

Immigration and Refugee Board of Canada

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> Responses to Information Requests

Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

12 June 2014

CUB104901.FE

Cuba: The application of government measures for individuals who have exceeded the time limits for returning to the country, namely 11 months before January 2013 and 24 months as of January 2013, and the treatment of such individuals, if any

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Legislation

The Decree Law 302 of 2012 states the following:

[translation]

Article 9.2: Cuban nationals are considered to have emigrated when they travel abroad for personal matters and reside abroad continuously for a period exceeding 24 months without proper authorization, or when they take up residence abroad without complying with the existing migration regulations (Cuba 2012a).

Resolution 44 of 2012, which outlines the procedure for Cubans who are considered emigrants and who want to return to live in Cuba, indicates the following:

[translation]

ONE: The purpose of this resolution is to establish the procedure whereby Cuban citizens who have emigrated submit applications for residence in their national territory.

TWO: Cuban émigrés requesting residence in the country at Cuban consulates abroad or at the applicable Ministry of the Interior Processing Office, must complete the following steps:

- a. Submit the application.
- b. Submit their current passport.
- c. Inform the reference person [government employee] that they commit to ensuring their accommodation and upkeep as appropriate in Cuba, until such time as they have their own income and housing.
- d. Pay the consular tax or fee, as applicable, in accordance with current legislation.

THREE: Applications by the persons referred to in the previous section must provide information on the means used to emigrate and the reasons for requesting residence once again in Cuba, as well as identifying information and valid passports for minors or disabled persons accompanying them.

FOUR: Rulings on applications for residence in Cuba submitted by Cuban citizens who have emigrated are made by the Directorate of Immigration and Foreign Nationals within 90 days, and notification thereof is

provided by the Cuban consulate or Ministry of the Interior processing office to which the application was submitted.

FIVE: Where Cuban citizens who have emigrated receive notification of the approval of their residency in the national territory, they will also be provided with a document for submission to the corresponding Ministry of the Interior administration office for the registration and updating of their personal information.

SIX: Persons serving prison sentences as emigrants may appoint a relative to represent them in the proceedings referred to in this resolution. (ibid. 2012b).

According to an article published in the Spanish news site Público.es, there are [translation] "tens of thousands" of repatriation requests, but wait times are [translation] "several months" long, since the authorities must review each request case by case (28 Dec. 2013).

Decree Law 302 of 2012 also states the following:

[translation]

Article 24.1: The following persons will be considered inadmissible to enter the national territory:

- a. Persons with a history of terrorist activities, human trafficking, drug trafficking, money laundering, weapons trafficking or who have committed other activities that can be prosecuted at the international level;
- b. Persons involved in crimes against humanity, human dignity, public health, or who have committed acts that can be prosecuted under international treaties to which Cuba is a party;
- c. Persons who organize, promote, or carry out hostile actions against the political, economic and social founding principles of the Cuban government;
- d. Persons who are considered dangerous, for reasons of national defence or national security;
- e. Persons who are prohibited from entering the country after being deported or declared undesirable;
- f. Persons who fail to comply with the Migration Act, its regulations or supplementary provisions for entering the country (Cuba 2012a).

The website of the Cuban Special Interests Section in Washington, DC, notes the following regarding the application for residence-also called the application for repatriation and PE-4-for individuals who have left the country temporarily and have exceeded the maximum stay of 24 months abroad:

[translation]

- All documents (originals and notarized translations) that justify the applicant's status must be enclosed with the application letter. ...
- It is essential for relatives in Cuba to guarantee before a notary, with the required documentary evidence, that they assume responsibility for the applicant's accommodations and food until the applicant can meet his or her own such needs.
- The original and a copy of the application form must be provided ...
- Two passport sized photographs must be provided.
- The applicant's criminal record in the United States, with a notarized Spanish translation, must be provided.
- Two US\$20 money orders (one for the application and one for administrative fees) must accompany the application.
- Once the approval is received, the applicant shall be informed and will then be required to send a US\$60 money order and their Cuban passport in which the permit will be affixed, allowing entry to Cuba (PE-4).
- Since residency applications are analyzed case by case, no response time is guaranteed... (ibid. n.d.a).

