
25 removed due to reasons beyond their control, the Chief

1 may issue an extension of the asylum or refugee entry
2 permit until removal is effectuated.

3 (5) Asylum seekers and former refugees may seek
4 legal status in the FSM by applying for an entry permit,
5 other than an asylum or refugee entry permit, in
6 accordance with the laws and regulations of the FSM.
7 However, if the asylum seeker or former refugee is
8 unable to conform with the requirements of the laws and
9 regulations of the FSM, such as lack of proper
10 documentation, the asylum seeker or former refugee will
11 not be exempted from such requirements in order to
12 qualify for other types of entry permits."

13 Section 25. Title 50 of the Code of the Federated States of
14 Micronesia is hereby amended by enacting a new section 324 to read
15 as follows:

16 "Section 324. Illegal entry and presence of asylum
17 seekers. The national government shall not impose
18 penalties, on account of their illegal entry, or
19 presence, on asylum seekers who, coming directly from a
20 place where their life or freedom was threatened in the
21 sense of Section 303, enter or are present in the FSM
22 without authorization, provided they present themselves
23 without delay to the authorities and show good cause for
24 their illegal entry or presence."

25 Section 26. Title 50 of the Code of the Federated States of

1 Micronesia is hereby amended by enacting a new section 325 to read
2 as follows:

3 "Section 325. Durable solutions for refugees. The
4 government shall work with refugees to find the
5 following solutions or alternative solutions for long
6 term placement:

7 (1) Voluntary repatriation. The repatriation of
8 refugees shall take place at their free volition
9 expressed in writing or other appropriate means which
10 must be clearly expressed. The voluntary and individual
11 character of repatriation of refugees and the need for
12 it to be carried out under condition of safety to the
13 country of origin shall be organized in co-operation
14 with UNHCR and other members of the international
15 community.

16 (2) Resettlement. The government shall submit
17 information about the refugee to the UNHCR and/or
18 Convention countries and request UNHCR to resettle the
19 refugees and/or the Convention countries to accept the
20 refugees for settlement.

21 (3) Local integration. If voluntary repatriation
22 or resettlement are not available, the national
23 government shall work with the state governments to
24 settle the refugees in a local community. Upon request,
25 a refugee who settles in the FSM shall be issued travel

1

2

3

4

5

6