

The Asylum Process for Separated Children

1. This note is prepared for a discussion with the Refugee Youth Project on the asylum system in the UK to be held at the Project's offices on Monday, 7th March 2011. The note provides a basic description of the asylum process for separated children. The UK Border Agency (and others) often refers to these children as unaccompanied asylum-seeking children. The acronym UASC is often used in UK Border Agency material.
2. The note includes information on age disputes, the appeal process, reporting (signing-on) conditions, detention and immigration offences. The information provided is necessarily general and incomplete. The aim is to provide an introduction, not to provide a complete explanation or analysis of the asylum process. Specialist legal advice will usually be necessary to assist with any individual asylum (or other immigration) claim, and to deal with any individual action by the UK Border Agency.

Further information:

3. ILPA produces short (two-page) information sheets on various matters relating to immigration, asylum and nationality law and practice in the UK. Many of these relate to asylum. ILPA also has a refugee children's project, which has a primary aim of providing training and guidance to lawyers and other practitioners working with children in the UK asylum system. As part of that project, some of the ILPA information sheets are specifically dedicated to providing information relevant to refugee children. These information sheets are available in the 'Info Service' section of the ILPA website at www.ilpa.org.uk or can be provided regularly by email (about one email per month) on request.
4. ILPA does not provide legal advice or representation. However, most members of ILPA are immigration advisers, and many have their contact details (with some short

explanation about the type of work they do) in the 'Directory' section of the ILPA website at www.ilpa.org.uk

Claiming Asylum:

5. An asylum claim may usually be made in one of three places. Someone arriving at a port of entry to the UK (e.g. Heathrow) can claim at the immigration desk. The UK Border Agency position is that most people should claim on their arrival in the UK – however, for various reasons, most asylum-seekers claim later (in-country).
Someone who has entered the UK, and is arrested and detained by the police or the UK Border Agency, may claim in the place they are held (e.g. at a police station or detention centre) – however, it is not possible to claim at these places if you are not being held there (i.e. someone in the UK, who wishes to claim asylum, cannot do this by going to their local police station). Someone who has entered the UK may go to the Asylum Screening Unit at Lunar House in Croydon. Most asylum claims are made there.
6. In some cases, the UK Border Agency may permit someone to claim asylum at the Agency's regional asylum office, or to do so in writing. However, it is rare that this will be allowed. Someone in hospital may be permitted to do this. Separated children are sometimes permitted to do this, with the assistance of local social services. However, in many cases, the UK Border Agency will require social services to bring the child to the UK Border Agency (including the Asylum Screening Unit) in order to claim. An appointment can be made in advance.
7. The UK Border Agency position is that asylum-seekers, including children, should claim as soon as possible. In some cases, the UK Border Agency may give a reason for refusing a claim (and/or refusing to believe what an asylum-seeker says) as being because the asylum claim was made late.
8. When an asylum claim is made, the UK Border Agency conducts a screening interview. This interview is not intended to go into the detail of the asylum claim. It is intended to take some brief personal information, including the asylum-seeker's

name, nationality, gender and age. Disputes about children's ages are too common (see below for more information). The interview is also intended to take details about the asylum-seeker's journey to the UK, the asylum-seeker's travel documents and his or her fingerprints. The main reasons for this are as follows:

Criminal investigations and intelligence:

9. Some of this information is meant to assist the UK Border Agency tackle smugglers (and traffickers) who bring people to the UK. Finding information about routes to the UK and methods of travel may assist the UK Border Agency understand the routes and methods being used by smugglers, and take steps to stop them.

Travel documentation:

10. The UK Border Agency is always keen to get hold of asylum-seekers' travel and identity documents (if they have them). This is because it assists the UK Border Agency to remove someone from the UK if he or she is refused asylum (see below).

Criminal prosecutions:

11. Over the last few years, the UK has increased the number and type of immigration offences. This is intended to give a 'tough' message to deter people from coming to the UK and claiming asylum, or to dissuade people from not co-operating with the UK Border Agency (see below for more information).

Fingerprinting:

12. In Europe, all asylum-seekers are fingerprinted. This information can be shared across the European countries to check whether someone has previously made an asylum claim in another European country. If it is found that someone has previously made a claim, the UK Border Agency will often take steps to arrange for the person to be returned to the country in which that claim was made (rather than deal with the asylum claim in the UK). These cases are dealt with by a part of the UK Border Agency called the Third Country Unit. It is often referred to by the acronym TCU.

