

Refugee Council

policy response



Refugee Council response to the UK Border Agency consultation on charging for immigration and visa applications

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About the Refugee Council

The Refugee Council is a human rights charity, independent of government, which works to ensure that refugees are given the protection they need, that they are treated with respect and understanding, and that they have the same rights, opportunities and responsibilities as other members of our society. We achieve this mission by:

- supporting refugees and working with them as they build a new life
- speaking up for refugees and ensuring that refugees themselves have a strong voice in all areas of UK life
- building links with people from across our society to increase mutual understanding of refugees
- making the case for a fair and just asylum system
- taking a leading role in helping to build up a vibrant, sustainable and successful refugee sector in the UK and internationally

Introduction and summary of Refugee Council concerns

The Refugee Council believes that the proposals outlined in this consultation could act as a further barrier to integration for refugees who wish to become citizens. We are concerned that these proposals misguidedly attempt to include refugees in a system designed for other types of migrant.

Refugees have been granted status because they are recognised as being in need of international protection and have been forced to flee their homes. They cannot choose whether or not they return to their country while they continue to be at risk. It is not fair to expect people who have endured prolonged uncertainty during the asylum determination process to face further hurdles and uncertainty in the already long journey to permanent settlement and citizenship.

Refugees should be granted permanent status, as they were prior to 2005, and those who want to apply for citizenship should be supported to do so. Barriers to citizenship such as the costs incurred, including access to free or low cost language learning should be removed or minimised.

The Refugee Council's main concern is that the current consultation is premised on charging those who benefit directly from the UK's immigration system. There is an assumption of rational choice, that migrants choose to come to the UK, one that is denied to refugees granted protection in the UK. Refugees who have been granted protection in the UK cannot exercise such choice as they are unable to return home safely. Refugees should not be considered within calculations of cost and benefit in relation to applications for permanent settlement. Any fees charged to refugees for citizenship must be carefully calculated to support integration and entitlements to services.

The Refugee Council's broader position on the Government's proposals on routes to citizenship is set out in our responses to *The Path to Citizenship: next steps in reforming the immigration system* (May 2008) and *Earning the right to stay: a new points test for citizenship* (October 2009) and in our briefings on the Borders, Citizenship and Immigration Act available on our website (see www.refugeecouncil.org.uk)

Our responses to this consultation are limited to those questions relevant to refugees and asylum seekers, in line with our remit. The term refugee is used to include asylum seekers granted refugee status and those refused asylum but granted Humanitarian Protection or Discretionary Leave to Remain, unless specified otherwise.

Q1 Do you agree that we should continue to set fees flexibly by taking into account wider policy objectives such as attracting specific groups of migrants that are beneficial to the UK?

Yes. Fees should be set flexibly for certain groups, including refugees. Refugee applicants should not be expected to pay for applications for permanent settlement. Any charges for refugees when applying for naturalisation should reflect their forced migration to the UK and their inability to return home safely. Charges for naturalisation applications, including any additional tests, should be set at a minimal level for refugees in order to support them in their application and integration into the UK. This is particularly important given the Probationary Citizenship period starting in July 2011 which encourages applications for naturalisation at an earlier stage than permanent settlement. Refugees who are unable to afford to apply for naturalisation given current fees should not be penalised by having to remain on temporary leave until eligible for permanent residence. For example, refugees who are restricted in their ability to work and raise money to pay the fee due to a disability should be exempted from charges for naturalisation.¹

Q2 Do you agree that fees for the different stages of the journey to citizenship should be set at different levels to reflect the different benefits provided at each stage?

Yes. Refugees should not be charged fees when applying for permanent settlement. We recognise that there are particular benefits attached to citizenship, including full voting rights and greater freedom of movement. However, refugees should not be charged the same level of fees as Tier 1 and 2 migrants as their circumstances are different. The emphasis should be on setting a fee level that refugees will be able to realistically afford. We note that UKBA did not include protection route applicants in the Impact Assessment conducted in June 2009. We recommend that any charges for refugees be subject to an

¹ The introduction of a regulation giving the Secretary of State power to waive the fee would be in accordance with the Secretary of State's duty under section 49A(1) of the Disability Discrimination Act 1995 to have due regard to the need to promote equality between disabled people and others, including the need to encourage the participation of disabled people in public life.

equality impact assessment that includes average levels of household income, access to affordable credit, numbers of dependants and outgoings amongst refugees. We are concerned that the UKBA has not properly assessed the level of poverty faced by many refugees, particularly those who have only had status in the UK for a relatively short time.

Q3 Do you agree that when setting the fees for the different stages of the journey to citizenship, the UK border Agency should take into account wider factors?

Yes. See answers to questions 1 and 2.

Q4 There are a number of factors that could be used to inform how much the fee for citizenship would cost. What factors, if any, do you think should be used to set this fee?

See answers to questions 1 and 2.

Q5 Do you agree that the UK Border Agency should set different fees for the same type of application?

Yes. Refugees should not be charged for fees for permanent settlement. Fees for citizenship should be set at a level that do not prohibit refugees from applying and makes concessions for refugees on low income or benefits. Any charges for citizenship, including for tests, should reflect the forced nature of a refugee's migration to the UK and the Government's commitment to refugee protection and integration.

