A BILL FOR AN ACT

To further amend title 50 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 entitled “Refugee Act of 2005”, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new Chapter 3 entitled “Refugee Act of 2005.”

Section 2. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 301 to read as follows:

“Section 301. Short Chapter. This chapter is known and may be cited as the ‘Refugee Act of 2005.’”

Section 3. Title 50 of the Code of the Federated State of Micronesia is hereby amended by enacting a new section 302 to read as follows:

“Section 302. Definitions.

(1) ‘Asylum seeker’ means a person who (i) is not a citizen of the Federated States of Micronesia (ii) is present in the territory of the FSM or at a port of entry in the FSM and (iii) who seeks recognition and protection as a refugee.

(2) ‘Chief’ means the Chief, Division of Immigration, Department of Justice of the Federated
States of Micronesia, or designee.

(3) ‘Country of origin’ means the asylum seeker’s country of nationality, and in the case of more than one country of nationality, each country of nationality; or if the asylum seeker has no nationality, the asylum seeker’s country of former habitual residence.

(4) ‘FSM’ means the Federated States of Micronesia.

(5) ‘Hearing Officer’ means the Chief, during an initial determination of refugee status, or any member of the Refugee Committee, during any hearing before the Refugee Committee.

(6) ‘Refugee’ means a refugee defined in Section 303 and includes spouses and minor children of persons determined to be refugees.

(7) ‘Refugee Committee’ means the appellate tribunal established under Section 318 of this Act.

(8) ‘UNHCR’ means the United Nations High Commissioner for Refugees.”

Section 4. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 303 to read as follows:

“Section 303. Definition of refugee. A refugee is any person who (i) is outside his country of origin, and (ii) who is unable or unwilling to return to, and is unable or unwilling to avail himself of the protection
of, that country (iii) because of a well-founded fear of persecution on account of race, religion, nationality, or membership of a particular social group or political opinion. The term 'nationality' includes ethnic identity and the term 'membership of a particular social group' includes sex."

Section 5. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 304 to read as follows:

"Section 304. Persons who shall be excluded from refugee status. A person shall be excluded from refugee status for the purpose of this Act if:

(1) he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(2) he has committed a serious non-political crime outside the FSM prior to his entry as an asylum seeker."

Section 6. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 305 to read as follows:

"Section 305. Principal of non-refoulement.

(1) Non refugee or asylum seeker shall be deported from the FSM or returned in any manner whatsoever to a place where there are reasons to believe his life or
freedom would be threatened on account of any of the reasons set out in Section 303.

(2) The benefit of this provision may not be claimed by a refugee or asylum seeker where there are reasonable grounds for regarding him as a danger to the security of the country or who has been convicted by a final judgement of a serious crime in the FSM and constitutes a danger to the community.”

Section 7. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 306 to read as follows:

“Section 306. Confidentiality of Information. Under no circumstances shall information about an asylum seeker be disclosed to government officials of the country of origin pending determination of refugee status.”

Section 8. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 307 to read as follows:

“Section 307. Interpretation. The government shall make all reasonable attempts to communicate with the asylum seekers in the language in which they are most fluent.”

Section 9. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 308 to read as follows:
“Section 308. Regulations. The President may pass regulations to give effect to the provisions of this Act.”

Section 10. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 309 to read as follows:

“Section 309. UNHCR. The national government shall not prohibit or restrict contact between UNHCR and any asylum seeker or refugees in the FSM. UNHCR shall be permitted to submit comments for the consideration of the Refugee Committee on any matter before the Refugee Committee and UNHCR may be invited to participate as an observer on the Refugee Committee. The national government shall provide the UNHCR with information concerning the conditions of refugees, the implementation of the Convention, and the laws, regulations and policies of the FSM relating to refugees and asylum seekers.”

Section 11. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 310 to read as follows:

“Section 310. Asylum entry permit. A person who meets the definition of an asylum seeker and makes a claim for asylum shall be granted an asylum entry permit.

(1) A claim for asylum is a clear indication from
a person that they are fleeing persecution, that they
seek asylum in the FSM and that they intend to apply to
become a refugee.

(2) An asylum entry permit may be issued to a
person without the travel documents required by other
immigration laws and regulations, if it appears that
such travel documents are missing due to circumstances
related to the claim for asylum and not due to an intent
to defraud or mislead authorities.

(3) An asylum entry permit shall not permit the
asylum seeker to work in the FSM and may have terms and
conditions as the Chief determines to be necessary.

(4) The spouse and minor children of the asylum
seeker are eligible for dependent asylum entry permits,
unless they have a separate claim for asylum, in which
case they are eligible for an asylum entry permit.

