

**ILPA BRIEFING
House of Commons - Report****October 2011****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –
Bill 235****Refugee Family Reunion**Simon Hughes
Tom Brake
Mike Crockart**145**Page 112, line 11 [*Schedule 1*], at end insert–

- (1A) Civil legal services provided to an individual for a matter arising out of any rule laid down under section 1(4) of the Immigration Act 1971 making provision for family members to enter or remain in the United Kingdom as the family member of a refugee or beneficiary of humanitarian protection.

Purpose

To preserve Legal Aid for family reunion applications for refugees and those granted 'humanitarian protection'.

Briefing Note

When a person is recognised as a refugee or granted humanitarian protection they are entitled under the immigration rules to apply to have certain family members (e.g. spouses, partners and minor children) join them. Such persons may be living in danger in the country of origin, or be refugees or living in a precarious situation in a third country. There are thus enormous parallels to asylum cases, which remain within scope. Without this special provision in the rules, refugees would have to wait until they were settled to have their families join them, and would have to fulfil additional criteria.

Those recognised as refugees and those granted humanitarian protection are people who are at risk of serious ill-treatment such as execution or torture. The difference between the two is not the harm of which they are at risk but the reasons for why that harm may be inflicted upon them. A refugee is someone who is at risk by reason of one of five reasons (race, religion, nationality, membership of a particular social group or political opinion). Someone granted humanitarian protection is at risk for some other reason. These cases, therefore, concern family reunion for persons whose applications for international protection have been found to be well-founded, and to whom the UK's protection has been extended. They would face torture or other persecution on return. It is accepted that they cannot be expected to go back.

Many of these people will already have experienced situations of great danger and suffering and all will have known fear. To give such persons protection must mean more than simply to keep them out of harm's way: there must be some possibility for them to try to recover from what has happened, to rebuild a life and to live it with dignity. This is very difficult to achieve in exile at the best of times, and is made all the harder without immediate family members. It is even harder when those family members continue to live in danger or desperation. Freedom from Torture (formerly The Medical Foundation for the Care of Victims of Torture) highlighted the importance of family reunion for its patients in its evidence to the Ministry of Justice consultation on the Green paper:

"... a 19 year old female client who, in addition to her psychological health problems, has a serious heart condition and residual paralysis following two strokes and who is the sole carer of her elderly mother has become so distraught following an unsuccessful attempt to secure entry clearance for her two sisters (the three sisters are triplets) that she is no longer able to engage in our therapeutic services. Likewise we had to suspend therapy with the children in another family because of acute trauma caused by separation from their mother and younger sibling... enforced separation was highly traumatic and caused the two older children to distance themselves emotionally from their mother. Medical Foundation clinicians took a decision to stop family therapy with the children in order to preserve the defence mechanisms they had erected to cope with this situation. Without legal aid, it is highly unlikely that the father in this case, due to his own traumatisation alone, would have been able to challenge the decision by the UK Border Agency to refuse entry to his wife."

UNHCR stated¹:

"Family reunification plays a significant role in meeting the long-term needs of resettled refugees ...The family is often the strongest and most effective emotional, social and economic support network for a refugee making the difficult adjustment to a new culture and social framework."

The Government said in its response to the consultation:

"Applications to join family members are treated as immigration cases, and are generally straightforward because they follow a grant of asylum. Respondents argued that these cases are akin to claims for asylum but if a person wishes to claim asylum it is open to that person to do so either as a dependant of a primary asylum claimant or to do so in his or her own right. Legal aid for any such asylum claim will be in scope."

This is incorrect. The family members are outside of the UK and hence cannot claim asylum. It would be unlawful² to assist them to do so. To deny family reunion increases the risk that they make hazardous and clandestine journeys to the UK.

The UK Border Agency routinely requires evidence of family relationships. Families with children will be frequently required to undergo DNA tests; spouses will be asked to produce evidence of the relationship and of their own identity. Particular complexity arises in cases of polygamy (only one spouse can join the refugee in the

¹ June 2010 *Background Note for the Agenda Item: Family Reunification in the Context of Resettlement And Integration: Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, for the Annual Tripartite Consultations on Resettlement, Geneva, 20-21 June 2001

² Immigration Act 1971, s25A

UK). The UK Border Agency's record in dealing with these applications is especially poor, and belies the suggestion they are straightforward. Some 61% to 66% of refusals are overturned on appeal.³

The situations of the applicants often seriously compound the difficulties they have in making an application or pursuing an appeal. The family members may be in hiding, or be in a third country where they have no lawful status. They too may have faced or fled persecution. The remnants of the family may be isolated, in hiding, shunned and/or in dire financial straits, thus ill-placed to pursue the application for family reunion. They may simply be in camps, designed or managing to cope with the mass of refugees, not with the circumstances of an individual who needs to prove an entitlement to join a family member in the UK.

