

POLICY BULLETIN 76

Asylum support applications from nationals of a European Economic Area State or from persons who have refugee status abroad

1 PURPOSE AND SCOPE

- 1.1 This Policy Bulletin provides guidance for Asylum Support Caseworkers on handling applications for asylum support from asylum seekers and failed asylum seekers who are nationals of a European Economic Area (EEA) State other than the United Kingdom and dependants who are nationals of an EEA State other than the United Kingdom or who have refugee status abroad (in an EEA State). Guidance on considering asylum applications from EEA nationals can be found in the Asylum Policy Instructions and the Asylum Process Instructions.
- 1.2 For the purposes of simplicity, and unless otherwise stated, the use of 'he' and 'him' will apply equally to both genders.

2. DEFINITIONS

- 2.1 The EEA is made up of the member states of the European Union together with Lichtenstein, Norway and Iceland. A full list of countries in the EEA is provided at Annex A.
- 2.2 Paragraph 4(2) of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 defines a person as having refugee status abroad if:
- he does not have the nationality of an EEA State; and
 - the government of an EEA State other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention.
- 2.3 The definition of dependant for the purposes of Schedule 3 is prescribed by regulation 2(2) of the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002. The relevant extract from these regulations is included in this Policy Bulletin at Annex B.

3 APPLICATION OF THIS INSTRUCTION IN RESPECT OF CHILDREN AND THOSE WITH CHILDREN

- 3.1 Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

4. KEY PRINCIPLES

4.1 EEA nationals and their dependants and those with refugee status abroad and their dependants are among the 5 classes of person prescribed by Schedule 3 to the Nationality, Immigration and Asylum Act 2002 as ineligible for various state benefits including support or assistance under a provision of the Immigration and Asylum Act 1999. **This means that they may not be provided with asylum support under sections 4, 95 or 98 except to the extent necessary to prevent a breach of a person's rights under the European Convention on Human Rights (ECHR) or under the Community Treaties.**

4.2 The presumption is that applications for asylum support from EEA nationals and those with refugee status abroad should normally be refused. The **onus is on the applicant** to show that support is necessary to avoid a breach of a person's Convention rights. Guidance on when support is necessary in order to avoid such a breach is provided in part 6 of this Policy Bulletin.

5. DEPENDANTS

5.1 As a general rule, if an application for support **includes** an asylum seeker who is an EEA national or who has refugee status abroad and/or an adult dependant who is an EEA national, or who has refugee status abroad then no person included in the application (including any children) may be provided with asylum support except to the extent necessary to prevent a breach of a person's rights under the ECHR or Community Treaties.

5.2 If an application for support **does not include** an asylum seeker who is an EEA national or who has refugee status abroad or an adult dependant who is an EEA national or who has refugee status abroad, but does include a child who is an EEA national or who has refugee status abroad, then Schedule 3 generally does not prevent the provision of support to the child or any other person included in the asylum support application.

6 ECHR CONSIDERATIONS

6.1 The Articles of the Convention most likely to be raised by applicants are Articles 3 and 8:

- *Article 3 – Prohibition of torture*

Article 3 is likely only to be relevant if the person cannot be expected to return home (eg because he has an outstanding asylum claim or is unable to travel because of a severe

medical condition) or, in the case of a person who has refugee status abroad, if he cannot be expected to return to the country in which refugee status was granted. If an EEA national or a person with refugee status abroad cannot be expected to leave the UK then the caseworker will need to assess whether the person has other means of support available to him (including overnight shelter and basic provisions such as food and access to sanitary facilities) from friends, family or charities and, if not, whether he can be expected to support himself by finding employment or being self-employed. EEA nationals who apply for asylum are not subject to the same employment restrictions as other asylum seekers and they generally have the right to live, work and study in the UK. However, caseworkers should be alert to any indicators which may mean that a person cannot be expected to find employment (e.g. pregnancy, illness, disability, language difficulties, the availability of childcare, etc). Some of these indicators may prevent a person finding any employment or only with extreme difficulty such that it is unlikely in the time remaining before his claim is resolved. Some may simply mean it will take longer to find employment.

Caseworkers should also note that nationals from Bulgaria and Romania, which acceded to the EEA on 1 January 2007, have only limited access to the labour market. They may only work in the UK if they:

- are self employed;
- are students at a reputable college, do not work for more than 20 hours a week and have a registration certificate;
- are highly skilled and have a registration certificate;
- hold a seasonal agricultural worker card; or
- hold an accession worker card.

To avoid a breach of Article 3, asylum support should not be denied in any case where a person cannot be expected to return home or find work, has no alternative sources of support available, and faces an imminent prospect of serious suffering caused or materially aggravated by the denial of support.