(5) An asylum entry permit shall be issued for 6
months and shall be renewable while the asylum seeker is
in the process of having their application for refugee
status considered. The asylum entry permit shall be
revoked pursuant to Section 323.

(6) An asylum entry permit may be denied to a
person who meets the criteria of Section 305(2).”
read as follows:

"Section 311. Rights and duties of asylum seekers.

(1) Asylum seekers have the right to be informed of their rights and obligations as asylum seekers, the procedure for applying for refugee status, and their right be in contact with UNHCR and other human rights organizations.

(2) Asylum seekers will be treated without discrimination as to race, religion, country of origin, gender, political or other opinion, or status.

(3) Asylum seekers must conform to all the laws of the FSM.

(4) Asylum seekers must approach the authorities without delays, unless duly justified, to apply for asylum or somehow express a need for protection.

(5) Asylum seekers must co-operate with the relevant authorities throughout the assessment of their claims, including disclosing information and documentary evidence that may be relevant to their claims and providing a truthful account of their stories."

Section 13. Title 50 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 312 to read as follows:

"Section 312. Assistance for asylum seekers. The national government shall make reasonable attempts to
provide assistance to asylum seekers and shall work with foreign nations, non-governmental organizations, and members of the community to meet the needs of asylum seekers. Assistance may include access to emergency and basic health care, access to primary education for children, and provision of food, accommodation and financial assistance. Failure to provide assistance shall not be grounds for any action against the national government, nor shall any cause of action be valid against the national government for incidents related to the provision of assistance or lack thereof."

Section 14. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 313 to read as follows:

"Section 313. Detention of asylum seekers.

(1) The Chief may decide to detain an asylum seeker, through a written decision with reasons, in the following cases only:

(a) to verify identity, when in dispute and when the asylum seeker is not co-operating;

(b) for the preliminary interview, to determine the basis of the asylum claim;

(c) in cases where the asylum seeker has destroyed travel and/or identity documents or has used fraudulent documents in order to mislead government
(d) to protect national security and public order, when there is evidence that the asylum seeker has a criminal record and/or affiliations which are likely to pose a risk to public order or national security.

(2) When a need has been identified for detaining an asylum seeker, the Chief will first consider alternatives which may reach the same objective. These include, but are not limited to, bail, reporting requirements, obligation of residence at a specific address, provision of a guarantor or community sponsored accommodation.

(3) The decision to detain an asylum seeker shall be initially reviewed by a judicial authority as soon as possible (and in any event not later than fourteen days), and if the need is confirmed, periodically reviewed by the same, at least every two months, in order to determine whether the necessity of the detention still exists.

(4) Children under 18 years old shall not be detained, unless it is determined by the Chief as a measure of last resort or unless the parents of the children request that the children be kept in detention with the parents. In that case it shall be for the shortest period of time as possible. Pregnant women,
nursing mothers, unaccompanied elderly persons, torture
or trauma victims and persons with a mental or physical
disability shall also be detained only as a last resort
and for the shortest period of time as possible.

(5) In case of detention, asylum seekers shall be
kept separated from convicted criminals or prisoners on
remand, and shall be treated humanely. Women shall be
separated from male detainees not part of their family.
Asylum seekers in detention will be given high priority
in assessing their claim for asylum.”

Section 15. Title 50 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 314 to read
as follows:

“Section 314. Unaccompanied minor children.
Unaccompanied minor children shall be appointed an
independent legal guardian as soon as possible after it
is determined that the child is seeking asylum. Such
children shall be provided with care and services to
meet their basic needs, including food, shelter, health
care and safety. The national government shall work
with international agencies to locate family members of
unaccompanied minor children. Claims of unaccompanied
minor children shall be given priority.”

Section 16. Title 50 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 315 to read
as follows:

"Section 315. Determination of refugee status.

(1) The asylum seeker must make an application to the Chief for recognition as a refugee, in a manner to be established in regulations.

(2) An asylum seeker claiming refugee status shall be entitled to a hearing before the Chief within thirty days of submitting the application for refugee status. However, the Chief may suspend determination of a claim for refugee status made by an asylum seeker who has been charged with a criminal offense under the laws of the FSM until those charges have been resolved. Notice of suspension shall be provided to the asylum seeker.

(3) No later than 15 days after the hearing, the Chief shall issue a written decision to the asylum seeker, setting forth the findings relevant to the determination, specifying the evidence on which those findings were based and giving the reasons for the decision.

