

ILPA information sheet

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Legacy Cases 9

19th September 2012

In July 2011, the UK Border Agency failed to meet its commitment to conclude the asylum “legacy” (or backlog). More than a year on, the legacy remains unconcluded and the UK Border Agency has made it clear it has no intention to conclude it any time soon. This information sheet updates the information given in the “Legacy Cases 8 – Cases Not Concluded” information sheet [<http://tinyurl.com/9puedph>]. Other relevant information is provided by the “Discretionary Leave” information sheet.

General background

As explained in the Legacy Cases 8 – Cases not Concluded” information sheet, in July 2006 the Home Office made a commitment to conclude the legacy within five years (i.e. no later than July 2011). Save for certain circumstances where the UK Border Agency considered a case could be closed without needing to take any steps to resolve the situation of the person to whom the case related (e.g. because the person had already left the UK or had died), there were only two ways to conclude a legacy case:

- the person to whom the case related was to be granted indefinite leave to remain, or
- the person to whom the case related was to be removed from the UK.

By this means, it was intended to ensure that by July 2011 the UK Border Agency could treat all these cases as finally concluded, with no remaining obligations such as having to deal with applications for further leave to remain into the future.

Relevant decisions of the High Court

In July 2007, the High Court decided the case of *R (FH & Ors) v Secretary of State for the Home Department* [2007] EWHC 1571 (Admin). The claimants in that case complained at the delay in concluding their cases (all of which were in the legacy), and the possibility that the delay might continue until July 2011. Although the court decided the long delay that would be caused in some cases by a general intention to conclude legacy cases by July 2011 was lawful, the court emphasised that those affected:

“...should not suffer any more than is inevitable because of delays which are not in accordance with good administration even if not unlawful.”

In October 2008, in the case of *R (HG & Ors) v Secretary of State for the Home Department* [2008] EWHC 2685 (Admin), the High Court confirmed its earlier decision in *R (FH & Ors)*.

In July 2012, the High Court decided the case of *R (Hakemi & Ors) v Secretary of State for the Home Department* [2012] EWHC 1967 (Admin). In that case, the High Court rejected the complaints of the claimants. One of these complaints related to delay on the part of the UK Border Agency in concluding their legacy cases. The High Court dealt with this complaint briefly and decided that there was no delay in the particular cases before it for which the UK Border Agency was responsible. In arriving at this conclusion, the court's judgment shows no specific consideration of the failure to conclude the cases by July 2011. This may be because the court had understood the original commitment in legacy cases to have been no more than to "work through these cases and endeavour to grant or refuse leave to remain by July 2011."

To endeavour (to try) to grant or refuse leave is not the same as concluding the case, which as explained above meant granting indefinite leave to remain or removing the person by July 2011. Many of the people whose cases were in the legacy backlog had been refused leave even before the commitment to conclude the legacy was announced in 2006.

To conclude or to review?

That the commitment in legacy cases was no more than to review the cases and try to make a decision as to whether the person should be permitted to stay or required to leave is a position adopted by the UK Border Agency towards the end of the period leading up to July 2011. This was the oral evidence of Jonathan Sedgwick, then Acting Chief Executive of the UK Border Agency, to the Home Affairs Committee in April and September 2011. In September 2011, he said the Agency had never committed to concluding the legacy cases, the commitment had only been to make a decision in each case; and he said a decision had been made in each case.

This contrasts with the July 2006 Home Office report *Fair, Effective, Transparent and Trusted: rebuilding confidence in our immigration system*, which (at paragraph 2.10) had stated that the legacy cases, which were yet to be "fully resolved", would be dealt with by July 2011, and the statements of the then Home Secretary to Parliament around this time (*Hansard* HC, 19 Jul 2006 : Columns 324 & 328). It contrasts also with the confirmation in the September 2008 minutes (see above) as to what was meant by concluding a case. It contrasts with the evidence presented to the High Court in *FH & Ors* (see above), in which the five-year timetable for concluding the legacy backlog was confirmed.

When will the legacy backlog be concluded?

There is no longer any fixed time period within which the UK Border Agency is committed to concluding the legacy. The following information has been given by the UK Border Agency to ILPA and others:

- The controlled archive (see the "Legacy Cases 8" information sheet) will be closed by the end of 2012. This means that the cases of those individuals the UK Border Agency is treating as people it cannot find, e.g. because they have left the UK, will be treated as closed. Nobody at the UK Border Agency will be doing any work on these cases, unless and until contact is made with the person. However, some cases have been wrongly placed in this archive, e.g. where someone has kept in contact with the UK Border Agency but the Agency has failed to maintain adequate records of this.
- The Case Assurance and Audit Unit (see the "Legacy Cases 8" information sheet) will close around April 2013. It is planned that the cases of those individuals whose legacy case remains outstanding (and is not in the controlled archive) at that time will be transferred to another Unit or Team, which may have other responsibilities beyond concluding the remaining legacy cases. However, the UK Border Agency has not made any final decision about this.