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ATLEU
ANTI TRAFFICKING AND
LABOUR EXPLOITATION UNIT

ATC - Immigration and Asylum

Legal definitions and protections

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Difference between an Asylum Seeker and a Refugee

Asylum Seeker

- A person who has left their country of origin and formally applied for asylum in another country but whose application has not yet been concluded

Refugee

- According to the 1951 United Nations Convention Relating to the Status of Refugees

“A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Asylum and humanitarian protection

- The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 is the legal framework for asylum applications in the UK
- Being a recognised Victim of Trafficking does not give rise to an automatic grant of asylum: risk on return (e.g. from traffickers) needs to be established
- Former victims of trafficking are capable of amounting to a Particular Social Group (PSG) – SB (Moldova) v SSHD.
- Humanitarian Protection (HP) could be granted instead of refugee status if the UKVI accepts that an asylum applicant cannot be returned to their country because they face a serious risk to their lives or personal integrity for one of the following reasons:
 - The death penalty
 - Unlawful killing
 - Torture
 - Inhuman or degrading treatment or punishment
- HP introduced in April 2013 to reflect subsidiary protection provisions in Articles 15 to 19 of Asylum Qualification Directive (2004/83/EC)
- Refugee/HP visas are given for a period of 5 years – full entitlement to welfare benefits, housing, student grants/finance, access to NHS and full employment rights. Rights and entitlements are very similar to refugee status
- After 5-year period refugees/HP holders are eligible for Indefinite Leave to Remain subject to Active Review

Asylum Process

Where to apply?

- Asylum Screening Units
- Ports of entry
- Police stations
- Detention centres
- Prisons

Victims of Trafficking applying for asylum

- Victims of Trafficking are not suitable for immigration detention
- UK has a positive obligation to identify Victims of Trafficking and follow procedural obligations enshrined in Article 4 ECHR (Rantsev v Cyprus and Russia [2010]; MS (Pakistan) [2016] UKUT 00226 (IAC))
- UKVI is an NRM First Responder
- Potential Victims of Trafficking claiming asylum should be identified by UKVI during the screening process and referred into the National Referral Mechanism
- NRM referral and asylum application are two separate matters that run in parallel and are usually considered by different government officials.
- Asylum Applicants are not entitled to work or receive welfare benefits whilst their cases are outstanding
- Asylum Applicants are entitled to receive medical treatment from the NHS
- National Asylum Support Service (NASS) - £36.95 per week per person. Applicants are placed in shared accommodation in low-cost areas, usually away from London

Asylum Preparation and Interview

- Applicants can be accompanied by legal representatives but generally this not covered by legal aid
- Asylum interviews are usually very lengthy. Applicants can be re-traumatised;
- It is advisable to take a detailed statement from the client prior to the interview;
- Medical and expert evidence;
- Some applicants are too traumatised to go through asylum interview;

Asylum Appeals

- Unless the application is certified, refused asylum applicants will be given a right of appeal to the First Tier Tribunal (Immigration and Asylum Chamber);
- Appeal form needs to be submitted. This is free of charge for destitute applicants. Fee of £140 otherwise.
- The appeal is heard by a single Immigration Judge. The UKVI is a party to the proceedings, represented by either counsel or a Home Office Presenting Officer (HOPO)
- If the appeal is unsuccessful permission to appeal can be applied from the Upper Tribunal but only if an error of law can be identified

Legal Aid

- Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012 drastically reduced the provision of legally aided representation for migrants
- Provision of publicly funded representation for asylum applications and appeals (with certain limitations) is within scope, subject to financial eligibility
- Victims of domestic violence can still access publicly funded representation for immigration applications;
- Victims of trafficking without an asylum claim in the system can only access legally aided representation if they have a positive Reasonable or Conclusive Grounds Decision in relation to an application for leave to enter or remain.