

APU Notice 4/2003

Updated: 20 August 2004 (re- branded November 2008)

One-off exercise to allow families who have been in the UK for three or more years to stay

Introduction

This note sets out the criteria for granting indefinite leave to remain or enter, exceptionally outside the Immigration Rules, as a result of the concession announced by the Home Secretary on 24 October 2003 to allow families who have been in the UK for three or more years to stay (the “concession” henceforth).

Basic criteria of the concession

The basic criteria for deciding whether or not a family will qualify for the exercise are:

- The applicant applied for asylum before 2nd October 2000; and
- The applicant had at least one dependant aged under 18 (other than a spouse) in the UK on 2 October 2000 or 24th October 2003.

Application for asylum

The initial claim for asylum must have been made before 2nd October 2000.

Families will be eligible for the concession where (i) the application has not yet been decided, (ii) has been refused and is subject to an appeal (iii) has been refused and there is no further avenue of appeal but the applicant has not been removed (iv) has been refused but limited leave has been granted.

Families will not be eligible if after refusal of that initial claim they have been removed or have made a voluntary departure.

Dependants for the purpose of qualifying for the concession

For the purpose of determining whether the basic criteria of the concession are met, a dependant is a child of the applicant, or child of the applicant’s spouse, who was or is financially and emotionally dependant on the applicant on the relevant date (i.e. 2 October 2000 or 24th October 2003).

Caseworkers should also be satisfied that the dependant:

- is related as claimed to the principal applicant; and
- formed part of the family unit in the UK on 2 October 2000 or 24th October 2003.

Caseworkers must be satisfied that the dependant was living in the UK on 2 October 2000 or 24th October 2003 as part of the family unit. Normally evidence on the asylum file of the dependant prior to the date of the announcement will be sufficient. If the dependant was born in the UK and is not listed on the asylum file, a UK birth certificate will be key evidence.

Where a dependant is not listed on the file and was not born in the UK, strong evidence will be required to satisfy a caseworker that a dependency relationship does exist and that the dependant was living in the UK on 2 October 2000 and/or 24th October 2003 as part of the family unit.

Granting leave in line to dependants

All dependants of the applicant who meet the basic criteria for the concession should be granted ILR.

For this purpose a dependant is the spouse or child of the main applicant, or child of the spouse, who formed part of the family unit on 24th October 2003.

Caseworkers should be satisfied that the dependants:

- are related as claimed to the principal applicant; and
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- formed part of the family unit on 24 October 2003.

Caseworkers must be satisfied that the dependant was living in the UK on the date of the announcement. Normally evidence on the asylum file of the dependant prior to the date of the announcement will be sufficient. If the dependant was born in the UK and is not listed on the asylum file, a UK birth certificate will be key evidence. If the dependant claims to be married to the applicant but is not listed on the file, a UK marriage certificate will be key evidence.

Leave will be granted to any dependants of the main applicant who come within the definition and were in the UK at the date of the announcement.

Where a dependant is not listed on the file and was not born in the UK strong evidence will be required to satisfy a caseworker that a dependency relationship

does exist and the dependant was living in the UK as part of the family unit on the date of the announcement.

Exclusions

The concession will not apply to a family where the principal applicant or any of the dependants (using the definition of a dependant as above in “granting leave in line to dependants):

- have a criminal conviction,
- have had been subject of an anti-social behaviour order or sex offender order,
- have made (or attempted to make) an application for asylum in the UK in more than one identity,
- should have their asylum claim considered by another country (i.e. they are the subject of a possible third country removal, but see also section on third country cases below);
- present a risk to security;
- fall within the scope of Article 1F of the Refugee Convention; or
- whose presence in the UK is otherwise not conducive to the public good.

Criminal convictions

A criminal conviction means a conviction for any crime committed in the UK or abroad which was not spent on the date of the announcement. For the purposes of this concession, the same rules for spent UK convictions will apply to convictions received abroad.

A criminal conviction in the UK becomes spent after a period of time following conviction, depending on the length of the sentence. Caseworkers should consult senior caseworker about excluding applicants on the basis of a criminal conviction.

Where criminal investigations are in train, or when court proceedings are pending, no decision should be taken on the case until the outcome is known.

Multiple identities

Applicants who fraudulently made or attempted to make a fresh claim for asylum, in a different identity are excluded.

This exclusion category does not cover applicants who changed their name/other details during the consideration of their claim providing they did not attempt to mislead IND into believing they were applying as a new individual (i.e. they did not pretend they were a different person from the person who made the original claim).

Third country cases

Families will be excluded where they are all subject to possible third country removal.

Families where one member of the family made a claim before 2 October 2000 which has been accepted for consideration by IND and therefore is not subject to third country removal, and would otherwise fall into the concession, will not be excluded.

Limited Leave

Families where the principal applicant asylum claim was refused but he/she was granted some form of limited leave will be considered under this exercise.

Humanitarian Evacuation Programme

Kosovan families who arrived under the Humanitarian Evacuation Programme before 2 October 2000 but did not claim asylum until after this date, are included in the scope of this exercise if they meet the necessary criteria.

Contact Details

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