



Legacy Cases 4

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ILPA has produced three previous information sheets on “Legacy Cases”. Those previous information sheets continue to provide useful information, and this information sheet should be read together with them. Previous information sheets are available at www.ilpa.org.uk/infoservice.html

General information

As is more fully explained in previous information sheets, legacy cases are those cases where an asylum claim has been made (which was not dealt with by a Case Owner under the New Asylum Model) and is yet to be resolved. The Case Resolution Directorate is made up of about 60 teams and is the part of the UK Border Agency (previously the Border and Immigration Agency) which is responsible for resolving legacy cases. There is no amnesty for these cases. Resolving a legacy case means the individual may be removed from the UK or may be granted permission to remain in the UK. However, permission will only be granted where the individual satisfies current criteria for granting permission.

Criteria for granting permission

The UK Border Agency position is that it will not grant permission to remain in the UK in a legacy case unless it would have done so under the ordinary criteria for granting permission in all cases – including non-legacy cases. What will, therefore, be considered in legacy cases is:

- firstly, do any of the specific criteria for granting permission apply (see below);
- secondly, if no specific criteria apply, do the general criteria which must be considered before it is decided to remove indicate that permission should be granted (see below)

Specific criteria

Where someone can demonstrate that there is a real risk they would face some serious harm if returned to their home country, this will usually mean they qualify for refugee status or humanitarian protection.

Where someone has a family in the UK, they may qualify for discretionary leave if the life they have with that family would be so significantly disrupted if they were required to return to their home country that to require them to do so would be a disproportionate exercise of immigration control. This will depend upon a number of factors including:

- the relative importance of the relationships involved (relationships between children and parents and between partners will usually be of most significance)
- the ability for the family to relocate together to the individual’s home country
- how reasonable it is to expect the individual to return to their home country and apply to join their family in the UK in the ordinary way under the Immigration Rules
- reasons for excluding the individual from the UK (e.g. previous criminality)

Someone may qualify for indefinite leave to remain if they satisfy the Long Residence Rules. In brief, an individual may qualify for indefinite leave to remain if:

- they have been in the UK lawfully for ten years or more
- they have been in the UK, whether lawfully or unlawfully, for 14 years or more

General criteria to be considered

Where someone has not been granted permission to remain in the UK under the specific criteria, the UK Border Agency should also consider certain general criteria before deciding whether to

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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.

remove an individual. The general criteria are set out in paragraph 395C of the Immigration Rules. These general criteria, which are considered by the Case Resolution Directorate, are as follows:

- the individual's age
- the individual's length of residence in the UK
- the strength of the individual's connections with the UK
- the individual's personal history (including character, conduct and employment record)
- the individual's domestic circumstances
- any past criminal record
- any compassionate circumstances
- any representations made on the individual's behalf

Paragraph 395C also expressly refers to paragraphs 365-368 of the Immigration Rules. These paragraphs are important for considering family cases. They set out further criteria that should be considered including:

- the ability of a spouse or civil partner to support himself or herself and any children if required to leave the UK
- the effect upon a child's education if required to leave the UK
- the effect upon a child's care in the UK if a parent is required to leave the UK
- any representations made on behalf of a spouse, civil partner or child

These general criteria simply set out factors, which should be considered before any removal is carried out. The criteria do not provide any explanation of when a removal will go ahead or someone will be granted permission to remain in the UK. However, the criteria are important because they provide a broad discretion on the part of the UK Border Agency to consider wide-ranging factors; and this may be useful for legal representatives making representations to the Case Resolution Directorate in individual cases. If it is decided to grant permission under the general criteria, indefinite leave to remain will usually be granted.

Previous Home Office policies

There are a number of Home Office policies under which an individual might in the past have been granted permission to remain in the UK. The Home Office has withdrawn many of these policies. However, it may be useful to consider whether any policy applies or would in the past have applied in any individual legacy case. This may be relevant when assessing whether a person should be granted discretionary leave because of their family life in the UK (see above). Alternatively, it may be relevant in considering the general criteria that must be considered (see above).

If a policy has not been withdrawn and it does apply to the circumstances of the individual, this may provide a reason for them to be granted permission to remain in the UK.

If a policy has been withdrawn, or no longer applies to the circumstances of the individual, but it did apply to the individual's circumstances at some point during the time they have been in the UK, this may provide a reason for them to be granted permission to remain in the UK. If the Home Office has been at fault in failing to apply the policy to the individual's circumstances, this may strengthen the individual's claim to now be granted permission to remain. However, the previous existence of a policy is unlikely to have any relevance for an individual if his or her presence in the UK had not been made known to the Home Office at the time when the policy was in force.