- *Article 8 – Right to respect for private and family life*

Article 8 protects the right to respect for private and family life. However, this right is not absolute. A public authority can interfere with an individual's private or family life if the interference is in accordance with the law and in pursuit of a legitimate aim and if the extent of the interference is proportionate to this legitimate aim. Only where the interference is disproportionate to the aim pursued will the interference amount to a breach of Article 8. Legitimate aims under Article 8 include immigration control and the economic wellbeing of the country.

'Private life' under Article 8 goes further than simple protection from state interference in a person's private affairs. Included within the ambit of 'private life' is the concept of 'physical and moral integrity'. What this means is that Article 8 extends so far as to protect an individual from actions by public authorities which adversely affect his physical or psychological wellbeing. In the context of a refusal of support, this may give rise to claims that refusing support will interfere with the claimant's physical or psychological wellbeing, for example, because it impacts on his health or ability to carry on an 'ordinary life'.

Article 8 will be relevant where there are children in the family. There will be an interference with Article 8 if asylum support is not provided in circumstances where the family is unable to procure alternatives and if, as a result, the children are at risk and may need to be looked after by the local authority. This will be an unjustified and disproportionate interference in cases where the family's options are very limited, for

example, where it cannot be expected to return home (e.g. because a member of the family has an outstanding asylum claim or is unable to travel because of a severe medical condition) and is unable to secure employment or support from friends family or charities. In the case of a family with refugee status abroad, any interference will be unjustified and disproportionate only if the family cannot reasonably be expected to return to the country in which refugee status was granted.

- 6.2 Caseworkers will need to consider any representations on ECHR grounds promptly, and if the person has an outstanding asylum claim access to initial accommodation should be granted in cases where such representations cannot be decided on the day that they are received by the UK Border Agency (provided that the applicant appears to be destitute).
- 6.3 In some cases where support is provided to prevent a breach of a person's Convention rights it may be appropriate to provide support for a limited period of time only, for example to allow the person sufficient time to find work and become self supporting or to return home.

7 NO RIGHT OF APPEAL TO AN ASYLUM SUPPORT ADJUDICATOR

- 7.1 Section 9(3) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 provides that there is **no right of appeal** to an Asylum Support Adjudicator against a decision to refuse or stop providing support to a person who is a national of an EEA State other than the UK or who has refugee status abroad, by virtue of a provision of Schedule 3.

8 ASSISTANCE WITH TRAVEL AND ACCOMMODATION

- 8.1 Asylum seekers and failed asylum seekers who are nationals of an EEA State and dependants who are nationals of an EEA State or who have refugee status abroad may be eligible for assistance with travel to their country of origin or to the country in which they have refugee status. Those with dependent children may also be eligible for short-term accommodation while they are waiting to travel.
- 8.2 Those requiring assistance with travel (and accommodation if they have dependent children) should seek assistance from their Local Authority.

Annex A – Countries in the European Union (EU) and the European Economic Area (EEA)

The **European Economic Area (EEA)** came into being on 1 January 1994 following an agreement between the European Free Trade Association (EFTA) and the European Union (EU). It was designed to allow EFTA countries to participate in the European Single Market without having to join the EU. The following countries are members of the EEA:

Austria
Belgium
Bulgaria***
Cyprus**
Czech Republic**
Denmark
Estonia**
Finland
France
Germany
Greece
Hungary**
Ireland
Italy
Latvia**
Lithuania**
Luxembourg
Malta**
Netherlands
Poland**
Portugal
Romania***
Slovak Republic**
Slovenia**
Spain
Sweden
Iceland*
Liechtenstein*
Norway*

*These countries are in the EEA, but are not members of the European Union.

**These countries joined the European Union (and therefore the EEA) on 1 May 2004.

***These countries joined the European Union (and therefore the EEA) on 1 January 2007.

Annex B – Extract from the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002

2.

(2) In these Regulations and for the purposes of Schedule 3 to the Act, a “dependant” of a person means a person who at the relevant time—

- (a) is his spouse or his civil partner;
- (b) is a child of his or of his spouse or of his civil partner;
- (c) is a member of his or his spouse's or his civil partner's close family and is under 18;
- (d) has been living as part of his household—
 - (i) for at least six of the twelve months before the relevant time, or
 - (ii) since birth,

and is under 18;

- (e) is in need of care and attention from him or a member of his household by reason of a disability and would fall under (c) or (d) but for the fact that he is not under 18;
- (f) has been living with him as a couple for at least two of the three years before the relevant time,

and “dependent” has the corresponding meaning.

(3) In paragraph (2)—

“relevant time” means, in relation to any arrangements made by a local authority in respect of a person, the time when the local authority begins to make those arrangements;

“couple” means a man and woman who are not married to each other but are living together as if they are, or, two people of the same sex who are not civil partners of each other but are living together as if they are.

Document Control

Change Record

Version	Authors	Date	Change Reference
3.0	BF	27/11/2008	Update branding only
4.0	SM	17/09/2009	Children's Duty paragraph added