



Immigration and
Refugee Board of Canada

Commission de l'immigration
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Cuba: Whether a person suspected of anti-government activities or a person who has been punished for not being patriotic would have been able to obtain a passport and an exit permit (2010-2013)

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1. Overview

The US *Country Reports on Human Rights Practices for 2011* for Cuba indicates that exit permits were "routinely denied" to members of the opposition (US 24 May 2012, 18). Several sources report that the government of Cuba abolished the requirement for Cuban citizens to obtain exit permits to travel abroad starting 14 January 2013 (AFP 16 Oct. 2012; NPR 11 Jan. 2013; BBC 31 Jan. 2013). Under the new rules, Cuban nationals need only a passport and the necessary visas from destination countries to leave Cuba (ibid.; *The Miami Herald* 14 Jan. 2013). The *Los Angeles Times* reports that Cuban "dissidents" will also be allowed to leave from and, importantly, return to Cuba" (15 Jan. 2013).

Sources report that the government can deny passports to persons on grounds of [translation] "public interest" or "national security and defense" (*Diario de Cuba* 1 Feb. 2013; NPR 11 Jan. 2013; AFP 16 Oct. 2012). Agence France-Presse (AFP) indicates that a passport can also be refused to a person with a criminal record or a government debt (ibid.).

2. Legislation

The website of the Ministry of Foreign Affairs of Cuba indicates that Decree 302 of 11 October 2012 amended the Migration Act (*Ley de Migración*) of 1976 and came into force on 14 January 2013 (Cuba 14 Jan. 2013).

Decree 302 added Article 23 to the Migration Act and it provides the following with regard to restrictions on the issuance of Cuban passports:

[translation]

Article 23: Cuban citizens residing in the national territory may not obtain a valid passport under any of the following circumstances:

- a. Persons subject to criminal proceedings provided that these have been ordered by the appropriate authorities.
- b. Persons subject to the pending enforcement of criminal sanctions or security measures, except in those cases expressly authorized by the courts.
- c. Persons subject to compliance with the provisions concerning military service.
- d. When advisable due to defence or national security reasons.
- e. Persons with obligations to the Cuban State or civil responsibilities, provided that these have been expressly ordered by the appropriate authorities.
- f. Persons lacking authorization under the rules aimed at retaining a skilled workforce for the country's economic, social and technical development, and the security and protection of official information.
- g. Minors or disabled persons who do not have authorization from their parents or a legal representative that is authenticated by a notary public.
- h. Other reasons of public interest as determined by the competent authorities.
- i. Persons who fail to comply with the requirements under the Migration Act, its Regulations and supplementary provisions for the requesting, issuing and granting of passports. (ibid. 2012)

New Article 25 of the Migration Act stipulates the following regarding exit restrictions from Cuba:

[translation]

Article 25: Persons in the national territory may not leave the country under any of the following circumstances:

- a. Persons subject to criminal proceedings provided that these have been ordered by the appropriate authorities.
- b. Persons subject to the pending enforcement of criminal sanctions or security measures, except in those cases expressly authorized by the courts.
- c. Persons subject to compliance with the provisions concerning military service.
- d. When advisable due to defence or national security reasons.
- e. Persons with obligations to the Cuban State or civil responsibilities, provided that these have been expressly ordered by the appropriate authorities.
- f. Persons lacking authorization under the rules aimed at retaining a skilled workforce for the country's economic, social and technical development, and the security and protection of official information.
- g. Minors or disabled persons who do not have authorization from their parents or a legal representative that is authenticated by a notary public. (ibid.)

3. Cases

The following are cases of Cubans who obtained or were refused passports since the coming into force of Decree 302 that were reported by the media:

