

Recent developments relating to the plans to return unaccompanied children to Afghanistan

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About the Refugee Council and its work with unaccompanied children in the asylum system

The Refugee Council is the largest refugee charity in the UK. We give help and support to asylum seekers and refugees, and also work with them to ensure their needs and concerns are addressed by decision-makers. The Refugee Council has a long tradition of working with children, in particular through our Panel of Advisers for Unaccompanied Refugee Children (Children's Panel) which helps approximately 1000 children each year.

We believe that every child in the asylum system in the UK should:

- feel safe and secure, be listened to and have a responsible guardian to turn to;
- receive accurate advice, appropriate guidance and support throughout the asylum determination procedure thus ensuring the fairest outcome for them;
- be seen as a child and a refugee rather than primarily a refugee.

Background to the issue of returning children to their country of origin

The asylum process and unaccompanied children.

The asylum process for children is broadly similar to that of adults, with a slightly longer timescale in the initial stages and the additional feature of the Statement of Evidence Form¹ to submit their asylum claim. There are also additional rules relating to how the UK Border Agency (UKBA) should consider and determine a child's claim, in order that decision makers consider the child's experiences in the context of them being a child, including taking into account the child's stage of development and the particular risks to them as children in their country of origin. The UKBA's guidance on dealing with children's asylum claims can be found in its instruction '*Processing an asylum claim from a child*'.²

The Refugee Council and other organisations have expressed concern over many years about the quality of decision making. These concerns include the lack of attention paid by the UK government to what is

¹ Referred to in the UKBA process instruction as 'Self Evidence Form'.

² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>

in a child's best interests, and guidance given from domestic and international organisations as to how children should be better dealt with in asylum procedures.³

The Quality Initiative Project of the UNHCR audited the UKBA's decision making in children's claims in 2008-9. Its findings were summarised in the sixth report⁴ which found that despite some good practice, many caseowners failed to take into account the fact that the asylum claim was from a child, affecting how the child was treated in the process and frequently resulting in poor decision making.

- Caseowners frequently failed to interpret the Refugee Convention correctly in relation to children seeking asylum resulting in children who are refugees not being identified as such.
- Many decisions made on children's claims did not take into account children's developmental status and the fact that children will recall events differently from adults.
- There were many examples of inappropriate questioning of children in interviews.

Without confidence that decision making on children's asylum claims results in all children in need of international protection being identified and accordingly granted the appropriate status, we remain concerned that plans to return children to their country of origin are being developed prematurely.

Establishing reception conditions in the country of origin

The current policy of the UKBA is that children whose asylum claims are refused will only be returned to their country of origin if there are adequate reception arrangements available. It is unlikely that reception arrangements other than the care of their own family exist in most of the countries from which children seek asylum. In practice, therefore, children are rarely removed from the UK while under the age of 18. To reflect this the UKBA will, if it believes that no adequate reception conditions exist, grant discretionary leave to expire when the young person is 17 and a half years of age. The child has to make a further application to remain beyond this period of time.

This policy will not change under the new proposals⁵. The new element is that for the first time, the UK government is not simply enquiring as to the existence of reception arrangements for children in the country of origin, but contributing towards such arrangements by providing funding from the UK to enable reception conditions to be established, in order that it may then refuse the claim because these reception conditions exist.

Recent developments relating to Kabul

In March 2010 a tender document was issued by the UK government⁶, inviting bids for the provision of reintegration assistance in Kabul. The tender is primarily for adult returnees, but also asks that additional assistance be provided, in the form of accommodation and other services, for up to 12 Afghan children per month, whose asylum claims have been refused.

We understand that the bidding process is underway and that the successful contractor will be announced in the summer months. There may be a delay while the successful contractor develops the arrangements, at which stage the UKBA may begin to refuse claims and refer to these arrangements as adequate reception conditions. The affected children would not be granted discretionary leave and arrangements could be made for their removal to be enforced while they are under 18.

³ Including Separated Children in Europe Programme Statement of Good Practice available at http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html

⁴ <http://webarchive.nationalarchives.gov.uk/20100503160445/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/>

⁵ At the time of writing the new instruction had not been published.

⁶ <http://ted.europa.eu/udl?uri=TED:NOTICE:92408-2010:TEXT:EN:HTML>

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Next steps

The UKBA will produce a revised version of its asylum process instruction for children and has indicated that it will provide training in its application to caseowners making decisions on children's claims. The UKBA will keep stakeholders such as the Refugee Council informed of the likely timescale for the reception arrangements to be completed.

When the reception conditions are believed by the UKBA to be adequate, children from Afghanistan who the UKBA believes to be aged 16 or 17, will then have their asylum claims processed as usual. Caseowners may cite the existence of reception arrangements in Afghanistan in their decisions and inform the child that s/he is to be returned to Kabul.