The website of the Embassy of Cuba in Ottawa states that to file a PE-4 Repatriation Application, the applicant must provide the original and a copy of the application form, a chest X-ray and AIDS blood test results, their criminal record and photocopy of their passport (ibid. n.d.b).

According to sources, around 1,900 emigrants have submitted repatriation applications (Agencia EFE 24 Sept. 2013; AP 25 Sept. 2013) since the new law came into force in 2013 (ibid.). Other sources report that, according to official figures, 3,500 emigrants have returned to the country (*El País* 14 Jan. 2014; Público.es 28 Dec. 2013). According to sources, Colonel Lamberto Fraga Hernández, Assistant Director of the Directorate of Immigration and Foreign Nationals (Dirección de Inmigración y Extranjería, DIE), allegedly stated, [translation] "fundamentally, we take into consideration the willingness of the person to reside in

Cuba" (Agencia EFE 24 Sept. 2013; ElBoletín.com 27 Sept. 2013). He added that the emigrants who return to live in Cuba [translation] "may reside in Cuba and travel abroad under the same conditions as Cubans, or continue living in the country they previously lived in" (ibid.; Agencia EFE 24 Sept. 2013). ElBoletín.com, a current affairs website from Madrid, cites a jurist from Cuban customs who allegedly explained that there is no legal term, such as [translation] "repatriated," to designate emigrants who return to Cuba, and that they can return to live on the island [translation] "under the same conditions and with the same duties and obligations as other Cubans" (27 Sept. 2013).

2. Treatment of Émigrants upon Their Return to Cuba

Information on the treatment of emigrants after they return to Cuba could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. However, the information below may be useful.

According to the United States Department of State's *Country Reports on Human Rights Practices for 2013* on Cuba,

The law provides for imprisonment of up to three years or a fine of 12 to 80 CUC (\$12 to \$80) for unauthorized departures, the overwhelming majority of which were by sea. Nonetheless, most persons caught attempting unauthorized departures were detained for no more than two to three weeks and fined. In the case of military or police defectors or those traveling with children, the punishment could be more severe. Jail terms were also more common for persons attempting to flee to the United States through the Guantanamo U.S. Naval Station.

Under the terms of the 1994 U.S.-Cuba Migration Accord, the government agreed not to prosecute or retaliate against migrants returned from international or U.S. waters, or from the U.S. Naval Station at Guantanamo, after attempting to emigrate illegally if they had not committed a separate criminal offense. The government prevented independent monitoring trips of repatriated Cubans outside of Havana. Some would-be migrants alleged harassment and discrimination such as fines, expulsion from school, and job loss, but others reported more severe punishment. (US 27 Feb. 2014, 20).

The US Coast Guard's Internet site reports that, during the 2014 fiscal year, the agency denied 1,835 migrants entry, including 890 Cubans, compared to 2,094 migrants, including 1,357 Cubans, during the 2013 fiscal year (US 7 May 2014). Further information on the situation of these individuals could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: Attempts to contact researchers from the following organizations were unsuccessful: Center for Hemispheric Policy, University of Miami; Department of Global and Sociocultural Studies, Florida International University; School of International Service, American University; Facultad Latinoamericana de Ciencias Sociales – FLACSO; Council on Foreign Relations.

Attempts to contact representatives from the International Organization for Migration were unsuccessful.

Internet sites, including: Amnesty International; British Broadcasting Corporation; CaféFuerte; *Clarín*; Cuba – Consultoría Jurídica Internacional, Gaceta Oficial; Cuba Encuentro; Cubanet; *Diario de Cuba*; *Diario las Américas*; ecoi.net; El Comercio; *El Nuevo Herald*; Factiva; Fédération internationale des ligues des droits de l'homme; Freedom House; Global Post; Granma Internacional; *Havana Times*; Human Rights Watch; International Crisis Group; Jamaica Gleaner; Lainformación.com; *Los Andes*; Martín Noticias; *Miami Herald*; *The New York Times*; *Periódico am*; United Nations – Office of the High Commissioner for Refugees, Refworld, ReliefWeb; United States – Department of Homeland Security; SvD Nyheter.

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