

**House of Lords Committee Stage
Crime and Courts Bill (HL Bill 4)****Appeals against Refusal of Asylum****After Clause 24****LORD AVEBURY**

Insert the following new Clause—

“Immigration appeals: asylum and humanitarian protection

In the Nationality, Immigration and Asylum Act 2002, in section 83(1)(b) omit the words from “Kingdom” to the end.”

Purpose:

To remove the stipulation in the Nationality, Immigration and Asylum Act 2002 whereby a person cannot appeal against a refusal of asylum where he or she has been granted leave to enter or remain for a period of 12 months or less.

Briefing:

Section 83 of the Nationality, Immigration and Asylum Act 2002 currently provides:

- “(1) *This section applies where a person has made an asylum claim and –*
- (a) his claim has been rejected by the Secretary of State, but*
 - (b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).*
- (2) The person may appeal to the Tribunal against the rejection of his asylum claim.”*

The amendment would remove the words underlined. This would provide a right of appeal against a refusal of asylum in any case where the Secretary of State had granted the person leave to enter or remain. Asylum-seekers, who are not granted leave to enter or remain when refused asylum, have a right of appeal under the provisions of section 82(1). Thus, currently, it is only asylum-seekers, who are granted leave to enter or remain for 12 months or less, who are unable to appeal when refused asylum.

Where an asylum-seeker is refused asylum, there are various reasons why he or she might nonetheless be granted leave to enter or remain. For example, a person refused asylum might be granted humanitarian protection because it is accepted that he or she is at risk of serious harm if returned to his or her country of origin but not accepted that this harm is for a ‘Refugee Convention reason’ (i.e. the harm is not “*for reasons of race, religion, nationality, membership of a particular social group or political opinion*”¹) or because it is accepted that his or her removal would constitute an unlawful interference with his or her private and family life.² A grant of leave on either basis would normally be for more than 12 months. In these situations, section 83 provides a right of appeal against the asylum refusal.

The group of asylum-seekers most affected by the ‘12 months’ stipulation in section 83(1)(b) is unaccompanied children. Unaccompanied children are often, if refused asylum, granted discretionary

¹ Article 1A(2) of the 1951 UN Convention relating to the Status of Refugees

² Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
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leave on the basis that there are no adequate reception arrangements in their country of origin to which to return them. Discretionary leave granted to an unaccompanied child on this basis is granted for whichever is the shorter period of (1) three years; or (2) until they are aged 17½ years of age.

Thus an unaccompanied child, who is aged 16½ years of age (or over) at the time of being refused asylum, will not be granted discretionary leave of sufficient length to allow him or her to appeal against the refusal of asylum. He or she will have to wait until his or her discretionary leave is nearing its expiry, apply for an extension of discretionary leave and if that extension is refused (or granted for a period that when added to the period of the original grant comes to more than 12 months) before he or she can appeal against the refusal of asylum. This has serious implications for such a child.

Firstly, in many cases, the UK Border Agency does not decide an application for an extension of discretionary leave for many months or sometimes years after the application is made. A child aged 16½ years of age when originally refused asylum may be well into adulthood before he or she is provided any opportunity to bring an appeal against the refusal of asylum. Delay in establishing refugee status can cause substantial harm to the child's welfare and development, over and above the ongoing uncertainty as the child's longer term future. For example, children and young people with only discretionary leave to remain (rather than refugee leave) may have difficulty accessing further or higher education or accessing financial support for this.³ Generally, unaccompanied children and young people awaiting a decision on their application for an extension of discretionary leave may have difficulties in accessing a range of entitlements because, while in law they continue to have discretionary leave, the document by which that leave was 'given' will show it to have expired.

Secondly, changes in circumstances (as regards the child or his or her country of origin) may mean it is more difficult or not possible to now succeed on appeal. This is because, in an asylum appeal, the issue for the immigration judge is not whether the person was a refugee when he or she originally claimed or was refused asylum, but is whether the person is now at risk of persecution. For example, a child wrongly refused asylum when at risk of being recruited as a child soldier may be unable to establish his or her asylum claim by being denied a right of appeal until after he or she has ceased to be a child. Additionally, ordinarily, a child like any other person will be best able to recall events and give evidence in an appeal the closer in time the appeal to those events.

Thirdly, provisions and guidance designed to protect a child's interests in immigration procedures, including appeals, will be unavailable during procedures taking place after the child has reached adulthood. These provisions and guidance include judicial guidance on dealing with child appellants and witnesses,⁴ UK Border Agency guidance on dealing with children⁵ and Legal Services Commission guidance on availability of legal aid.⁶ The protections provided include that particular care is needed in seeking to take evidence from a child, that children are not to be detained and such that restrict the prospect that a child is left without legal representation at appeal.

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³ See section on 'education' in Coram Children's Legal Centre, *Seeking Support: A Guide to the Rights and Entitlements of Separated Children*, Fourth Edition 2012, see

⁴ Practice Direction, First-tier and Upper Tribunal, Child, Vulnerable Adult and Sensitive Witnesses, 30 October 2008, see

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Practice%20Directions/Tribunals/Childvulnerableadultandsensitivewitnesses.pdf>

⁵ Asylum Process Guidance and Enforcement Instructions and Guidance each contain various provisions specific to children and children's welfare.

⁶ Paragraph 29.29.5, chapter 29, Decision-making guidance to the Funding Code, November 2010, see [www.legalservices.gov.uk/docs/cls_main/Funding_Code_Chapter_29_Immigration_-_Nov_2010_\(498kb\).pdf](http://www.legalservices.gov.uk/docs/cls_main/Funding_Code_Chapter_29_Immigration_-_Nov_2010_(498kb).pdf)