

# **Policy regarding Specific Residence Authorisation**

Updated policy – October 2020



MINISTRY FOR HOME AFFAIRS,  
LAW ENFORCEMENT AND NATIONAL SECURITY

## A. Background and Introduction

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

Apart from the two forms of international protection found in law (*Refugee Status* and *Subsidiary Protection*), Malta's protection system also included a national form of protection called *Temporary Humanitarian Protection* (commonly referred to as THP). THP was established in 2008 and is given to asylum applicants who do not satisfy the criteria for Refugee Status or Subsidiary Protection, but who nevertheless need to be protected either because they are unaccompanied minors; or because the person concerned should not be returned to his/her country of origin on medical grounds; or because the person should not be returned on other humanitarian grounds. While these rules were previously set out in policy by means to amendments to our national asylum legislation the said status is now statutory.

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

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

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

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

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

- i. Addressing the situation of a number of THPN certificate holders and other persons who do not have international protection and who cannot be or have not been returned to the country of origin;
- i. Reducing social exclusion amongst migrant communities and recognising the efforts of those migrants who are actively contributing to our society;

- ii. Taking action to implement the principles set out in the Migrant Integration Strategy and Action Plan Vision 2020.<sup>1</sup>

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

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

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

## **B. Revision of Policy**

Following the practical implementation of the policy by Identity Malta Agency since its commencement on the 15<sup>th</sup> October 2018, experience has shown that certain features need to be revisited in order to clarify certain situations that have emerged following such implementation.

Those applicants whose status for renewal is rejected in view of non-eligibility in line with the policy shall be offered the opportunity to return to their country of origin voluntarily. The applicant may also be given access to AVR (Assisted Voluntary Return Programme) so as to facilitate re-integration in the country of origin. In the absence of the possibility to effect a return to the country of origin by any means, including forced return, the applicant shall be referred to the Police Immigration Authorities to be issued with a Police identification document.

No new applications for SRA will be considered after the 31<sup>st</sup> December 2020. However, existing applications will continue being renewed in line with this document. In the event that an applicant's SRA is not renewed after 31<sup>st</sup> December 2020 it will not be possible for the former holder to re-apply. However, family members of an existing holder who fulfil the criteria indicated in this policy shall still be able to register as such even after the 31<sup>st</sup> December 2020. The latter also applies to children born to parents who are both beneficiaries of the SRA status.

## **C. Specific Residence Authorisation**

### **Definition and Content**

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

Persons who are granted a Specific Residence Authorisation shall receive:

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

### **Eligibility Criteria**

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

1. Applicant must have entered Malta in an irregular manner prior to the 1 January 2016 (i.e. by the 31 December 2015) and been physically present in Malta for a period of 5 years preceding the date of application. Persons who have entered Malta legally are not eligible for SRA, including persons who are in a relationship with individuals who have already been granted the SRA status.
2. Applicant must have his/her application for international protection finally rejected by the relevant asylum determination authorities;
3. Applicant must be of good conduct – the section *Disqualification Criteria* below refers in this regard.
4. Applicant must demonstrate that she/he has been in employment on a frequent basis, which is, having worked a minimum of 9 months per year during the 5 years preceding the application for a Specific Residence Authorisation. In exceptional circumstances, any other period immediately before or after to the said 5 year period may be taken into consideration to calculate the said employment period as long as this is in the aggregate of not less than 195 weeks. See note below in assessment guidelines.
5. Applicant must demonstrate integration efforts by participating in integration programmes.

### **Disqualification Criteria**

Persons who have been found guilty of an offence and sentenced to imprisonment for twelve (12) months in Malta or abroad shall not be granted a Specific Residence Authorisation. An applicant for

the status who is found guilty and sentenced to one (1) year imprisonment, even if with a suspended sentence, shall be automatically disqualified from obtaining SRA status.

The Police Authorities shall be consulted to advise on the *Fedina Penali* of each applicant before an SRA status is granted.

## **D. Assessment Guidelines**

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

### **Guidelines on the assessment of the criteria**

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

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

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

Identity Malta may consider this criterion in a favourable and holistic manner so as not to put undue pressure on the applicants, although every effort is to be made to obtain evidence as regards such other documents which could be utility bills, hospital appointments, *Police Identification Book*, medical records, employment history, documents issued by a recognised educational institution and any other documentation that Identity Malta deems fit in the circumstances, if these are made available.

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

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

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

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

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

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

- i. Employment need not necessarily be for a continuous 9 months, but an accumulation of 9 months within a year is sufficient. Hence on such renewal once an applicant fails to provide evidence that he/she was in employment for not less than 9 months (39 WEEKS) in the preceding two (2) year renewal period, then applicant should be considered as having failed the criteria, if no exceptional justification is provided. These applicants should be

- disqualified from having their SRA status renewed and should be therefore referred to the Police Immigration Authorities.
- ii. The period of employment may also be an aggregate of not less than 45 months over a period of 5 years.
  - iii. Employment need not necessarily be with the same employer.

Employment shall be assessed using documentation, including:

- Latest payslips issued by the applicant's employer;
- Updated Jobs Plus employment record;
- FSS Payee Statement of Earnings (FS3);
- VAT certificate (for self-employed applicants);
- SSC (blue) receipts and a Profit and Loss statement certified by warranted accountant (only for self-employed applicants);

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

*Pregnant women (only for single parents)* – consideration of the 9-month period of pregnancy of a previously employed mother and any other justified period post-partum shall be taken into consideration.

