

# Resources Guide for Legal Practitioners Working with Refugee Children

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# About this Guide

The Immigration Law Practitioners' Association (ILPA) is a charity and a professional association the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government and other consultative and advisory groups.

ILPA ran a Refugee Children Project, funded by The Diana, Princess of Wales Memorial Fund. This project aimed to improve advice and representation for refugee children through the provision of training and resources. This guide developed out of preparatory work for the training courses, and was been augmented with material from subsequent courses and from the publications produced as part of the project. We are pleased to be able to produce this latest edition and place on record our gratitude to the Fund for all the support it gave ILPA.

This guide is aimed at legal practitioners working with refugee children. It provides a list of child-specific resources covering legislation, policy and research based publications on a variety of themes.

Legal and policy documents have been sorted into international, regional and national instruments. Documents include hard and soft law, guidance and instructions and good practice publications. Within sections, documents are in reverse chronological order unless otherwise stated.

National documents presented include legislation specific to children; immigration legislation; immigration rules; Home Office guidance and instructions; asylum policy notices; asylum support policy bulletins; Home Office enforcement instructions and guidance; Home Office detention service orders; as well as guidance produced by other government departments and the courts and tribunals.

The resources guide lists reports produced by official bodies, such as by the HM Chief Inspector of Prisons and the Children's Commissioner for England. All relevant ILPA publications and ILPA information sheets that are child-specific have also been included. Reports by non-governmental organisations and academic articles are included.

This resources guide is accurate as of March 2014. Law, policy and practice change over time, as do web links – full titles have been provided for all documents to make searching easier when a link no longer functions. All entries are listed in reverse chronological order.

ILPA intends, by gathering all these resources together, to save busy practitioners time and to ensure that they are able to draw on a wide range of resources in their work. This guide can be downloaded and there is thus the possibility for the user to cut and paste particular extracts from the document cited into the body of the guide, or to add links of their own. It can also be used to develop an index to a file of hard copy resources if desired.

# Resources Guide

## International Law

The following lists the key international legislation and conventions relevant to working with refugee children either as separated or part of a family unit and associated published guidelines and comments.

### Conventions and other international instruments

#### ***United Nations (UN)***

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)

[www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)

[www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx)

Convention on the Rights of the Child (1989)

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Status of ratifications, declarations and reservations

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

Convention relating to the Status of Refugees (1951)

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

Optional Protocol (1967)

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en)

#### ***Hague Conference on Private International Law***

Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993)

<http://www.hcch.net/upload/conventions/txt33en.pdf>

Convention on the Civil Aspects of International Child Abduction (1980)

<http://www.unhcr.org/refworld/docid/3ae6b3951c.html>

#### ***International Labour Organisation (ILO)***

ILO Convention No. 184 on the Worst Forms of Child Labour (1999)

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ChildLabour.aspx>

## **Council of Europe**

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Council of Europe Treaty Series No. 201 (2008)

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CL=ENG>

Council of Europe Convention on Action against Trafficking in human beings, Council of Europe Treaty Series No. 197 (2005)

<http://www.conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>

Explanatory Report

<http://www.conventions.coe.int/Treaty/EN/Reports/Html/197.htm>

European Convention on the Exercise of Children's Rights (1996)

<http://conventions.coe.int/Treaty/en/Treaties/Html/160.htm>

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

## **European Union**

Regulation No. 604/2013 of the Council and the Parliament of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('Dublin III Regulation')

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

The Stockholm Programme – An open and secure Europe serving and protecting citizens 2010/C 115/01 (2010)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:01:EN:HTML>

Council Directive 2005/85/EC of 1 December 2005 on minimum standards for procedures in Member States for granting and withdrawing refugee status (the 'Procedures Directive')

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the 'Qualification Directive')

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (the 'Reception Conditions Directive')

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>

Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>

Charter of Fundamental Rights of the European Union (2000/C 364/01) (see in particular Article 24)  
[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

### **Organisation of African Unity**

Organisation of African Unity, African Charter on the Rights and Welfare of the Child (1999)  
[http://www.africa-union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf)

## **Inter-Governmental Organisations**

### **United Nations General Assembly**

*Assistance to Unaccompanied Refugee Minors*, UN General Assembly Resolution 54/145 of 22 February 2000  
[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.54.145.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.54.145.En?Opendocument)

### **United Nations Secretary General**

Report of the UN Secretary-General, *Assistance to Unaccompanied Refugee Minors* (1997)  
<http://www.un.org/documents/ga/docs/52/plenary/a52-273.htm>

### **United Nations Committee on the Rights of the Child**

#### *General Comments*

General Comment No. 14 *The right of the child to have his or her best interests taken as a primary consideration* (2013) (Article 3, para. 1)  
<http://www2.ohchr.org/english/bodies/crc/docs/GC.14.pdf>

General Comment No. 12 *The Right of the child to be heard* (2009)  
<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.doc>

General Comment No. 6 *Treatment of unaccompanied and separated children outside their country of origin* (2005)  
[www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/\\$FILE/G0543805.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/$FILE/G0543805.pdf)

General comment No. 5 *General measures of implementation of the Convention on the Rights of the Child* (27 November 2003) CRC/GC/2003/5 <http://www.unhcr.org/refworld/docid/4538834f11.html>

#### *Consideration of reports submitted by States Parties*

Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland (20 October 2008)  
<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

Report of the 28 September 2012 day of general discussion, *The rights of all children in the context of international migration* (1 March 2013)

[http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC\\_DGD-Childrens\\_Rights\\_InternationalMigration.pdf](http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf)

### **United Nations International Children's Emergency Fund (UNICEF)**

UNICEF, *Child notice Afghanistan* (January 2013)

<http://www.refworld.org/category,COI,UNICEF,,,5124c09e2,0.html>

UNICEF, *Every Child's Right to be Heard, Resource Guide* (2011)

[http://www.unicef.org/adolescence/files/Every\\_Childs\\_Right\\_to\\_be\\_Heard.pdf](http://www.unicef.org/adolescence/files/Every_Childs_Right_to_be_Heard.pdf)

UNICEF, *Female Genital Mutilation/Cutting* (resources portal)

[http://www.unicef.org/media/media\\_pr\\_mutilation.html](http://www.unicef.org/media/media_pr_mutilation.html)

UNICEF, Hamilton, C. et al. *Administrative Detention of Children: A Global Report* (2011)

[www.unicef.org/protection/files/Administrative\\_detention\\_discussion\\_paper\\_April2011.pdf](http://www.unicef.org/protection/files/Administrative_detention_discussion_paper_April2011.pdf)

UNICEF, Smith, T. and Brownlees, L. *Age Assessment Practices: a Literature Review and Annotated Bibliography* (2011)

[http://www.unicef.org/protection/Age\\_Assessment\\_Practices\\_2010.pdf](http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf)

UNICEF, Brownlees, L. and Finch, N. *Levelling the playing field: A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England* (2010)

<http://www.unicef.org.uk/Documents/Publications/levelling-playing-field.pdf>

UNICEF, Innocenti Research Centre, Crawley, H. *The situation of children in immigrant families in the United Kingdom* (2009)

[http://www.childmigration.net/files/iwp\\_2009\\_18.pdf](http://www.childmigration.net/files/iwp_2009_18.pdf)

UNICEF, *Children and the Millennium Development Goals: Progress towards a World Fit for Children*, New York; United Nations Children's Fund (2007)

[http://www.unicef.org/publications/files/Children\\_and\\_the\\_MDGs.pdf](http://www.unicef.org/publications/files/Children_and_the_MDGs.pdf)

### **United Nations High Commissioner for Refugees (UNHCR)**

*Executive Committee (EXCOM)*

UNHCR, *A Thematic Compilation of Executive Committee Conclusions* 6<sup>th</sup> Edn (2011)

<http://www.unhcr.org/3d4ab3ff2.html>

EXCOM, *Conclusion on Children at Risk*, No. 107 (LVIII) (2007)

<http://www.unhcr.org/4717625c2.html>

*Guidance*

UNHCR, *A Framework for the Protection of Children* (26 June 2012)

<http://www.refworld.org/docid/4fe875682.html>

UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08 (2009)

<http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>

UNHCR, *Guidelines on Determining the Best Interests of the Child* (2008)

<http://www.unhcr.org/refworld/docid/48480c342.html>

UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked* (2006)

<http://www.unhcr.org/443b626b2.html>

UNHCR, *Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers* (1999)

<http://www.refworld.org/docid/3c2b3f844.html>

UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* (1997)

[www.unhcr.org/refworld/docid/3ae6b3360.html](http://www.unhcr.org/refworld/docid/3ae6b3360.html)

UNHCR, *Refugee Children: Guidelines on Protection and Care* ('UNHCR Children's Guidelines') (1994)

<http://www.unhcr.org/cgi-bin/tehis/vtx/refworld/rwmain?page=search&docid=3ae6b3470>

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (HCR/IP/4/Eng/REV.1 Re-edited, Geneva, January 1992)

<http://www.unhcr.org/3d58e13b4.html>

## **Reports**

UNHCR, UK Report, *Considering the Best Interests of a Child Within a Family Seeking Asylum* (December 2013) [http://www.unhcr.org.uk/fileadmin/user\\_upload/docs/UNHCR-Best\\_Interest-screen.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/docs/UNHCR-Best_Interest-screen.pdf)

UNHCR, UK Report, *Untold stories...families in the asylum process* (June 2013)

