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Protection Settlement Applications

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This information sheet provides information about applications for indefinite leave to remain (settlement) by refugees, and those granted humanitarian protection, who have been granted and are coming to the end of five years leave to remain.

Background information

In August 2005, the Government changed the policy on the immigration status to be given to refugees once their asylum claims were accepted. Previously, refugees had been granted indefinite leave to remain (settlement). From 30 August 2005, refugees were granted five years leave to remain.

Also from 30 August 2005, asylum-seekers accepted as entitled to humanitarian protection were granted five years leave to remain. Humanitarian protection is granted to asylum-seekers, who face serious harm but not for one of the specific reasons which would mean someone is a refugee.

The first of those people granted five years leave to remain will be coming to the end of their leave. This information sheet provides information about how these people may apply for settlement.

The importance of applying before leave expires

It is important that anyone who has limited leave to remain (or enter) in the UK, who wishes to apply to stay longer, applies before his or her current leave expires (runs out). This means that an application should be with the UK Border Agency (not merely sent and on its way) before the person's last day of leave.

This is important because failing to apply in time will lead to the person becoming an overstayer. This can have the following consequences:

- the person could be prosecuted for the criminal offence of overstaying (it may be unlikely that this happens, but overstaying is a criminal offence)
- if the person makes a new application, it may be considered differently (and more strictly) than if the person had applied in time
- if the person makes a new application and it is refused, the person may be without a right of appeal that he or she would have had if the application had been made in time
- the person will lose entitlements (which may include permission to work, permission to claim benefits), which he or she would have retained if he or she had applied in time (and which would have continued during any in time appeal he or she brought if the application was refused)

- if the person is required to leave the UK, it is possible that the person may face a ban on returning to the UK (more information is given in the February, March and May 2008 information sheets on “Immigration Rules – general grounds”)

How to apply

Applications for settlement by refugees or those granted humanitarian protection must be made by post. There is no fee. The applications should be posted to:

UK Border Agency
 SET (Protection Route) Applications
 Dept 21, PO BOX 306, Liverpool L2 0QN

Applications may be made on a standard form. It is not a requirement that the form is used. However, the form is available at:

http://www.ukba.homeoffice.gov.uk/settlement/applicationtypes/completing_set_protection_route/

Dependants (e.g. a spouse or child) of the applicant may be included on his or her application if they were previously included on the applicant’s original asylum claim. The UK Border Agency has said that child dependants can still be included on the application even if they have ceased to be dependent on the applicant (e.g. no longer live with him or her or are no longer under the age of 18 years). A dependant who was granted five years leave as a refugee or as humanitarian protection may instead apply in his or her own right.

How the application will be considered

Since August 2005, the policy has been that an application for settlement after 5 years leave to remain by a refugee or person granted humanitarian protection, will only be considered in detail (referred to as ‘active review’) if one of the following applies:

- there is evidence the person used deception to obtain his or her five years leave
- there is evidence that the person has acted in a way that shows he or she no longer needs protection (e.g. he or she has returned to his or her country of origin)
- there is evidence that the person has been involved in criminal activity in the UK
- the Government has decided, in consultation with the UN High Commissioner for Refugees (UNHCR) that refugees from the person’s home country should now be considered for return because there has been a fundamental change of circumstances in that country (no such decision has been taken to date)

If one of these applies, the UK Border Agency may make a new decision as to whether the person is still a refugee or is still entitled to humanitarian protection; and if not the UK Border Agency may seek to remove the person from the UK. Where none of these applies, the policy has been that there is no need for such a new decision and settlement can be granted.

However, it is still not clear whether the UK Border Agency intends to apply this policy. The standard form asks whether the applicant is still in need of protection. If the policy that has been clear since August 2005 is applied, there is no need for this question to be asked. ILPA and others have raised this with the UK Border Agency. No clear or final response has been received.

Legal Advice

Those who need or wish to make an application for settlement may be best advised to seek legal advice before doing so. The Community Legal Advice Service provides information about how to find a solicitor who gives advice funded by legal aid. They can be contacted on 0845-345 4345.