*Persons who have suffered a partial or permanent disability* and are, consequently, unable to work shall provide a certificate from an official Government-appointed medical consultant. Such certificate should clearly make reference to the gap/period that the applicant was unable to employ him/herself due to the injury/injuries sustained or treatment given;

*Persons with physical and/or mental health issues* must have their condition certified only by an official Government appointed medical consultant. The certificate should clearly refer to the situation/condition of the applicant indicating that person was unable to employ him/herself due to the injury/ies sustained and/or due to prevailing mental health issues;

*Persons in situations of domestic violence and/or abuse.* A declaration/assessment report by a government agency - such as from Agenzija Appogg - shall be provided to attest such circumstances.

*Pensioners* - Persons who reach the pensionable age are to be considered as vulnerable persons and should be granted this status.

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

Furthermore, persons who are in full-time education shall be exempt from this criterion until such time as they complete their full-time education. Identity Malta and the Immigration Authorities shall ensure (when consulted) that the persons mentioned above shall not be excluded from eligibility where justification has been provided.

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



This criterion shall apply to renewals of the Specific Residence Authorisation. When assessing this criterion, authorities shall take into account the applicant's integration efforts.

- i. Whether the applicant has submitted an integration request to the Intercultural and Anti-Racism Unit within the Human Rights Directorate (Ministry for Justice, Equality and Governance);
- ii. Certification in the Maltese or English languages obtained in Malta;
- iii. Certification for other specific integration courses, for example lifelong learning courses such as *Living and Working in Malta*;

A further automatic renewal subject to the criteria mentioned above is granted for another period of two years upon presentation of receipt for application to the *I belong* course (level 1) with the HRD if applicant has as yet not been granted the facility to attend for such course.

Where the person does not have the ability to undertake the course, the HRD may use other avenues in order to assess and follow up with the respective person as to whether such person has indeed integrated in Maltese society. The Directorate should then provide an assessment report to Identity Malta IMA Expatriates Unit Senior Manager upon such request. Such report should aid Identity Malta in assessing whether to grant applicants the SRA status.

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

## **E. Guidelines on the modalities of assessment**

### **Family Unity and the best interests of the child**

In its implementation of SRA Identity Malta Agency shall ensure that family unity is maintained on similar principles to those applicable in the Maltese asylum legislation provided that the family members had also entered Malta irregularly prior to 31st December 2015. Hence, the family members of a holder of SRA, that is, the spouse, the partner, who is in a stable relationship with the said holder and minor children, who have already been in Malta at the time the holder arrived in Malta irregularly, and who prove that their residence in Malta has been registered by a Maltese authority (including in particular by means of the Police Identification Document), shall be granted SRA even if they do not qualify for such status in their own right, provided that they:

- are dependents of the holder;
- are of good conduct; and
- Satisfy the integration measures set out in this policy.

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

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

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

Those family members

- who had entered illegally before 31 December 2015;
- who have THP or are failed asylum seekers and registered with the Police Immigration Office and;
- whose relationship with the person who has been granted SRA is genuine,

may be considered for SRA with the main sponsor.

## **ANNEX 1**

### ***Information Leaflet – Specific Residence Authorisation***

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

#### **Eligibility Criteria**

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

Applicant must demonstrate that she/he has been in employment on a frequent basis, which is, having worked a minimum of 9 months per year during the 5 years preceding the application for SRA or who have worked an average of not less than 195 weeks spread over a period of five (5) years. It is to be remarked that

- Employment need not necessarily be for a continuous nine (9) months, but an accumulation of nine (9) months within a year is sufficient; and
- Employment need not necessarily be with the same employer.

Applicant must demonstrate integration efforts by undertaking to participate in HRD programmes. This should be evidenced by documentation that shows:

- i. Integration certificate issued by the Intercultural and Anti-Racism Unit within the Human Rights Directorate (*I Belong* – level 1);
- ii. A request for an integration certificate to the Intercultural and Anti-Racism Unit within the Human Rights Directorate has been submitted;
- iii. Persons who are unable to attain a full or partial certification from HRD must be certified as such by the HRD directorate.
- iv. Certification in the Maltese or English languages obtained in Malta.

#### **Processing Of Application**

Following the submission of the documents shown hereunder to the Expatriates Unit within Identity Malta Agency, the application (Form HV1) shall be processed by the said Unit by means of the examination of the relative documentation and referring the request to the Police Immigration Section and other authorities as and when required.

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

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

## **Renewal of the SRA Status**

For the status to be renewed, applicant should apply two months prior to the expiry date of the residence permit, provided that evidence of residence in Malta for the previous two years, and of employment for a minimum period of not less than nine (9) months per year prior to submission of application, is included with the application.

## **Provisions concerning Family Units**

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

## **Documentation**

- i. Identification/travel document/s;
- ii. Birth certificate and/or Marriage Certificate;
- iii. Jobs Plus employment history and the applicant’s last three (3) payslips;
- iv. FSS Payee Statement of Earnings (FS3);
- v. VAT certificate (applicable for self-employed persons);
- vi. SSC receipts and Profit and Loss statement certified by warranted accountant (self-employed persons);
- vii. Letter giving background regarding residence in Malta following arrival in Malta and proof of continuous residence in Malta (such as renewal of yellow Police identification document, hospital medical appointments, utility bills, etc.)
- viii. Demonstration of integration efforts;
- ix. Lease Agreement and Rental Declaration Form.