

Applications raising article 3 medical grounds

The purpose of this notice is to:

- Clarify when Discretionary Leave should be granted on Article 3 medical grounds and the duration of leave to be granted in such cases;
- Advise that all asylum cases where it is proposed to grant Discretionary Leave on Article 3 medical grounds must be referred to a senior caseworker for approval;
- Advise that all medical cases which are to be refused outright and which involve serious medical conditions (whether physical or mental) and where the claimant would be unlikely to access treatment in their country of origin, should be flagged up under the Assured Representation at Appeal scheme.

The Article 3 threshold

Applicants may claim that their removal from the UK would constitute a breach of Article 3 on account of their medical condition. Recent caselaw, both at domestic and Strasbourg level, has confirmed that the circumstances in which such a breach could be established will be exceptional. For guidance please refer to the **IDIs Chapter 1 Section 8 Paragraph 3.4**.

Granting Discretionary Leave

Discretionary Leave should be granted on medical grounds only in those exceptional cases where the high threshold of Article 3 is met. Information on the availability of treatment in the country of origin should be obtained from CIPU and from NCC5 of the Managed Migration Directorate (the CMU dealing with all non-asylum applications for LTR on the basis of HIV infection or other life-threatening medical conditions). Work is in hand to set up a comprehensive database containing such information.

Caseworkers should refer all cases where a grant of Discretionary Leave is proposed to a senior caseworker for approval. If the grant of Discretionary Leave is approved, the senior caseworker should keep a record of the case for monitoring purposes. Cases should also be referred to a senior caseworker where it is proposed to grant leave under the "Other cases" category of Discretionary Leave (see **paragraph 2.5 of the API on Discretionary Leave**), i.e. where the Article 3 threshold is not met but where circumstances are considered to be so compelling that a grant of leave is appropriate. Such cases are likely to be rare.

The initial period of Discretionary Leave granted should be three years unless there are clear reasons for granting a shorter period. Examples may include where the applicant is undergoing a course of treatment of a finite duration or is awaiting surgery, after which Article 3 barriers may no longer apply.

Those granted Discretionary Leave on this basis and subsequently granted extensions will be eligible to apply for ILR after completing six years' leave in the normal way.

The period of Discretionary Leave granted should not be affected by whether or not the medical claim was accompanied by an asylum claim.

Assured Representation at Appeal

Medical cases which are to be refused outright and which involve serious medical conditions (whether physical or mental) and where the claimant would be unlikely to access treatment in their country of origin should be flagged up under the Assured Representation at Appeal scheme. This will ensure that such cases are represented by a Presenting Officer at appeal. For instructions on how this should be done please refer to **APN 03/2003**.

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