

Refugee Children's Consortium

Case resolution on asylum applications made by unaccompanied children and young people seeking asylum

Members of the Refugee Children's Consortium are: The Asphaleia Project, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, Barnardo's, BASW (British Association of Social Workers), British Associations for Adoption and Fostering (BAAF), Children's Legal Centre, Child Poverty Action Group, Children's Rights Alliance for England, The Children's Society, Family Rights Group, The Fostering Network, FSU (Family Service Units), The Immigration Law Practitioners' Association (ILPA), The Medical Foundation for the Care of Victims of Torture, NCB, NCH, NSPCC, Rainer, RAMFEL, Refugee Council, Refugee Arrivals Project, Refugee Legal Centre, Scottish Refugee Council, Save The Children UK, Student Action for Refugees (STAR), Welsh Refugee Council and Voice. The British Red Cross, Office of the Children's Commissioner (England), UNICEF UK and UNHCR all have observer status.

This note provides information for those working with children and young people who, having applied for asylum prior to 5th March 2007, will have their cases finally determined under the Case Resolution exercise.

The Case Resolution Directorate (CRD) of the Border and Immigration Agency (BIA) was established to fulfil the promise made by the Home Secretary in July 2006 that all outstanding applications for asylum would be dealt with by July 2011. The cases in this backlog have also been known as 'legacy cases'.

The caseload of the CRD includes all applications from unaccompanied children that were made prior to 5th March 2007, regardless of the stage the case is at. Such cases will usually be allocated to an individual caseworker who will contact the asylum seeker before the case is determined. Thus far people have been invited to complete a questionnaire to set out their circumstances and explain why they should be given leave to stay in the UK. Questionnaires, however, will not be issued in all cases. Young people who made an asylum application as an unaccompanied child and who were therefore not interviewed in depth about the substance of their claim should be invited for interview before a decision is made on their application.

Most of the young people who will be dealt with under the Case Resolution exercise will have had an initial refusal on their application and been granted Discretionary Leave (DL). These young people will have been entitled to apply for further leave and should have been advised to make the application before their existing leave expired. The consideration of this application is known as an 'active review'.

The BIA may consider applications that were made after the existing leave expired and will have to consider any late application that raises fresh asylum and/or human rights arguments. However, making an application late may have adverse consequences; see (3) below.

Information for those helping children and young people who made asylum applications prior to 5th March 2007, including those who have made applications for further leave.

1. Unaccompanied children (as others) are entitled to legal advice and assistance under legal aid. Changes to legal aid in England and Wales were introduced in October 2007 (for more information on this see www.ilpa.org.uk). Those who made their original asylum application as an unaccompanied child are exempt from these changes.
2. Young people who applied for asylum as unaccompanied children should ordinarily seek legal advice and assistance if

- they receive any correspondence, including a questionnaire, from the Case Resolution Directorate.
- their Discretionary Leave, or any other leave they have been granted, is due to expire within the next 6-8 weeks (or less, when urgent action is required).
- their Discretionary Leave has expired and they have not made any application for further leave, or they are not sure whether or not this has been done.
- an application for further leave is refused.

3. There are several reasons why it is important that these children and young people make sure that any application to extend their Discretionary Leave (or any other limited leave) is made before the leave they have been granted expires.

- by applying to extend their leave before it expires, young people will continue to have leave to remain in the UK (and welfare, employment and educational entitlements) while that application and any appeal against a refusal remains under consideration;
- by applying to extend their leave before it expires, the young person will retain a right of appeal against any refusal of their application;
- applying to extend their leave before it expires should ordinarily mean that these young people will not face the risk of detention for immediate removal while that application and any appeal against a refusal remains under consideration.

4. Despite some reports in the media, there is no general amnesty being applied to the legacy backlog. Young people who sought asylum as unaccompanied children are not, therefore, guaranteed a grant of indefinite leave to remain or an extension of their leave. However, the Case Resolution Directorate will consider all relevant circumstances that are drawn to their attention. The length of time a young person has spent in the UK and the degree to which they have settled in the UK or degree to which they may suffer if removed from the new circumstances they have established in the UK will all be relevant. However, for these factors to prove compelling, it will be necessary to consider (with legal advice) what evidence can be obtained in order to demonstrate the degree of integration or consequences for the young person of being removed from the circumstances they have established.

5. Despite the fact that the young person will have been refused asylum in the past, it will be necessary to consider (with legal advice) the current circumstances in the young person's home country. This will also be the case for those who have previously had an appeal.

Please note that this briefing is for information purposes and should not be seen as a substitute for individual legal advice. For further information on finding a legal adviser you may find it useful to consult the following directories.

<http://www.ilpa.org.uk/directory/directory.html>

<http://www.communitylegaladvice.org.uk/en/directory/directorysearch.jsp>

<http://www.refugeecouncil.org.uk/practice/basics/links/legalorganisations.htm>

FOR MORE INFORMATION CONTACT:

Steve Symonds, Legal Officer, Immigration Law Practitioners Association
020 7490 1553 steve.symonds@ilpa.org.uk

Or

Judith Dennis, Policy Adviser, Unaccompanied Children, Refugee Council
020 7346 1170 judith.dennis@refugeecouncil.org.uk