(4) An application for refugee status shall be granted if the asylum seeker satisfies the definition of a refugee as set forth in Section 303. An application for refugee status shall be denied on the following basis: (I) failure to satisfy the definition of refugee as set forth in Section 303; (ii) exclusion from the
definition of refugee, pursuant to Section 304; or (iii)
ineligibility for refugee status, pursuant to Section
316."

Section 17. Title 50 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 316 to read as follows:

"Section 316. Ineligibility. An application for
refugee status may be denied on grounds of ineligibility if:

(1) a claim made by the asylum seeker for refugee
status has been denied by a final decision of the
Refugee Committee or of the UNHCR and there is no
showing of new or changed circumstances justifying a
reconsideration;

(2) a prior claim for refugee status to the FSM or
any other nation or the UNHCR was withdrawn or abandoned
and there is no sufficient explanation as to the reasons
for the withdrawal or abandonment;

(3) the asylum seeker has been recognized as a
refugee by another country and can be sent or returned
to that country;

(4) the asylum seeker came directly or indirectly
to FSM from a country other than a country of their
nationality or their former habitual residence, that is
(i) a party to the Convention or (ii) not being a party,
complies with the principal of non-refoulement and has policies and practices with respect to claims under the Refugee Conventions and a human rights record which is acceptable to the FSM;

(5) there are reasonable grounds for regarding the asylum seeker as a danger to the security of the country or the asylum seeker has been convicted by a final judgment of a serious crime in the FSM and constitutes a danger to the community;

(6) the asylum seeker is subject to extradition if such extradition would not violate Section 305.”

Section 18. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 317 to read as follows:

"Section 317. **Hearings.** All hearings under this Chapter shall be conducted as inquisitorial rather than adversarial hearings. The hearing officer shall have all the powers necessary to decide the matter and shall have the aid and advice of any person. The rules of evidence shall not apply. The hearing shall be public unless the asylum seeker requests otherwise and a record shall be made of the proceedings. The asylum seeker shall receive notice of the hearing and shall be expected to present his claim. The asylum seeker may be assisted by counsel, the UNHCR or any other persons in
the hearing. Other procedures for hearings shall be as set forth in regulations.”

“Section 19. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 318 to read as follows:

“Section 318. Refugee Committee.

(1) A Refugee Committee is hereby established as the appellate authority and final decision maker on applications for refugee status. The Refugee Committee shall consist of the Secretary of Justice or designee, but not the Chief; the Secretary of Foreign Affairs or designee, and a designee of the President. The members of the Committee shall not receive any financial consideration for their participation on the Committee apart from pay and benefits received in the ordinary course of their government employment.

(2) The Committee’s deliberations may be observed and assisted by up to three observers conversant with refugee matters or regarded as good decision makers, such as a representative from UNHCR, local organizations, the state governments, the national Congress or traditional leaders. The observers shall not be acting members of the Committee but may provide comments on the Committee’s deliberations. The observers shall be selected by consensus of the Refugee Committee
based on application to the Committee. The observers shall not receive any financial consideration for their participation on the Committee apart from pay and benefits received in the ordinary course of their government employment. The Committee’s deliberations may not be delayed due to lack of observers.

(3) The Refugee Committee shall hear the following matters: (a) an appeal of a determination on refugee status by the Chief; (b) a petition to cancel refugee status on the grounds of material fraud; (c) a petition for cessation of refugee status due to change in circumstances.

(4) The Refugee Committee may review all matters denovo and shall have all powers necessary to determine a matter, including holding hearings.

(5) If the asylum seeker is not granted refugee status by the Chief, the asylum seeker may appeal the decision to the Refugee Committee. The appeal must be made within 15 days of the asylum seeker’s receipt of the decision of the Chief; however, this time limit may be waived by the Refugee Committee upon a showing of good cause.

(6) Within sixty days of receiving an appeal or petition, the Refugee Committee shall issue a written decision setting forth the findings relevant to the
determination, specifying the evidence on which those findings were based and giving the reasons for the decision.

(7) Actions taken under this chapter are not subject to judicial review until all proceedings in this chapter are exhausted. Judicial review of actions take under this chapter are limited to review for action which is in violation of law or regulation.”

Section 20. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 319 to read as follows:

“Section 319. Refugee entry permit. Every person who is determined to be a refugee shall be issued a refugee entry permit, granting them the right to live and work in the FSM, to be valid as long as the refugee determination remains valid; however, the entry permit shall expire upon resettlement of the permit holder in another in another country, subject to issuance of a new entry permit as long as the refugee determination remains valid.”

