

Illegal entry

1. Introduction

Section 33(1) of the Immigration Act 1971, as amended by the Asylum and Immigration Act 1996, defines an illegal entrant as a person who:

- unlawfully enters or seeks to enter in breach of a deportation order or the immigration laws; or
- enters or seeks to enter by means of deception. (This can also include deception by another person.)

1.1. Key points

If an applicant is a potential illegal entrant, this option should be explored first.

Applications from illegal entrants should be considered on their merits for the grant of asylum or exceptional leave to remain.

The asylum refusal notice must be served by an Immigration Officer, together with removal directions, in order to trigger a right of appeal under section 69 of the Immigration and Asylum Act 1999.

2. Identification of illegal entrants claiming asylum

Evidence of illegal entry may be provided in the Statement of Evidence Form (SEF) or at the interview stage.

Illegal entrants fall into five broad categories:

- a person who enters the UK clandestinely;
- a person who enters the UK in breach of a deportation order;
- a person who enters the UK using forged or false documents;
- a person who obtains leave to enter (LTE) by verbal deception to an immigration officer - see paragraph 4 below; and/or
- a person who cannot produce any evidence of lawful entry, nor give a credible account of their entry, to the UK - see paragraph 5 below.

3. The asylum interview

During the asylum interview of all known and potential illegal entrants, the interviewing officer should ask the applicant about:

- reasons for travelling to the UK; and
- method of entry to the UK.

Although a formal 'method of entry' interview under caution may be conducted before serving asylum refusal notices, such information obtained in the

Asylum Interview Record will be of assistance when deciding whether or not to pursue any illegal entry contention.

4. Illegal entrants by deception

An asylum applicant who has been given leave to enter may well have entered the UK by deceiving an Immigration Officer. In such cases the Immigration Service will need to show to a high degree of probability that material deception was used to gain entry.

In asylum cases it is sufficient to show that the leave to enter granted was for a different purpose than that intended by the applicant.

NB If leave to remain has been granted during an applicant's stay in the United Kingdom; they cannot be treated as an illegal entrant unless the leave to remain was obtained by using the same deception as was used originally to gain leave to enter.

5. No evidence of lawful entry

Examples are persons who arrive hidden in a car or lorry or who are landed on a beach without seeing an immigration officer. If an applicant produces no evidence that they have entered the UK lawfully, they may be an illegal entrant. However, further enquiries should be made for evidence of lawful travel and entry to the UK. (e.g. by checking INDECS.)

Where no evidence of lawful entry exists, the applicant's account of their entry to the UK will be probed in the asylum interview. If it is credible, i.e. provides details of the Immigration Officer's interview on arrival; the date and place of arrival; and the conditions of entry, they are unlikely to be an illegal entrant.

6. Applications for asylum from illegal entrants

Illegal entrants who claim asylum must be given a one-stop notice under Section 75 of the Immigration and Asylum Act 1999 at the time of application. A section 75 notice must also be served on all members of the applicant's family, including children.

Applications from illegal entrants should be considered on their merits.

7. Appeal rights

7.1. Asylum appeals

Section 69(5) of the Immigration and Asylum Act 1999 gives an illegal entrant an in-country right of appeal on the grounds that their removal would be contrary to the UK's obligations under the 1951 Convention relating to the Status of Refugees. The right of appeal is triggered by the setting of removal directions and the applicant has ten working days in which to lodge a notice of appeal. Any directions for removal cease to have effect while the appeal is

outstanding. An appeal cannot be made under Section 69(5) if asylum has not been claimed before the removal directions were made.

Where asylum is claimed for the first time after removal directions are set, these (removal directions) will be cancelled and the case referred to the ICD for the claim to be considered.

7.2. Serving refusals

If an illegal entrant is refused asylum, they and any family members should all receive one-stop notices under Section 74 of the Immigration and Asylum Act 1999 at the same time as the RFRL is served.

Removal directions for illegal immigrants can only be set by an Immigration Officer. Any refusal of asylum in an illegal entry case must therefore be referred to the Removals Group to ensure that the right of appeal is correctly triggered.

8. Illegal entry notices

8.1. IS151B

An IS151B is a notice of removal to an illegal entrant whose application for asylum has been refused - see Annex A.

8.2. IS151C

An IS151C is a notice of removal to a person who has entered in breach of a deportation order and whose subsequent application for asylum has been refused - see Annex B.

8.3. IS85D

An IS85D is a notice of removal directions to a crew member who has been refused asylum in the UK - see Annex C.

Enquiries: Further enquiries should normally be made in writing via a Senior Caseworker to EPU.