



Legacy Cases 3

11th September 2007

ILPA has produced two previous information sheets on “Legacy Cases” – one in April, the other in August. Those information sheets ought now to be read in the light of information here. They remain available at www.ilpa.org.uk/infoservice.html

Border and Immigration Agency information

As highlighted on the August information sheet, the Border and Immigration Agency (BIA) have now produced a Question & Answer sheet giving some information about legacy or case resolution. That Q&A sheet remains available at:

<http://www.ind.homeoffice.gov.uk/applying/asylum/caseresolutionprogramme>

However, since it first appeared, it has been amended as explained in the next section. It is advisable to check the BIA website in case further changes are made.

Time in which legacy questionnaires should be returned

The BIA Q&A sheet had stated that a questionnaire should be returned within 21 working days of the date it was sent to the individual. That has been changed to refer to 21 calendar days. This means the questionnaire should be returned within 3 weeks.

What to do while waiting to receive a legacy questionnaire?

The BIA Q&A sheet states that individuals should do no more than update the BIA with their new address and contact details. Beyond this, they should wait to hear from the BIA before providing any further information that is relevant to their case.

However, the BIA have now informed us that some people may never receive a questionnaire even though their case is within the legacy backlog. Some people in this backlog may never have their case considered by the Case Resolution Directorate, which is the part of the BIA that is responsible for dealing with the backlog.

At present, BIA enforcement may take steps to remove an individual without his or her case being considered by the case resolution directorate. This may change by next year, but in the meantime some individuals may be at risk of simply being detained for removal despite never having received a questionnaire. Removal could take place within only a few days of the person being detained. (For more information on removals, please see the “Removals & Judicial Review” information sheet.)

Individuals should, therefore, now consider taking legal advice on whether there are reasons why they should be allowed to stay in the UK. If so, it may be necessary to immediately inform the BIA of those reasons along with any relevant evidence. Any information that is sent to the BIA now may simply be ignored until the BIA is ready to send out a questionnaire. If so, it may be that information will have to be updated in the future.

However, since it is not possible to know who will receive a questionnaire and who may simply be picked up by enforcement for removal at short notice, there may be good reason to make sure that the BIA do now have full and up to date reasons why someone should be allowed to stay.

ILPA information service

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www.ilpa.org.uk/infoservice.html

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Information sheets provide general information only.

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

Outstanding initial claims for asylum

The BIA provided some further information at a meeting at the end of August:

- some individuals in the legacy backlog may never have received a decision on their asylum claim. For these people, the BIA will prioritise dealing with their cases over the next few months.
- other individuals will have been refused asylum and appealed before 2 October 2000. For some of these, they may have raised human rights reasons why they should not be removed from the UK yet never received a decision on those human rights reasons. The BIA will be prioritising these cases in the same way as those cases where no asylum decision has ever been made.

Some individuals will have had asylum and human rights decisions, but have since made fresh claims. Fresh claims will not be prioritised in the same way as outstanding initial claims.

Applications for ILR and extension applications

Some individuals in the legacy backlog will have previously been granted leave to enter or remain in the UK. This will have been for a temporary period. They may now have applied for indefinite leave to remain (ILR) or for further limited leave to remain (e.g. a further 3 years discretionary leave).

We understand that the BIA may prioritise some of these cases over the next few months.

The cases of individuals who have applied for ILR, after having had 4 years exceptional leave to remain (ELR), are not being dealt with by the Case Resolution Directorate. These cases should be dealt with by the Managed Migration part of the BIA.

If an individual applied for ILR or further limited leave to remain before his or her initial leave to enter or remain expired, he or she continues to have leave to enter or remain until the current outstanding application is finally decided. This will include throughout the time period of any appeal. However, this will only apply to individuals who make sure their application is received by the BIA (or previously the Immigration and Nationality Directorate) before their initial period of leave to enter or remain expires.

The BIA has confirmed that individuals who apply in time will be able to obtain from the BIA written confirmation of their continuing leave to enter or remain. This may be important to demonstrate their continuing entitlement to work, to participate on a course of education or receive welfare, housing or educational support.