

Examining the Current Legal Status of Afghan Refugees in Iran

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Abstract

The present study is conducted to evaluate the current legal status of Afghan refugees in Iran. The purpose of choosing this subject is to examine the current legal status of Afghan refugees in Iran in terms of economic, security, educational, and residential constraints. The methodology is descriptive-analytical and library regarding the main question- How is the current legal status of Afghan refugees in Iran in terms of economic, security, educational, and residential constraints in recent years? - and the main hypothesis- the current legal status of Afghan refugees in Iran is desirable in terms of economic, security, educational, and residential constraints in recent years. Moreover, the results of the sub-hypotheses show that based on the legal provisions of Article 180, current legal status of Afghan refugees in Iran is desirable in terms of economic constraints for them and their families in recent years. The results show that Afghan citizens, like the Iranian people, have favorable safety. Moreover, in accordance with Article 120 of the Labor Law enacted in 1990, Afghan people cannot work in Iran, unless they firstly, have a visa with the right to work and secondly, get a work permit according to the relevant laws and regulations. In addition, Afghan refugees have the right for free schooling like Iranian people, and the results also show that the most important legal effect of acceptance of asylum is the permission to stay where there is no limit for Afghan people according to the new laws.

Key words: Afghan refugees, Economic, Security, Education, Residence

INTRODUCTION

Foreign rights issues have always been discussed during history and different opinions are expressed about it. Influenced by these ideas and theories, each country has considered certain legal rights for foreigners. Some countries consider human personality and rely on it so consider extensive rights for foreigners. In contrast, there are the theories that focus on the political sovereignty of each country asserting that each country has a political organization and a sovereign, and all this sovereignty and independence rely on its citizens. In the case of foreigners, whether natural persons (individuals who are residents of foreign countries) or legal entities (companies and foreign companies), the principle is that they have all the rights

enshrined in the Iran law, unless the law explicitly deprives them of some of those rights (Ghasemi, 2004, 45).

In Iranian law, the issue of the rights of Afghan refugees is the function of “reciprocity” more than anything else. In other words, the Iranian government will behave a foreigner the same as his government would behave with the citizens of Iran. This can be seen in many parts of laws.

For example, in the discussion of Iranian citizenship, Article 978 of the Civil Code stipulates, “The children who are born from the citizens of the countries whose governments consider the children born from Iranian citizens as their own citizens, and consider their return to Iranian citizenship subject to permission, will be treated the same.” In addition, the issues of memorandum of understanding and joint ventures between the two countries will play an important role in the legal approach towards foreign nationals. An important point seen in the current Iranian laws and regulations is that the Law on Entry and Residence of foreign nationals is old. As mentioned before, the governance of a country takes shape in terms of its domestic laws and regulations. Strengthening border

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security, which is one part of the actions of the territorial sovereignty of the country, is directly linked with the phenomenon of foreigners. Therefore, setting accurate and updated regulation, like entry and residence or exit and deport, for these people while setting some restrictions to prevent unauthorized entry to Iran will reduce the number of refugees in Iran. The importance of this issue and the necessity to create changes in the mentioned law make the responsibility of the legislature in this regard more evident than ever. Thus, considering that due to the existence of the same international laws for refugees, especially Afghan refugees that have greater demand for asylum because of the border with Iran, this study seeks to examine the current legal status of Afghan refugees in Iran in terms of security, economic, educational and residence restrictions. The main purpose of this paper is to examine the current legal status of Afghan refugees in Iran in terms of economic, security, education, and residence constraints.

CONCEPTUAL FRAMEWORK

Refugee Rights

A refugee has the right to safe asylum. However, international protection involves more than physical safety. Refugees should at least have the same rights and basic assistance that foreigners with legal residence benefit from: the rights to freedom of expression, movement, and repudiation of torture and degrading treatment are of these rights. Economic and social rights of refugees should be respected equally. Refugees should have access to medical and education services and the right to work. In certain cases when adequate state resources are not available in a timely manner- like the sudden arrival of a large number of displaced people- United Nations High Commissioner for Refugees (UNHCR) and other international organizations offer assistance such as grants, food, tools and shelter, and building schools and medical centers. UNHCR does its best to make the refugees self-sufficient as soon as possible through projects such as income-generating activities and vocational training programs (Emami, 2009, 44).