[http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/aUNHCR\\_Report\\_Untold\\_Stories.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/aUNHCR_Report_Untold_Stories.pdf)

UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report* (May 2013)

<http://www.refworld.org/docid/519b1fb54.html>

UNHCR and others, Separated Children in Europe Programme, Thematic Group on Age Assessment, *Review of Current Laws, Policies and Practices Relating to Age Assessment in Sixteen European Countries* (2011)

[www.edustajat.fi/pdf/20110927\\_ageassessment\\_report.pdf](http://www.edustajat.fi/pdf/20110927_ageassessment_report.pdf)

UNHCR and others, Separated Children in Europe Programme, *Statement of Good Practice* (4<sup>th</sup> revised edition) (2010)

<http://www.unhcr.org/refworld/pdfid/415450694.pdf>

UNHCR, Christine Mougne for UNHCR, *Trees only move in the wind: A study of unaccompanied Afghan children in Europe* (2010)  
[www.unhcr.org/4c1229669.html](http://www.unhcr.org/4c1229669.html)

UNHCR and others, Separated Children in Europe Programme, *Separated Children Seeking Asylum in Europe: A Programme for Action* (2000)  
<http://scep.sitespirit.nl/images/17/189.pdf>

### **United Nations Office on Drugs and Crime**

United Nations Office on Drugs and Crime (UNODC), Issue Paper, *Abuse of a position of vulnerability and other 'means' within the definition of trafficking in persons and Guidance Note* (November 2012)  
[http://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf)

### **Council of Europe Commissioner for Human Rights**

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and their explanatory memorandum (2011)  
[http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20\\_4\\_.pdf](http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf)

Human Rights Comment, *'Methods for assessing the age of migrant children must be improved'* CommDH018 (2011)  
[http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=166](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=166)

### **Council of Europe Parliamentary Assembly**

Resolution 1579 *Prostitution – Which stance to take?* (2007)  
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1579.htm>

Recommendation 1778 *Child victims: stamping out all forms of violence, exploitation and abuse* (2007)  
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1778.htm>

Resolution 1307 *Sexual exploitation of children: zero tolerance* (2002)  
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/ERES1307.htm>

### **European Union: European Commission**

*Communication from the Commission: Early Childhood Education and Care: Providing all our children with the best start for the world of tomorrow* (2011)  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0066:FIN:EN:PDF>

*Communication from the Commission to the European Parliament and Council: Action Plan on Unaccompanied Minors (2010-2014)*  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

Council conclusions of 26 November 2009 on the education of children with a migrant background (2009/C 301/07)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:301:0005:0008:EN:PDF>

### **European Union: other**

European Asylum Support Office *Age Assessment Practice in Europe* (2013)

<http://easo.europa.eu/wp-content/uploads/EASO-Age-assessment-practice-in-Europe.pdf>

FRONTEX for the European Commission, '*Unaccompanied Minors in the Migration Process*' (2010)

[http://frontex.europa.eu/assets/Attachments\\_News/unaccompanied\\_minors\\_public\\_5\\_dec.pdf](http://frontex.europa.eu/assets/Attachments_News/unaccompanied_minors_public_5_dec.pdf)

European Union Agency for Fundamental Rights (FRA), *Separated, Asylum-seeking Children in European Union Member States* (2010)

[http://fra.europa.eu/fraWebsite/attachments/SEPAC-SUMMARY-REPORT\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/SEPAC-SUMMARY-REPORT_en.pdf)

### **European Court of Human Rights**

European Court of Human Rights, *Protection of children factsheet* (January 2014)

[http://www.echr.coe.int/Documents/FS\\_Minors\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Minors_ENG.pdf)

## Guidance published by overseas governments

Finland, Directorate of Immigration, *Guidelines for Interviewing (Separated) Minors* (2002)

[http://www.unhcr.org/refworld/publisher,FIN\\_DI,,,430ae8d72,0.html](http://www.unhcr.org/refworld/publisher,FIN_DI,,,430ae8d72,0.html)

Ireland, Department of Children and Youth Affairs, *Children First: National Guidelines for the Protection and Welfare of Children* (2011)

<http://www.dcy.gov.ie/documents/Publications/ChildrenFirst.pdf>

United States of America, United States Bureau of Citizenship and Immigration Services (formerly Immigration and Naturalization Service), *Guidelines for Children's Asylum Claims* (1998)

<http://www.unhcr.org/refworld/docid/3f8ec0574.html>

United States of America, United States Bureau of Citizenship and Immigration Services, *Asylum Officer Basic Training Course, Guidelines for Children's Asylum Claims* (2009)

<http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Guidelines-for-Childrens-Asylum-Claims-31aug10.pdf>

# UK Legislation, Regulations, Rules and Guidance

## ***Selected Legislation: Children***

Children Act 2004

<http://www.legislation.gov.uk/ukpga/2004/31/contents>

Children (Leaving Care) Act 2000

<http://www.legislation.gov.uk/ukpga/2000/35/contents>

Children Act 1989

[www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents)

Children and Young Persons Act 1933

<http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/contents>

The Children (Northern Ireland) Order 1995 SI 1995/755 (NI 2)

[1995 No. 755 \(N.I. 2\)](http://www.legislation.gov.uk/nisr/1995/755/ni.2)

Children (Leaving Care) Act (Northern Ireland) 2002

<http://www.legislation.gov.uk/nia/2002/11/contents>

Children Scotland Act 1995

<http://www.legislation.gov.uk/ukpga/1995/36/contents>

Rights of Children and Young Persons (Wales) Measure 2011

[www.legislation.gov.uk/mwa/2011/2/contents/enacted](http://www.legislation.gov.uk/mwa/2011/2/contents/enacted)

## ***Selected Legislation: Immigration and Asylum***

### *Acts of Parliament*

Borders, Citizenship and Immigration Act 2009

<http://www.legislation.gov.uk/ukpga/2009/11/contents>

UK Borders Act 2007

<http://www.legislation.gov.uk/ukpga/2007/30/contents>

Immigration, Asylum and Nationality Act 2006

<http://www.legislation.gov.uk/ukpga/2006/13/contents>

Asylum and Immigration Act 2004

<http://www.legislation.gov.uk/ukpga/2004/19/contents>

Nationality, Immigration and Asylum Act 2002

<http://www.legislation.gov.uk/ukpga/2002/41/contents>

Immigration and Asylum Act 1999  
<http://www.legislation.gov.uk/ukpga/1999/33/contents>

British Nationality Act 1981  
<http://www.legislation.gov.uk/ukpga/1981/61>

Immigration Act 1971  
<http://www.legislation.gov.uk/ukpga/1971/77/contents>

#### *Secondary legislation*

The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (SI 2012/2560)  
<http://www.legislation.gov.uk/uksi/2012/2560/contents/made>

The Immigration (European Economic Area) (Amendment) Regulations 2012 (SI 2012/1547)  
<http://www.legislation.gov.uk/uksi/2012/1547/contents/made>

The Refugee or Persons in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525)  
<http://www.legislation.gov.uk/uksi/2006/2525/contents/made>

The Immigration (European Economic Area) Regulations 2006 (SI 2006/1003)  
<http://www.legislation.gov.uk/uksi/2006/1003/contents/made>

British Nationality (Proof of Paternity) Regulations 2006 (SI 2006/1496)  
[http://www.legislation.gov.uk/uksi/2006/1496/pdfs/uksi\\_20061496\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/1496/pdfs/uksi_20061496_en.pdf)

The Asylum Seekers (Reception Conditions) Regulations 2005 (SI 2005/7)  
<http://www.legislation.gov.uk/uksi/2005/7/contents/made>

Immigration Rules  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

## **Home Office - Immigration Rules, Guidance and Instructions**

### **[alphabetical]**

Adopted Children, version 9.0 (7 January 2014)  
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[http://www.childrenscommissioner.gov.uk/content/publications/content\\_556](http://www.childrenscommissioner.gov.uk/content/publications/content_556)

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# Table of Cases

What follows does not purport to be exhaustive. It draws attention to some of the cases that have received particular attention from trainers on the Refugee Children's Project courses, in the project publications and in ILPA Information Sheets. Cases are set out by Court/Tribunal and thence alphabetically.

## **European Court of Human Rights**

*Alim v Russia* (Application No. 39417/07), 27 September 2011

<http://www.bailii.org/eu/cases/ECHR/2011/1453.html>

Best interests of children, detention for removal of father, violation of Article 8

*Balogun v The United Kingdom* (Application No. 60286/09), 10 April 2012

<http://www.bailii.org/eu/cases/ECHR/2012/614.html>

Deportation of person in the UK since the age of 3/5, private life, deportation proportionate.

*Boultif v Switzerland* (Application No. 54273/00), 2 August 2001

<http://www.bailii.org/eu/cases/ECHR/2001/497.html>

Concerns the circumstances in which expulsion will be a disproportionate interference with the right to private and family life and the principles governing such cases.

*C.N. v The United Kingdom* (Application No. 4239/08), 13 November 2012

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114518>

CN had been trafficked from Uganda. The ECHR found a violation of Article 4 and the UK's positive obligation to protect victims of slavery.

*Jeunesse v The Netherlands* (Application No. 12738/10), admissibility decision of 4 December 2012

<http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-115732>

Addresses the relationship between the Court of Justice of the European Union (then European Court of Justice) and the European Court of Human Rights. Discrimination to require a provisional residence visa as if partner had been EU Member State then it would not be required – inadmissible. But applicant was entitled to remain because of EU nationality of dependent children.

