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By email to Gillian.haimes2@homeoffice.gsi.gov.uk

Dear Ms Haimes

Proposed amendments to s4 eligibility criteria and regulations

Thank you for sending the Immigration Law Practitioners' Association (ILPA) a copy of your letter to the Asylum Support Appeals Project of 2nd September and the copy of the draft regulations and for extending the deadline for response.

ILPA is a professional association with some 1200 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups .

In ILPA's view, section 4 support is inadequate to maintain a decent standard of living and to treat people with humanity and dignity. These inadequacies become all the more apparent the longer a person spends on section 4 support. Those cases being dealt with by the Case Resolution Directorate have no promise of a decision before 2011, assuming that the legacy programme will deliver its stated objectives on target. Some people face the prospect of a further three years on section 4 support, having already spent years on this minimal support. These have included people who cannot return to their country of origin, either because of the situation of conflict in that country, or because it has been impossible to remove the individual.

ILPA recall comments made during the passage of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004

'I agree with my hon. Friend the Member for Walthamstow (Mr. Gerrard) that problems may arise in connection with people who suffer under section 4 for a long period of time.' Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 926

'I do not pretend that the regime under which they live is terribly pleasant—it is meant to be temporary, although I take the point about longevity. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, cols. 927-928

Meanwhile access to section 4 support continues to be problematic, and particular concern has been voiced at the delay between a decision of an asylum support adjudicator that a person should receive support and the provision of such support.

Both the August 2008 report of the Asylum Support Appeals Project (ASAP) *Unreasonably Destitute* and the 2006 Citizens Advice Evidence Report *Shaming Destitution* have catalogued the failures and inadequacies of the asylum support system. No change to the legal framework can ameliorate the situation of those who, to quote the former Minister cited above, 'suffer under section 4 support' or indeed suffer because they do not receive support at all, without considerable improvement in the administration of the support regime. Such changes can in any event be but an interim measure and ILPA trusts that when the full Immigration and Citizenship Bill is laid before parliament and becomes law it will ensure that people do not continue to live in poverty on section 4 support, and to ensure that people are not left destitute.

We make the following points on the draft regulations

Regulation 5

ILPA does not consider that it is acceptable to use the threat of destitution to try to force people to behave in a particular way. But even if the threat were successful, the applicant could still find him/herself destitute.

Regulation 5(2)(a)(i) relies upon acceptance onto a voluntary returns programme. Such a decision, and the timing of the decision, is outside the control of the applicant, or indeed of a government body. There is a delay in securing acceptance on a voluntary returns programme. Under the proposed regulations, people endeavouring to secure such acceptance will not be able to secure section 4 support during that period. While no delay is acceptable, in members' experience the period taken to secure acceptance has varied in the past, both due to the volume of applications overall and the circumstances of the individual case. The regulations do not make provision for this situation and this is not acceptable.

Regulation 5(b)(b) relies on having a medical reason for not travelling. But it is likely that the UK border Agency will require this to be evidenced by medical reports, again a matter outside the control of the applicant.

It is ILPA's understanding that an application is treated by the International Organisation for Migration as having expired after three months if progress has not been made. But there are cases where progress is not made within this timeframe, in particular where the attitude of the country of origin means that there is no possibility of redocumentation. The regulations must be framed so that people do not lose support in these circumstances.

As to regulation 5(2)(c) and the question of viable routes of return, there has been considerable, and often contentious, debate about whether there is a viable route of return to a particular country or place. The views of the UK Border Agency and its predecessors have frequently appeared to be at odds with the views expressed by other government departments. Litigation on the point can take considerable time and even then doubt can remain about an individual case. If people cannot be returned to a particular country, they should be given a period of limited leave. In any event, it one thing for the UK Border Agency to reserve a power to support groups of applicants who would otherwise not be eligible for support, it is quite another to use this contentious criterion to determine eligibility in the first place.

Your letter makes reference to 'specified steps' that are to govern whether a person receives support. ILPA members' experience spans the whole of the immigration system and we have most recently had to contend with detailed specified steps under the Points-Based system. Experience has been that the resulting system has been cumbersome and bureaucratic, leaving few interstices in which commonsense can take refuge. It can be very difficult for those who are destitute or living in the extreme poverty imposed by section 4 to comply with bureaucratic provisions. In members experience, prescriptive provisions tend not to reply but to displace other exercise of judgement, and this is what we fear will happen with the steps set out in your letter. What will it mean to comply 'fully'? What will constitute 'complete' information? What will it mean 'otherwise to pursue' a voluntary departure? We see every possibility of the old problems arising in a new guise under the draft regulations.

In summary ILPA is unconvinced that the attempt to replace 'all reasonable steps', with the possibility of taking account in what is reasonable in the individual case, with 'specified steps' as per your letter, will increase fairness or avoid destitution. As drafted, the regulations risk exacerbating existing problems.

Regulation 7

Regulation 7 supposes that unsupported and destitute applicants have a very high level of awareness of the myriad obligations placed upon them by asylum

law and guidance. Many of the conditions would not be straightforward for anybody. At what point does a person start living with a person as if married or a civil partner (regulations 7(3)(f) and 7(3)(g))? At what point can a couple be said to have separated (regulations 7(3)(j) and 7(3)(k))? Is it really the intention of the Secretary of State to deprive a person of support because she failed to identify rapidly that she is pregnant and is therefore deemed to have failed to make notification (regulation 7(3)(1))? What is a 'reasonable time' within which to notify the Secretary of State of a death in the family (regulation 7(2)(i))? Is it really the intention of government to withdraw support from a person who is not considered to have made a sufficiently timely notification of such a death? Or of having given birth (regulation 7(2)(h) read with regulation 7(3)(m))? Or been admitted into hospital (regulation 7(2)(h) read with regulation 7(3)(p))? Or into prison (regulation 7(2)(h) read with regulation 7(3)(q))? Or into immigration detention (regulation 7(2)(h) read with regulation 7(2)(r))? The Secretary of State might reasonably be expected to have knowledge of whether a person is detained under immigration act powers without having to rely upon the person, or their impoverished family members, to make the notification.

While ILPA acknowledges that the application of tests depending on reasonableness have proved difficult for the Secretary of State to implement and operate in the past, it is unconvinced that these regulations will provide a solution.

Yours faithfully

Sophie Barrett-Brown
Chair
ILPA