

ILPA information sheet

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Early Legal Advice Project (ELAP)

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From 15 November 2010, new asylum claims being dealt with by the UK Border Agency in its Midlands and East of England region are subject to the Early Legal Advice Project (ELAP). This information sheet provides information about ELAP.

General approach

The aim of ELAP is to improve decision-making by the UK Border Agency in asylum claims by introducing greater flexibility into the asylum process before the initial decision, whether to grant or refuse asylum, is made. It is also hoped that this will improve confidence in the asylum process and save money.

Key aspects of ELAP are explained in the following sections. More information about ELAP can be found in the UK Border Agency asylum policy instruction on 'Early Legal Advice Project Guidance'. The information which follows is largely taken from this guidance, which is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/elap-midland-and-east?view=Binary>

Legal advice and representation

In ELAP, all asylum-seekers who qualify for Legal Aid will be offered an appointment with a legal representative at the start of the asylum process. A key reason for greater flexibility in the process is to allow that legal representative more time with the asylum-seeker and more opportunity to discuss the case with, and present evidence to, the UK Border Agency case owner (who will decide the asylum claim).

Before the asylum interview

In ELAP, more time will usually be given before the asylum interview than in non-ELAP asylum cases. It is intended that the asylum-seeker and legal representative will meet each other before the asylum interview on at least three occasions. This is to give time for the asylum-seeker and legal representative to establish a relationship of trust and confidence, for the asylum-seeker to explain the basis for his or her asylum claim and for the asylum-seeker to give and approve a witness statement. The statement is to be passed to the UK Border Agency at least three working days before the asylum interview.

It is also intended that the legal representative and UK Border Agency case owner will discuss the case before the asylum interview. This is to ensure that it is appropriate for the asylum interview to go ahead and to identify what is and what is not relevant for the interview to address.

The asylum interview

In ELAP, an asylum interview should not normally go ahead without the legal representative being present.

The UK Border Agency case owner will be responsible for the interview. However, the interview should cover the areas agreed between the legal representative and the case owner before the interview. The case owner may decide to allow the legal representative to begin the questioning or may do so himself or herself. If the legal representative is concerned that the interview is not covering all the relevant areas, he or she may ask the case owner to do so. Again, the case owner may decide whether it is better for the case owner to ask any necessary further questions or to allow the legal representative to ask these questions.

If the asylum-seeker raises new information in the interview, or his or her answers bring into question matters that had previously been agreed between the UK Border Agency case owner and legal representative to be settled and uncontroversial, the interview may cover areas beyond what was agreed before the interview.

The UK Border Agency case owner will make a written record of the interview. Ordinarily, the interview will not be tape recorded.

After the asylum interview

In ELAP, it is intended that the UK Border Agency case owner and the legal representative will discuss the case immediately after the asylum interview. There may be more than one discussion before the case owner makes his or her decision on the asylum claim. The purpose of these discussions is to check whether there are any remaining outstanding matters, and any further evidence that may be submitted.

If the UK Border Agency case owner then considers that the asylum claim should be refused, he or she may discuss the case further with the legal representative. The purpose of this is to clarify what aspects of the evidence the case owner accepts, what aspects he or she does not accept and what further aspects of the claim the case owner considers to be insufficient. The purpose of this is to allow the legal representative to consider whether there is anything further that may be submitted to assist the claim.

Appeals

As with other asylum cases, if an asylum claim is refused in ELAP there will be a right of appeal. Legal Aid will be available if the asylum-seeker continues to satisfy the means test and there is sufficient prospect of success on any appeal.

(General information about the means and merits tests for Legal Aid is available from the October 2007 "Legal Aid" information sheet. However, it should be noted that Legal Aid continues to be subject to significant changes.)

Separated (or unaccompanied) children

Separated children seeking asylum, whose cases are dealt with in the UK Border Agency Midlands and East of England region will also have their cases dealt with in ELAP. However, the timescales in the process will (as they are for separated children in asylum cases generally) be slower than the timescales for adult asylum-seekers.