

SPECIAL ISSUE

Kenya Gazette Supplement No. 63

2051

3rd May, 2016

(Legislative Supplement No. 36)

LEGAL NOTICE NO. 71

THE REFUGEES ACT, 2006

(No. 13 of 2006)

IN EXERCISE of the powers conferred by section 26 of the Refugees Act, 2006, the Cabinet Secretary for Interior and Co-ordination of National Government makes the following Regulations—

THE REFUGEES (RECEPTION, REGISTRATION AND ADJUDICATION) (AMENDMENT) REGULATIONS, 2016

1. These Regulations may be cited as the Refugees (Reception, Registration and Adjudication) (Amendment) Regulations, 2016.

2. The Refugees (Reception, Registration and Adjudication) Regulations, 2009, hereinafter referred to as the “principal Regulations” are amended in regulation 23 by inserting the following new paragraph immediately after paragraph (3)—

“(3A) An applicant whose application for refugee status is rejected shall be issued with a rejection letter in form 6A set out in schedule.”

3. The principal Regulations are amended in regulation 29 by inserting the following new paragraph immediately after paragraph (3)—

“(4) The Commissioner shall issue an asylum seeker who has completed a Refugee Status Determination process with a recognition letter in form 6B set out in schedule, pending determination of his or her refugee status.”

“4. The principal Regulations are amended by inserting the following new regulation immediately after regulation 35—

Residing outside a
designated camp

“35A. (1) A refugee or an asylum seek shall be required to reside within a designated refugee camp.

(2) A refugee or an asylum seeker who wish to reside outside a designated refugee camp shall apply to the Commissioner for Refugee Affairs for an Exemption.

(3) The Commissioner for Refugee Affairs after considering the application shall issue the applicant with an Exemption letter in form10 set out in the Schedule.”

5. The principal Regulations are amended in the Schedule by—

(a) inserting the following new forms immediately after form 6—

FORM 6A

(r.23)

REPUBLIC OF KENYA
DEPARTMENT OF REFUGEE AFFAIRS

P.O. Box 42227-00100

The Castle, James Gichuru

Road, Lavington, Nairobi

REF:

Date.....

Name of Applicant:

Case number no.:

Date of Notification:

REJECTION LETTER

Dear (applicant's full name in the order that it appears at DRA Registration)

We are writing with respect to your application for refugee status. At the time of interview, you indicated that you were a year old man/woman from..... You stated that you are applying for international refugee protection because You stated that you fear to return to.....

In order to be eligible for refugee protection under the 2006 Refugees Act of Kenya, you must establish that you are outside of your country of origin and are unwilling to return there owing to a well-founded fear of persecution. The persecution you fear must be for reasons of race, religion, sex, nationality, membership in a particular social group or political opinion. If you do not meet the criteria described above, you may still be eligible for refugee protection under the 2006 Refugees Act of Kenya if you are unable to return to your country of origin owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of your country of origin or nationality.

After a thorough assessment of your refugee claim and careful consideration of all available information, we regret to inform you that, the Department of Refugee Affairs has determined that you are not eligible for refugee protection under the 2006 Refugees Act of Kenya. This decision is based on the following determinations:

PART A: GROUNDS FOR REJECTION

REJECTION BASED ON LACK OF CREDIBILITY ON MATERIAL ELEMENTS OF APPLICANT'S CLAIM

Upon consideration of all of the available information, including explanations you have given, the Department of Refugee Affairs has determined that the information you provided on relevant and important points of your claim is not credible.

[State each material element of the Applicant's claim which was not accepted as true and provide the reasons for this finding. For each element identified, describe the credibility problem with reference to the relevant credibility indicator(s) and the evidence considered. Explain how any explanations provided by the Applicant for the credibility

problem were considered. Draw from your analysis in Part II of the RSD Assessment Form when completing this section.]

(a)

(b)

As a result of the credibility problems outlined above, these facts have not been accepted as true and could not be relied upon to support your refugee claim.

[If notwithstanding the credibility problems described above, some important and material elements of the Applicant's claim were accepted as true, select and complete any other paragraph below which reflects the reasons for the negative decision taken].

REJECTION BASED ON AN ANALYSIS OF THE GROUNDS UNDER SECTION 3(1)(a) OF THE ACT

Not Outside Country of Nationality

The Department of Refugee Affairs has determined that you are not outside of your country of origin, [name of country]....., and are therefore not eligible for refugee protection.

Protection Available in another Country of Nationality

The Department has determined that you have the nationality of more than one country [name each country of nationality]..... While the problems you have described in [country in which Applicant fears harm]..... are noted, you have not established that you are unable to obtain protection in each of the countries of which you are a national, specifically, [name of countries in which protection need not established]....., and are therefore not eligible for refugee status.

