

# Refugee Council

## policy response



Refugee Council response to the Prevention of Illegal Working: consultation on the implementation of new powers to prevent illegal migrant working in the UK

July 2007

## About the Refugee Council

The Refugee Council is the largest organisation in the UK working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers.

Our response to the consultation is not comprehensive. We have responded to questions directly relevant to the employment of asylum seekers with permission to work and those granted refugee status, humanitarian protection, exceptional and discretionary leave to remain.

We want to note two related policies that impact on the consultation. The first is the five years limited leave to remain given to asylum seekers granted refugee status from August 2005. The Refugee Council is opposed to the structured review of refugee status. We believe that all asylum seekers granted protection under the 1951 Refugee Convention should automatically receive indefinite leave to remain.

The second policy issue relates to asylum seekers' entitlement to work. The Refugee Council believes that asylum seekers should have the choice to work from the day of their claim. Permission to work should continue until someone is granted leave to remain in the UK or able to return. Allowing asylum seekers to work will help combat economic and social exclusion, alleviate the burdens destitution places on community organisations and related agencies, and challenge the negative public stereotypes of asylum seekers being a 'burden'. In addition, the effects of such a policy do not disappear when an asylum seeker is granted leave to remain.

The Refugee Council believes that allowing asylum seekers to work and giving indefinite leave to remain to those granted refugee status will strengthen attempts to empower employers to recruit those with entitlement to work.

## Question 2

### Will the proposed codes significantly impact upon recruitment practices?

Yes

Asylum seekers granted refugee status from August 2005 have limited leave to remain, as do those receiving Humanitarian Protection and Discretionary Leave to Remain. These groups will only have documents from List 2. Before this date, refugees were granted Indefinite Leave to Remain (ILR) and will have documents in List 1.<sup>1</sup>

Asylum seekers with permission to work are now List 2 with the Application Registration Card (ARC) plus confirmation from the Employers' Helpline establishing a statutory defence.

We have a number of concerns

1. the emphasis is on punishing administrative failure to check documents rather than levels of employer exploitation
2. dividing refugees between the two lists, those with ILR and those with limited leave to remain, will be confusing for employers
3. employers, particularly small and medium sized, are likely to be limited in their human resources capacity. It is unrealistic to assume that some employers will not favour those individuals who hold passports/on the basis of having traditional, established documentation (ie a national passport)
4. as part of List 2, employers will have the additional responsibility to check regularly that leave is continuing and as a consequence many employers may not recruit recognised refugees and others without indefinite leave to remain
5. the Travel Documents issued to those with refugee status, humanitarian protection and discretionary leave to remain do not state that someone is allowed work
6. research on refugee employment records high levels of unemployment and underemployment<sup>2</sup>. Where jobs can be found, these are likely to be in lower skilled, temporary posts where competition with migrant workers, many of whom will be EU citizens, is high. Those with more acceptable documentation (ie a national passport) may have a competitive advantage.<sup>3</sup>

In the light of this, we would recommend that research is commissioned into

- employers understanding of asylum related documents on List 1 and 2
- whether citizens from EU member states have a competitive advantage in recruitment due to having more acceptable documentation

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<sup>1</sup> Research being carried out by the Refugee Council has found that many refugees granted status after August 2005 were not aware they had limited leave to remain. In the light of this, there is clearly a danger that refugees will not be aware they have to apply for a review in their fifth year of leave and potentially lose their entitlement to work.

<sup>2</sup> For example, Bloch, *A Refugees' opportunities and barriers in employment and training*, DWP Research report 179 (2002)

<sup>3</sup> As noted by ILPA, the Refugee Convention requires that a Contracting State grant equal access to welfare to recognised refugees as nationals; and equal rights to work as most favoured foreigners (in this instance EEA nationals). See <http://www.ilpa.org.uk/briefings/Lords2ndReadingBriefingFINAL.doc>, last searched 12 July 2007

### Question 3

#### **How well understood are the requirements for employer under the current (1996) legislation?**

Misunderstood

The Refugee Council provides training for employers and advisers on recruiting refugees. In our experience, there is a lack of awareness around which documents are required for a statutory defence. A recent example was an agency that refused to register an asylum seeker with permission to work because he did not have a passport. In our experience:

- employers can share public views by conflating terms such as asylum and illegal immigrant<sup>4</sup>
- there is still a widespread belief that a possession of a National Insurance number demonstrates permission to work
- employers favour job applicants who hold passports

#### **What improvements to the Government communication process would aid understanding of the proposed codes and assist employers in complying with the law?**

In our view, applicant and employee awareness is as important as an employer's. The Home Office should consider integrating information about employment rights and entitlement into the asylum process.

