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Refugees and Family Reunion – separated children

31st August 2010

This information sheet explains the situation of separated child refugees and separated children granted humanitarian protection who wish to be reunited with their parents.

Separated child refugees and family members other than parents

The rules and requirements about family members, who can apply to join a refugee or person granted humanitarian protection, do not make specific provision for parents to join a person. Thus, although the same rules and requirements apply to children as to adults, children are affected in a very different way.

The “Refugees and Family Reunion” information sheet explains these rules and requirements.

Separated child refugees and their parents

As explained above, the Immigration Rules dealing with family reunion for refugees do not provide for parents of separated child refugees (or separated children granted humanitarian protection).

As explained in the “Refugees and Family Reunion” information sheet, family members who cannot meet the requirements of the Rules may be permitted, outside the Rules, to come to the UK under the relevant Home Office policy. That policy, which has its origins many years ago, includes the following statement:

“Only pre-existing families are eligible for family reunion, i.e. the spouse, civil partner, and minor children who formed part of the family unit prior to the time the sponsor fled to seek asylum. Other members of the family (e.g. elderly parents) may be allowed to come to the UK if there are compelling, compassionate circumstances.”

The first part of this statement is now effectively dealt with by the Immigration Rules – see the “Refugees and Family Reunion” information sheet. This sets out requirements for spouses, civil partners and minor children to be permitted to join a refugee in the UK. Parents of a refugee child are treated as no more than “other family members” and may be permitted to join the child if “compelling, compassionate circumstances” are shown. Effectively, therefore, the Home Office treats the parents of a refugee child as having a lesser family status or importance than the children of a refugee for the purpose of immigration law and policy.

Why the Home Office treats refugee children's parents as of lesser status or importance?

Ministers of the previous Government (i.e. before the May 2010 general election) resisted any proposals, which they believed would treat parents of separated child refugees as of equal status or importance. In January 2010, Lord West of Spithead, then a Home Office Minister, gave the Government's reasons in a debate in the House of Lords:

“[These proposals carry] an unacceptable risk of requiring us to admit parents of unaccompanied minors [referred to here as separated children] who are granted status. We fear that this would create an incentive for children to be sent on ahead to member states in the hope that they will be granted status and their parents will be able to join them later. That would introduce a new threat to the welfare of children by incentivising their separation from their family units.” (Hansard, HL 12 January 2010 : Column 496)

There are several flaws in Lord West's reasoning. ILPA has pointed them out to the UK Border Agency. These flaws are briefly discussed below. Nonetheless, the UK Border Agency continues to adopt this same reasoning.

Firstly, it is contrary to the UK Border Agency's international and domestic duties. The 1989 UN Convention on the Rights of the Child provides that the child's best interests must be a primary consideration. The Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to safeguard and promote the welfare of children in the UK. While there may be cases where a child is at risk of harm from his or her parent, it will usually be contrary to a child's best interests and to his or her welfare to deny the child the opportunity to be reunited with his or her parents.

Secondly, it is on its face discriminatory against children. It is generally understood that the key family relationships of an adult are those with his or her partner and children. It is similarly understood that the key family relationships of a child are those with his or her parents and siblings. The current policy, therefore, discriminates against children since less respect is shown for their key family relationships than for the key family relationships of adults. Lord West's reasoning simply ignores this discrimination.

Thirdly, Lord West speculates that giving proper and equal respect to a refugee child's right to be reunited with his or her parents would lead to a situation in which more separated children left their home country to seek asylum in the UK (or elsewhere in Europe). However, he provides no evidence. In any case, since the UK Border Agency's policy does currently provide for circumstances in which parents can be reunited in the UK with refugee children, what reason is there to think that any incentive (if there is any) would be made any greater? After all, a separated child, who claims asylum, is far more likely to be refused asylum than an adult (on a straightforward comparison of Home Office asylum statistics). If refused asylum, the child's parents will not be able to join him or her in the UK. Giving proper and equal respect to refugee children's rights would do nothing to change this.

Fourthly, Lord West suggests the incentive, on which he speculates, would be contrary to the UK Border Agency's international and domestic obligations because it would harm children's welfare. This reasoning cannot be supported for two reasons. Firstly, as previously explained, there is no evidence to support the suggestion of any incentive. Secondly, the UK Border Agency's obligations under the Borders, Citizenship and Immigration Act 2009 are solely owed to children in the UK. (The previous Government, including Lord West, argued strongly for this limitation.) The UN Convention on the Rights of the Child establishes duties towards children within the UK's "jurisdiction". This may have a wider meaning than 'in the UK', but it clearly does not mean children who are outside the UK and have no current relationship to the UK or any UK authority. Lord West's reasoning, therefore, makes the rights of refugee children in the UK subordinate to his speculation as to the interests of children to whom the UK has no comparable obligations.