

Migrants' social rights
(29 October 2015)

Migrants' social rights in this note relate to :

- Access to the job market (I) ;
- Social benefits (II) ;
- Enabling children to access education (III).

I. Concerning migrants' right to work

A distinction must be made between two situations : that of migrants who obtain refugee status and that of migrants who wish to seek asylum in France.

a) Refugees

Article L. 711-1 of the Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA)) defines refugees as follows :

« Refugee status is given to any person who is persecuted as a result of striving for freedom and to any person with regards to whom the United Nations High Commission for Refugees (UNHCR) operates its mandate in accordance with Articles 6 and 7 of its Statute (as adopted by the United Nations General Assembly on 14 December 1950) or to any person who comes under the definitions given in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees. These individuals are protected by the dispositions in relation to refugees in accordance with the Geneva Convention as mentioned abovehand. »

Once refugee status has been granted by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), migrants may then submit an application with a prefecture for the grant of a resident card (by providing the documents mentioned under Article R 314-2 of the CESEDA).

Within eight days of the application for a resident card, an acknowledgement of application for a resident permit (*récépissé de la demande de titre de séjour*) should be given to the migrant. This acknowledgement is a resident permit which is valid for a period of three months and which may be renewed.

The acknowledgement also enables the refugee to work in France ; indeed, Article R. 742-5 of the CESEDA purports that the document « *confers to its owner the right to carry out any professional activity he may wish to engage in* ».

The refugee will then (automatically, according to law) receive a resident card which will be valid for ten years and which may be renewed. This will of course enable them to carry out any professional activity they wish to in France.

b) Asylum seekers

However, the situation seems more complex for migrants who did not obtain refugee status and who then need to seek asylum in France.

After having carried out all the relevant administrative tasks at the prefecture in order to obtain the right to asylum, the migrant is granted an acknowledgement of asylum seeking (*récépissé de demande d'asile*) which is a temporary leave to stay (APS). This acknowledgement does not enable the migrant to work in France.

However, access to the job market will be open to them if, for reasons which the asylum seeker is not responsible for, OFPRA has not delivered a decision in relation to the application within nine months (the duration used to be twelve months).

The future employer will nevertheless need to obtain a temporary work permit from the relevant Regional Department of Enterprise, Competition, Consumer Affairs, Labour and Employment (*Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi* (DIRECCTE)).

II. Concerning migrants' right to social security

As soon as they arrive in France and even before they seek to benefit from a specific legal status, migrants should be able to benefit from emergency care (*soins d'urgence*) in some hospitals where medical centres providing access to healthcare have been set up.

Once migrants have initiated their administrative tasks (which they will be able to prove by showing a summons to the prefecture), they must benefit from the Universal Healthcare Coverage (*couverture maladie universelle (CMU)*) according to Article R. 380-1 of the Social Security Code (*Code de la sécurité sociale*) without having to meet the regular residency criterion which is a minimum of three months. They will have to apply for the CMU at the closest government agency responsible for the management of health insurance (*Caisse primaire d'assurance maladie (CPAM)*).

Furthermore, asylum seekers may apply for a Temporary Waiting Allowance (*allocation temporaire d'attente (ATA)*). The said allowance will only be given during the investigation procedure of the application for asylum with OFPRA (checks in relation to the asylum seeker's situation will be carried out every month).

The award of the allowance depends on specific requirements :

- The asylum seeker must provide proof that their monthly income is lower than the Earned Income Supplement (*revenu de solidarité active (RSA)*)

- The asylum seeker must neither live in a reception centre for asylum seekers (*centre d'accueil pour demandeurs d'asile (CADA)*) nor have declined an offer to live in such a center.

Once refugee status has been granted, asylum seekers will continue to be affiliated to the CMU (they must inform the CPAM of their new status).

Asylum seekers will then be able to obtain :

- Family-related benefits from the social security (notably family allowances (*allocations familiales*) by requesting them from the CPAM and/or from the Family Allowances Office (*caisse d'allocations familiales (CAF)*) depending on the relevant French department (*département*)).
- And the Earned Income Supplement (*RSA*)

As soon as they are employed, migrants will need to change their status with the CPAM in order to benefit from the regular social security system.

Finally, if the relevant administrative bodies (employment centers (*Pôle Emploi*), CPAM) refuse to award the benefits or the rights to which the refugee is entitled, it seems as though there is no specific judicial recourse.

It is therefore recommended to follow specific complaint procedures (for instance, when facing a refusal by a CPAM to allow benefits, one must engage in a procedure before an appeals board (*commission de recours amiable*) and possibly before the Social Security Court (*tribunal des affaires de sécurité sociale*)).

III. Concerning access to education for migrants' children

We first recommend migrants get in touch with Academic Centres for the Education of New Arrivals and Traveller's Children (*centres académiques pour la scolarisation des enfants allophones nouvellement arrivés et des enfants issus de familles itinérantes et de voyageurs (Casnav)*).

With regards to small children, and since there are no specific rules on the matter, we consider that the dispositions found in the Education Code (*code de l'éducation*) may be applied.

Therefore, a migrant's child may join a nursery school as soon as they are 3 years old (by enrolling at the town hall (*mairie*)), and must attend school between the ages of 6 and 16 years old (by enrolling directly with the school).
