

Humanitarian Protection and Discretionary Leave

As of today exceptional leave has ceased to exist. This is in line with the Home Secretary's decision to restrict grants of leave to those unsuccessful asylum seekers who are nevertheless in genuine need of international protection or have other truly compelling reasons for not being removed.

Exceptional leave will be replaced on the asylum side by two types of leave, each of which will be more focussed than the current exceptional leave provisions. These are Humanitarian Protection and Discretionary Leave.

Both types of leave will be granted under the same powers as exceptional leave is currently granted (that is, under provisions in the 1971 Immigration Act which allow the Secretary of State to grant leave to a person for a reason not covered by the Immigration Rules). It is intended that Humanitarian Protection (but not Discretionary Leave) will be added to the Rules.

Staff who are involved in the consideration of Humanitarian Protection and Discretionary Leave will already be familiar with the new procedures. You should also read the API's on Humanitarian Protection and Discretionary Leave which accompany this statement and are also available on the Knowledge Base and website. Further instructions will also be issued in due course by (1) the Asylum Processes and Procedures Unit and (2) Removals and Process Secretariat addressing process issues for asylum and removals caseworkers.

For other staff, a very general summary of the key provisions is attached (addressing who should be granted leave and the conditions attached to that grant of leave).

Please note that on the non-asylum side, some grants of leave outside the rules will continue to be granted under arrangements separate from the API's on Humanitarian Protection and Discretionary Leave. Enquiries on the non-asylum side should be addressed to INPD.

The API on Human Rights is currently being updated and a revised instruction should be available shortly. In the meantime, caseworkers should continue to action ECHR claims in accordance with the API on the knowledge base (which has not been revised).

Asylum Policy Unit

Humanitarian Protection

Subject to certain exclusion grounds, Humanitarian Protection (HP) will be granted to anyone who is unable to demonstrate a claim for asylum but who would face a serious risk to life or person arising from:

- The death penalty.
- Unlawful killing.
- Torture, inhuman or degrading treatment or punishment.

Serious Criminals, including war criminals; terrorists or others who raise a threat to national security and anyone who is considered to be of bad character, conduct or associations will be excluded from these provisions.

Even if they can not be removed they will still be excluded from HP and given less favourable terms of stay.

HP should be granted for up to 3 years, less in specific cases as directed. If at the end of 3 years, following an active review, it is decided that further protection is needed, a claimant will usually receive ILR. If protection is no longer needed and a person has no other basis of stay in the UK they will be expected to leave.

Discretionary Leave

Discretionary Leave (DL) may be granted for a limited number of specific reasons. These people will either not be considered to be in need of international protection, or will have been excluded from such protection.

DL may be granted to an applicant who:

- Has an Article 8 claim.
- Has an Article 3 claim only on medical grounds or severe humanitarian cases.
- Is an Unaccompanied Asylum Seeking Child (UASC) for whom adequate reception arrangements in their country are not available.
- Would qualify for asylum or Humanitarian Protection but has been excluded.
- Is able to demonstrate particularly compelling reasons why removal would not be appropriate.

An individual grant of DL should not be made for more than 3 years, or less in specific cases as directed by the API's or separate notices which may be issued from time to time. UASC's should normally be granted for 3 years or until their 18th birthday, whichever is earlier, although there may be some exceptions. After the DL period has expired the claimants situation will be reviewed with further leave granted if appropriate. A person on DL will normally become eligible to apply for ILR after 6 years. However a person who has been excluded from asylum and/or HP but granted DL will be excluded from ILR under the DL provisions. They will only be able to apply for

ILR under the long residence concessions and even then they may be excluded. A person who no longer qualifies for leave will be expected to depart from the UK.

Date of issue: 1st April 2003