

UK Border Agency policy and practice on Further Submissions

1. On 14 October 2009, the UK Border Agency introduced a new policy relating to how further submissions may be made. Further submissions are made by those who have been refused asylum in order to ask the UK Border Agency to give further consideration to the person's case. Further submissions include fresh claims, but not every further submission is a fresh claim.
2. This note provides information about the new policy, and the way in which it is being implemented by the UK Border Agency.
3. This note accompanies a presentation to be made at Praxis on Friday, 18th December.

The key change:

4. Before 14 October, further submissions to the UK Border Agency were made by post. From 14 October, the UK Border Agency policy has been to refuse to accept further submissions made by post. Instead, those who want to make further submissions are required to attend in person in order to do so.
5. The new policy works differently in legacy cases than it does in New Asylum Model (NAM) cases. There are some exceptions to the policy. The way in which the policy works and the exceptions are briefly explained below. Further information is available from ILPA information sheets on Making Asylum Claims and Further Submissions. ILPA Information sheets are available in the 'Info service' section of the ILPA website at www.ilpa.org.uk

Standard forms:

6. The UK Border Agency has introduced a standard form for making further submissions. However, there is no requirement that the form be used.

New Asylum Model cases:

7. Since March 2007, all new asylum claims have been dealt with by a case owner in what the UK Border Agency call the New Asylum Model (NAM).
8. In these NAM cases, further submissions are required to be submitted at the local enforcement office at which the person regularly reports.
9. For those who do not report at a local enforcement office (e.g. those who report at a police station), an appointment must be arranged with the NAM case owner.
10. A decision on further submissions will not be made on the day these are submitted.

11. The UK Border Agency will not pay for travel to submit further submissions. However, some people are entitled to claim travel expenses for travel to report.

Legacy cases:

12. Where an asylum claim was made before March 2007, the Case Resolution Directorate will be responsible for dealing with the case. These cases are the legacy backlog. The Case Resolution Directorate is the part of the UK Border Agency responsible for dealing with the legacy.
13. In these legacy cases, further submissions are required to be submitted at the Liverpool Further Submissions Unit. An appointment must be made first by telephoning 0151-237 0980. The official opening times for this line are 9.00 am to 4.00 pm.
14. There are a maximum of 100 appointments available during any one day. Appointments cannot be booked more than 10 days in advance. Once there are no appointments available the telephone line is closed. The UK Border Agency opens the line at 9.00 am and leaves it open until 50 appointments for the day (10 days ahead) have gone. It then reopens the line at 2.00 pm and leaves it open until the other 50 appointments have gone.
15. A decision on further submissions will not be made on the day these are submitted.
16. Making further submissions will not necessarily mean that a legacy cases is considered any quicker than it would have been considered had the further submissions not been made.
17. The UK Border Agency will not pay for travel (or overnight stay) to submit further submissions.

Exceptions:

18. The following people are still permitted to make further submissions by post:
 - a. those who have a disability and are physically unable to travel
 - b. those who have a severe illness and are physically unable to travel
 - c. those who are in prison and those who are detained
 - d. those who have an outstanding judicial review application
 - e. those for whom removal directions have been set and those who are scheduled to be removed on a charter flight

19. The UK Border Agency will normally require a doctor's certificate in order to be satisfied that someone is physically unable to travel.
20. In legacy cases, the Case Resolution Directorate has said that those who believe they are not required to attend an appointment because they are physically unable to travel must still call the appointments line (0151-237 0980) in order to be instructed where they must post their further submissions and what they must include with these.

Section 4 support and fresh claims:

21. In some circumstances, refused asylum-seekers are entitled to claim support (accommodation and £35 per week on a cash payment card or vouchers). One circumstance in which refused asylum-seekers may claim support is if they have an outstanding fresh claim. This support is often referred to as section 4 support.
22. A fresh claim is a new claim for asylum. Further information on what constitutes a fresh claim is provided by the ILPA information sheet on Fresh Asylum Claims. Information sheets are available in the 'Info service' section of the ILPA website.
23. In legacy cases, if a section 4 claim is made and someone makes further submissions, the Case Resolution Directorate will try to decide the further submissions before deciding the section 4 claim. The appointment line system allows the Case Resolution Directorate to get the person's file out of storage before the further submissions can be submitted.
24. The Case Resolution Directorate say that these arrangements allow it to avoid delays in deciding on further submissions and section 4 claims. However, this explanation is difficult to accept because the arrangements introduce a minimum of 10 days delay before someone can get the further submissions to the Case Resolution Directorate. Indeed the delay in many cases is often significantly longer because many people cannot get through on the appointment line for several days.

The purpose and effect of these changes:

25. The UK Border Agency has for the last few years had targets to reduce the amount it spends on providing section 4 support. It has missed its targets.
26. It appears – though this has not been explicitly said by the UK Border Agency – that the purpose of the new policy on further submissions is to deter people from making further submissions; and particularly to deter those who make fresh claims for asylum and claim section 4 support.

27. The Case Resolution Directorate has indicated that since October 2009 there have been more people making further submissions in the legacy backlog. This may be because people think that making further submissions is a way of getting their case considered quickly.
28. Most of those who have made further submissions have not claimed section 4 support. Those who have made section 4 claims have had decisions on their further submissions – usually within 10 days of the appointment. Those who have not made section 4 claims have often not received any decision on their further submissions.
29. Many people have simply been unable to get through on the appointment line.

Conclusions:

30. Lawyers have threatened judicial review of the new policy on further submissions. ILPA has advised lawyers that we consider the policy to be unlawful. Although we have had several opportunities to discuss the policy with the UK Border Agency (at meetings and through exchange of letters), it has not been demonstrated to us that the policy serves any useful purpose; and it is clear that it does introduce significant difficulties – particularly in legacy cases – for those who want or need to make a fresh claim.
31. If this policy does result in a reduction of what the UK Border Agency spends on section 4 support, it will do so by excluding people from basic support in circumstances where they need that support. Moreover, the policy may well increase other costs. If people are effectively prevented from making fresh claims before they are detained and removal directions are set, there is every possibility that the policy will result in more fresh claims being submitted very shortly before removal leading to judicial review applications.

Steve Symonds
ILPA Legal Officer

16th December 2009