Social services:

13. The UK Border Agency should ensure that all separated children are known to and assisted by social services.

Age Disputes:

14. Age disputes can arise at any stage of the asylum process, but generally these arise at or near the beginning of the process. An age dispute is when an asylum-seeker says he or she is X years old, and the UK Border Agency and/or social services say he or she is a different age (usually older).
15. There are broadly two reasons why age disputes arise. Firstly, the UK Border Agency may dispute someone's age because the Agency refuses to accept someone is a child, and therefore not required to be treated as a child by that Agency. If the UK Border Agency accepts or treats someone as a child, he or she should not be detained, he or she cannot be subjected to fast track procedures (a much speeded-up version of the asylum process), he or she should always be accompanied by an independent adult in any UK Border Agency procedure (including any interview), the Agency must show particular care in interviewing and assessing his or her evidence and the Agency must generally have regard to his or her welfare. A particular responsibility in relation to the latter, is that the Agency must ensure that there are adequate reception arrangements for any child, who is removed from the UK, in the country to which he or she is removed. If there are no adequate reception arrangements, a child asylum-seeker who is refused asylum should be granted discretionary leave (to age 17.5 years).
16. Secondly, social services may dispute someone's age because social services refuses to accept the particular age and, therefore, responsibilities (immediate and ongoing) in respect of a child's housing, welfare and educational needs. Social services generally accept a greater responsibility in respect of children under the age of 16 years, so age disputes sometimes arise not about whether the person is or is not a child, but about whether he or she is or is not under the age of 16 years.

17. Generally, but not always, the UK Border Agency will accept an assessment of age by social services. Sometimes, age disputes are complicated by litigation (legal challenges in the High Court) or by decisions of immigration judges in asylum appeals about the asylum-seeker's age.

Detention:

18. Separated children should not be detained. However, some separated children are detained. This can happen in two ways. Firstly, where the UK Border Agency or police find someone who has not yet claimed asylum and has no entitlement to be in the UK, that person may be detained. If, at the time, the UK Border Agency is unaware that the person is a child, he or she may be detained as an adult. Secondly, where there is an age dispute. Some children are detained because the UK Border Agency says (and sometimes social services also say) that the person is an adult.

19. The UK Border Agency says that some adults claim to be children to avoid detention, or to obtain other benefits. The UK Border Agency also says that it is necessary to be careful not to treat adults as children because children may be at risk from an adult who is permitted to be in a child's environment by reason of being wrongly treated as a child.

20. Someone who is detained may apply for bail. This can be done to the UK Border Agency or to an immigration judge. If someone is granted bail, they are usually bailed on certain conditions (including reporting conditions – see below).

First Reporting Event and Other Reporting:

21. Asylum-seekers (unless detained) are usually granted temporary admission. This is not the same as permission to be in the UK. It is a legal status that essentially recognises that the person is in the UK and imposes certain conditions on him or her until such time as it is resolved whether he or she is to be permitted to stay or is removed (or detained for removal). Temporary admission is usually granted on

condition that the person does not work. It is also usually granted on reporting conditions.

22. Asylum-seekers may be required to attend a First Reporting Event after the screening interview (see above). This was supposed to be when they would meet their case owner (see below), but that often does not happen. It will be the first contact that an asylum-seeker has with the regional office of the UK Border Agency responsible for their asylum claim. It may be at this event, that other reporting conditions are decided or imposed. Asylum-seekers will usually be required to report to the UK Border Agency regularly – this could be monthly or weekly (or more regularly). This is mainly so that the UK Border Agency is able to monitor whether someone has absconded. Missing reporting events can lead to someone being treated as an absconder, and this can be treated as a reason for detaining someone – though a separated child should not normally be detained. It may also be treated as a reason for disbelieving someone.

The Asylum Claim and Interview:

23. The screening interview (see above) is not designed to investigate the asylum claim. However, all asylum-seekers (including children of 12 years or older) are normally subjected to an asylum interview. Before this, all asylum-seekers are entitled to receive legal advice and representation. Legal representatives can attend interviews, but Legal Aid does not normally pay for legal representatives to attend asylum interviews. However, Legal Aid does pay for legal representatives to attend the asylum interviews of children.
24. Prior to the interview, asylum-seekers are invited to send to the UK Border Agency a statement about their asylum claim – e.g. what has happened to them in their home country, and what is it that they fear will happen to them if they are returned there (and why). Whether or not a statement is submitted, the UK Border Agency may proceed to the asylum interview.

