



UNHCR position on mixed Azeri-Armenian couples from Azerbaijan and the specific issue of their admission and asylum in Armenia

Introduction

UNHCR's attention has been drawn to several decisions in asylum cases of mixed Armenian-Azeri couples (ethnic Armenian husband, ethnic Azeri wife or wife from mixed origin) from Azerbaijan, whereby a negative decision was rendered with the motivation that the concerned asylum seekers have the possibility to settle in Armenia, even if they have never been in Armenia. This position, which is embodied in the Aliens Circular (Chapter C8; assessment of asylum requests of asylum seekers from Azerbaijan) is notably based on a country report prepared by the Ministry of Foreign Affairs in December 1999, which states that ethnic Armenians can obtain Armenian citizenship, even if they have never lived in Armenia. According to the same report, consultations with UNHCR and the Armenian authorities would have confirmed that the Armenian authorities would indeed grant citizenship to ethnic Azeri women married to ethnic Armenian men, even if they have never lived in Armenia.

As this policy seems to result from a misunderstanding of UNHCR's position on this question, the Office would like to clarify its position.

The following issues have to be considered in relation to this question and are developed below:

1. Provisions of the Armenian citizenship Law and the Law on Legal status of Foreigners applicable to ethnic Armenians.
2. Can refugee status be denied to those applicants on the ground that they can obtain Armenian citizenship?
3. Can asylum be denied to them on that ground, i.e.the issue of Armenia as a safe third country and meaning of the term "connection or close links", as per EXCOM conclusion 15.

1. Provisions of the Armenian citizenship Law.

The Republic of Armenia (further RA) Citizenship Law was adopted in 1995.

For refugees from Azerbaijan currently in Armenia, Article 10 (2) applies, which stipulates that "if a stateless person or former citizen of other USSR republics, who is not a foreign citizen, has been permanently residing in the RA and has applied for acquisition of the RA citizenship before 31 December 2003, s/he is recognised as the RA citizen". As refugees from Azerbaijan are former citizens of other USSR republics (i.e. Azerbaijan) and can be considered de jure stateless, they have an opportunity to be "recognised" as part of the initial body of citizens. This should not be confused with "acquisition" in line with Article 13 of the Law on Citizenship, which provides for affirmative treatment for acquisition of Armenian citizenship for ethnic Armenians. Based on Article 10 (2), the Government of Armenia has established a "facilitated procedure". (This is distinct from the "simplified way" of acquisition as per Article 13 of the Law on Citizenship.) According to the facilitated procedure, refugees can apply for citizenship with the local authorities and within ten days they can obtain Armenian passports – the only form of proof of Armenian citizenship for those over the age of 16. This process does not involve approval from any authorities whereas the "simplified way" of acquisition under Article 13 still requires approval from the President.

It should be noted that the "facilitated procedure" is in principle time limited. Under the current formulation, it is valid only till the end of this year. However, this deadline has been extended four times since the entry into force of the Law on Citizenship in 1995. Beyond Article 10 (2), the specific procedure itself has not been codified. Although we have little doubt about the Government's policy to continue to facilitate naturalisation of refugees from Azerbaijan currently in Armenia, the process has not been made sufficiently durable and foreseeable.

Article 13 of the Law on Citizenship stipulates "ethnic Armenians acquire the citizenship of Armenia in a simplified way". Under normal circumstances, the applicant for Armenian citizenship has to:

- (1) have resided in Armenia for the past three years:
- (2) be proficient in Armenian language and
- (3) be familiar with the RA Constitution.

Ethnic Armenians are exempted from the three-year residence requirement. Nevertheless, unlike the facilitated process under article 10(2), the application still has to receive presidential approval and the process may take more than one year. There is thus no automatic acquisition of citizenship by ethnic Armenians coming to Armenia.

Refugees from Azerbaijan do not obtain Armenian citizenship under the Article 13 procedure. This is more reserved for ethnic Armenians from outside of the former USSR republics.

2. Can refugee status be denied to those applicants on the ground that they can obtain Armenian citizenship?

Article 1(A) of the 1951 Convention provides that a person is a refugee if, for the reasons specified in this article, he "is outside the country of his nationality" (not a country of which he may acquire the nationality), and further provides that, "[i]n the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national" (not the countries of which he may become a national). The text of article 1 (A) thus clearly states that what matters for the purposes of the inclusion clauses is the nationality/ies that the persons actually possess/es -not the nationality/ies that the person may eventually acquire.

The same is confirmed by the wording of the cessation clauses. Article 1(C)(3) provides that the Convention shall cease to apply to any person falling under the terms of Section A if "[h]e has acquired a new nationality, and enjoys the protection of the country of his new nationality". Again, the text unequivocally indicates that the nationality should have been acquired. The mere possibility of acquiring a nationality is not sufficient to produce cessation of refugee status.

Refugee status can thus not be denied on the sole ground that an asylum seeker can acquire another nationality.

3. Can asylum be denied to them on that ground, i.e. the issue of Armenia as a safe third country and meaning of the term "connection or close links", as per EXCOM conclusion 15.

As stated in many policy documents and latest in its Summary Observations of January 2003 on the amended Proposal by the European Commission for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (COM(2000) 326 final/2, 18 June 2002), UNHCR takes the view that removal of an asylum-seeker to a third country should not take place unless the following conditions are met:

- that the third country has *expressly* agreed to admit or re-admit the person to its territory and to consider the asylum application;
- that the third country will protect the asylum-seeker against *refoulement* and will treat him or her in accordance with recognised basic human rights standards until a durable solution is found, namely that the country is "safe" for the particular applicant; in this context, accession to the 1951 Convention and its 1967 Protocol, and actual State practice and compliance remain a critical factor;
- that the applicant has already a connection or close links with the third country so that it appears reasonable and fair that s/he be called upon to first request asylum there; in this respect, the well-founded intentions of the asylum-seeker should as far as possible be taken into account.