Q8 Do you agree that we should charge for consultancy services provided to customers and third parties?

No. We do not think that it is appropriate for refugees to be charged for consultancy services. We know of a number of cases in the past where refugees have failed applications for citizenship because they were encouraged by training providers to take inappropriate English language courses. Charging refugees for consultancy services may lead to an increase in partial and exploitative advice being given by third parties. Consultancy services should be made available to refugees free of charge to minimise these possibilities. We would also recommend that the UKBA supports training for refugee community organisations (RCOs) and other not-for-profit organisations on the citizenship application process without charge. RCOs and refugee agencies represent some of the main sources of integration information accessed by refugees. The Refugee Council would also recommend that UKBA ensures all local authorities providing the Nationality Checking Service clearly understand the entitlements and eligibility of refugees to apply for permanent settlement and naturalisation. This includes an understanding of ESOL requirements, documentation and fees charged.

Q12 Do you agree that each dependant applying for leave to remain in the UK should pay an additional, separate fee for their application in line with the practice overseas?

No. Dependants of asylum seekers granted refugee status or refused asylum but granted Humanitarian Protection should continue to have rights to family reunion without additional, separate charges. Dependants of refugees making an application for naturalisation should not be charged an additional, separate fee but included within the main applicant's. Dependants should continue to qualify for permanent settlement without charge.

Q13 Do you agree that migrants who come through the dependant relative route and who are over the standard age of retirement, should pay more at the point of application?

No. Older dependants should not be penalised for their predicted lower levels of economic activity and should be included within the standard category for dependant relatives.

Q14 Do you agree that we should charge over-stayers more than the cost of consideration of such applications?

No. Refugees should not be charged if they make an application after their leave has expired. The process of applying for further leave will affect refugees granted refugee status from August 2005 and is currently unclear. It is unfair to penalise refugees for late applications when the policy will have only been in place for a short time. The Refugee Council would recommend that asylum seekers who are refused asylum but granted Discretionary Leave to Remain (DLR) or Humanitarian Protection (HP) should also be exempt from additional charges for permanent settlement and citizenship applications if their leave has expired. Like refugees, these groups of people are in the UK for very different reasons to economic migrants and there should not be an assumption made that they are in work or have adequate financial resources to cover these additional costs.

Q17 Do you agree that a fee should be charged to applicants who request an administrative review of an application that has been refused?

No. The Refugee Council assumes that it is not proposed that this should apply to forced migrants. We do not consider it appropriate that refugees whose applications for permanent settlement or naturalisation has been refused should be charged for an administrative review.

Q18 Do you agree that a fee should be charged to applicants who request a reconsideration of an application that has been refused?

No. Refugees should not be charged for a reconsideration of their application. A refusal can be made for a number of reasons and the emphasis should be on providing appropriate information to refugees and checks on their applications for naturalisation and permanent settlement at the beginning of the application process. It is not acceptable for refugees who continue to have protection needs to face additional charges if their application is not successful.

Q19 Do you agree that users of the immigration system should contribute to the costs of the appeal system?

Yes. In principle, we are not opposed to refugees being charged for applications for naturalisation but fees must reflect our concerns outlined in previous answers (see answers to Q1-2 above). These include the need to conduct a proper assessment of the financial capability of refugees and to recognise the distinct situation of refugees as force migrants in the UK.

We would recommend that costs are shared by all visa and immigration applicants (Option A).

Q20 Do you think that any proposal outlined above could have an impact upon community cohesion?

Yes. The Refugee Council is concerned that refugees, who are likely to be long term residents in the UK and to whom the Government has a distinct commitment to support their integration,² are being disadvantaged by their inclusion within the Government's managed migration agenda. Limited leave to remain, subsequent applications for further leave and potential charges for gaining permanent settlement will restrict the employment and training opportunities. Limited leave and the process of

² UKBA *Moving on together: the Government's recommitment to supporting refugees* (March 2009)

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applying for further does increase the level administration required of employers for refugee applicants. It also assumes a level of knowledge amongst employers that in our experience does not exist.³ The inclusion of refugees within groups of other migrants who do not have access to public funds has also lead to refugees being denied access to certain services. If the Government continues with its current policy of granting limited leave to refugees, they need to ensure that refugees are not discriminated against as a result, either directly or indirectly, and are able to play full and equal roles in the UK.

Q22 Do you think that any proposals outlined above would have a disproportionate effect upon any particular group according to race, gender, age, disability , religion, belief, sexual orientation?

Yes. As outlined in previous answers, the Refugee Council is concerned that refugees, whose status can impact on a number of protected characteristics, will be disproportionately affected by the consultation's proposals. For example, a black refugee woman can experience distinct challenges as a result of her status to those faced by other black women or a black refugee man. As in Q2, we recommend that UKBA conducts an Equality Impact Assessment which includes refugees.

³ The Refugee Council does training and events for employers on recruiting refugees. We have noted a widespread confusion around UKBA's current guidance on preventing illegal working, particularly for refugees whose applications for further leave our outstanding. We would recommend that guidance on the steps employers should take for applicants and employees who have outstanding applications for further leave be included in the *Comprehensive Guidance for Employers on Preventing Illegal Working*.