*Kanagaratnam and others v Belgium* (Application No. 15297/09), 13 December 2011

<http://www.unhcr.org/refworld/docid/4ef0a7902.html>

Tamil woman with three children (aged 13, 11 and 8 at the time). They claimed asylum upon arriving in Belgium and were detained. Their asylum claims were refused and their appeals discussed. European Court of Human Rights granted a Rule 39 measure to stop their expulsion. They remained in detention. They were subsequently granted asylum. Court relied on previous judgments against Belgium (*Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (App. No. 13178/03) and *Mushkhadzhiyeva et ors v Belgium* (App. No. 41442/07)) and found that the children's detention violated Article 3 and Article 5(1).

*Liu v Russia (No.2)* (Application No. 29157/09), 26 July 2011

<http://www.bailii.org/eu/cases/ECHR/2011/1196.html>

Family life; refusal to grant a residence permit; violation Article 8

*Maslov v Austria* (Application No. 1638/03), 22 March 2007

<http://www.unhcr.org/refworld/country,,ECHR,,BGR,,464423e22,0.html>

Important case in which the expulsion of a 19 year old young person who had lived in Austria since he was six was held to be disproportionate under Article 8 (c.f. *Balogun v The United Kingdom* above), despite his commission of criminal offences. Sets out important criteria to take into account when weighing up a possible breach of Article 8 in deportation cases.

*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (Application no 13178/03), 12 October 2006

<http://www.bailii.org/eu/cases/ECHR/2006/1170.html>

Children should not be detained for immigration purposes save as a measure of last resort and then only in suitable conditions. Thus, the detention of a child in an adult facility may violate Article 5.

*Muskhadzhiyeva and Others v. Belgium* (Application No. 41442/07), 19 January 2010

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=861160&portal=hbkm&source=externalbydocnumber&tabl>

Detention of children under immigration powers for over a month in a closed centre which was not designed to house children, in circumstances in which concern had been expressed by independent doctors about the children's state of health, was a violation of Article 3 (inhuman or degrading treatment or punishment).

*Neulinger and Shuruk v Switzerland* [2010] ECHR 1053, 6 July 2010

<http://www.bailii.org/eu/cases/ECHR/2010/1053.html>

A child abduction case, worthy of consideration by those working with refugee children because it emphasises the universal nature of the UN Convention on the Rights of the Child and legally binding nature of the the EU Charter of fundamental rights which contains in Article 24, three sets of child-specific obligations based directly upon Articles 3, 9 and 12 of the UN Convention on the Rights of the Child: the best interests, protection, participation and family unity rights.

*O'Donoghue v The United Kingdom* (Application No. 34848/07), 14 December 2010

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102266>

Concerns the right to marry and found a family

*Popov v France* (App.Nos.39472/07 and 39474/07), 19 January 2012

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108708> (French text)

Two young parents of Russian ethnic origin from Kazakhstan with two young children (aged five months and three years). They were detained for 15 days while an attempt was made to expel them. The detention centre, while ostensibly adapted to the needs of children, was not. France held to be in violation of Articles 3 and 5 (1) in respect of the children (but not the parents). Violation of Article 8 in respect of the entire family because, although they were not separated, the strain imposed on the family was not justified. There was no clear indication that the family intended to abscond.

*Rantsev v Cyprus and Russia* (Application No. 25965/04), 7 January 2010

[www.unhcr.org/refworld/docid/4b4f0b5a2.html](http://www.unhcr.org/refworld/docid/4b4f0b5a2.html)

A human trafficking case, where there was found to be a violation of Article 2 (right to life and security of person) because the Government of Cyprus had failed to carry out an effective investigation into the applicant's death. The Court also found violations of Article 4 (prohibition of trafficking or forced labour) because of the Government of Cyprus's failure to put into place an appropriate legislative framework and to take protective measures. Both Cyprus and Russia had violated Article 4 because they had not investigated human trafficking. There was also a violation of Article 5 (right to liberty and security of person).

*Rodrigues da Silva and Hoogkamer v Netherlands* (Application No. 50435/99), 31 January 2006

<http://www.unhcr.org/refworld/pdfid/464dcaca2.pdf>

Refusal to grant a residence permit to mother with no lawful leave to be in Netherlands in circumstances in which this would prevent her from maintaining contact with her daughter (who lived with paternal grandparents) was a disproportionate interference with the rights of mother and child under Article 8.

*Siliadin v France* (Application No. 73316/01), 26 July 2005

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69891>

Concerns domestic slavery and obligations under Article 4. Elucidates the positive duties on States imposed by Article 4: "Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity." Articles 19, 32 and 36 of the UN Convention on the Rights of the Child considered.

*Souza Ribeiro v France* (Application No. 22689/07), 30 June 2011 (Grand Chamber)

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105421>

Article 8, long unlawful residence of a child/minor who had committed a criminal offence, best interests, removal a violation of Article 5 (best interests) and Article 8 (family life)

*Udeh v. Switzerland* (Application No. 12020/09), 16 April 2013 [French text]

<http://www.bailii.org/eu/cases/ECHR/2013/328.html>

Mr. Udeh had convictions for serious offences (drug trafficking). His (ex)partner and children are Swiss nationals. He claimed that if the decision refusing him a residence permit was enforced it would be impossible for him to have regular contact with his children, thus ruining his family life. Held: expulsion to Nigeria would be a violation of Article 8

*Üner v Netherlands* (Application No. 46410/99), 18 October 2006

<http://www.unhcr.org/refworld/category,LEGAL,,NLD,45d5b7e92,0.html>

Deportation of a person who had been in Netherlands since he was 12 and had lived there for 25 years, was found to be proportionate under Article 8 due to the countervailing public policies reasons in favour of his exclusion. Added a child specific duty to the criteria to be considered in Article 8 expulsion cases set out in *Boultif v Switzerland* (*supra*.)

### ***Court of Justice of the European Union (formerly European Court of Justice)***

*Alarape & Anor v Secretary of State for the Home Department* [2013] EUECJ C-529/11, 8 May 2013

<http://www.bailii.org/eu/cases/EUECJ/2013/C52911.html>

The parent of a child who has attained the age of majority and who has obtained access to education on the basis of Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community as amended by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, may continue to have a derived right of residence under that article if that child remains in need of the presence and care of that parent in order to be able to continue and to complete his or her education, which it is for the referring court to assess, taking into account all the circumstances of the case before it.

Periods of residence in a host Member State which are completed by family members of a Union citizen who are not nationals of a Member State solely on the basis of Article 12 of Regulation No 1612/68, as amended by Directive 2004/38, where the conditions laid down for entitlement to a right of residence under that directive are not satisfied, may not be taken into consideration for the purposes of acquisition by those family members of a right of permanent residence under that directive.

*MA & Ors v Secretary of State for the Home Department* (Case C-648/11), 6 June 2013

[http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/EUECJ/2013/C64811.html&query="C-648/11"&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/EUECJ/2013/C64811.html&query=)

Confirms that unaccompanied minors (defined as any unmarried asylum seeker under the age of 18 without a responsible adult (Article 2(h)), should not be transferred to another State under the Dublin II (now Dublin III) Regulation. Their asylum applications must be considered in the State where they are present even where they have previously made an application for asylum in another Member State.

*London Borough of Harrow v Nimco Hassan Ibrahim and SSHD* (Case C-310/08), 23 February 2010

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0310:EN:NOT>

Concerns free movement of persons and retained rights. The children's father, a Dutch national who had been a qualified person under Directive 2004/38/EC (the free movement Directive), having left the UK, the children were entitled to remain for so long as they remained in education. Being small children, giving effect to this right necessitated their mother was able to remain to care for them, although she would not have been a qualified person in her own right and was in receipt of State benefits (see also *Maria Teixeira v London Borough of Lambeth and SSHD* Case C-480/08

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0480:EN:NOT>).

*N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*, 21 December 2011

<http://curia.europa.eu/juris/liste.jsf?num=C-411/10&language=en>

This was a reference by the UK Court of Appeal to the Court of Justice of the European Union about removals to a 'safe' third country, the effect of the UK and Polish Protocol (so-called 'opt out') to the EU Charter of Fundamental Rights and the circumstances in which the risk of being in breach of the Charter would prevent transfer of a person seeking asylum to another Member State. It was held that there is no conclusive presumption that a member State responsible under the 'Dublin Regulation' (Council Regulation No 343/2003 of 18 February 2003 *establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*) would not comply with the person's fundamental rights under the Charter. The Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No. 343/2003 if due to the systemic deficiencies in the asylum procedure and in the reception conditions in that Member State, there is a risk that the person will be subject to inhuman or degrading treatment. This is no less the case for the UK; the Protocol does not call this into question.

*Gerard Ruiz Zambrano v Office national de l'emploi (ONEm)* (Case C-34/09), 8 March 2011

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0034:EN:HTML>

Two Belgian children had been born in Belgium to Colombian parents and had never left or exercised free movement rights. Their father, whose claim for asylum had failed and had no leave to be in Belgium, sought permission to stay and to work to support them. If father left Belgium children would leave with him (to Colombia). This, court held, would be an unjustified interference with the children's enjoyment of their rights as citizens of the European Union and therefore father should be given permission to remain in Belgium and to work to support them.

