

Applying for NASS support under Section 55

Following a Court of Appeal judgement on 21 May 2004, the Home Office revised its procedures for determining eligibility for NASS support under Section 55 of the Nationality, Immigration and Asylum Act. The Court of Appeal ruled that the Home Office was in breach of Article 3 of the European Convention on Human Rights because it denied three asylum seekers access to basic state support. The effect of this judgement is that NASS should provide support under Section 55 to all asylum seekers unless it believes the person concerned has alternative means of support. The new procedures took effect on 28 June 2004.

Background

Section 55 of the Nationality, Immigration and Asylum Act 2002 (NIA Act) was introduced on 8 January 2003 and denies access to NASS support for asylum seekers who have not applied for asylum 'as soon as reasonably practicable'. Since its inception, there have been several court cases which tested if refusal of support by NASS under Section 55 amounted to a breach of the European Convention on Human Rights.

As a result, many asylum seekers were able to have their applications for support successfully reconsidered but the overwhelming majority of support applicants were given negative decisions.

Is the latest judgement the end of Section 55?

No. NASS will continue assessing support applications from asylum seekers against the Section 55 criteria. However, NASS should not refuse to provide support if an asylum seeker does not have alternative sources of support available to him or her. NASS considers provision of night shelter, food and basic amenities to be alternative forms of support.

Who is eligible to apply for NASS support?

Under Section 55 of the NIA Act, asylum applicants will only be eligible to apply for NASS support if

- they can show they have applied for asylum; and
- they apply for asylum 'as soon as reasonably practicable' after arrival in the UK
- or they are destitute and have no alternative means of support.

Who is exempt?

Asylum applicants will not have their eligibility for NASS support restricted if they

- have dependent children under 18;
- are visibly pregnant;
- have special needs (if needs do not arise solely out of destitution or effects of destitution, local authorities are responsible for care arrangements);
- applied for asylum in-country due to changed conditions in their country of origin and proved that they have applied at the earliest opportunity following the change of circumstances.

What does the 'as soon as reasonably practicable' test mean?

NASS will consider whether

- an asylum seeker has claimed asylum within three days of arrival;
- the account given by the asylum seeker about his or her arrival are credible;
- individuals who apply for asylum following a significant change in circumstances in their country of origin make their asylum claim at the earliest possible opportunity.

NASS has said that each case will be considered on its own merits taking into account the information provided by the asylum seeker and his or her circumstances.

How will the decision-making process work in practice?

Asylum seekers will no longer be expected to undergo level 2 screening to determine eligibility for NASS support. Instead, NASS will conduct a purely paper-based exercise, using information gained at the level 1 interview and from completed NASS 1 application forms.

NASS has created a dedicated team called the NASS Eligibility and Assessment Team (NEAT), which will make Section 55 decisions. Asylum seekers and their advisers can contact NEAT on 020 8760 3311/3314/3315/3320 (fax: 020 8760 3195).

If information given is insufficient for NASS to make a decision, the applicant will be invited to attend a level 2 screening interview.

What if an asylum seeker has previously been refused support under Section 55?

An asylum seeker who has previously been refused support under Section 55 can ask for that decision to be reconsidered. An asylum seeker needs to state that the s/he does not have access to alternative forms of support including night shelter, food and basic amenities. The Post Refusal Casework Team (PRCT) at NASS will consider such requests in line with the new policy. The PRCT can be contacted on: 020 8760 3313/4541 (fax: 020 8760 3820/3888).

Further information

NASS has published a policy bulletin 75, which provides guidance on the criteria used to assess whether asylum seekers are eligible for NASS support under Section 55 of the NIA Act. Advisers can download this policy bulletin at:

http://www.ind.homeoffice.gov.uk/ind/en/home/applying/national_asylum_support/policy_bulletin/section_55__late_claims.html

Further information from the Refugee Council

Refugee Council Information Line

Tel: 020 7820 3085

(open Mondays, Wednesdays, Fridays, from 10am to 1pm)

E-mail: info@refugeecouncil.org.uk

Refugee Council London Office

One Stop Service

240-250 Ferndale Road

London SW9 8BB

Advice line: 020 7346 6777

Refugee Council West Midlands Office

One Stop Service

First Floor, Smithfield House

Digbeth

Birmingham B5 6BS

Tel: 0121 622 1515

Refugee Council Eastern Region Office

One Stop Service

First Floor, 4-8 Museum Street

Ipswich IP1 1HT

Tel: 01473 221 560

Refugee Council Yorkshire & Humberside Office

One Stop Service

Ground Floor, Hurley House

1 Dewsbury Road

Leeds LS11 5DQ

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