

ILPA information sheet

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at www.ilpa.org.uk/infoservice.html

Steve Symonds ILPA Legal Officer 020-7490 1553 steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

Immigration Fees 2 – Exemptions

19th September 2012

The “Immigration Fees” information sheet [<http://tinyurl.com/8m9ppa2>] provided general information about fees for immigration applications. Most fees have risen since the time of that information sheet. Two other changes have been the closure of the Migrant Impacts Fund and the introduction of fees for immigration appeals.

The general information given in that information sheet about fees for applications for permission to come to or stay in the UK remains valid. This information sheet provides further information about these fees. In particular, it gives information as to when there is no fee or when there may be an exemption from any fee.

Relevant legislation

Currently, the relevant legislation is contained in:

- the Immigration and Nationality (Fees) Order 2011, SI 2011/445: this lists types of immigration and nationality applications (and other services) for which a fee is required.
- the Immigration and Nationality (Fees) Regulations 2012, SI 2012/971: this specifies the fee that applies for a range of these applications and services, and sets out circumstances in which exceptions apply such that a person is not required to pay the specified fee.
- the Immigration and Nationality (Cost Recovery Fees) Regulations 2012, SI 2012/813: this specifies the fee that applies for certain other applications and services (not covered by SI 2012/971), and sets out circumstances in which exceptions apply such that a person is not required to pay the specified fee.

Fee exemptions for those outside the UK applying for a visa to come to the UK

The fee exemptions for those who are applying for a visa to come to the UK include:

- Section 5.2 of Table 5 (SI 2012/971) exempts applicants for refugee family reunion visas from any fee. This applies to certain family members of refugees, or persons granted humanitarian protection, in the UK. More information on refugee family reunion is provided by the “Refugees and Family Reunion” information sheets [<http://tinyurl.com/9d9xj9a> and <http://tinyurl.com/9a8zyad>]
- Section 5.3 of Table 5 (SI 2012/971) exempts applicants under the EC Association Agreement with Turkey from any fee. This applies to certain Turkish nationals applying to come to the UK to work or establish a business.
- Section 6.1 of Table 6 (SI 2012/971) provides the Secretary of State with a general power to waive any visa fee.

Fee exemptions for those in the UK applying to stay in the UK

The fee exemptions for those who are applying for leave to remain (or making related applications) in the UK include:

- Section 3.1 of Table 3 (SI 2012/971) generally exempts asylum-seekers and their dependents from any fee. Specifically, it exempts an “Article 3 or Refugee application” from any fee. An “Article 3 or Refugee application” is defined in Part 1 of Schedule 1. Read together, these provisions mean that a person claiming asylum is exempt from any fee in respect of that claim. If he or she is granted asylum (whether recognised as a refugee or granted humanitarian protection), any further application for leave to remain (whether limited or indefinite leave to remain) on the basis of that grant is also exempt from any fee. If he or she is refused asylum, but granted limited leave to remain outside the immigration rules, any further application for leave to remain on the basis of that grant of leave is also exempt from any fee. Someone who applies for leave to remain as the dependent (as defined in the immigration rules) of an asylum-seeker, and any child born in the UK to an asylum-seeker is similarly exempt from any fee in any of these situations.
- Section 3.2 of Table 3 (SI 2012/971) exempts destitute victims of domestic violence from the specified fee. This applies to destitute persons applying under paragraph 289A of the immigration rules.
- From 1 October 2012, section 3A (SI 2012/813) will exempt victims of domestic violence from any fee for an application for limited leave as such a victim under Appendix FM of the immigration rules; and, if the applicant is destitute, from any application for indefinite leave to remain as such a victim under Appendix FM. From this time, Sections 10.6 of Table 10 and 11.12 of Table 11 (SI 2012/971) will exempt certain destitute victims of domestic violence from any fee when applying for a biometric immigration document. These changes will be made by the Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2012, SI 2012/2276.
- Section 3.3 of Table 3 (SI 2012/971) exempts a person who applies at a port of entry to the UK to vary his or her leave to remain in the UK for a period of no more than 6 months from any fee for that application.
- Section 3.4 of Table 3 (SI 2012/971) exempts children being provided with assistance by a local authority from any fee. Part 1 of Schedule 1 defines what is meant by “assistance by a local authority”. It means children supported by a local authority under section 17, 20 or 23 of the Children Act 1989 or similar provisions in Scotland and Northern Ireland.
- Section 3.5 of Table 3 (SI 2012/971) exempts applicants under the EC Association Agreement with Turkey from any fee. This applies to certain Turkish nationals applying to stay in the UK to work or to establish a business.

Human rights considerations

It may be unlawful to require a fee from someone who cannot afford to pay it, if requiring the fee prevents the person from establishing or exercising his or her rights under the 1950 European Convention on Human Rights. In *R (Baiai) v Secretary of State for the Home Department* [2008] UKHL 53, the House of Lords indicated that it would be unlawful to prevent someone exercising the right to marry by requiring a fee he or she could not pay. More information about this case is available from the “Right to Marry 2” information sheet [<http://tinyurl.com/999yogy>]. In *Case of GR v The Netherlands* (Application no. 22251/07), the European Court of Human Rights found that requiring a fee for an application for residency (by a father, to remain in the Netherlands with his wife and children) was unlawful because this effectively denied the applicant the opportunity by which his right to respect for his family life could be recognised. Paragraph 400 of the Immigration Rules, introduced on 13 July 2012, provides that where someone seeks to resist his or her removal from the UK on the basis of Article 8 (the right to respect for private or family life), the person may be required to make a formal application and pay a fee. However, these decisions of the House of Lords and European Court of Human Rights show that it would be unlawful to require a fee if to do so would deny the person the opportunity to establish that the removal was contrary to Article 8.