

Asylum-seekers: UK law and practice

Introduction:

1. These notes accompany a workshop to be given as part of Medsin's conference on Refugee and Asylum-seeker access to Healthcare in the UK on Saturday, 23rd February.
2. The aim of the workshop will be to provide participants with a grounding in UK law and practice as it applies to asylum-seekers, thereby providing a wider context for the focus of the conference on healthcare needs and provision for asylum-seekers and refugees; and current proposals in this regard. As regards the access of asylum-seekers to healthcare and the policy and practice surrounding this, participants may find the Medact briefing at the following link to be useful:
<http://www.medact.org/content/refugees/Briefing%20V1%20agreed.pdf>
3. Further information relating to UK immigration law and practice is provided by the ILPA information service, previous materials of which are available online at <http://www.ilpa.org.uk/infoservice.html>. Updates relating to this service are freely available by email, for which please contact steve.symonds@ilpa.org.uk.

Asylum-seekers and refugees:

4. An asylum-seeker in ordinary language is a person who has sought the protection available to refugees under the 1951 Refugee Convention. However, for some purposes in UK law (e.g. asylum support), it also includes a person who claims that his or her removal from the UK would place him or her at risk of torture or some other serious harm (whether or not he or she is a refugee).
5. Article 1(A)(2) of the 1951 Refugee Convention provides a definition of a refugee. Essentially a refugee is someone who is at serious risk of harm in his or her home country for one of five reasons, and for which he or she

cannot rely upon the protection of his or her home State. The five reasons include race, religion, nationality and political opinion. The final reason (membership of a particular social group) may – depending on the circumstances in the individual’s home country – include such groups as women and homosexuals. The full text of the 1951 Refugee Convention (along with the 1967 Protocol amending the definition in Article 1(A)(2)) can be found at: <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b66c2aa10>

6. Asylum-seekers in the UK may not be removed if to do so places them at risk of torture or inhuman or degrading treatment or punishment. This is because to do so would be to fail to protect the right of anyone in the UK not to be subjected to such treatment, as provided by Article 3 of the European Convention on Human Rights (now adopted in UK law by the Human Rights Act 1998).
7. Statistics about asylum-seeking in the UK are available at: <http://www.homeoffice.gov.uk/rds/immigration1.html>. In August 2007, the Home Office published the asylum statistics for the Year 2006. These showed that in 2006, Eritrea, Afghanistan, Iran, China and Somalia were the countries from which the highest numbers of new asylum-seekers had come. In the previous year, these five countries had also produced the highest number of new asylum applications in the UK.
8. In 2006, there were 23,610 asylum claims made in the UK; compared to 25,710 in 2005. In both years, just under 1/3 of all claimants were women; and around 3,000 claimants were separated children. However, because dependents are not counted separately, the numbers of women and children seeking asylum will be higher because in most families’ cases it is the man that claims and the woman and any children claim as his dependents. (Note: women and children are entitled to claim in their own right, whether or not they come with a family.) In both years, about 18% of new claims were made by people over the age of 35 years.

9. In each of 2005 and 2006, around 17% of resolved asylum claims led to a grant of refugee status; and around a further 10% were granted some form of subsidiary protection (humanitarian protection, discretionary leave). There was a marked drop in the percentage of claims in which the Home Office granted refugee status or subsidiary protection following changes introduced in 2003. However, the rates of grants have begun to rise again towards pre-2003 levels.

Background to seeking asylum in the UK:

10. A person can claim asylum at the port at which they enter; or at an Asylum Screening Unit (ASU) in Croydon or Liverpool. Someone who is picked up by the police or immigration officers may at that time claim asylum.
11. Over a period of several years, a number of measures have been introduced to deter people from seeking asylum in the UK and strengthen the UK's immigration controls. The Government says this is necessary in order to deter people, whom it says make false claims in an attempt to abuse the UK's asylum system. The Government believes that the fall in the numbers of asylum claims (in each of Years 2000 and 2001, more than 100,000 people claimed asylum) shows that it has had some success with these measures, which include:
- introducing and expanding detained fast-track processes, whereby more asylum-seekers are held in detention during the entirety of their claim and any appeal; and cases are dealt with in very quick time including initial asylum decisions within about 3-4 days of arrival in the UK and concluded appeals (through up to three tiers of the process) within about 3-4 weeks;
 - restricting and reducing legal protections, including denying appeal rights to asylum-seekers from certain countries deemed to be generally safe until the asylum-seeker has returned home (Bangladesh and Sri Lanka were removed from the list following court rulings that their

inclusion was not safe); and significant restrictions upon access to the High Court to challenge unsafe decisions of the asylum tribunals (now called the Asylum and Immigration Tribunal) or unsafe removals by the Home Office;

- reducing the circumstances in which asylum-seekers, who do not meet the 1951 Refugee Convention definition will be offered subsidiary protection by removing country policies and exceptional leave to remain;
- restricting and reducing access to housing and welfare, including the denial of any support to those who failed to claim at the port immediately on arrival to the UK (after lengthy legal challenges, these provisions are now generally not implemented); the use of vouchers (generally withdrawn as a policy in the face of widespread criticism); the dispersal of asylum-seekers away from London and settled diaspora communities; and the exclusion of any welfare support for those who are refused asylum, except in limited circumstances such as where a person is cooperating with the UK's efforts to remove him or her (section 4 support); and
- expansion of immigration controls and immigration offences, including UK immigration officers (and private contractors) operating outside of the UK to prevent asylum-seekers getting to the UK; introducing and prosecuting criminal offences related to illegal entry, failing to produce a valid passport and failing to cooperate with the Home Office to obtain travel documents from Embassies on which to return home; and the expansion of the UK's immigration detention estate.