History of asylum

With the beginning of hard battles between troops of the former Soviet Union and Afghan Mujahideen militants, a large number of Afghan people left Afghanistan and took refuge in various countries to rescue from war and poverty. Most of them chose Pakistan, a country in South and East of Afghanistan; and Iran, in the west of the country to migrate. Among those who suffered the most from the war, Pashtuns took refuge mostly in Pakistan and Tajiks and a number of the Hazaras of Afghanistan took refuge in Iran. Because of the

revolution of Afghanistan in 1978 and the Soviet invading to this country, hundreds of thousands of people came to Iran from this country. According to statistics, three million Afghan refugees entered Iran gradually (Gayemi, 2013, 69).

Refugee Legal sources

Asylum is recognized in the Constitution of the Islamic Republic of Iran. Article 155 of the mentioned law states, "The government of the Islamic Republic of Iran may grant political asylum to those who seek refuge, unless they are known as criminals and traitors under Iranian law." Regulations of refugees adopted on December 16, 1963, convention related to the status of refugees on 28 July 1951, and protocol related to the status of refugees dated 31 January 1967, which the Iranian government joined in 1975 over a single article with the approval of parliament, specify the issues regarding the quality of granting asylum and the rights and duties of refugees in Iran (Mohajer, 2012, 48).

Related Research

In a study, Saidi (2015) examined the rights of foreign nationals in Iran and the results of the study show that in the Iranian law, the right of foreign nationals is a function of "reciprocity" more than anything else. In other words, the Iranian government will behave a foreigner the same as his government would behave with the citizens of Iran. Immigration is as old as human history: a phenomenon that, in the past, has sometimes been the reason for disagreements and widespread conflict between states and government to seize more immigrants. However, population growth, limited food resources, and the spread of thoughts based on nationalism have changed the governments' views towards migration. Prior to these major changes, governments used to consider migration as a phenomenon to develop human resources and consequently higher income. The power due to population increase, especially in the military, used to reinforce this positive view.

The study entitled "The problems of Afghan refugees in Iran" conducted by Mohajer et al. (2012) acknowledges that any person who is allowed to live in the community needs work permit not to go stray, and this is a problem that our immigrants have always faced.

In a study, Abdollahi et al. (2009) examined the law governing the personal status of foreigners residing in Iran. The results showed that in terms of personal status, qualifications, as well as the rights of inheritance within treaties, foreign nationals residing in Iran follow the laws and regulations of their respective governments.

MATERIALS AND METHODS

As this study is an analytical-comparative one, scientific articles and library resources are used to collect the required data and information. Thus, the questions and hypotheses are as follows:

Research questions:

The main question: How is the current legal status of Afghan refugees in Iran in terms of economic, security, educational, and residential constraints in recent years?

The first sub-question: How is the current legal status of Afghan refugees in Iran in terms of security constraints for them and their families?

The second sub-question: How is the current legal status of Afghan refugees in Iran in terms of economic constraints for them and their families in recent years?

The third sub-question: How is the current legal status of Afghan refugees in Iran in terms of educational constraints for them and their families in recent years?

The fourth sub-question: How is the current legal status of Afghan refugees in Iran in terms of residence constraints for them and their families in recent years?

Hypotheses

In order to answer research questions, the following hypotheses were designed.

The main hypothesis

The current legal status of Afghan refugees in Iran is desirable in terms of economic, security, educational, and residential constraints in recent years.

First sub-hypothesis

The current legal status of Afghan refugees in Iran is desirable in terms of security constraints for them and their families in recent years.

Second sub-hypothesis

The current legal status of Afghan refugees in Iran is desirable in terms of economic constraints for them and their families in recent years.

Third sub-hypothesis

The current legal status of Afghan refugees in Iran is desirable in terms of educational constraints for them and their families in recent years.

Fourth sub-hypothesis

The current legal status of Afghan refugees in Iran is desirable in terms of residence constraints for them and their families in recent years.

