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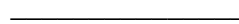
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CHAPTER 5 SECTION 1

EXCEPTIONAL LEAVE

1. INTRODUCTION

This instruction outlines the criteria to be applied in deciding whether an asylum applicant should be granted exceptional leave to enter/remain (ELE/R) in the UK. It also sets out the circumstances in which a grant of ELE/R may not be appropriate. This chapter should be considered together with Chapter 1 Section 2 - Assessing the Claim.

Guidance on granting ELE/R to dependants is included in the instruction on *Dependants*.

2. CRITERIA FOR GRANTING EXCEPTIONAL LEAVE

Exceptional leave should normally be granted to asylum applicants only *after* their application has been substantively considered, and it has been decided that asylum should be refused.

If the case is to be refused without substantive consideration (e.g. for reasons of non-compliance), the caseworker should consider whether the applicant qualifies for ELE/R on the basis of the information already provided.

2.1. Eligibility criteria

ELE/R *must* be granted to asylum applicants if they fall under one of the following criteria:

- ◆ Where the 1951 UN Convention requirements are not met in the individual case but return to the country of origin would result in the applicant being subjected to torture or other cruel, inhuman or degrading treatment, or where the removal would result in an unjustifiable break up of family life. For example:
 - Where there are *substantial* grounds for believing that someone will suffer a serious and wholly disproportionate punishment for a criminal offence e.g. execution for draft evasion.
 - Where there is *credible* medical evidence that return, due to the medical facilities in the country concerned, would reduce the applicant's life expectancy and subject him to acute physical and mental suffering, in circumstances where the UK can be regarded as having assumed responsibility for his care. In cases of doubt, a second opinion should be sought from a credible source.

- ◆ Where the applicant does not satisfy the 1951 UN Convention criteria for refugee status but there are compassionate or humanitarian reasons which merit not requiring the person to return to their country of origin or habitual residence.

- ◆ Where ministers have agreed that, for humanitarian reasons, a general country policy will apply. These countries are reviewed by ministers at appropriate intervals - see *Annex A* for the current list. Please note that the periods of exceptional leave granted in these cases may not accord with the general practice, and may not be granted to all unsuccessful asylum applicants. If there is any doubt concerning a specific country, the Country Information and Policy Unit should be contacted for clarification.

- ◆ In addition, exceptional leave *may* be granted in cases where a decision has *not* been taken seven years after the application was made.

2.2. Disqualifying criteria

A person should **never** be disqualified from ELE/R if there are substantial reasons for believing that he or she would be tortured or otherwise subjected to inhuman or degrading treatment if they were to be returned to their country of origin.

However, if in the individual case the person concerned would not face torture or other cruel or inhuman treatment, an asylum applicant who meets the eligibility criteria set out in paragraph 2.1 above may be refused ELE/R if any of the following criteria apply:

- ◆ The applicant has committed a serious non-political crime in the UK or overseas.

- ◆ The applicant is a major political figure or there are other obvious political or security sensitivities. (Although exceptional leave is not automatically ruled out, it may be necessary to seek the views of other government departments first e.g. FCO.)

- ◆ The application is so clearly unfounded and abusive that any prolongation of stay would be inappropriate.

2.3. Enforcement difficulties

Caseworkers should *not* grant, or propose granting exceptional leave simply because they consider there may be practical difficulties in enforcing departure. It is a matter for ISED to decide whether removal action should be pursued.

3. APPLICATION FOR EXCEPTIONAL LEAVE FOLLOWING REFUSAL OF ASYLUM AND EXHAUSTION OF APPEAL RIGHTS

Occasions may arise when, following the refusal of asylum and exhaustion of all appeal rights, an application is nonetheless made requesting ELE/R outside the Immigration Rules.

By the time all rights of appeal have been brought before the Appellate Authorities, there will not be many cases that would merit the grant of ELE/R. However, caseworkers should give full and careful consideration to the reasons given for requesting exceptional leave, and decide whether the grant of ELE/R would be appropriate.

3.1. Refusing

AD caseworkers should inform the applicant by form ADL 43 (see *Annex B*) that the Secretary of State is not prepared to exercise his discretion in the applicant's favour. The file should then be forwarded to the appropriate Directorate for their continued action.

3.2. Further representations

If the request for exceptional leave reiterates the asylum claim as previously made, or if the request for exceptional leave provides new information that would oblige the Directorate to consider it under the terms of the 1951 Convention, the application for ELE/R should be treated in accordance with the instruction given in *Further Representations and Fresh Applications*.

4. PROCEDURES

4.1. Granting

For information on granting ELE/R please see the instruction on *Implementation: Grants*.

4.2. Upgrade of status

For information on requests by those granted ELE/R to be upgraded to refugee status, please see the instruction on *Upgrade of Status*.

4.3. Refusal/revocation

For information on the circumstances when it may be appropriate not to grant further exceptional leave, or when it may be appropriate to revoke ELE/R status, please see the instruction on *Termination of Refugee Status and Exceptional Leave*.

Further advice: see also the instructions on *Dependants, Upgrade of Status, Implementation: Grants, Termination of Refugee Status and Exceptional Leave* and *Further Representation and Fresh Applications*.

COUNTRY POLICIES

Instructions to grant exceptional leave on the basis of nationality presently apply to:

Liberia

For additional information on the terms of this country policy, please contact the Country Information and Policy Unit.

ANNEX B

ADL 43

FORM REFUSING APPLICATION FOR EXCEPTIONAL LEAVE TO ENTER/REMAIN

The Secretary of State has carefully considered your application dated XXX for leave to *enter/remain in the United Kingdom exceptionally outside of the Immigration Rules. However, following refusal of your asylum application on XXX, and dismissal of your appeal against the refusal of asylum by *a/the *special adjudicator/Immigration Appeal Tribunal on XXX, the Secretary of State is not prepared to exercise his discretion in your favour.

* delete as appropriate.