Section 21. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 320 to read as follows:

“Section 320. Rights and duties of refugees. Every refugee, so long as he remains within the FSM, shall
have the right to receive the treatment as is accorded to refugees under the Convention on the Status of Refugees (1951).”

Section 22. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 321 to read as follows:

"Section 321. Persons who shall cease to be refugees.

(1) The determination of refugee status shall cease if

(a) the refugee has voluntarily reavailed himself of the protection of his or her country of nationality;

(b) the refugee had lost his or her nationality and has voluntarily reacquired his or her nationality;

(c) the refugee has acquired a new nationality and enjoys the protection of the country of that new nationality;

(d) the refugee has voluntarily become re-established in the country that the person left or remained outside of owing to fear of persecution; or

(e) the reasons for which the refugee sought refugee protection have ceased to exist, unless the refugee is able to invoke compelling reasons arising out or previous persecution for refusing to return to the refugee’s country of nationality or former habitual
(2) A determination of refugee status may be found to be ceased by the Refugee Committee upon a petition for cessation and a hearing on the petition. A petition for cessation of refugee status may only be brought by the Chief.”

Section 23. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 322 to read as follows:

“Section 322. Cancellation of refugee determination.
A determination of refugee status may be cancelled by the Refugee Committee upon a petition for cancellation and a hearing on the petition. The only grounds for canceling a determination shall be a finding that the decision was obtained without certain withheld information or as a result of information that was fraudulent, forged, false, or misleading, where the information is sufficiently material to have affected the outcome of the decision on the refugee status, had it been known earlier. A petition for cancellation may only be brought by the Chief.”

Section 24. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 323 to read as follows:

“Section 323. Removal of asylum seekers not determined
to be refugees and refugees whose status ceases or status is cancelled.

(1) Fifteen days after a decision of the Chief denying refugees status which has not been appealed; or immediately after a decision of the Refugee Committee denying an appeal by the asylum seeker, the asylum seeker’s entry permit shall be revocable and the asylum seeker shall be obliged to immediately leave the FSM.

(2) Immediately after a decision of the Refugee Committee determining that a refugee’s status has ceased or is canceled, the refugee’s entry permit shall be revocable and the refugee shall be obliged to immediately leave the FSM.

(3) The government may assist the asylum seeker or former refugee to obtain travel documents and arrange travel out of the country. If the asylum seeker or former refugee refuses to depart voluntarily, the Chief shall take whatever measures necessary to remove the asylum seeker or former refugee from the FSM. Deportation proceedings shall not be required prior to removing the asylum seeker or former refugee. Should a forcible removal be necessary, it shall be carried out in a humane and dignified manner.

(4) If an asylum seeker or former refugee cannot be removed due to reasons beyond their control, the Chief
may issue an extension of the asylum or refugee entry permit until removal is effectuated.

(5) Asylum seekers and former refugees may seek legal status in the FSM by applying for an entry permit, other than an asylum or refugee entry permit, in accordance with the laws and regulations of the FSM. However, if the asylum seeker or former refugee is unable to conform with the requirements of the laws and regulations of the FSM, such as lack of proper documentation, the asylum seeker or former refugee will not be exempted from such requirements in order to qualify for other types of entry permits.”

Section 25. Title 50 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 324 to read as follows:

“Section 324. Illegal entry and presence of asylum seekers. The national government shall not impose penalties, on account of their illegal entry, or presence, on asylum seekers who, coming directly from a place where their life or freedom was threatened in the sense of Section 303, enter or are present in the FSM without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

Section 26. Title 50 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 325 to read as follows:

"Section 325. Durable solutions for refugees. The government shall work with refugees to find the following solutions or alternative solutions for long term placement:

(1) Voluntary repatriation. The repatriation of refugees shall take place at their free volition expressed in writing or other appropriate means which must be clearly expressed. The voluntary and individual character of repatriation of refugees and the need for it to be carried out under condition of safety to the country of origin shall be organized in co-operation with UNHCR and other members of the international community.

(2) Resettlement. The government shall submit information about the refugee to the UNHCR and/or Convention countries and request UNHCR to resettle the refugees and/or the Convention countries to accept the refugees for settlement.

(3) Local integration. If voluntary repatriation or resettlement are not available, the national government shall work with the state governments to settle the refugees in a local community. Upon request, a refugee who settles in the FSM shall be issued travel
documents for the purpose of travel outside and back to the FSM, unless compelling reasons of national security or public order otherwise require.”

Section 27. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 11/07/05  
Introduced by: /s/Simiram Sipenuk
Simiram Sipenuk  
(by request)