FINDINGS

A Look at Some of the Fundamental Rights of Afghan Citizens in Iran

Given the above, it is possible to study the rights of Afghan citizens in Iran more accurately. International covenants and conventions have considered some rights as basic human rights required by foreign nationals, including Afghan migrants and refugees. Some of these rights include the right to respect for personal status, freedom of entry, stay, and exit, acquisition of movable and immovable property, referring to court, and the right to paid employment. Before dealing with the status of these rights in Iran, a point should be reminded as follows. Anything confirmed about the rights of foreign nationals in the laws of our country is established only when the immigrant has either entered Iran through legal ways and according to the statute, or his status is in line with the legal definition of refugees and displaced people (Nasehi, 2003, 88).

Personal Status of Afghan Refugees

Personal status of Afghan refugees living in Iran is according to the law of their relevant government. Article 7 of the Civil Code stipulates that personal status, qualifications, and the rights of inheritance within treaties for foreign nationals residing in Iran follow the laws and regulations of their respective governments.

Employment of Afghan Refugees

After granting asylum, one of the most important issues faced by the refugee is employment to earn a living and not to be a burden over the adopting government. Paragraph 1 of Article 17 of the convention related to the status of refugees states that concerning the right to work and receive wages, in such cases, any contracting state will have the most desirable behavior to nationals of foreign states that is usually adopted towards refugees living on its soil land (Sarvari Moghadam, 2004, 86).

Sanction of Non-compliance with the Rules on Work Permits

According to Article 128 of the Labor Code, prior to signing any agreement resulting in the employment of foreign experts, employers are required to inquire the views of the Ministry of Labor and Social Affairs about the possibility of allowing the employment of foreign citizens. Moreover, they should sign the employment contract after obtaining the consent of the Ministry of Labor and Social Affairs. Article 181 of Labor Code states that employers who employ foreign nationals without a work permit, employ the ones whose period of validity of license has expired, accept foreign nationals in something other than what is listed on their work permits, or do not inform the Ministry of Labor and social Affairs in cases when the employment relationship of foreign citizens with the employer is interrupted shall be sentenced to imprisonment

from 91 to 180 days considering the situation and means of the offender and the degree of the offense (Dorudian, 2003, 45).

The Rights of Afghan Refugees in Iran's Legal System

Afghans' refuge in Iran follows the regulations of the Interior Ministry, and a refugee is known in the following ways:

1. Person or persons crossing the border into Iran
2. Submitting a request of asylum to enter Iran by one of the foreigners residing outside Iran
3. Submitting a request by foreigners residing in Iran

Dealing with refugees' affair is in joint qualification of the Interior Ministry and the Ministry of Foreign Affairs. In the event of reception of asylum by the Iranian government, residence booklet is given to the refugee. The mentioned booklet is the identification of the refugee registered in the law enforcement agencies of the residence area of refugee and must be renewed every now and then. Among the rights of refugees under the 1967 Convention, some points are mentioned (Fadavi, 2002, 89).

Government Commitments and its International Obligations

Responsibilities given tangibly to the government regarding refugee support are shaped in the form of the 1951 Geneva Convention and 1967 Protocol. As we know, the provisions of the Convention and the related Protocol apply only to its member states. The fundamental problem in refugee protection is that countries that have not accepted the Convention and its 1967 Protocol have not assumed clear and specific commitment and responsibility for it and some of the leading countries in receiving refugees have not adopted these legal texts (Gayemi, 2013, 156).

CONCLUSION

According to the assessments of the research subject, the questions, the hypotheses proposed, and according to studying the current legal status of Afghan refugees in Iran, the following results were obtained, which are discussed briefly.

- The results show that the current legal status of Afghan refugees in Iran in terms of economic, security, educational, and residence constraints is desirable in recent years.
- Afghan citizens have been barred from practicing notaries and Deputy Registrar in Iran. Employment of foreign doctors in the country is subject to certain conditions and limitations. According to the law of "immovable property of foreign nationals," land sales and registration in the name of foreign nationals is nearly banned.

