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Commission de l'immigration
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Cuba: Treatment of "deserters," and whether the law regarding dereliction of duty is applied, including towards university professors (2014-2015)

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1. Treatment of "Deserters"

In correspondence with the Research Directorate, a professor of Spanish and Latin American studies at Dalhousie University, who specializes in Cuban international relations, history, and culture [1] indicated that, since the introduction of the new immigration law in January 2013, "which eases restrictions on Cubans leaving and entering" the country, "policies on travelling abroad [have been] greatly relaxed" (Professor 29 Sept. 2015). In January 2013, sources reported that Cubans no longer needed exit visas to leave the country (The Christian Science Monitor 14 Jan. 2013; AP 14 Jan. 2013). According to Granma, a publication described as "the official voice of the Communist Party of Cuba Central Committee" (Granma n.d.), from 14 January 2013 on, Cubans would only need a valid passport and, when required, visas from destination countries in order to leave Cuba (ibid. 16 Oct. 2012). For additional information on the new exit rules for Cuban citizens, see Response to Information Request CUB104288.

According to the Professor,

for the Cuban government, the question of "desertion" remains a serious offence. And while Cubans are free to leave for up to two years, if they go on an official mission and then stay ("desert"), there are serious consequences. Someone who leaves on an official mission with an official (red) passport and decides not to return will be considered a deserter. ... [I]t is clear that,

although the situation is far more flexible for Cubans to leave the country, Cubans who left on official missions (everything from commercial missions buying goods for the Cuban state to diplomats making official representations to another government) will not be allowed to return to Cuba for several years. (Professor 29 Sept. 2015)

The Professor indicated that, according to an academic based in Cuba, "academics would not be treated particularly severely, as opposed to a state functionary on official business" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, an official at the Canadian embassy in Havana explained that before the year 2000, "deserters" were referred to as gusanos (worms) and, as a result, they were discriminated against "in all aspects" (Canada 6 Oct. 2015). El Nuevo Herald, a newspaper based in Miami, similarly reports that the Cuban government referred to those who left the country in the 1960s as gusanos (15 Aug. 2010). The Canadian embassy official indicated, however, that this perception has changed in most of the country, except in remote areas (Canada 6 Oct. 2015). According to her, the treatment of "deserters" who return to Cuba depends on the country they went to (for example the US versus other countries), whether they were political dissidents, and the profession they had before leaving Cuba (ibid.). The same source explained that "[m]ost [people] with low skills would not suffer consequences [upon their return]. ... As for professors, it will depend on where they were teaching and at which level"; for example at a renowned institution, university, secondary or technical school (ibid.). Further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Dereliction of Duty

Article 135 of the Criminal Code (Código Penal) of 1987 indicates the following:

[translation]

Article 135.1. An official or employee charged with a mission in a foreign country who quits, or, having completed the mission, or being asked at any time to return, expressly or implicitly refuses to return is liable to a penalty of three to eight years in prison.

2. The same penalty applies to officials or employees who, having completed a mission abroad and against the express order of the Government, move to another country. (Cuba 1987, Art. 135)

According to the Canadian embassy official, Article 135.1 is still valid "in principle," but the government now applies the new immigration law, "which impedes a person who left illegally [from going back to Cuba] for at least eight years, unless the person left after the exit permit was lifted and re-enters Cuba within two years" (Canada 6 Oct. 2015). The official also indicated that this rule does not apply to minors (ibid.).

Subsection 2 of Article 9 of Decree Law No. 302 of 2012, the amended Immigration Law (Decreto de la Ley No. 302 Modificativo de la ley No. 1312, "Ley de Migración" de 20 de Septiembre de 1976), indicates the following:

[translation]

Cuban citizens are considered to have emigrated when they travel abroad for personal matters and reside abroad continuously for a period of over 24 months without proper authorization, or when they take up residence abroad without complying with the immigration regulations in force. (Cuba 2012, Art. 9(2))

On 14 January 2013, Granma reported that

[translation]

Cuban authorities announced a set of complementary measures to Decree Law 302 that regularize the temporary entry into Cuba of those who emigrated illegally after the migration agreements of 1994, as long as eight years or more have passed since they left Cuba. This will also apply to health professionals and high performance athletes who left the country after 1990, if more than eight years have passed since they left the country, except in humanitarian cases, where entry into the country can be approved after a shorter period of time.

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.

Note

[1] The Professor noted that he is not an expert on Cuban immigration policy but that he consulted several Cubans, including academics, to provide the information contained in his correspondence (Professor 29 Sept. 2015).

References

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Professor, Spanish and Latin American Studies, Dalhousie University. 29 September 2015. Correspondence with the Research Directorate.

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Oral sources: A professor of sociology at the Facultad Latinoamericana de Ciencias Sociales, and a professor of sociology and international relations at Boston University.

Internet sites, including: Amnesty International; BBC; Clarín; Cuba - Gaceta Oficial; Cubanet; Diario de Cuba; ecoi.net; El País; Factiva; Freedom House; Havana Times; Human Rights Watch; Institute for War and Peace Reporting; International Crisis Group; International Federation for Human Rights; International Organization for Migration; Radio Free Europe/Radio Liberty; Radio Martí; Telemundo; United Nations - Refworld, ReliefWeb, UNHCR; United States - Department of Homeland Security, Department of State; Univisión.

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