Trade Associations and governing bodies will play a key role. This should include ensuring that their members are well informed and recognise that discriminating against someone on the basis of (correct) documentation is unlawful.

### Question 4

#### **Would the provision of any other services assist employers in complying with their duties under the legislation?**

We have a number of concerns relating to the role of the Employers' Helpline.

1. Asylum related documents, including the ARC and ISD, issued after August 2005 will be List 2 and so will require referral to the Employers' Helpline at some stage. Fundamentally, we do not think it appropriate for an employer to know about the asylum status of an applicant or employee before they do.
2. It is the responsibility of the Home Office to ensure that refugees are in possession of documentation that clearly demonstrates that they can take employment.
3. It cannot be assumed that employers will use the information provided by the Employers' Helpline lawfully. Vulnerable workers need protecting from those employers who would use such information exploitatively

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<sup>4</sup> For example, Lewis, M, *Asylum: Understanding Public Attitudes*, ippr (2005) and Institute for Employment Studies, *Employing Refugees: Some Organisations' Experiences* (2004)

4. Providing advice to employers on asylum related matters needs specialist advisers. Will the Employers' Helpline have these resources?
5. We are unclear as to whether the service is empowering employers to employ individuals or providing advice that is too cautious.
6. Applications for further leave to remain take time to be registered. This can mean that someone with, for example, Discretionary Leave to Remain makes an application in time but when the employer checks with the Employers' Helpline, the application has not been electronically lodged. The applicant or employee might then be refused employment.<sup>5</sup>
7. Given the arrangement for using the Employers' Helpline, how will the applicant or employee give genuine consent for the employer to access the information? We recommend that
  - employers have to explain clearly to the applicant or employee why they are requesting consent and how the information will be used ( similar to the requirements for service providers conducting credit checks on potential customers)
  - consent is given in writing on a standard form that lays out the employer's responsibilities and applicant's rights to data protection

We do not think employers will nor should they pay for such a service.

## Question 5

**The Code recommends that employer conduct document checks on all prospective employees to avoid allegations of unlawful discrimination. Do you think this recommendation will be followed?**

Unsure. We welcome the recommendation that employers conduct checks on all prospective employees. However, it should be recognised that recruitment practices vary enormously. Many employers do not have a human resources department, while others choose to use an agency. In addition, the Code is unclear on how employers should act. For example, whether it is unreasonable for an employer not to employ or invest in the training of someone who has 12 months leave remaining, or is an asylum seeker with permission to work.

**Do you think the recommendation is enough to provide a safeguard against unlawful discrimination?**

No

We suggest that refugees, asylum seekers granted Humanitarian Protection or Discretionary Leave to Remain and asylum seekers with permission to work are

- explicitly referred to in the Code as being protected from racial discrimination under the Race Relations Act
- issued with an employment and training entitlement document which does not refer to their protection status or exceptional/discretionary leave to remain following a claim for

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<sup>5</sup> For example, we have had experience of an individual granted exceptional leave to remain. She was in employment, applied for further leave to remain in time. She was detained while at work as immigration officials were not aware of the application having been made. It was only through our intervention and that of her solicitor that she was released and able to restart her employment.

asylum. This should include reference to the continuation of employment, training and education rights when an application for further leave is made

The Code should also make clear the legal position relating to discrimination on the basis of someone's leave to remain or asylum status. The onus should be on employers to demonstrate that they have applied document checks to all applicants and have not unlawfully discriminated in recruitment on the basis of someone's race, nationality or asylum status.

## Question 9

**How important should the following factors be in calculating the amount of the penalty fine?**

**e. Whether the employer has reported his or her suspicions to the Border and Immigration Agency.**

Not important (see f. below)

**f. Whether the employer has cooperated with the Border and Immigration Agency.**

Not important

We are opposed to employers in the first instance reporting suspicions to or co-operating with the BIA.

As there may be delays in the Home Office providing appropriate documentation, employees should be given a reasonable amount of time to provide employers with evidence of work entitlement. This should include a solicitor's letter confirming that an application for further leave has been submitted. The Employers' Helpline cannot be relied on to provide accurate information in all cases.

In addition, there may be times when someone has been working unlawful, whether knowingly or not, but then receives formal documentary entitlement to work. Employees and employers in this situation should not be liable for the period of time before regularisation.

We would also be wary of making an explicit link between the level of fines and the costs of returning asylum seekers who have been refused.