

Case Resolution (legacy backlog) Update

1. The Case Resolution Directorate is the part of the UK Border Agency dealing with the asylum backlog. That backlog (often referred to as the legacy) was first announced in summer 2006 by the then Home Secretary, John Reid MP. He announced that the backlog would be cleared no later than summer 2011.
2. This note provides an update on Case Resolution – the work to clear the backlog. More information is available from ILPA information sheets on Legacy Cases. These information sheets are available in the 'Info service' section of the ILPA website at www.ilpa.org.uk
3. This note accompanies a presentation to be made at Praxis on Friday, 18th December.

Progress in dealing with the backlog:

4. The Case Resolution Directorate target is to clear the backlog no later than summer 2011. The UK Border Agency has indicated that it hopes to clear the backlog earlier than that. However, the official target remains summer 2011.
5. When the Home Secretary announced the backlog in summer 2006, he estimated that there were between 400,000 and 450,000 cases in the backlog. In December 2009, the Case Resolution Directorate informed ILPA (and others) that it now had got through a little more than half of these cases.
6. It is important to note that the Case Resolution Directorate has not been operating at the same speed since summer 2006. The Directorate did not exist before about March or April 2007. It was not fully staff and trained up until about November or December 2007. It has undergone two major changes since 2007 designed to increase the speed with which it is dealing with cases.
7. The most recent development has been, over the last few months, to introduce additional administrative staff. These staff members do things like paperwork and updating the UK Border Agency's records. This leaves the decision-makers free to concentrate on making decisions on the backlog cases. Nonetheless, the Case Resolution Directorate has said that there are currently delays. It has noted three causes of delay – (1) a freeze on recruitment of staff, which means it has less administrative staff than it would like, (2) slowness on the part of those conducting criminal records' checks – these checks are made in all cases before a grant of status can be made, (3) individuals and families failing to provide passport-sized photographs.

8. The most recent figures given to the Home Affairs Select Committee in October 2009 are set out in the table below. The Home Affairs Select Committee is a committee of Members of Parliament (MPs).
9. The figures are rounded to the nearest 500. The cases referred to as resolved by “archive” include cases where the Case Resolution Directorate has been unable to locate the individual or family concerned and has concluded that they may have left the UK. The case is registered as concluded, but may need to be reopened if the individual or family are later found to still be in the UK. The cases referred to as “errors” include cases where the UK Border Agency records were incomplete or wrong. This includes cases where an individual or family had already left the UK and cases where an individual or family had already been granted indefinite leave to remain (ILR) or British citizenship.

| | Total number of concluded cases | Of which, main applicants | Of which, dependants |
|--------------|---------------------------------|---------------------------|----------------------|
| Removals | 30,000 | 28,000 | 2,500 |
| Grants | 74,000 | 41,500 | 32,500 |
| Duplicates | 4,000 | 2,000 | 2,000 |
| Errors | 88,500 | 79,500 | 9,000 |
| EU Nationals | 8,500 | 5,500 | 3,500 |
| Archive | 14,500 | 13,500 | 1,000 |
| Total | 220,000 | 170,000 | 50,500 |

10. The figures show that a large number of the backlog cases have so far been found to be errors – i.e. cases that should not have been included in the backlog. Of the other cases, it can be seen that the majority have been granted some form of status (usually indefinite leave to remain). Nonetheless, in many cases, the individual or family has been removed from the UK. Of cases granted status, it is clear that many of these are family cases – though many individuals have been granted status. Of cases where there has been a removal, most of these have been single adults; but some families have been removed.

Further submissions:

11. On 14 October, a new policy was introduced on how further submissions may be made. There is a separate note on this policy and information is not repeated here.

The criteria used to decide backlog cases:

12. This was set out in detail in the ILPA information sheet “Legacy Cases 4”. That information sheet remains available in the ‘Info service’ section of the ILPA website at www.ilpa.org.uk

13. More recently, the Case Resolution Directorate has provided some further explanation of the criteria. Where it is unlikely that a person could be removed from the UK, this will also be taken into consideration. This will benefit some cases where the individual or family would, in a further year or so, be likely to satisfy the criteria for being granted status by reason of their length of residence in the UK. This is to avoid cases being left in limbo for many more months or years in circumstances where it is clear that the individual or family would eventually be granted status.

Outstanding refugee claims:

14. Case Resolution Directorate decision-makers are meant to first consider the general criteria relating to paragraph 395C of the Immigration Rules. This is further explained in the ILPA information sheet "Legacy Cases 4". Where this criteria is met, a grant of indefinite leave to remain (ILR) is usually made.
15. In some backlog cases, an individual (or family) may have an outstanding claim to refugee status. This may be particularly important if there are family members (spouse, dependant children) overseas. This is because when a person is recognised as a refugee, his or her family members may join the refugee in the UK.
16. The Case Resolution Directorate should give an opportunity to those with outstanding refugee claims to have those claims decided even if it is decided to grant ILR. This should not delay the grant of ILR. Instead, ILR should be granted and when the person receives that he or she should be asked to say whether he or she also wishes to have the outstanding refugee claim decided.
17. This only applies to those with outstanding refugee claims. It will not apply to those whose claims to refugee status have already been refused unless they have since made a fresh claim to refugee status.

Permission to work:

18. Earlier this year, the Court of Appeal decided (agreeing with the High Court) that some people with outstanding fresh claims could obtain permission to work. This applies where someone has made a fresh claim to refugee status, and that claim has been outstanding for 12 months. The UK Border Agency must consider any application that person makes for permission to work.
19. This does not apply to those who have made further submissions, which do not amount to a fresh claim. It does not apply to those who have made a fresh claim on human rights but not refugee grounds. (However, lawyers continue to pursue wider arguments that could benefit a wider group of people including some people in these groups.)

20. Further information is provided in the ILPA information sheet "Permission to Work Judgment". That information sheet remains available in the 'Info service' section of the ILPA website at www.ilpa.org.uk
21. The Home Office (UK Border Agency) has sought permission to appeal to the UK Supreme Court (what used to be called the House of Lords). Meanwhile, the Case Resolution Directorate has said it will consider applications for permission to work, but that it will need 3-4 months in each case to do so. Lawyers have brought legal challenges against the ongoing failure of the UK Border Agency/Case Resolution Directorate to grant permission to work in many of these cases. These lawyers have argued that 3-4 months is too long. So far the High Court has been willing to consider making orders that permission to work must be granted in individual cases. In some cases, this has resulted in the Case Resolution Directorate dealing with the case much more quickly and granting ILR to the person rather than permission to work.
22. It should be noted that requests for permission to work by those who do not have an outstanding fresh claim, or whose fresh claim has not been outstanding for at least 12 months, will not benefit from the current judgment of the courts.

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