- Article 7 of Iran Civil Code stipulates that, "personal status, qualifications, as well as the rights of inheritance within treaties for foreign nationals residing in Iran follow the laws and regulations of their respective governments.
- Afghan foreign nationals in Iran will have a right to choose a lawyer, according to Article 35 of the Constitution. In summary, it could be stated that Afghan foreign nationals in Iran enjoy all the rights that citizens do, except for cases restricted or prohibited by law. In this respect, the right of Afghans foreign nationals in Iran is not different from other immigration countries.
- According to Article 218 of the Civil Procedure Law, Afghan nationals, including the main claimer or entering a claim as a third party, in case of the request of the other party, they must pay compensation for legal fees and lawyer's fee, to which may be condemned.
- As far as the law and security of the country allow, Afghan refugees are free to choose housing like foreign nationals.
- According to Note 1 of Article 13 of this law, Afghan refugees will use the same rights for foreign nationals in the refugee acquisition of movable and immovable properties.
- According to Article 120 of the Labor Law enacted in 1990, Afghan nationals cannot work in Iran, unless they have a visa with specified work right firstly and receive work permits according to the relevant laws and regulations secondly.
- The most important legal effect of acceptance of asylum is the residence permit. The person whose asylum request is accepted has the right to stay in Iran, and in this case, the refugee must be treated with the most favorable treatment that foreign refugees residing in Iran receive.
- Afghan refugees have the free schooling condition as Iran's people, and with the pursuit of the presidency and the Ministry of Education, from the academic year 2014-2015, students of foreign nationals residing in Iran pay no fee for enrollment at schools.
- Afghan refugees are deprived of some public rights such as the right to vote and elect, to be elected, government employment, public and non-governmental occupations, jobs in public service, and participation in the military and law enforcement.

Recommendations

- Asylum is because of an international legal vacuum, lack of uniformity in different countries, and lack of an international organization to improve this problem. We can hope to reduce it when various governments work together with more coordination. Since the causes of multiple- citizenship are somehow known, it seems

that preventing its creation by governments and the international community is conceivable.

- It is recommended that governments' tendency to solve the problem of asylum be considered because without the governments' will no solution could be found to eliminate or limit this problem.
- According to international agreements of the countries, it is recommended that through two methods, the nationality due to non-original nationality, including nationality gained by marriage and acquired nationality could be prevented. This means that if a person with the original citizenship has acquired a new nationality, or a citizen of one country acquires a new nationality through marriage to a citizen of a foreign state without losing previous citizenship- considering that according to Article 961 of the Civil Code, Afghan citizens cannot enjoy the rights they are deprived of in their own country due to their recognition in Iranian law- the right conditions are created so that by obtaining the proper guarantee, these restrictions are resolved via legal channels.
- Based on the "law of immovable property by foreign nationals," Afghan citizens like all foreign nationals in the country are deprived of owning agricultural lands. Moreover, apparently, the ownership of land is limited to homes and even it needs Iranian government's official permission, so conditions should be created that regarding the mentioned law, convention laws are applied as well.
- Since under Article 180, Standing Committee determines the workplace and residence of the refugees, arrangements should be done for better organizing and using the ability of some refugees, prevention of non-compliance of asylum laws by the refugee, and determining the place of work and employment of refugees with their own opinions.
- One of the requirements for employment of refugees is having three years of residence and having a wife and child, so it is suggested that changes be made in existing laws for helping these people more.
- According to Article 7 of executive regulation of

Article 129 of the Labor Law enacted in 1992, foreign nationals refugees (refugees) - with valid work permits-whose contract with their employer is terminated for any reason are subject to renew the work permit. To prevent confusion and to help the families of these people, it is recommended that changing the work permit with a new employer be prevented.

- In accordance with Article 13 of refugee law, granting citizenship to the refugees that fully comply with rules and regulations during their stay in Iran will be considered favorably, so it is recommended that proper informing be provided for refugees in this regard.
- As Afghan refugees are deprived of rights such as the right to vote and elect (the presidency, Islamic Consultative Assembly, etc.) to be elected, government employment, and membership in the army, it is recommended that these rights be made available to them if they accept Iran's refugee laws and get Iranian nationality with appropriate guarantees.

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