Evidential demands may often be substantial and protracted, including the need for witness statements from other relatives (including relatives overseas). Applicants are not in a position to obtain such evidence. Refugee family reunion cases frequently take a long time. Often family members must be traced. Communication may then be indirect and very slow. Even when they can be reached, they may be in a camp and unable under their own steam to travel to interviews at embassies or consular posts etc. Even submitting the application may be a matter of considerable difficulty.

Nonetheless, on appeal, however careful an immigration judge may be of the way they treat litigants in person, they cannot pluck evidence out of thin air and they must base their decisions on the evidence before them. Moreover, the judge will be restricted by reason of the fact that the applicant family members (and possibly any potential witnesses to the relationship) will not be in the UK and so unable to appear at any hearing.

Continued separation is a major obstacle to a refugee's integration in the UK. Conversely, inability to integrate following recognition as a refugee is itself a major obstacle to being able to deal with any legal proceedings. The UK Border Agency is already withdrawing all of its funding for refugee integration⁴. The prospect that refugees are left with no or little assistance to integrate and remain separated from family, including partners and children, is dismal; and fails to provide effective protection with a possibility of recovery from torture and other persecution.

A substantial body of evidence to the Public Bill Committee made many of these points, including written evidence from the British Red Cross (LA 68)⁵, Refugee Action (LA 22)⁶, the Refugee Children's Consortium⁷ (LA 38), the Zimbabwe Association⁸ (LA 75) and NGO and local authority members of the South East Strategic Partnership for Migration⁹ (LA 75).

For further information please get in touch with:

Steve Symonds, Legal Officer, steve.symonds@ilpa.org.uk, 020-7490 1553
Alison Harvey, General Secretary, alison.harvey@ilpa.org.uk, 020-7251 8383

³ Management information collected by the UK Border Agency for 2009 and 2008, and shared with ILPA and others in discussion on refugee family reunion applications and policy. More recent evidence is not to ILPA's knowledge available. For further statistics, see *Hansard*, HC Report, 22 June 2010 cols 143-144W

⁴ See <http://www.edf.org.uk/blog/?p=9315>

⁵ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la68.htm>

⁶ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la22.htm>

⁷ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la38.htm>

⁸ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la75.htm>

⁹ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la75.htm>

Annexe – Case Studies

Case of C

C was seeking family reunion, outside the immigration rules, for his sister. C was a recognised refugee but there is no entitlement to family reunion for siblings. C had arrived in the UK as a minor. C had been kidnapped in his country of origin where his whole family had been killed with the exception of his younger sister. She was also kidnapped, and he had not heard from her since the day that they were both taken. Both client and sister had been taken from their home town to the traditional family home, where they were kept following kidnapping.

Following recognition as a refugee, C had made attempts to locate his sister through the Red Cross, but without success. One consequence of C's escape and his search for his sister was that an adult who had helped him was murdered. C managed to get in touch with another person in his home country who, after a year of searching found his sister. She had been kept as a sexual slave for five years at this point. The person who found her assisted her escape and she stayed in hiding. It had been held in the appeal that the authorities in the country were complicit in allowing the persecutors to operate freely without hindrance from the law. The representatives collated a lot of evidence of attempts made to locate her, evidence of C's original asylum claim, and a statement as well as representations on family life. They obtained evidence that there were people willing to support the sister. The initial hurdle was that C's sister was not allowed to make the application because she did not have a passport. This was resolved. A couple of months later the UK consular authority said that they would not accept the application without a fee. The representatives pressed them to consider exercising their discretion to waive the fee. Finally this was referred to the UK. But still it was refused. Further representations and further complaints were made. Eventually the case was referred to the UK for consideration outside the immigration rules.

After a further delay, Entry Clearance was granted. After a variety of problems with travel, the applicant eventually made it to the UK and she is settling in, with assistance from friends and counselling. Legal Aid costs were approaching £1000, at private rates, much more. Without Legal Aid, she would have remained in her home country.

Case of D

D had indefinite leave to remain as a refugee and was not working because she was looking after her severely disabled daughter. An application was being made for her husband and eight year old son to join her.

While the application was being prepared the husband died suddenly, as a result of a heart problem. This left the son on his own. There were no relatives nearby to look after him. He was being looked after, after a fashion, by some family friend who could not afford to keep him. There was immense potential for abuse and exploitation. In a single day the lawyers prepared the application. It was refused. An appeal succeeded. The family are now reunited.

For further examples see Annexe 1 to ILPA's 14 February 2011 submission to the Ministry of Justice consultation on the Green paper, available at <http://www.ilpa.org.uk/pages/non-parliamentary-briefings-submissions-and-responses.html> .