25. The UK Border Agency person who is responsible for the asylum claim is called the case owner. He or she should, if the asylum-seeker is a child, be a specially trained case owner for the purpose of interviewing and dealing with children's claims. The case owner will normally conduct the asylum interview and decide the asylum claim. If the asylum claim is refused, the case owner continues to be responsible for the case up until it is concluded (either by a decision that the asylum-seeker may remain in the UK or by his or her removal from the UK).
26. The UK Border Agency rarely conducts more than one asylum interview. The interview is, therefore, very important as it is the most direct opportunity for an asylum-seeker to explain what has happened to him or her (or e.g. to his or her family) and from what and why he or she is at risk if returned to his or her home country. However, information can be sent to the case owner after the interview. Children often have particular difficulties making their asylum claim. This may be because they are too young to remember relevant facts, or do not know all the relevant facts (e.g. what happened to their parents and why). The UK Border Agency is supposed to be understanding of the difficulties that children may have (not just those referred to here).

The Asylum Decision:

27. While it is for an asylum-seeker to prove that he or she is at risk of serious harm if returned to his or her home country, the required standard of proof is low. An asylum-seeker does not have to show that he or she will certainly be killed or harmed, or that it is more likely than not that this will happen. He or she must show that there is a real risk of this. In children's cases, the UK Border Agency should be more willing to give the benefit of any doubt to the child asylum-seeker.
28. When making the asylum decision, the case owner must decide, firstly, whether the asylum-seeker is a refugee. The definition of a refugee is set out in the Refugee Convention. It is a relatively complex legal test, and requires both that the person is at risk of serious harm and that this harm (or risk) is by reason of one of five

particular reasons. If the asylum-seeker satisfies this test (the test is not fully set out here), the case owner should grant refugee status. If the asylum-seeker does not satisfy this test, the case owner should still consider whether there is a risk of serious harm (for a reason that is not one of the five Refugee Convention reasons). If the asylum-seeker is at risk of serious harm, but not a refugee, the case owner should grant humanitarian protection. Finally, the case owner should consider if there is any reason why the asylum-seeker should be permitted to remain in the UK. In children's cases, one reason relates to the inadequacy of reception arrangements (see above). If there are no adequate reception arrangements for the UK Border Agency to return a child to his or her home country, the case owner should grant discretionary leave. If nothing is granted, the case owner will be responsible for making arrangements to return the asylum-seeker to his or her home country.

29. If refugee leave is granted, this is granted for 5 years. At the end of this period, an application can be made for indefinite leave to remain (that is permission to stay in the UK permanently). In the great majority of cases, these applications are granted. If humanitarian protection is granted, this is granted for 5 years. At the end of this period, an application can be made for indefinite leave to remain. If discretionary leave is granted, this may be granted for 3 years or until a child is 17.5 years of age (whichever is the shorter). At the end of this period, an application for further discretionary leave may be made. If granted, a further 3 years may be granted. Only when someone has completed 6 years of discretionary leave may he or she ordinarily apply for indefinite leave to remain, and there is no guarantee that such an application will be granted.

30. The relatives (partners and children) of adults granted refugee leave or humanitarian protection may apply to join them in the UK. This is called family reunion. The UK Border Agency does not permit family reunion on the same basis for children. The parent of a child granted refugee leave or humanitarian protection may be permitted to join the child in the UK, but this is left entirely to the discretion of the UK Border Agency. It says it cannot permit family reunion on the same basis as

adults because this would encourage parents to send their children to the UK to make asylum claims.

Appeals:

31. Asylum-seekers are usually permitted to appeal against a decision not to grant asylum. However, a child granted discretionary leave for 12 months or less will not be permitted to appeal this decision. He or she will have to apply at the end of the period for further leave, and if refused (or granted up to a period now making more than 12 months) may then appeal. Appeals are heard by immigration judges. They form part of a tribunal called the First-tier Tribunal (Immigration and Asylum Chamber). Appeals must be submitted within a short timescale. If the appeal is submitted late, it may be refused as out of time.