## **Supreme Court (formerly the House of Lords)**

*AA, R (on the application of) v Secretary of State for the Home Department* [2013] UKSC 49 (10 July 2013) <http://www.bailii.org/uk/cases/UKSC/2013/49.html>

Held that the detention of a child (incorrectly assessed as an adult at the material time) was not unlawful, as the Secretary of State had followed her guidance and had not breached her duties under Section 55 of the Borders, Citizenship and Immigration Act 2009.

*AA (Somalia) v Entry Clearance Officer Addis Abbaba* [2013] UKSC 181

<http://www.refworld.org/docid/52b1ce114.html>

The case concerned an application by a child who had been the subject of a de facto (kafala) adoption for entry clearance to come to the UK to join her adoptive parents, one of whom was a recognised refugee. Rule 352D of the Immigration Rules provides for family reunion with pre-flight children of refugees, but under the rules (rule 309A) a de facto adoptive refugee parent must have spent a period of 18 months living in the child's country immediately prior to the application for entry clearance and cared for the child for 12 of those 18 months. While it dismissed the appeal, the Court did urge the Secretary of State to rewrite the rules.

*R(A) v LB Croydon, R(M) v LB Lambeth* [2009] UKSC 8

[www.supremecourt.gov.uk/docs/uksc\\_2009\\_0106\\_judgment.pdf](http://www.supremecourt.gov.uk/docs/uksc_2009_0106_judgment.pdf)

The leading UK case on the assessment of age. An age assessment is a decision of objective fact which, in disputed cases, can only be determined by the court on evidence and on the balance of probabilities.

*Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/beoku-1.htm>

The Asylum and Immigration Tribunal should take into account the rights of family members not party to the proceedings. Thus, in a case of removal, taking into account the effect on British children who would be separated from the parent removed.

*Chikwamba v Secretary of State for the Home Department* [2008] UKHL 40

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/chikwa-1.htm>

In cases involving family life under Article 8, and particularly those involving children, rarely will making a person without leave go back to their country of origin to make an entry clearance application be proportionate.

*EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/leban-1.htm>

EM had divorced her husband in Lebanon due to his violent behaviour. He had been imprisoned inter alia for failing to support their son, AF of whom EM had sole custody. In Lebanon, this she would lose when AF attained the age of seven, under Lebanon's Shari'a-based family law that would automatically award custody to the father or a male member of the family. AF was not in touch with his father or any family in Lebanon. AF had had no contact with his father or with any family in Lebanon. Held that on the particular facts of the case it would be a flagrant denial of the right to respect to family life under Article 8 of the European Convention on Human Rights for the government to remove EM and AF to Lebanon. Their rights to family life would be completely denied or nullified; the very essence of the right destroyed. It was not Shari'a law but its effect given the facts of the particular case that caused the breach.

*Huang v Secretary of State for the Home Department* [2007] UKHL 11

<http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070321/huang%20-1.htm>

Leading UK case on Article 8 and proportionality. Clarifies that there is no test of exceptionality.

*LC (Children)* [2014] UKSC 1 (15 January 2014)

URL: <http://www.bailii.org/uk/cases/UKSC/2014/1.html>

Concerns the habitual residence of children for the purposes of the Hague Convention on the Civil Aspects of International Child Abduction 1980

*Re W (Children)* [2010] UKSC 12

[http://www.supremecourt.gov.uk/docs/UKSC\\_2010\\_0031\\_JudgmentV2.pdf](http://www.supremecourt.gov.uk/docs/UKSC_2010_0031_JudgmentV2.pdf)

This case is about the principles guiding the exercise of the court's discretion in deciding whether to order a child to attend to give evidence in family proceedings. It removed the presumption that a child will give evidence only in exceptional cases. The essential test is whether justice can be done to all the parties without further questioning of the child and the court sets out the relevant considerations. The relevant factors are simply an amplification of the existing approach. What the court has done however is remove the presumption or starting point; that a child is rarely called to give evidence will now be a consequence of conducting a balancing exercise and not the threshold test

*ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4

[www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2010\\_0002\\_Judgment.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0002_Judgment.pdf)

The leading case on the best interests of the child, which makes clear that they must be the primary consideration in any decision about a removal or deportation with implications for children: whether those who will go with their parents or carers or those who will be left behind in the UK. It also highlights the importance of taking the child's views into account.

*Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 (27 November 2013)

<http://www.bailii.org/uk/cases/UKSC/2013/74.html>

Clarifies the principles to be applied when considering the welfare of children in deportation cases. Dismisses appeal and finds removal of children proportionate on the facts.

### ***Court of Appeal***

*AA (Afghanistan) v the Secretary of State for the Home Department* [2013] EWCA Civ 1625 (11 December 2013)

<http://www.bailii.org/ew/cases/EWCA/Civ/2013/1625.html>

Concerns the ambit of Secretary of State's duty to trace an unaccompanied minor's family members in the country of origin.

*AA (Afghanistan) v the Secretary of State for the Home Department* [2007] EWCA Civ 12

<http://www.bailii.org/ew/cases/EWCA/Civ/2007/12.html>

Concerns the correct approach to return of separated children, whose claims for asylum have failed, to their country of origin.

*AA (Iran) v Upper Tribunal (IAC) & Anor* [2013] EWCA Civ 1523 (26 November 2013)

URL: <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1523.html>

Applies *KA (Afghanistan)* and finds on the facts of the case the Secretary of State's failure to trace the applicant's family was not material.

*AJ (India) v the Secretary of State for the Home Department* [2011] EWCA Civ 1191

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/1191.html>

Consideration of the best interests of a two-year old child and of Article 8. Removal not unlawful; the child had no ties outside the family. Held that no express reference to section 55 of the Borders, Citizenship and Immigration Act is necessary for a decision to comply with the duty.

*BA & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 944

<http://www.bailii.org/ew/cases/EWCA/Civ/2012/944.html>

The Court of Appeal (President of QBD, Black & Davis LJ) considered whether a person refused permission to challenge removal directions and lawfulness of detention, is thereby barred from bringing a fresh action in the County Court or Queen's Bench Division for damages for unlawful detention. The case concerns a mother, refused asylum, and her three children, who had been detained at Yarl's Wood. The Court concluded that the case was unusual on its facts, and hence the decision that in the instant case there was no bar to the fresh action for damages for unlawful detention is no necessary indication that in another case there would be no such bar. Ultimately, the test as to whether such a fresh action is to be regarded as an abuse of process is to be (paragraph 26): "*a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.*"

*R (CJ) v Cardiff City Council* [2011] EWCA Civ 1590 (20 December 2011)

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/1590.html>

Dealt with the issue of burden of proof in judicial reviews of age assessments – the lower court in this case had incorrectly placed the burden of proof on the putative child. The Court of Appeal decided that the issue is one of balance of probabilities.

*DS (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 305 (22 March 2011) <http://www.bailii.org/ew/cases/EWCA/Civ/2011/305.html>

Child orphans are a particular social group in Afghanistan. The Secretary of State is under a duty on under Article 19(3) of Directive 2003/9/EC to initiate attempts to 'trace' the family members of a separated child seeking asylum. The duty rests upon the Secretary of State to initiate family tracing although it also remains as part of the burden upon the child claimant to establish his/her claim for asylum. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to consider the best interests of a child. Failure to do so will render the decision unlawful. The matter is justiciable before the tribunals. There is a duty to cooperate and a burden on all the parties and also on the tribunal, to ensure that the child's interests are safeguarded and sufficient information is available to establish the protection needs of the child.

*EU (Afghanistan) & Ors v Secretary of State for the Home Department* [2013] EWCA Civ 32 (31 January 2013) <http://www.bailii.org/ew/cases/EWCA/Civ/2013/32.html>

Concerns whether the 'corrective principle' can be applied to cases where the Secretary of State has failed to comply with her duty to trace the families of unaccompanied minors. Applies *KA (Afghanistan) and others v Secretary of State for the Home Department* [2012] EWCA Civ 1014.

*R (FZ) v LB of Croydon* [2011] EWCA Civ 59

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/59.html>

Provides guidance on the conduct of age assessments, as follows: i) There should be an opportunity as part of the interview process to respond to points the interviewers considered adverse to the case before the decision as to age is taken; ii) there should be the opportunity to have an appropriate adult present at the age-assessment interview. The Court held that it is not sufficient to ask whether the interview process had been "Merton compliant" (a reference to *R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin)). The court should ask whether the material before the court

raises a factual case which, taken at its highest, could not properly succeed in a contested factual hearing.

*HK (Afghanistan) & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 315

<http://www.unhcr.org/refworld/pdfid/4f7081f72.pdf>

Concerns the situation of separated children whose application for asylum has been refused but where the Secretary of State has not taken steps to trace the child's family. Held that the Upper Tribunal was not precluded from drawing an adverse inference from failure by a child to seek to get in touch with family members in his or her country of origin although this should not alone be determinative of whether there would be family support on return. A finding that there were no family members to receive the child in Afghanistan would not, in itself, necessarily show the child to be at risk if returned. The matter is one of evidence. The child's failure did not relieve the Secretary of State of her obligation to comply with the duty to trace, under Regulation 6 duty of Directive 2009/3/EC and her duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

*KA (Afghanistan) and others v Secretary of State for the Home Department* [2012] EWCA Civ 1014

<http://www.bailii.org/ew/cases/EWCA/Civ/2012/1014.html>

Whether Afghan minor applicants for asylum who attain majority by the time of the hearing before the First-Tier or Upper Tribunal should retain the advantages (in immigration terms) of their minority. Concerned the failure of the Secretary of State, over a four year period from 2006-2010, to discharge her EU law and domestic law duty to endeavour to trace the Appellants' family members, and of the Secretary of State and the First-tier Tribunal to have regard to the best interests of the child and, in particular, to section 55 of the Borders, Citizenship and Immigration Act 2009.

