

October 2004

One-off Government asylum case clearing exercise for asylum-seeking families

Background

On 24th October 2003, the Government announced a special one-off exercise to clear an estimated 15,000 asylum-seeking family cases. Under this exercise, the Home Office is granting certain asylum-seeking families who have been in the UK for three or more years indefinite leave to remain (ILR). Since this announcement, the Government has revised the qualifying criteria and made changes to the way in which families are expected to apply.

Who is eligible?

A family will have to meet the following criteria to be eligible for ILR under this exercise. The main applicant needs to have

- made an initial application for asylum before 2nd October 2000; and
- had at least one dependant under the age of 18 (other than a spouse) in the UK on 2nd October 2000 or 24th October 2003. This includes families who were joined by a child between those two dates.

Furthermore, the following criteria regarding the asylum application have to be met:

- The asylum application is still awaiting an initial decision from the Home Office.
- Or the asylum application has been refused and is subject to an appeal hearing.
- Or the asylum application has been refused and there is no further avenue of appeal but the applicant has not been removed.

In addition:

- Families where the main applicant's asylum claim was refused but she/he was granted limited leave to remain will be considered.

- Kosovar families, who came to the UK under the Humanitarian Evacuation Programme before 2 October 2000 and did not apply for asylum until after this date, will be considered if they meet the necessary criteria.

Families will not be eligible if they have been removed or have left the UK voluntarily after their initial asylum application has been refused.

If the family is eligible and all members of the family meet the dependency criteria as set out below, the Home Office should grant ILR to all family members. Lone parent families are also considered under this exercise.

Who is defined as a 'dependant'?

For the purpose of this exercise, a dependant is defined as a child of the applicant, or child of the applicant's spouse, who was under 18 years of age on 2nd October 2000 or on 24th October 2003, and who was or is financially and emotionally dependant on the main applicant.

The Home Office has indicated that its caseworkers will look at whether the dependant:

- is related as claimed to the main applicant, and
- formed part of the family unit in the UK on 2nd October 2000 or 24th October 2003.

It should generally be sufficient for the applicant to show that the dependant has been listed on the asylum case file before the 24th October 2003 - the date of the Government announcement. If the dependant was born in the UK and is not listed on the asylum file, then the UK birth certificate should be sufficient as documentary evidence.

A dependant may not be listed on the asylum file or may not have been born in the UK. In this case, strong evidence will be required to satisfy a caseworker that a dependency relationship to the main asylum applicant exists and that the dependant has been living in the UK on 2nd October 2000 and/or 24th October 2003 as part of the family unit.

Who is excluded?

The concession will not apply to a family where the main applicant or any of the dependants

- have a criminal conviction;
- have or have had an anti-social behaviour order or sex offender order;

- have made or tried to make an application for asylum in the UK under more than one identity;
- should have their asylum applications considered by another country (for example, if they are the subject to removal to a 'safe-third' country);
- present a risk to national security;
- have committed crimes against humanity or against the purposes of the United Nations as outlined in Article 1F of the 1951 Refugee Convention;
- whose presence in the UK is otherwise not conducive to the public good.

How is the Home Office implementing this exercise?

The Home Office has contacted the families which it thought should qualify and assessed their cases using a questionnaire. At that point the Home Office did not want the families to apply under the scheme but to wait for a questionnaire.

However, the Minister for Immigration, has now requested that those who believe they are eligible for ILR under the exercise and have not yet heard from the Home Office should write to IND, PO Box 1541, Croydon CR9 2YS providing their name, date of birth, Home Office reference number and details of why they think they should be eligible. **The closing date for applications is 31 December 2004.**

Following receipt of an application letter from a family, the Home Office will send an acknowledgement letter within about five days and the questionnaire within four to five weeks later.

If the family does not receive the questionnaire within six weeks, it should ask an adviser to contact the **ILR Helpline on 020 8760 4779**. Please note that this helpline will only deal with enquiries from advisers and not from families themselves.

What about pending asylum applications and appeals?

Individuals who believe they are eligible under this exercise should continue to pursue their asylum application or asylum appeal.

At the Immigration Appellate Authority Stakeholders' meeting on 14th January 2004, both the Chief Adjudicator and the representative from the Home Office Presenting Unit said that they would resist applications for adjournment of appeal hearings. If they proceed it will not jeopardise or influence the outcome of their entitlement under the concession. Clearly, some individuals may wish to pursue their applications for full refugee status even though they are eligible under this policy. This should still be possible and may also have implications for their family reunion rights and ability to reclaim loss of benefits since the time of their original application.

Further information

The latest communication from the Home Office regarding this one-off exercise can be found on the Immigration & Nationality Directorate's website at:
http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis/one-off_exercise_to.html.

For further updates, visit the Refugee Council website at: www.refugeecouncil.org.uk or sign up to our fortnightly email newsletter at: www.refugeecouncil.org.uk/#email

For general information enquiries, please contact the Refugee Council Information Line on 020 7820 3085 on Mondays, Wednesdays and Fridays from 10am to 1pm or email us at: info@refugeecouncil.org.uk