Background

States have a right under international law to control entry, exit and the conditions upon which a non-citizen may remain in the State. With an estimated 50,000 Irish immigrants in the United States with an irregular migration status, it is important that Irish law deals compassionately with issues relating to migration status. This Bill seeks to provide a workable and limited solution to persons who may have made refugee, subsidiary protection and/or leave to remain applications, which have been under consideration for a period of four years or more. This Bill also seeks a humane solution for those with deportation orders outstanding, but not effected for a significant period of time.

In recent months, there have been significant concerns relating to the effectiveness of the protection system in Ireland. For example, 2,441 persons are currently residing in direct provision centres for a period of four years or more. The proposed introduction of the single protection procedure for those seeking protection is very welcome. In addition, the appointment of respected independent experts to the Working Group on the Protection System and Direct Provision, chaired by Judge Bryan McMahon may also result in positive changes to the protection system overall.

There are many complex reasons why individuals have not had final determination of status over many years or why deportation orders may not have been implemented. This Bill seeks to ensure that when the newly reformed protection process is introduced, a line can be drawn under some of the outstanding applications in the Irish immigration system.

Purpose of the Bill

The Immigration (Reform) (Regularisation of Residency Status) Bill 2014 seeks to deal with significant issues relating to regularisation of residency status for those who have been in Ireland for a significant period of time. Where persons have applied for, but not received a definitive determination on applications for refugee status and/or subsidiary protection and/or leave to remain in Ireland within 4 years, then such individuals will be entitled to a residence permit. The Bill places time-limits as regards the issuance of this residence permit. This residence permit will be valid for a period of not less than three years, and may be renewable. Once a residence permit is issued, then the regularised applicant will a number of key
rights, including the right to work, travel, religious freedom, access to education and training, the right to medical treatment and the right to access social welfare benefits. Significant protections remain in this Bill to ensure that the Minister may refuse such a residence permit or revoke this residence permit on specified grounds. These grounds generally relate to the common good, maintenance of public order, prevention of crime and security in the State.

The Immigration (Reform) (Regularisation of Residency Status) Bill 2014 also seeks to deal with the practice of deportation orders being issued, but not effected. Where the Minister issues a deportation order, this must be capable of being carried out effectively and in a human rights compliant manner. Where this is not the case, and where a deportation order has not been effected for 1 year after its issuance and there is no reasonable degree of likelihood that it will be effected within a further 6 months, then this individual will be entitled to a residence permit valid for a period of not less than three years, which may be renewable. The residence permit will grant an individual who satisfies all conditions the capacity to enjoy the rights of residence permit holders described above. The powers of the Minister to revoke the residence permit are as described above.

Provisions of the Bill Explained

Section 1 sets out the short title of the Bill and provides that the Act comes into operation three months after the date of its passing.

The purpose of this delayed commencement is to afford a reasonable time period so that the necessary administrative arrangements can be put in place to facilitate the smooth operation of the new approach which is provided for in this Bill.

Section 2 defines six key terms which are used in the Bill.

Section 3 empowers the Minister to make regulations so as to enable the Bill to have full effect. The making of regulations is also envisaged by section 6(4).

Section 4(1) states that this Bill will only apply to a person who meets certain specified conditions. The conditions which a person must satisfy are then set out in section 4(2), 4(3) and 4(4).

Section 4(2) stipulates the first set of conditions with which a person must comply with in order to be eligible to avail of the entitlements which are conferred under this Bill. Specifically, it requires that a person must have submitted either, (a) an application for asylum, or (b) an application for subsidiary protection, or (c) an application for leave to remain.

Section 4(3) stipulates the second condition with which a person must comply with in order to be eligible to avail of the entitlements which are conferred under this Bill. Specifically, that a person must have submitted their application (for asylum, subsidiary protection or leave to remain) at least four years previously and has still not been informed of the Minister’s decision.

Section 4(4) stipulates that the immediate family members of an applicant (for asylum, subsidiary protection or leave to remain) may be able to avail of the entitlements which are conferred under this Bill irrespective of whether they themselves meet the conditions which are set down in section 4(2) or 4(3). However, any immediate family members who are the subject of a deportation order cannot avail of such entitlements.
Section 4(5) defines two terms which are used in this section.

Section 5 states that a person who is subject to a deportation order is expressly precluded from deriving any entitlement or benefit under this Act, unless two conditions are met, firstly that the deportation order was not effected within one year of its initial issuance, and secondly, that there is no reasonable degree of likelihood that the deportation order will be effected within six months.

Section 6 is the key provision of the Bill as it is this section which provides for the regularisation of the residency status of applicants for asylum, applicants for subsidiary protection and applicants for leave to remain (and their immediate family members) provided that they meet the conditions set out in section 4. Once a person satisfies the requirements of section 4, he or she may apply to the Minister for Justice for a residence permit and the Minister is obliged to grant a permit within six months. The residence permit will be valid for at least three years and is also renewable at the end of that period.

Section 7(1) states that the holder of a residence permit, which has been issued under section 6, will be entitled to the same rights and privileges as those conferred by law on persons generally who are not Irish citizens.

Section 7(2) sets out the various rights which the holder of a residence permit, which has been issued under section 6, will enjoy. Those specified rights include: an entitlement to reside in the State; the right to travel; religious freedom; the right to work; the right to join a trade union; the right to have access to the courts; the right to access education and training; the right to medical care; and the right to social welfare benefits.

Section 7(3) confirms that notwithstanding the terms of certain other pieces of legislation, a person who has been issued with a residence permit under this Bill will be entitled to acquire, hold, dispose of real or personal property in the same way as an Irish citizen currently can.

Section 7(4) defines one term which is used in section 7(2).

Section 8 addresses circumstances in which a person might be expelled from the State. Section 8(1) empowers the Minister for Justice to revoke residence permit, and issue a deportation order where certain circumstances arise, such as where the person has been ordered to serve a term of imprisonment of one year or more, or their deportation has been recommended by a court, or where the Minister believes that the deportation would be conducive to the common good, or the person served a prison term in another country in certain specified circumstances, or the person has falsified or concealed information in an application made under section 6 of this Bill, or in an application for asylum, an application for subsidiary protection, or an application for leave to remain.

Section 8(2) requires that where the Minister proposes to exercise the power to remove a person from the State, the Minister must first inform the person who it is proposed will be subject of that decision. The Minister must also adhere to a number of other requirements, including a requirement to have regard to any representations made by the individual, as well as the length of residence of the individual in the State, his or her employment record, his or her right to family life, humanitarian considerations, the common good, and considerations of public policy or national security.
Section 8(3) requires that a proposed decision to expel a person from the State under section 8(1) must be finalised within six months of the initial notice of the proposed decision.

Section 8(4) states that the power to expel which is contained in subsection is in addition to any other power of the Minister, is exercisable at any time after an application for a residence permit has been submitted under section 6, and that it is exercisable at any time after a residence permit has been granted or renewed under section 6.

Senator David Norris,
Detreadh Fómhair, 2014.