Without these safeguards, asylum-seekers may easily find themselves "in orbit". Whether a country is "safe" or not, is not a generic question which can be answered for any asylum-seeker who has set foot in that particular country. The analysis whether the asylum-seeker can be transferred to a third country

for determination of the claim must be made on an individualised basis. The burden of proof does not lie with the asylum-seeker to establish that the third country is unsafe, but with the country that wishes to remove the asylum seeker from its territory.

The question whether the Armenian ethnic origin of an asylum seeker can be considered to be a « connection or close link » so that it appears reasonable and fair that s/he be called upon to first request asylum in Armenia can, in our view, not be answered in a general manner, without considering the specific circumstances of the applicants. The mere fact that, by operation of the law, the applicants may be eligible for Armenian nationality, does not prove that they have an effective link with that country, particularly if they have never lived there.

The following considerations concerning the situation of refugees from Azerbaijan in Armenia should be taken into account :

During the influx of refugees from Azerbaijan (1988 - 1992), Armenia recognised them as refugees on a prima facie basis. Refugees were registered with the designated governmental structure, today, the State Department for Migration and Refugees (further: DMR).

If there is no registration with the DMR, there is no legal ground for Armenia to admit the person concerned. The official view of the DMR in Armenia is that, should they arrive in Armenia for one reason or another, they would have to go through individual refugee status determination as per the Law on refugees, as any other newly arriving asylum-seekers. UNHCR has no information on such cases but in practical terms, one cannot exclude the possibility of some ad hoc decisions and arrangements made in favour of ethnic Armenians originating from Azerbaijan. However, we have little information on this kind of ad hoc practices.

Today, it is widely believed that most of the remaining Azeris are of mixed marriage background and/or elderly. The number is not known. It is also believed that the remaining Azeris keep low profile. According to NGOs, they feel relatively safe and secure as long as they remain in their own community. Their neighbours are aware of their ethnic background but this does not normally pose any problem. The key issue is that they have never left Armenia since the conflict started and are simply accepted as part of the community. There is no guarantee, however, that the same level of acceptance would be there if an Azeri individual should return after several years of absence or arrive there having never been in Armenia. In the past years, UNHCR has not been made aware of any mistreatment of ethnic Azeris. However, this does not categorically assert that there is no security risk for ethnic Azeris. Precisely because of their ethnicity, remaining Azeris maintain discrete posture. They may not wish to unnecessarily expose themselves by reporting mis/maltreatment by Armenians. Therefore, in comparison with ethnic Azeris who have remained in Armenia, one cannot exclude the possibility of the higher risk for ethnic Azeris - even with Armenian

spouses - returning to Armenia after many years of absence or sent there having never been in Armenia.

From the perspective of refoulement, it is safe to assume that the Armenian authorities would not resort to forceful return of ethnic Armenians to Azerbaijan while it is simply impossible to conjecture if the same applies to ethnic Azeris who have never resided in Armenia. However, this alone should not constitute the reason for sending them to Armenia for the reason stated above with regard to the potential security risks associated with ethnic Azeris.

Regarding the assistance provided by the Armenian authorities to ethnic Armenians:

At the time of their influx in 1988 - 92 and afterwards, the Armenian government was indeed receptive and generous towards Armenian refugees from Azerbaijan. In the beginning, refugees were accommodated in temporary shelter and provided with humanitarian assistance. Over a decade after their flight, however, the resources available to solve the refugee problem, much affected by the current dire economic situation of the country, have dwindled to a minimum. The shelter problem is so acute for refugees now that the government claims that there is a waiting list of some seven hundred refugee families to be accommodated in sub-standard communal centres. UNHCR has a limited shelter project to provide permanent housing to vulnerable refugees in communal centres. But the project addresses only a small portion of the entire problem and is being scaled down. Against this background, any "new arrival" or "returned refugee" will certainly face the immediate shelter problem unless he/she can have a private arrangement with his/her relatives and friends.

Furthermore, the country's dire socio-economic situation does not really allow the ordinary people to spend their own meager resources to help the others. While the family ties are strong in Armenia, many refugees are not part of the closely knit family networks of Armenia. Ethnic Armenians from Azerbaijan have significantly different social background from their counterpart in Armenia. For instance, most ethnic Armenians in Azerbaijan do not speak Armenian fluently and prefer to communicate in Russian. Most of the refugees have urban background, coming from major urban centres in Azerbaijan such as Baku and Smugait. Given this difference in background between the refugee population and the local population (e.g. language, profession, etc.) some refugees even feel alienated from the rest of the society. One can thus often question whether these persons would have a genuine link to the republic of Armenia.

Conclusion

UNHCR believes that ethnic Armenians who have been previously registered in Armenia as refugees from Azerbaijan can be re-admitted to Armenia. This view is repeatedly confirmed by the Government of Armenia. However, the delicate situation concerning ethnic Azeri population as described in the note calls for a more cautious approach towards mixed marriage cases even if they have been registered as refugees in the past. For those who have never set a

foot in Armenia, Armenian ethnicity alone should not be considered the determining factor for close link and connection allowing “return” of these individuals. As for ethnic Azeris who married to ethnic Armenians originally from Azerbaijan, there is no reasonable ground to categorically conclude that mixed marriage couples from Azerbaijan can find effective protection and a durable solution, especially if they have never been present in Armenia in the past. Against this background, UNHCR strongly recommends not to reject claims for asylum submitted by Azeri citizens of mixed origin and mixed couples from Azerbaijan on the sole basis that they have a possibility to settle in Armenia.

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