*L, HVN, THN & T v The Queen* [2013] EWCA Crim 991

<http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html>

The Court of Appeal considered and gave guidance on how the courts should approach victims of trafficking (including trafficked children) who are prosecuted for crimes they are forced to commit, including the approach the criminal courts should take to age assessment.

*R (MA & Ors) v. Secretary of State for the Home Department* [2011] EWCA Civ 1446

<http://www.unhcr.org/refworld/pdfid/4f5a288a2.pdf>

The Court of Appeal has referred to the Court of Justice of the European Union a question about how the Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003) is to work in relation to the removal of separated children seeking asylum to other European Union countries. The Court of Appeal was concerned as to how under the Dublin Regulation the best interests of a separated child seeking asylum are to be considered when he or she does not have a family member in any European Union country. One possibility is that rather than delay the child's asylum claim by seeking to return the child to another European Union country, the UK may be required to deal with the child's asylum claim unless it would be in the best interests of the child to be returned to another European Union country.

*R (Medical Justice) v Secretary of State for the Home Department* [2011] EWCA Civ 269

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/269.html>

In this case removal without notice, a practice that has led to peremptory removals of both separated children and young people who are the subject of age disputes, has been found to be unlawful. Seventy-two hours' notice of removal must be given, so that challenges to removal can be brought in appropriate cases. In the course of the hearing before the High Court (*R (Medical Justice Network) v Secretary of State for the Home Department* [2010] EWHC 1925 (Admin)) it was revealed that the UK Border Agency had suspended its policy on removing children without notice

since the case of *R (AM/BT) v Secretary of State for the Home Department* (unreported) in March 2011 (a case in which a child who had been trafficked to Italy had been returned without notice to the streets of that country), and had suspended it in all other children's case since April 2010, a policy change that had not previously been publicised. The suspension of the policy was, as a result of the Medical Justice case, by order of the court.

*Deron Peart v Secretary of State for the Home Department* [2012] EWCA Civ 568

<http://www.bailii.org/ew/cases/EWCA/Civ/2012/568.html>

The court considered how decisions to deport and applications for revocation of a deportation order should be considered, including on appeal; particularly in relation to children of the person whose presence is said to not be conducive to the public good, and where that person came to the UK as a child.

*R (SO) v Barking and Dagenham & Anor* [2010] EWCA Civ 1101

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/1101.html>

Respective responsibilities of the Secretary of State and a local authority toward a separated child turning 18. Held that the local authorities had obligations under leaving care provisions toward a 'former relevant child' (a child who had formerly been looked after under s 20 of the Children Act 1989), rather than the Secretary of State becoming responsible for his accommodation and support (under section 4 of the Immigration and Asylum Act 1999).

*TN (Afghanistan) & Anor v Secretary of State for the Home Department* [2013] EWCA Civ 1609 (12 December 2013) <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1609.html>

Concerns whether the applicants were denied an Effective Remedy in European law by virtue of the fact they were granted DLR for less than a year, ensuring they could not appeal to the Tribunal before turning 18; appeals dismissed.

### **High Court**

*A v London Borough of Croydon and Secretary of State for the Home Department; WK v Secretary of State for the Home Department and Kent County Council* [2009] EWHC 939

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/939.html>

This case examined the weight that local authorities should give to medical reports in conducting age assessments.

*R(A) v Lambeth* [2010] EWHC 2439 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2439.html>

This case did not concern a person seeking asylum, but the Administrative Court's ruling on the inadequacy of the local authority's 'pathway plan' is as likely to be of importance to unaccompanied child asylum-seekers as to any other child supported by a local authority.

*R(A & WK)* [2009] EWHC 939 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/939.html>

Judgment of the High Court in what became *R(A) v LB Croydon*, *R(M) v LB Lambeth* [2009] UKSC 8.

*R (ABC (a minor) (Afghanistan)) v Secretary of State for the Home Department* [2011]

EWHC 2937 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2937.html>

A separated child, abused by his siblings in Afghanistan, killed his half-brother while the latter was beating him and fled to the UK aged 14. Excluded from refugee status and humanitarian protection by the Secretary of State on the basis that he had committed a serious crime. Granted six months discretionary leave. He challenged his exclusion from asylum and humanitarian protection and the

refusal to grant discretionary leave to age 16 ½. There was an acknowledgement by the Secretary of State of a real risk that detention conditions in Afghanistan would violate Article 3. Held that the decision that ABC had committed a serious crime was not lawful because the Secretary of State has misapplied English law on self-defence and provocation. The age and maturity of the young person and facts of what happened are all relevant and should have been taken into account. HK's being left in limbo by the six month grant is deprecated; there had been a fundamental failure to consider the welfare of the child under section 55 of the Borders, Citizenship and Immigration Act 2009 save as an afterthought.

*R (Sher Afzal) v Secretary of State for the Home Department* [2012] EWHC 1487 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2012/1487.html>

This judgment is largely concerned with arguments about the exercise of discretion by the Secretary of State in relation to applications for leave outside the Rules. However, a distinct issue arises as to whether the duty to safeguard and promote the welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009 may have application in relation to an immigration decision in respect of an adult where the relevant children are said to be children whom he teaches in the community as distinct from his children, or children related to him. Although the judicial review application is unsuccessful, the conclusion of Wyn Williams J at paragraph 61 is of interest.

*R (AS) v LB Croydon* [2011] EWHC 2091 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2091.html>

An age assessment case. Cites the Royal College of Paediatrics and Child Health guidance on assessing age (see NGOs below). Holds that the most appropriate approach is "to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive and behavioural and emotional assessments" undertaken by appropriately trained social workers. An age assessment must, as a minimum be 'Merton compliant' ((a reference to *R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin)). A challenge to an age assessment will normally entail both the claimant and the social worker giving evidence, where required.

*R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin)

[www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html](http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html)

This case sets out guidance on the conduct of age assessments to which all references to an assessment being 'Merton compliant' in judgments refer back.

*R (BN) v Secretary of State for the Home Department* [2011] EWHC 2367 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2367.html>

Whether a fresh Article 8 human rights claim had been made, given assertions of previous failures of the Secretary of State properly to consider the claimant's and her children's circumstances and to have regard to section 55 of the Borders, Immigration and Citizenship Act 2009. Held that it had been unreasonable of the Secretary of State not to have accepted that a fresh human rights claim with a realistic prospect of success on an appeal to the Tribunal had been made, especially given a detailed report by a social worker and in light of the judgment in *ZH (Tanzania)* [2011] UKSC 4. The court criticised the UK Border Agency for failing to pass the social worker's report to its Office of the Children's Champion. It was held that the decision not to defer removal of the claimant so as to give the Children's Champion proper opportunity to give informed advice in light of the new material was also unreasonable.

*R (F) v Southwark LBC* [2009] EWHC 3542 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/3542.html>

The first case on age assessment following the decision of the Supreme Court in *R(A) v LB Croydon*, *R(M) v LB Lambeth* [2009] UKSC 8. Provides guidance about how the court will carry out its fact-

finding role in age assessment judicial reviews. Held that if local authorities want to defend the age assessment reports, social workers who prepared the reports will have to give oral evidence and submit to cross examination. The applicant must be available if required to give evidence. Medical and paediatric evidence are admissible provided that the local authority has had the opportunity to consider them.

*R (J) v Secretary of State for the Home Department* [2011] EWHC 3073 (QBD)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/3073.html>

The refusal of the claimant's asylum claim and his detention had been unlawful because the UK Border Agency had failed to ensure that the age assessment on which it relied (which in the judge's view obviously did not comply with the guidance in *R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin)) was 'Merton-compliant'. There was "an independent obligation on the part of the [Secretary of State] to consider that assessment and to reach her own conclusion as to whether or not it was Merton compliant." The age assessment was unlawful (*inter alia*) because it was carried out by only one social worker; the claimant was not given the opportunity of having an appropriate adult present during the process.

*KA v Essex Country Council* [2013] EWHC 43 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/43.html>

The case concerns the approach of a local authority in deciding whether refusal of support under the Children Act 1989 would involve a breach of Convention rights as part of the procedural protection for Article 8. The application was for judicial review of the Defendant's refusal on the 5 July 2012 to provide accommodation and support for the Claimant and her family pursuant to the Children Act 1989. Applications from Claimant and her husband for leave to remain had been refused without a right of appeal. The Claimant succeeded in her argument that the denial of support would in effect compel her and her family to return to Nigeria, as a result of which they would be deprived of the procedural protection for their Convention rights through an appeal under the under the Nationality Immigration and Asylum Act 2002.

*R (MXL & Ors) v Secretary of State for the Home Department* [2010] EWHC 2397 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2397.html>

Concerned the continued separation of a mother and her two children by reason of her being detained on completion of her criminal sentence of imprisonment. The failure of the UK Border Agency to give proper consideration to the welfare of her two children in its decision to detain, and to maintain detention of, the mother was a significant factor in the Court's ultimate ruling of unlawful detention.