- Yoani Sánchez: *El Espectador* reports that Sánchez is a blogger and reporter who is considered by the Cuban government to be the leader of [translation] "cyber-dissidence" through her blog (30 Jan. 2013). She is reported to have been previously denied permission to travel abroad 20 times (*La Nación* 15 Jan. 2013; AFP 16 Oct. 2012). Sources report that she applied for her passport on 14 January 2013 (*Los Angeles Times* 15 Jan. 2013; *El Espectador* 30 Jan. 2013) and received it on 30 January 2013 (ibid.; BBC 31 Jan. 2013). Sources report that she left Cuba on 17 February 2013 on a tour to 12 countries including Brazil, Mexico, Spain, Czech Republic, Italy, the Netherlands, and the United States (AFP 17 Feb. 2013; AP 18 Feb. 2013).
- Eliécer Ávila: Ávila was a student at the Universidad de Ciencias Informáticas in Havana (*El Nuevo Herald* 7 Feb. 2013; BBC 4 Feb. 2013) as well as president of the Union of Communist Youth (Unión de Jóvenes Comunistas, UJC) and supporter of President Fidel Castro (ibid.). Sources report that, in 2008, he publicly questioned the president of the National Assembly of Cuba about why Cubans must obtain exit permits to leave Cuba (ibid.; *El Nuevo Herald* 7 Feb. 2013). BBC reports that he was then barred from writing on the university webpage and directing the UJC (4 Feb. 2013). He was also denied a permit to live in Havana and was given a [translation] "'ridiculous'" job in Puerto Padre taking care of children at the Information Technology and Electronics Youth Club (ibid.). AFP reported on 8 February 2013 that Ávila had received a passport. Sources report that he left for Stockholm, Sweden, on 2 February 2013, on a trip sponsored by La Cubanada, a Sweden-based social network on Cuba (*Havana Times* 4 Feb. 2013; *El Nuevo Herald* 7 Feb. 2013). He was the first dissident to leave Cuba after the law entered into force (BBC 4 Feb. 2013).
- Guillermo Fariñas: Fariñas is a psychologist and journalist (Agencia EFE 14 Jan. 2013) who has gone on hunger strikes to support political prisoners (ibid.; *La Nación* 15 Jan. 2013). Agencia EFE reports that, in 2010, when he wanted to travel to Strasbourg to receive the Sakharov Prize, the government informed him that he could leave the country [translation] "permanently," not on a temporary basis as was his wish (14 Jan. 2013). The Sakharov Prize is granted by the European Parliament "to individuals or organizations fighting for human rights and fundamental freedoms" (EU n.d.). Sources report that he announced that government officials had notified him on 14 January 2013 that he could travel outside the country and return (Agencia EFE 14 Jan. 2013; Andina 14 Jan. 2013).
- Bertha Soler: Soler is the leader of the Damas de Blanco (*La Verdad* 9 Feb. 2013; AFP 9 Feb. 2013), a dissident group formed by spouses and relatives of 75 dissidents who were detained in the [translation] "'Black Spring'" of 2003 (ibid.). *El Mundo* explains that Black Spring refers to the detention of 75 people who were summarily sentenced to prison terms between 12 and 28 years, for publicly opposing the government (18 Mar. 2011). *Clarín* similarly reports that 75 [translation] "dissidents" were tried and sentenced in the Black Spring of 2003, but says that sentences ranged from 12 to 26 years (25 July 2012). Sources report that Soler received a passport on 8 February 2013 (AFP 9 Feb. 2013; *La Verdad* 9 Feb. 2013).
- Rosa María Payá: Agencia EFE says that she is the daughter of dissident Oswaldo Payá who died in 2012 (14 Jan. 2013). Sources report that she was denied an "exit permit" in December 2012 to travel to Chile (*Diario de Cuba* 16 Feb. 2013; Martí Noticias 15 Feb. 2013). Agencia EFE quotes her as saying that she would not undertake the process to obtain the passport since [translation] "'it will be a waste of time'" (14 Jan. 2013). However, sources report that, under the new regulations, she was able to travel to Spain and Switzerland on 15 February 2013 (*Diario de Cuba* 16 Feb. 2013; Martí Noticias 15 Feb. 2013).
- José Daniel Ferrer: Ferrer was sentenced to 25 years in prison in the Black Spring of 2003, but was released in 2011 through an [translation] "extrapenal license" (Martí Noticias 1 Feb.

2013). Sources report that his passport application was rejected as he is a person of [translation] "public interest" (*El Nuevo Herald* 7 Feb. 2013; *Havana Times* 8 Feb. 2013). Martí Noticias, a Web portal promoting freedom and democracy in Cuba (n.d.), quotes Ferrer as saying that his passport would not be processed until the prison sentence that was originally imposed on him in 2003 expires (1 Feb. 2013).

- Juan Ángel Moya Acosta: Moya was imprisoned during the Black Spring, but was released in 2010 through an [translation] "extrajudicial license" (*Diario de Cuba* 30 Jan. 2013). Sources report that his passport application was rejected because he is a person of [translation] "public interest" (*El Nuevo Herald* 7 Feb. 2013; *Diario de Cuba* 30 Jan. 2013). *Diario de Cuba*, a Madrid-based newspaper, quotes Moya as saying that his passport would not be processed until the 20-year sentence that was imposed on him in 2003 expires (ibid.).
- Gisela Delgado Sablón: Sources indicate that Delgado is the director of the Independent Libraries Project in Cuba (*El Nuevo Herald* 8 Feb. 2013; *Diario de Cuba* 7 Feb. 2013). AFP described this project in 2006 as consisting of 139 libraries throughout the country that loaned books and provided space for discussion groups that were [translation] "disapproved by authorities" (6 Oct. 2006). Sources report that the government refused to issue a passport to Delgado for being on a list of persons belonging to [translation] "counter-revolutionary groups" (*Diario de Cuba* 7 Feb. 2013; *El Nuevo Herald* 8 Feb. 2013).

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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