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Refugees and Family Reunion

31st August 2010

The Immigration Rules set out circumstances in which a person may come to the UK to join his or her relative. In most of these circumstances the person coming to the UK is required to show that he or she can be accommodated and financially supported without relying on 'public funds' (social welfare benefits as defined in the Rules). The position of family members of refugees and those granted humanitarian protection is different. This information sheet gives information about the Rules for family members to join refugees and those granted humanitarian protection in the UK.

Which family members can apply to join a refugee in the UK

The Immigration Rules provide for applications to join a refugee to be made by the following family members:

- the refugee's spouse if the marriage took place before the refugee left his or her home country
- the refugee's civil partner (a formal relationship between persons of the same sex) if the civil partnership took place before the refugee left his or her home country
- the refugee's partner (where there is no marriage or civil partnership) if the refugee and his or her partner have been living together for at least two years in a relationship akin (similar) to a marriage or civil partnership
- the refugee's child if the child is under 18 years of age, has not formed an independent life or family and was part of the refugee's family at the time the refugee left his or her home country

If any of these family members satisfy the specific requirements of the Rules they may be permitted to come to the UK. It is not necessary to show that they can be accommodated or financially supported without relying upon public funds.

Other family members may apply, outside the Rules, to join a refugee. The Home Office has long operated a policy whereby other family members of refugees may be permitted to come to the UK "*if there are compelling, compassionate circumstances*". Family members permitted to come to the UK under this policy do not need to show that they can be accommodated or financially supported without relying upon public funds.

The Supreme Court judgment in *ZN (Afghanistan) & Ors v Entry Clearance Officer (Karachi)* [2010] UKSC 21 decided that it makes no difference whether the refugee in the UK has 'refugee leave' (leave that is given when asylum is granted), indefinite leave to remain or has become a British citizen – provided he or she had been granted asylum in the UK.

Which family members can apply to join a person granted humanitarian protection in the UK

The Immigration Rules do not make provision for family members to join someone in the UK who has been granted humanitarian protection. However, the Humanitarian Protection asylum policy instruction states:

“Where the sponsor [that is the person in the UK] was granted HP [humanitarian protection] on or after August 30th 2005 family members who are abroad may seek entry clearance for immediate family reunion.”

The family members to whom this applies are spouses, children under the age of 18, civil partners and same sex or unmarried partners. These are the same family members as may apply to join a refugee as set out in the four bullet points in the previous section; and the requirements that apply to them are essentially the same. It is not necessary to show that they can be accommodated or financially supported without relying upon public funds.

Where humanitarian protection was first granted before 30 August 2005, these family members will not normally be permitted to join the person granted humanitarian protection unless or until he or she is granted indefinite leave to remain.

Marriage age

The Immigration Rules generally state that where a person seeks to join his or her spouse or civil partner in the UK, both that person and the spouse or civil partner must be at least 21 years of age. Information about this requirement, and the policy reasons for it, is given in the December 2009 “Marriage Age Judgment” information sheet. The requirement does not strictly apply to applications made outside the Rules, but it may be taken into account. It is unclear whether it is intended to be applied to applications to join a refugee or person granted humanitarian protection. However, since the policy reasons for the requirement do not apply (refugee family reunion under the Rules is generally restricted to family relationships which pre-date the refugee’s flight from his or her home country), there is good reason to think it should not be applied.

Child refugees and children granted humanitarian protection

As can be seen from what is set out in the previous sections, neither the relevant Immigration Rules nor the relevant policy documents make specific reference to the parents (or primary carers) of separated children. The position of separated child refugees and separated children granted humanitarian protection is dealt with in the “Refugees and Family Reunion – Separated Children” information sheet.

Legal advice

The relevant Immigration Rules and relevant policy documents relating to family reunion are complex. In some cases, a refugee’s family member, who cannot satisfy the requirements of the Rules or the Home Office policy, addressed in this information sheet, may nonetheless be able to satisfy the requirements set out in other parts of the Rules. Alternatively, in some cases, an application outside the Rules may be based on the right to respect for private and family life, Article 8 of the European Convention on Human Rights. Further, general information about Article 8 is given in the August 2008 “Article 8” information sheet. Anyone in the UK who wishes for his or her family member overseas to join him or her in the UK may benefit from taking legal advice.

ZN (Afghanistan)

The Supreme Court judgment (referred to above) is available at:

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2009_0126_Judgment.pdf