*R (PM) v Hertfordshire* [2010] EWHC Civ 2056 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2056.html>

The extent to which a decision of the tribunal can bind non-parties. Addresses the situation where an immigration judge rules that a person who claims to be a child is an adult despite the decision of a local authority to accept the person to be a child and to support him/her accordingly. The local authority had responded to the decision of the immigration judge by simply terminating its support. The Administrative Court ruled that to be unlawful. The immigration judge's decision did not bind the local authority, although it would be appropriate for a local authority to consider whether such a decision required it to reconsider its age assessment.

*R (Jamil Sanneh) v Secretary of State for Work and Pensions and The Commissioners for Her Majesty's Revenue and Customs* [2013] EWHC 793 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/793.html>

The Claimant is an overstayer from Gambia whose child is British and who therefore has a right to reside as her daughter's sole carer; *Ruiz Zambrano v Office National de l'Emploi* (2011) EUECJ C-34/09. Her claims for benefits and/or tax credits were refused. She contended on appeal that, on the basis of the principles set out in *Ruiz Zambrano*, the denial of those benefits creates a situation in which she will be forced to leave the United Kingdom (UK) through lack of means, with the result that her daughter would also be compelled to leave the UK. The substantive appeal is now at the permission stage in the Court of Appeal and is likely to be determinative of how *Ruiz Zambrano* impacts on entitlement to benefits, however, the Claimant lodged a claim for judicial review of the Defendants' refusal to make interim payments. Hickenbottom J effectively adopted the Upper Tribunal's analysis in CIS/1371/2012 and held that the refusal of benefits and/or payments in the interim would not have the consequence that the Claimant would have to leave the UK with her British citizen daughter due to economic pressure. He held that the Claimant's claim for interim payments of Income Support, Child Benefit and Child Tax Credits on the basis of *Ruiz Zambrano*, "falls at the first hurdle".

*SM & Anor v Secretary of State for the Home Department* [2013] EWHC 1144 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/1144.html>

Concerns the Home Office policy of granting limited leave of three years (now two and a half years under policy published on 6 April 2013) Discretionary Leave rather than settlement to children without considering their best interests.

*R(SM) v Secretary of State for the Home Department* [2011] EWHC 338 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/338.html>

FM, SM's British Citizen child was made an interested party to his father's challenge to his detention and application for *habeas corpus*. The Administrative Court held in this case that the detention of the father, who had been separated from his children, was unlawful and that the advice provided to him by the UK Border Agency and the Office of the Children's Champion were seriously deficient in failing to address or attempt to address the welfare and best interests of children.

*R (Suppiah et ors) v Secretary of State for the Home Department* [2011] EWHC 2 (Admin)

[www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/suppiah-judgment.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/suppiah-judgment.pdf)

A challenge to the detention of children under immigration act powers. Held that the current UK Border Agency policy on the detention of children is not unlawful; there is a way in which it can be operated lawfully. But in the cases before the Court, the detention had not been lawful. While there was no breach of Article 3 (prohibition on torture, inhuman and degrading treatment or punishment) of the European Court on Human Rights, the judge found breaches of Articles 5 (right to liberty) and Article 8 (right to private and family life).

*R (Tinizaray) v Secretary of State for the Home Department* [2011] EWHC 1850 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/1850.html>

The Court held that the four decisions to refuse leave to a child's mother should be set aside as the Agency had not properly considered what was in the child's best interests. Those best interests should have been a primary consideration in the UK Border Agency's decision-making but had not been. Each family member (the applicant, her mother and her daughter) should have been considered separately, as well as collectively, under Article 8. The judge carefully considers the UK Border Agency's safeguarding duty under section 55 of the Borders, Immigration and Citizenship Act 2009 and *ZH(Tanzania)* [2011] UKSC 4 and also gives guidance as to the type of investigations that could, and should, have been made properly to discharge the duty under section 55.

*R (TS) v Secretary of State for the Home Department & Anor* [2010] EWHC 2614 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2614.html>

Consideration of the application of the safeguarding and welfare duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 in the context of a decision to return an separated child seeking asylum to Belgium under the “Dublin” arrangements.

### ***Court of Session, Outer House***

*AM (AP) et ors v Secretary of State for the Home Department* [2012] CSOH 24

<http://www.scotcourts.gov.uk/opinions/2012CSOH24.html>

The application of best interests in relation to a proposed removal of a family. Consideration given to the Administrative Court's judgment in *Tinazaray v Secretary of State for the Home Department* [2011] EWHC 1850 (Admin). On the facts before the court there was no positive duty on the Secretary of State to take further steps (e.g. by interview) to identify the views of the children where statements from those children were before her and had been considered (and those children had had the opportunity, though not taken, to attend a family interview in the course of the family removal process).

### ***High Court of Justice, Northern Ireland***

ALJ and A, B and C, Re Judicial Review [2013] NIQB 88 (14 August 2013)

URL: <http://www.bailii.org/nie/cases/NIHC/QB/2013/88.html>

Important case in which the High Court refuses to return a mother and her three children to the Republic of Ireland (Eire) under the Dublin Regulation on grounds *inter alia* that the reception conditions in Ireland are not compatible with the children's best interests and the Secretary of State's duties under s.55 of the Borders, Immigration and Citizenship Act 2009.

### ***Immigration and Asylum Chamber, Upper Tribunal***

*AA (unattended children) Afghanistan* CG [2012] UKUT 00016 (IAC)

[http://www.unhcr.org/refworld/publisher,GBR\\_UTIAC,,4f293e452,0.html](http://www.unhcr.org/refworld/publisher,GBR_UTIAC,,4f293e452,0.html)

Section 55 of the Borders, Citizenship and Immigration Act 2009 (duty to safeguard and promote the welfare of children) applies to substantive asylum/Humanitarian Protection decisions. Where a child wants to go back and seek protection from the State in the country of origin, but this is not in his/her best interests, then the section 55 duty is engaged. “Unattached children” (those no longer in touch with their families and therefore not receiving protection from their families) in Afghanistan are exposed to a risk “of serious harm” from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. In Afghanistan there is a distinction between children in families and those not. AA was held to be a refugee and had he not been, to have been entitled to protection under Article 3 of the European Convention on Human Rights. Comments are made about the importance of family tracing.

*Ahmed v Secretary of State for the Home Department*, [2013] UKUT 89 (IAC) (28 February 2013)

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00089\\_ukut\\_iac\\_2013\\_na\\_pakistan.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00089_ukut_iac_2013_na_pakistan.html)

It is not possible for a third-country-national spouse or civil partner to retain residence rights under Article 13(2) of Directive 2004/38, even following domestic violence, unless the EEA-national spouse is in the UK and exercising Treaty rights on the date of the divorce or the termination of the civil partnership; it is possible for a parent to have a right of residence under Article 20 of the Treaty (as interpreted in the *Ruiz Zambrano* judgment) even if his/her child is a national of an EEA Member State other than the host Member State; it is possible to have derived rights under Article 12 of EU

Regulation 1612/68 (i.e. qualify as a 'Teixeira' parent) even if the EEA-national worker's presence in the UK has not overlapped with the child's time in compulsory education, notwithstanding the contrary requirement found in Regulation 15A of the amended Immigration (European Economic Area) Regulations 2006.

*R (on the application of AM) v Solihull Metropolitan Borough Council* (AAJR) [2012] UKUT 00118 (IAC) (2 February 2012)

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=topic&tocid=4565c22520&toid=4992a76a2&publisher=&type=&coi=&docid=4f8e688b2&skip=0>

Concerns age assessment (language and medical evidence) and entitlement to support.

*Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 00197(IAC), 26 March 2013

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00197\\_ukut\\_iac\\_2013\\_ha\\_iran.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00197_ukut_iac_2013_ha_iran.html)

*Bee & Anor (permanent/derived rights of residence) Malaysia* [2013] UKUT 83 (IAC), 26 February 2013

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00083\\_ukut\\_iac\\_2013\\_lb\\_malaysia.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00083_ukut_iac_2013_lb_malaysia.html)

A non-EU citizen, who is residing in the United Kingdom by reason of a derived right of residence (e.g. as the primary carer of an EU citizen child), cannot as a result acquire a permanent right of residence in this country.

*EA (Article 8 – best interests of child) Nigeria* [2011] UKUT 00315 (IAC)

<http://www.unhcr.org/refworld/category,LEGAL,,,NGA,4e56083d2,0.html>

Student parents argued that the best interests of their young child were to remain in the UK. The correct starting point in considering the welfare and best interests of a young child is that it is in the best interests of a child to live with the parents. Where this is so, the child's removal with the parents does not interfere with the right to family life. A period of substantial residence as a child leads to putting down roots – the extent to which ties to the UK are made is a question of fact in each case. *In the early years the ties are to the family.*

*Green (Article 8 – new rules)* [2013] UKUT 00254 (IAC), 23 May 2013

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00254\\_ukut\\_iac\\_2013\\_cg\\_jamaica.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00254_ukut_iac_2013_cg_jamaica.html)

The Upper Tribunal has issued further significant guidance as to the application of the new Immigration Rules on private and family life in the context of deportation cases. The tribunal reaffirmed that the new rules failed, in a number of important respects, to reflect the established jurisprudence of the European Court of Human Rights in particular the requirement to take into account, in deportation decisions, whether the offender was a juvenile at the time of his offending (as an aspect of the obligation to have regard under Article 8, ECHR to the best interest of the child): *Maslov v Austria* [2008] ECHR 546. That being the case, the Upper Tribunal reaffirmed that where the rules do not reflect established Article 8 principles, tribunals must consider such principles outside the context of the immigration rules, taking appropriate account of the public interest. *Nagre v Secretary of State for the Home Department* [2013] EWHC 720 (Admin) approving the guidance in *Izuazu* [2013] UKUT 45 (IAC); also see *Ogundimu (Article 8 – new rules) Nigeria* [2013] UKUT 00060 (IAC) regarding appeals against decisions made after 9 July 2012.