32. Asylum-seekers may be legally represented for their appeal. Legal Aid will pay for legal representation for an adult asylum-seeker if there is a better than 50-50 chance of success or if it is unclear what are the asylum appeal's chances – this is called the merits test. However, the Legal Aid merits test should not prevent a child asylum seeker having Legal Aid for his or her asylum appeal.

33. Appeals are conducted at a tribunal hearing centre. The procedure is fairly formal. The UK Border Agency will normally be represented (possibly, but not necessarily, by the case owner) and will try to persuade the immigration judge that the appeal should be dismissed. The case owner may cross examine (question) the asylum-seeker to try and show that his or her evidence is not reliable. The immigration judge may ask questions. The legal representative is entitled to ask questions (but not to cross examine – i.e. he or she cannot challenge the evidence of his or her own witnesses, including the asylum-seeker), and may make submissions to the judge. The legal representative should normally also have put together written material (including a witness statement for the asylum-seeker, and general country information) in support of the appeal. The judge will normally consider the written evidence and what was said at the appeal hearing after the hearing, and make his or her decision then – this can be several days, sometimes weeks after the hearing.

34. The decision of the immigration judge will first be sent to the UK Border Agency. It is left to the UK Border Agency to send it on to the asylum-seeker or his or her legal representative.
35. If the immigration judge allows the appeal, the UK Border Agency may appeal against his or her decision if the judge has made an error of law (this means more than simply arguing that the judge got the decision wrong). If the immigration judge dismisses the appeal, the asylum-seeker may appeal against the decision if the judge has made an error of law. The proceedings for this are quite complex and there are short time-limits. If nobody appeals, or any appeal is dismissed, the decision of the judge will stand; and the UK Border Agency will be required to follow it. Appeals against decisions of immigration judges are heard by a tribunal called the Upper Tribunal (Immigration and Asylum Chamber). In some cases, appeals go on to the higher courts – the Court of Appeal (or Court of Session in Scotland) and the Supreme Court.

Housing and Financial Support etc:

36. Separated children should be supported by social services. Adult asylum-seekers are normally provided with housing and limited financial assistance by the UK Border Agency up until they are either granted asylum (or otherwise permitted to remain in the UK) or refused asylum and any appeal is finally dismissed. There is more restricted financial support provided for some refused asylum-seekers if they are co-operating with steps to remove them. Some separated children may be entitled to support by social services after becoming 18 years old. However, there can be disputes as to who is responsible for a former child, and many children are told to apply to the UK Border Agency for support after they have become 18 years of age. This is a complex area.

Refused Asylum-Seekers:

37. Someone who is refused asylum and has his or her appeal dismissed may be returned to his or her home country.

38. He or she may be offered a voluntary return, including a financial incentive to return home. If he or she does not go home voluntarily, the UK Border Agency may take steps to forcibly remove him or her. Adults facing removal are often detained prior to removal. If so, this is supposed to be for the shortest possible time, but in some cases detention lasts several months (some people are detained for several years – but see below). To remove someone from the UK, the UK Border Agency will normally need to obtain travel or identity documents for the person to be removed. If the person does not have valid travel or identity documents, establishing their identity and nationality, the process to obtain documents from a foreign Embassy can take several months. In some cases, it may simply prove not possible to obtain travel documents.

Criminal Offences:

39. Committing an immigration offence or an offence of deception may affect an asylum claim because decision-makers (case owners and judges) often rely on such offences as being reasons why someone should not be believed. Since most asylum claims turn on whether the asylum-seeker is believed or not, a criminal conviction of this sort can be damaging for an asylum claim.

40. Being convicted of a criminal offence, however, can have other harmful consequences – particularly if the person is sentenced to a period of imprisonment. In many cases, this may lead the UK Border Agency to detain someone (after completing his or her prison sentence) and to take steps to deport him or her. Deportation is a form of removal from the UK, which involves an order that excludes the person from being permitted to return to the UK (unless the order is lifted). Someone who has a criminal record may find it much harder to get bail, even if the UK Border Agency faces difficulties in being able to remove or deport the person – e.g. because travel documents cannot be obtained, or there is no safe route to get back into the person's country.

Conclusion:

41. What is provided here is only a very general overview of the UK asylum system, and experiences of the asylum system will differ for a variety of reasons. In discussion, we may touch upon particular points in more detail.

42. Appended is an ILPA information sheet concerning the UK asylum system – “The New Asylum Model”. The information sheet is several years old, but the basic outline described remains broadly accurate.

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