

**ILPA BRIEFING
House of Lords – Committee****December 2011****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –
HL Bill 109****Immigration: Refugee Family Reunion
(Schedule 1, Part 1, Paragraph 26)****69****LORD THOMAS OF GRESFORD
LORD DHOLAKIA
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**Page **130**, line **12**, after 'Qualification Directive' 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 retain legal aid for applications and appeals by family members of refugees (and those found to be at risk of serious harm such as torture but not for a Refugee Convention reason, and hence granted humanitarian protection) to be reunited with a refugee recognised in the UK.

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 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

ILPA Lindsey House, 40/42 Charterhouse Street London EC1M 6JN Tel: 020 7251 8383 Fax: 020 7251 8384

email: info@ilpa.org.uk website: www.ilpa.org.uk

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) 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 traumatising alone, would have been able to challenge the decision by the UK Border Agency to refuse entry to his wife."

UNHCR has 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."

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

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. When Simon Hughes MP urged the Government to bring refugee family reunion back into scope for legal aid in this Bill, the Minister for Legal Aid acknowledged that these cases can be “complex”. He said he would look further at these cases.³ This remains outstanding. There are several factors which contribute to the complexity of these cases and the need for legal aid to be retained:

- The UK Border Agency’s record in dealing with these applications has been especially poor: 61-66% of refusals are overturned on appeal.⁴
- The often precarious situations of applicant families overseas and distress and trauma of sponsoring refugees in the UK mean they are particularly ill-placed to be able to make and pursue these applications by themselves.
- The UK Border Agency frequently disputes family relationship, and many applications are protracted and evidentially complex.
- On appeal, the immigration judge is confined by the evidence presented to him or her, however careful he or she may treat litigants in person; and is further restricted by the absence of the applicant family members at the appeal hearing (who will still be overseas).
- Continued separation is a major obstacle to a refugee’s integration in the UK. Refugees’ integration is already at risk by reason of the withdrawal of all UK Border Agency funding for this⁵.
- Refugee family reunion applications are also complicated by the fact that not all applications are permitted to be made under the Rules – e.g. child refugees cannot secure family reunion under the Rules, and must rely on applications made outside the Rules (and in circumstances where publicly-facing UK Border Agency policy guidance provides no assistance).

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)⁶, Refugee Action (LA 22)⁷, the Refugee Children’s Consortium⁸ (LA 38), the Zimbabwe Association⁹ (LA 75) and NGO and local authority members of the South East Strategic Partnership for Migration¹⁰ (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

² Immigration Act 1971, s25A

³ *Hansard* HC, Report 31 Oct 2011 : Column 651

⁴ 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 data is not to ILPA’s knowledge available.

⁵ See <http://www.edf.org.uk/blog/?p=9315>

⁶ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la68.htm>

⁷ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la22.htm>

⁸ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la38.htm>

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

¹⁰ <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>