*Izuazu (Article 8 – new rules)* [2013] UKUT 00045 (IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00045\\_ukut\\_iac\\_2013\\_ui\\_nigeria.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00045_ukut_iac_2013_ui_nigeria.html)

In cases to which the new Immigration Rules introduced as from 9 July 2012 by HC 194 apply, judges should proceed by first considering whether a claimant is able to benefit under the applicable

provisions of the Immigration Rules designed to address Article 8 claims. Where the claimant does not meet the requirements of the rules it will be necessary to go on to make an assessment of Article 8 applying the criteria established by law. There can be no presumption that the Rules will normally be conclusive of the Article 8 assessment or that a fact-sensitive inquiry is normally not needed. The more the new Rules restrict otherwise relevant and weighty considerations from being taken into account, the less regard will be had to them in the assessment of proportionality.

*JS (Former unaccompanied child - durable solution) Afghanistan* [2013] UKUT 00568 (IAC)

<http://www.refworld.org/docid/528b33734.html>

A local authority's obligations to an appellant as an unaccompanied child and asylum seeker and his status as a former relevant child after he becomes 18 do not of themselves determine the outcome of a decision on an appellant's immigration status but may provide evidence relevant to those issues. As to this, the failure of the Home Office to endeavour to trace family members of a child asylum seeker is only relevant to an immigration appeal after the appellant ceases to be a child, where he is able to show a causal link between that failure and issues relevant to the outcome of the appeal.

*R (JS) and R (YK) v Birmingham City Council (AAJR)* [2011] UKUT 00505 (IAC)

[http://www.unhcr.org/refworld/publisher,GBR\\_UTIAC,,4f3277b22,0.html](http://www.unhcr.org/refworld/publisher,GBR_UTIAC,,4f3277b22,0.html)

First case of a judicial review of an age assessment being heard in the Upper Tribunal. Birmingham had not followed the policy on age assessment nor given any good reason for departing from it but instead simply adopted and that was different from that adopted by the Secretary of State. Defendant's decisions quashed, on that ground alone, leaving the defendant to apply its policy and differ from the Secretary of State's assessment only by following the procedure in the protocol. The case has been appealed to the Court of Appeal.

*LD (Article 8 – best interests of child) Zimbabwe* [2010] UKUT 278 (IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2010/00278\\_ukut\\_iac\\_2010\\_ld\\_zimbabwe.html](http://www.bailii.org/uk/cases/UKUT/IAC/2010/00278_ukut_iac_2010_ld_zimbabwe.html)

The UN Convention on the Rights of the Child is highly relevant to consideration of the right to private and family life under Article 8 of the European Convention on Human Rights in immigration cases: "Although questions exist about the status of the UN Convention on the Rights of the Child in domestic law, we take the view that there can be little reason to doubt that the interests of the child should be a primary consideration in immigration cases. A failure to treat them as such will violate Article 8(2) as incorporated directly into domestic law."

*MK (best interests of child) India* [2011] UKUT 00475 (IAC)

[http://www.unhcr.org/refworld/country,,GBR\\_UTIAC,,IND,,4ed8bf812,0.html](http://www.unhcr.org/refworld/country,,GBR_UTIAC,,IND,,4ed8bf812,0.html)

Applies *ZH (Tanzania)* [2011] UKSC 4. Deals with taking into account the wishes and feelings of the child, holds that consideration of the best interests of the child is an integral part of the balancing exercise under Article 8 of the European Convention on human rights but must be addressed first as a distinct inquiry. Factors relating to the public interest in the maintenance of effective immigration control must not form part of the consideration of best interests of the child. What is required is an "overall assessment." In considering the effect upon the child's education, the impact on a child's educational development, progress and opportunities must be taken into account.

*Mundeba (s.55 and para 297(i) (f)) Democratic Republic of Congo* [2013] UKUT 88 (IAC), 26 February 2013

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00088\\_ukut\\_iac\\_2013\\_lm\\_drcongo.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00088_ukut_iac_2013_lm_drcongo.html)

Where an immigration decision engages the Article 8 rights of a child, due regard must be had to the UN Convention on the Rights of the Child and an entry clearance decision for the admission of a child under 18 is "an action concerning children...undertaken by...administrative authorities" and so by

Article 3 "the best interests of the child shall be a primary consideration". Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55

*Nagre, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin), 28 March 2013

[http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2013/720.html&query=title+\(+Nagre+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2013/720.html&query=title+(+Nagre+)&method=boolean)

"Insurmountable obstacles to relocation" is not the sole and definitive test when considering proportionality in precarious family life cases.

*Ogundimu (Article 8 – new rules) Nigeria* [2013] UKUT 00060 (IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00060\\_ukut\\_iac\\_2013\\_oo\\_nigeria.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00060_ukut_iac_2013_oo_nigeria.html)

The Tribunal held that (i) The introduction of the new Immigration Rules (HC 194) does not affect the circumstance that when considering Article 8 of the Human Rights Convention "for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in [this] country very serious reasons are required to justify expulsion." The principles derived from *Maslov v Austria* [2008] ECHR 546 are still be applied; (ii) Paragraph 399(a) of the Immigration Rules conflicts with the Secretary of State's duties under Article 3 of the UN Convention on the Rights of the Child 1989 and section 55 of the Borders, Citizenship and Immigration Act 2009. Little weight should be attached to this Rule when consideration is being given to the assessment of proportionality under Article 8 of the Human Rights Convention; (iii) the natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances.

*RS (immigration and family court proceedings) India v The Secretary of State for the Home Department* [2012] UKUT 00218(IAC), 4 July 2012

[http://www.bailii.org/uk/cases/UKUT/IAC/2012/00218\\_ukut\\_iac\\_2012\\_rs\\_india.html](http://www.bailii.org/uk/cases/UKUT/IAC/2012/00218_ukut_iac_2012_rs_india.html)

Where a claimant appeals against a decision to deport or remove and there are outstanding family proceedings relating to a child of the claimant, the Tribunal should first consider whether the outcome of the contemplated family proceedings likely to be material to the immigration decision, whether there are compelling public interest reasons to exclude the claimant from the UK irrespective of the outcome of the family proceedings or the best interest of the child and to consider whether the family proceedings have been instituted to delay or frustrate removal and not to promote the child's welfare...Having considered these matters the Tribunal will decide whether the claimant has at least an Article 8 right to remain until the conclusion of the family proceedings and if so whether the appeal be allowed to a limited extent and a discretionary leave be directed as per the decision on *MS (Ivory Coast)* [2007] EWCA Civ 133.

*Sanade and others (British children - Zambrano – Dereci)* [2012] UKUT 00048(IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2012/00048\\_ukut\\_iac\\_2012\\_ms\\_ors.html](http://www.bailii.org/uk/cases/UKUT/IAC/2012/00048_ukut_iac_2012_ms_ors.html)

Considers *ZH (Tanzania) v SSHD* [2011] UKSC 4. That children are British is a strong pointer to their future lying in the United Kingdom. Case C-34/09 *Ruiz Zambrano* now makes it clear that where the child is a British citizen and therefore a citizen of the European Union, as a matter of EU law it is not possible to require the family as a unit to relocate outside of the European Union or for the Secretary of State to submit that it would be reasonable for them to do so. Where in the context of

Article 8 one parent (“the remaining parent”) of a British citizen child is also a British citizen (or cannot be removed as a family member or in their own right), the removal of the other parent does not mean that either the child or the remaining parent will be required to leave, thereby infringing the Zambrano principle, see C-256/11 *Murat Dereci*. The critical question is whether the child is dependent on the parent being removed for the exercise of his Union right of residence and whether removal of that parent will deprive the child of the effective exercise of residence.

*Seye (Chen children; employment)* [2013] UKUT 00178 (IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00178\\_ukut\\_iac\\_2013\\_ss\\_france.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00178_ukut_iac_2013_ss_france.html)

The court affirmed the following: (i) income from illegal employment in the host Member State on the part of a parent of a “Chen” child (Case c-200/02 *Chen* [2004] ECR I-9925) cannot create self-sufficiency for that child; the proposition in *MA & Others* (EU national; self-sufficiency; lawful employment) [2006] UKAIT 00090 and *ER and Others* (EU national; self-sufficiency; illegal employment) [2006] UKAIT 00096 that even lawful employment cannot create such self-sufficiency, where the parent is on limited leave or temporary admission, must be regarded as doubtful, in the light of *Metock and Others* [2008] EUECJ C-127/08 and *Liu and Ors v SSHD* [2007] EWCA Civ 1275; and lawful employment undertaken by a parent whose leave has been extended under section 3C of the Immigration Act 1971 cannot create self sufficiency for the “Chen” child.

