

Update on Asylum

Introduction:

1. These notes and materials accompany an Update on Asylum workshop for Wednesday, 25th April.
2. The aim of the workshop will be to update participants on recent developments in UK asylum law and process. Materials appended to these notes are made up of information sheets produced by ILPA on specific topics for discussion at the workshop. These and other information sheets are available on the ILPA website (www.ilpa.org.uk); and form part of a free information service, which is available to be emailed monthly by request.
3. More information about the ILPA Project, through which this information service is provided is available from one of the information sheets that is appended. Also included are the first 2 immigration updates (produced in March and April respectively).

New Legislation:

4. Later this year, there will be a new immigration Act. The UK Borders Bill is currently passing through Parliament. It affects many aspects of immigration law, including asylum.
5. Key areas where it may affect asylum cases relate to:
 - biometric information and identity cards;
 - new reporting and residence restrictions for some asylum-seekers;
 - minor amendments to support provisions for asylum-seekers;
 - new deportation provisions for persons convicted of certain offences.

6. An information sheet on the Bill is included in the appended material. Although there have been some amendments to the Bill, the information on that sheet remains good.

New Asylum Model:

7. The New Asylum Model (NAM) was introduced in 2006. From April 2006, all new asylum claims (not fresh claims) have been dealt with in the NAM. However, the NAM is to receive a new name – to reflect the fact that it is now not new!
8. An information sheet on the NAM is included in the materials appended. Also included is an information sheet on children’s cases, which are dealt with in the NAM – but through a separate children’s “segment”.
9. Development of the NAM is an ongoing process. Key aspects of the NAM are:
 - Home Office target to conclude all cases (including where an appeal is brought) within 6 months of when the claim is made;
 - allocation of a named person at the Home Office (called a Case Owner) to be responsible for dealing with the case from start to finish.

Legacy Cases:

10. Asylum cases not being dealt with in the NAM will be dealt with as part of a backlog of about 450,000 cases. These include cases where an asylum claim has been made in the past and the case is not resolved.
11. The Home Office have given very little information about legacy cases. It is clear that they are still working on how to deal with these cases, but some steps have already been taken; and some information has been announced.

12. An information sheet on Legacy Cases is included in the materials; and it is up to date. It should be noted that legacy is not a new amnesty.

Judicial Review Challenges to Forced Removal:

13. In March, the Home Office changed its policy for dealing with judicial review challenges to removal directions. The Home Office did this following extensive consultation with the courts, and the courts have also changed their guidance to judges to reflect the new arrangements. The key changes are:

- the Home Office will give at least 72 hours notice of a forced removal;
- this notice period must include at least two working days;
- the last 24 hours of this period must include at least 24 hours.

14. A Home Office note on the changes is included in the appended materials. The ability of a lawyer to make a judicial review challenge to removal directions often depends on whether the lawyer can obtain case papers, including:

- all decisions that have been made on a case;
- the reasons for those decisions (e.g. reasons for refusal letter; appeal determinations; letter refusing a fresh claim);
- the evidence that was submitted (e.g. witness statements; fresh representations)

Recent Caselaw Developments:

15. There have been important Court of Appeal judgments recently affecting Zimbabwe and Sudan (Darfur). However, these cases do have importance for asylum-seekers from other countries.
16. The Sudan case is particularly important for asylum-seekers, who can show a well-founded fear of persecution in their home area. To claim refugee status, these individuals need also to show a fear of persecution

elsewhere in their home country OR that it would be unreasonable to expect them to move to a safe place in their home country because such a move would be unduly harsh. The Sudan case provides important clarification of how a decision-maker (whether at the Home Office or a judge) should apply the test of what is unduly harsh.

17. The Zimbabwe case has revealed how the Home Office remove people from the UK – by retaining their travel documents and handing these over to the authorities in the person’s home country (this may also be done by the airline). It also reveals the importance of specific evidence, including individual testimony, in seeking to demonstrate what happens routinely at the point of return.
18. Information sheets on both of these cases are included in the appended material.

Fresh Claims:

19. In recent months, there have been important decisions in the High Court and Court of Appeal. These confirm that where information that is put forward does raise something that is new, the Home Office ought to treat the matter as a fresh claim. The Home Office should not refuse to treat something as a fresh claim simply because they take the view that new information does not establish a well-founded fear of persecution (or other serious risk of harm).
20. For a lawyer to make a fresh claim, it is vital that the lawyer has all the relevant information including:
 - all decisions that have been made on a case;
 - the reasons for those decisions (e.g. reasons for refusal letter; appeal determinations; letter refusing a fresh claim);
 - the evidence that was submitted (e.g. witness statements; fresh representations)

21. What the lawyer needs to assess is:
- is there new information?
 - why has the information not been available previously?
 - what are the facts that have already been decided?
 - how does the new information affect those facts/decisions OR how is the new information affected by those facts/decisions?
22. The reason the lawyer will need to answer these questions is that in most cases there will already be established facts. Unless the new information provides good reason to rethink previous decisions, those facts will remain established. Sometimes, some of these facts may be helpful. Ultimately, what the lawyer needs to do is to work out what are the established facts, and how does the new information show the individual to be at risk given the facts already established.

Status & Settlement:

23. In recent years there have been significant changes in the status that asylum-seekers may be granted. Some of the key changes have been:
- humanitarian protection has since August 2005 be granted for 5 years (and will usually lead to a grant of ILR on application);
 - refugee leave is also granted for 5 years (and will usually lead to a grant of ILR on application);
 - discretionary leave for unaccompanied children is now only granted to age 17½.
24. To apply for settlement (ILR) a person is now required to demonstrate some knowledge of English and life in the UK. This will, in the years ahead, apply to asylum-seekers who were granted 5 years refugee leave or 5 years humanitarian protection.

25. An information sheet on Applying for Settlement is included in the appended material. A paper provided for a recent Refugee Council conference on protection statuses is also provided.

Steve Symonds

Legal Officer

Immigration Law Practitioners' Association (ILPA)

24th April 2007