No Well-Founded Fear

On the basis of a thorough review of the available and generally accepted information regarding your country, the Department has determined that there is not a reasonable possibility that you will suffer serious harm if you return there.

[Briefly summarize the reasons why you have found that there is not a reasonable possibility that the Applicant would face serious harm. Include any conclusions you have made on the availability of state protection. Draw as appropriate from your analysis in Part III-1 of the RSD Application Form. If the statements of the Applicant regarding experiences of past persecution have been accepted as credible, refer briefly to these aspects of the claim and explain the facts relied upon to determine that the Applicant does not now face a risk of serious harm.].....

Harm does not Amount to Persecution

The Department has determined that there is a reasonable possibility that if you return to your country of origin you would experience [Summarize each of the forms harm you have determined would await the Applicant on return. This may or may not be entirely the same as the harm claimed by the Applicant and summarized in the opening paragraph.]..... This harm has been considered in its entirety and is not considered to be of a nature or seriousness as to constitute persecution. [Summarize the reasons why this harm is not persecution. If it is established that the

Applicant will face some interference with one or more of his or her human rights, a careful explanation should be given as to why this does not create an intolerable situation for the individual].....

[If the harm feared is prosecution, also select and complete the following paragraph:]

You may face prosecution and/or punishment for violation of a law of general application in your country of origin. Specifically, [Summarize the offence and the punishment that is reasonably possible]..... On the basis of the available information, the Department is unable to conclude that the law is persecutory or that it would be applied in a persecutory way to you.

No link to a Ground under Section 3(1)(a) of the 2006 Refugee Act of Kenya

The Department has determined that there is a reasonable possibility that if you return to the country of origin [Summarize the harm you have determined to be reasonably possible and the reason why the Applicant may experience that harm. The relevant facts established may not be identical to those claimed]..... However, this is not for reasons of your race, religion, nationality, membership in a particular social group or political opinion.

Availability of Flight or Relocation Alternative

Upon consideration of the situation in the whole of your country of origin and the nature of your refugee claim, the Department has determined that you are able to safely travel to and live in another part of your country of origin without fear of persecution. [Specify the region(s) identified and explain briefly why considered to be safe for the Applicant].....

Taking into account your personal background and experiences, the Department has determined that you can legally and safely return to this area without facing serious harm and that you could reasonably live in this area without undue hardship. [Refer to the specific factors you have relied on to find that relocation to the area would be both relevant and reasonable for the Applicant referring to COI relied upon].....

ALSO NOT ELIGIBLE UNDER SECTION 3(2) OF THE 2006 REFUGEE ACT OF KENYA

The Department has further determined that there is no reasonable possibility that you would face serious threats to life, physical integrity or freedom resulting from external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of your country of origin or nationality.

PART B:

APPEAL PROCEDURES

If you believe that the decision to reject your refugee claim has been reached because of an error, or there are new elements that are relevant to your claim, you may apply to have this decision reconsidered on appeal.

To request an appeal, you must complete the attached Appeal Application Form and return it to the Refugee Appeal Board at the following address: Maendeleo House, 7th floor, Monrovia Street, Nairobi Central Business District, within 30 days of the receipt of this Notification of Decision, as outlined in Section 10(1) of the 2006 Refugee Act of Kenya.

Yours sincerely,

COMMISSIONER FOR REFUGEE AFFAIRS

FORM 6B

(r.29)

REPUBLIC OF KENYA
DEPARTMENT OF REFUGEE AFFAIRS

P.O. Box 42227-00100
The Castle, James Gichuru
Road, Lavington, Nairobi

Ref: RFG/OPS.....

*Digital photograph – with
DRA wet seal*

Date:.....

REFUGEE RECOGNITION LETTER

Name:.....

Case number:.....

Nationality:.....

Date of birth:.....

Sex:.....

Place of birth:.....

This is to certify that the bearer of this letter and the xx persons whose names and photographs are shown overleaf are recognised as refugees by the Commissioner for Refugee Affairs under Section 3(1)(a) of the Refugees Act of Kenya 2006. These persons are of concern to the Office of the Department of Refugee Affairs and should in particular be protected from forcible return to a country where they face threats to their lives or freedom, pending issuance of a Refugee ID card as per Sections 14(a), 15(1)(a) of the Refugees Act of Kenya 2006 and Section 33(1) of The Refugees (Reception, Registration and Adjudication) Regulations, 2009.

This recognition letter expires on month..... and may be renewed upon request.
(one year validity)

Should you have any queries regarding this case, please do not hesitate to contact the Office of the Department of Refugee Affairs at the above address.

Thank you for your kind cooperation.

Yours sincerely,

COMMISSIONER FOR REFUGEE AFFAIRS