*ST (Child asylum seekers) Sri Lanka* [2013] UKUT 292(IAC), 25 June 2013

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00292\\_ukut\\_iac\\_2013\\_st\\_srilanka.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00292_ukut_iac_2013_st_srilanka.html)

The UT held that as the wider range of grounds permissible in appeals under 2002 Act, s.82 are not available in s.83 appeals (see s.84(1)&(3)) and that the Tribunal has no power to entertain them, the “best interests of the child” are relevant in s.83 appeals only to the extent that they illuminate a claim that the appellant is a refugee (see s.84(3)) or entitled to humanitarian protection (see *FA (Iraq) v SSHD* [2010] EWCA Civ 696) on the basis of a hypothetical return at the date of the hearing. The Tribunal is unlikely to be assisted by hearing the evidence of a child who is 12 years old or younger and whenever a judge is considering hearing evidence from a child the issues should be explored with the advocates and the responsible adult accompanying the child and the guidance in the Senior President’s Practice Statement of 30 October 2008 ‘Circumstances Under Which a Child Vulnerable Adult or Sensitive Witness May Give Evidence’ should be applied. A judge should alert the advocates when s/he is minded to depart from a favourable assessment of credibility made by the SSHD (see *WN (Surendran; credibility) DRC* [2004] UKIAT 213.)

*T (s.55 BCIA 2009-entry clearance) Jamaica* [2011] UKUT 00483 (IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2011/00483\\_ukut\\_iac\\_2011\\_t\\_jamaica.html](http://www.bailii.org/uk/cases/UKUT/IAC/2011/00483_ukut_iac_2011_t_jamaica.html)

Section 55 of the Borders, Citizenship and Immigration Act 2009 does not apply to children who are outside the United Kingdom. Where there are reasons to believe that a child’s welfare may be jeopardised by exclusion from the United Kingdom, the considerations of Article 8, the “exclusion undesirable” provisions of the Immigration Rules and the extra statutory guidance to Entry Clearance Officers to apply the spirit of the statutory guidance in certain circumstances should all be taken into account by the Entry Clearance Office at first instance and the immigration judge on appeal. When the interests of the child are under consideration in an entry clearance case, it may be necessary to make investigations, and where appropriate having regard to age, the child herself may need to be interviewed. It is difficult to contemplate a scenario where a s. 55 duty is material to an immigration decision and indicates a certain outcome but Article 8 does not.

# ILPA Materials

Below you will find lists of the material available on ILPA's public website. The password-protected members' area of the site contains a wealth of additional material.

## **Best Practice, Guidelines, Briefings and Responses**

The following publications are all available online from:

[www.ilpa.org.uk](http://www.ilpa.org.uk)

### **2013**

ILPA response to the Independent Chief Inspector's thematic inspection into the handling of asylum claims made by unaccompanied children (February 2013)

<http://www.ilpa.org.uk/resources.php/17291/13.02.18-independent-chief-inspectors-thematic-inspection-into-the-handling-of-asylum-claims-made-by>

### **2012**

*Working with Migrant Children: Community Care law for immigration lawyers*, Adam Hundt and Zubier Yazdani for ILPA (December 2012)

<http://www.ilpa.org.uk/data/resources/16693/13.01.07-Community-care-final-PDF-for-the-web.pdf>

ILPA response to Children's Society Inquiry into Asylum Support for Children and Young People (December 2012)

<http://www.ilpa.org.uk/data/resources/16473/12.12.07-ILPA-response-to-The-Childrens-Society-inquiry-into-asylum-support-for-children-and-young-people.pdf>

*Separated Children and Legal Aid Provision*, Solange Valdez for ILPA (December 2012)

<http://www.ilpa.org.uk/data/resources/16550/12.12.13-Legal-Aid-pdf-for-web.pdf>

ILPA's submission to the Joint Committee on Human Rights inquiry into the human rights of unaccompanied migrant children and young people in the UK (October 2012)

<http://www.ilpa.org.uk/data/resources/16028/12.10.26-ILPA-to-JCHR-separated-children.pdf>

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[http://www.ilpa.org.uk/data/resources/14627/12.04.25-ilpa\\_child\\_gdlines\\_2nd\\_ed.pdf](http://www.ilpa.org.uk/data/resources/14627/12.04.25-ilpa_child_gdlines_2nd_ed.pdf)

*Working with refugee children: current issues in best practice* Second edition (February 2012) Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo for ILPA

[http://www.ilpa.org.uk/data/resources/13326/ilpa\\_wking\\_w\\_refugee\\_chldrns2nd\\_edition\\_Jan2012.pdf](http://www.ilpa.org.uk/data/resources/13326/ilpa_wking_w_refugee_chldrns2nd_edition_Jan2012.pdf)

### **2011**

*Working With Refugee Children: Current Issues in Best Practice*, Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo for ILPA (May 2011)

*Resources Guide for Practitioners Working with Refugee Children* (September 2011)

**2010**

*The Detained Fast Track Process a Best Practice Guide Update*, ILPA, April 2010

**2009**

*Consideration by the European Court of Human Rights of the UN Convention on the Rights of the Child*, 1989 ILPA (July 2009)

**2008**

*The Detained Fast Track Process a Best Practice Guide* (January 2008)

**2007**

*When is a child not a child? Asylum, age disputes and the process of age assessment*, ILPA/Heaven Crawley (May 2007) Executive Summary

**2006**

*Non-Refoulement under Threat: Proceedings of a Seminar Held Jointly by The Redress Trust and ILPA* (November 2006)

*Child first, migrant second: Ensuring that every child matters*, ILPA/Heaven Crawley (February 2006)

**2005**

*Representation at Immigration Appeals A Best Practice Guide*, Jane Coker, Jim Gillespie, Sue Shutter, Alison Stanley, ILPA/OISC (December 2005)

**2004**

*Working with children and young people subject to immigration control: Guidelines for best practice*, ILPA/Heaven Crawley (November 2004 - Updated 2012)

*Asylum: a guide to recent legislation*, ILPA and the Resource Information Service (RIS), January 2004

**2003**

*Challenging Immigration Detention: A Best Practice Guide*, Emily Burham, ILPA/Bail for Immigration Detainees/Law Society (October 2003)

*Best Practice Guide to Asylum and Human Rights Appeals*, Mark Henderson, ILPA/Refugee Legal Group (October 2003 - Updated 2009 - updated version is available through the Electronic Immigration Network)

**ILPA Information Sheets**

The following information sheets are available from: <http://www.ilpa.org.uk/pages/ilpa-information-service-further-information-sheets.html> Listing below is alphabetical by issue and date (most recent first)

*Age Assessment and Age Disputes*

Age Disputes (Dental X-Rays) – 03/04/2012

Age Disputes and Age Assessment 4 – 20/02/2012

Age Disputes and Age Assessment 3 – 01/04/2011

Age disputes and Age Assessment 2 – 01/02/2010

Age disputes and Detention 2 – 29/11/2011

Age Disputes and Detention – 27/05/2011

Age disputes and Age Assessment – 18/10/2007

### *Appeals*

Appeals and Children – 10/11/2011

### *Article 8*

Article 8 No 4 – 13/03/2013

Article 8 No 3 – 21/12/2012

Article 8 No 2 – 26/07/2012

Article 8 Judgments – 23/08/2008

Article 8 – 05/08/2008

### *Asylum and Refugees*

Asylum Operating Model – 02/05/2013

Refugees and Family Reunion – separated children - 31/08/2010

Children's Asylum Claims - 05/04/2007

### *Best Practice – working with children*

Best practice: working with children – 28/05/2012

### *Children's Best Interests*

Children's Best Interests 3 – 26/07/2012

Children's Best Interests 2 – 26/07/2012

Children's Best Interests – 06/01/2011

Children – New Statutory Duty – 04/08/2009

Children's Welfare – 03/12/2008

### *Detention*

Detention of Children 5 – 03/08/2011

Detention of Children 4 – 04/02/2011

Detention of Children 3 – 09/08/2010

Detention of Children 2 – 18/06/2010

Detention of Children – 03/08/2009

### *Deportation*

Deportation – 26/07/2013

Deportation 3: European Deportation – 17/09/2012

Deportation 2: Automatic Deportation – 17/09/2012

### *Discretionary Leave*

Discretionary Leave – 19/09/2012

Discretionary Leave and Separated Children – 22/05/2012

### *Dublin III*

Dublin III Regulation – 31/01/2014

Safe Third Country (Dublin) Returns – 20/02/2012

### *EU*

New European Free Movement Regulations – 31/01/2014

European Citizenship (*Ruiz Zambrano*) Update – 21/12/2012

European Citizenship Judgment (*Ruiz Zambrano*) – 30/03/2011

### *Family Migration*

Family Migration – Changes to Immigration Rules 1 – 26/07/2012

*Family Tracing*

Family Tracing 3 – 13/03/2013

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*Family Visit Visas*

Family Visit Visa Appeals (II) – 13/05/2013

Family Visit Visa Appeals – 08/06/2012

*Funding - Legal Aid*

Legal Aid New Proposals – 31/01/2014

Legal Aid: Exceptional Case Determinations – 02/05/2013

Legal Aid: New Proposals – 02/05/2013

Legal Aid 13 – 21/12/2012

Legal Aid 14 – 13/03/2012

Legal Aid Bill 5 - Children – 15/11/2011

Legal Aid Bill 4 - Children – 15/08/2011

Legal Aid Proposals – Children – 06/01/2011

*Funding – Other*

Strategic Legal Fund for refugee children and young people – 23/01/2012

*Judgments – General*

ZH (*Tanzania*) – UK Supreme Court Judgment – 09/02/2011

‘Leaving Care’ Judgments – 19/11/2010

*Legacy*

Legacy Cases 9 – 19/09/2012

*Removals and Returns*

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UKBA Family Returns Pilots – 19/11/2010

Removals and Separated Children – 09/08/2010

*Rules and Concessions (exercise of discretion outside the Rules)*

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