12. Asylum-seekers may obtain legal advice; and (subject to their means, and the merits of their claims) this can be provided under legal aid. However, the legal aid available for advising and representing asylum-seekers has also been subject to increased restrictions in recent years. ILPA, and many others, believe that the access to suitably experienced and expert lawyers has been a significant problem for asylum-seekers over several years; and

that this problem has been exacerbated by dispersal of asylum-seekers to areas of the country where there have been few or no such lawyers and by changes to and restrictions upon legal aid payments to lawyers.

Asylum process:

13. The asylum process has changed in recent years. The basics remain pretty much the same in that asylum-seekers are interviewed by the Home Office, after which the Home Office decides the asylum claim. If it is refused, in most cases an appeal may be made to a tribunal (currently called the Asylum and Immigration Tribunal). A person may be represented by a lawyer through this process, and the lawyer may submit written representations to the Home Office before it decides the claim; and appear before the tribunal on any appeal.

14. Many of the changes to the asylum process have been designed to speed the process up. The detained fast track is now especially fast in that an asylum-seeker may have his or her claim refused and pass through an appeal process (including an oral hearing before a tribunal and two levels of challenges on the papers to the tribunal's decision) within less than 4 weeks. ILPA, and many others, believe this process is too fast to reach fair and safe decisions. Other cases now pass through a process known as the New Asylum Model (NAM), where the Home Office aims to make its initial decision within about 4 weeks and conclude the case, following any appeals, by either recognising the person as a refugee (or granting subsidiary protection) or removing him or her from the UK within 6 months. NAM was introduced in 2006; but was only introduced for all new asylum claims (excluding those in the detained fast track) from April 2007. It aims to reach a target of concluding 90% of new cases within 6 months by 2011.

15. In the past, some asylum claims have taken many years to resolve. Indeed, in some cases, several years passed before the Home Office had interviewed the person or made an initial decision on his or her claim. Delays and other serious failings on the part of the Home Office have

contributed to a situation where there are a large number of individuals who have claimed asylum in the UK, who have no confidence in the safety or fairness of the decision they have received. Currently, the Home Office is seeking to resolve a backlog (they have called this a legacy) of asylum-seekers who have claimed asylum (sometimes many years ago) and remain in the UK. Currently there are around 330,000 cases in this backlog. The Home Office intends to clear it by 2011; but has made clear it will not grant a general amnesty. In the meantime, many of the individuals in this backlog face destitution and/or exploitation, because for those that are refused asylum-seekers they are not entitled to work or claim any housing or welfare support.

Removals and those in limbo:

16. The Home Office encourages refused asylum-seekers (and sometimes even those who are yet to receive a decision) to make voluntary departures. For those that do not do so, the Home Office makes efforts to forcibly remove them from the UK. In 2006, 18,260 asylum-seekers were removed or voluntarily departed from the UK compared to 15,685 in 2005. Around 20% of these were removed to countries other than the asylum-seeker's country of origin – often because it was said that the individual passed through and ought to have claimed asylum in that country rather than in the UK. A small majority of these removals were to EU countries, among whom there are specific arrangements whereby asylum-seekers may be returned to the EU country in which they first had an opportunity to claim asylum. The EU operates a fingerprint database so as to track whether asylum-seekers have previously claimed asylum in any EU country.

17. However, the Home Office faces difficulties in securing documentation on which to remove many asylum-seekers; and some countries are particularly reticent to accept returns. In other countries the general lack of stability and humanitarian situation makes returns very difficult. In recent years, litigation has precluded returns to Zimbabwe and the Democratic Republic of Congo.

18. The Home Office agreed new arrangements with the High Court in 2007 so as to reduce the circumstances in which judicial reviews against removals would stop the removal going ahead. However, the pressure on the Home Office has shifted to deporting foreign national prisoners and this group now occupies a far larger proportion of the UK's immigration detention estate than previously; and hence the capacity for the Home Office to remove asylum-seekers is reduced.
19. For those who remain in the UK, they are generally not entitled to work or to seek any welfare or housing support from any public authority. Many individuals and families rely upon charity, friends (including other asylum-seekers) and illegal working (including in exploitative situations) to support themselves. Many effectively go underground.

Status & Settlement:

20. In recent years there have been significant changes in the status that asylum-seekers may be granted. Some of the key changes have been:
 - in 2003, exceptional leave to remain (usually for 4 years) was replaced with humanitarian protection (for 3 years) and discretionary leave (for 3 years);
 - humanitarian protection has since August 2005 be granted for 5 years (and will now 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 (unlike humanitarian protection and refugee leave, discretionary leave does not usually lead to a grant of ILR; and a person with discretionary leave can expect to have their circumstances actively reviewed at the end of the period of the grant).
21. 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.

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