

## Refugee family reunion – policy briefing

### Introduction

Refugee Action believes that refugees should be able to be united with close family members. Allowing families to be united boosts refugees' ability to successfully integrate and build independent lives in the UK; and can also provide a legal and relatively safe means of entering the UK.

However in reality, many current policies and practices mean that family reunion is often a fraught process for many refugees in the UK. The criteria for family reunion are narrowly drawn; and making an application is often unnecessarily complex and lengthy. Too often, this results in applications failing, or not being made in the first place, for families who can and should be reunited. It can also lead to relatives being forced to make dangerous journeys to reach their loved ones in the UK.

This briefing sets out some of the main challenges which refugees experience in making family reunion applications, and our proposals on how these barriers can be removed.

### Legal and policy background

Refugee family reunion is the process by which adult refugees based in the UK ('sponsors') reunite their family members who remain in their country of origin or who currently reside in third countries ('applicants').

Applying for family reunion is ensured within domestic policy and legislation. In particular, part 11 of the Immigration Rules identifies the eligibility criteria of which family members may apply. Presently, eligible family members include married or civil partners, and children aged 17 or younger. However, there are a number of significant family relationships which are currently excluded from the criteria (see below).

The Legal Aid Sentencing and Punishment of Offenders Act 2012 removed legal aid from refugee family reunion cases. Recent research from the British Red Cross has demonstrated that the nature of family reunion is such that legal aid plays a pivotal role throughout the application submission process. Ultimately, the many complexities which may develop over the course of an application may result in its failure, despite legitimate grounds for the claim. Qualified legal advice is therefore essential to ensuring that refugee family reunion applications are comprehensive and well-developed and delivered.

## **Obstacles and solutions**

While there are numerous obstacles and challenges within the refugee family reunion application process, this briefing will highlight four areas which we believe, if improved upon, could significantly enhance this process.

If implemented, these measures would help ensure unity between refugees and their family members, and mitigate the use of unsafe and illegal travel to the UK.

### **1. Eligibility Criteria**

The eligibility criteria for refugee family reunion in the UK currently define applicants by age (in the case of children) and the nature of the relationship between the sponsor and applicants.

With regard to children, the applicants must be 17 years old or younger at the time of applying; and according to part 11 of the Immigration Rules, must also demonstrate that they are not “leading an independent life,” must be unmarried or without a civil partner, and must not have “formed an independent family unit.” A further condition on child applicants is that they were “part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum.”

Significantly, unaccompanied child refugees within the UK do not have access to refugee family reunion. This ensures that child refugees who could grow up with their families instead live under the provisions of the state, without all of the benefits of growing up within their own family unit. Furthermore, while applicants who are step-children or adopted are permitted under the Immigration Rules, the specific evidence requirements for these cases are known to present very significant challenges to these applications. More problematically, de-facto adopted children of sponsors are excluded from refugee family reunion even where there is a relationship of dependency between sponsor and applicant.

In applications with spouses of sponsors (whether marriage or civil partnership) as well as unmarried partners, the applicant must demonstrate a “subsisting” relationship that preceded the sponsor’s application for asylum as well as the intention to live together permanently. For unmarried and same-sex partners, applications must also “demonstrate that they have been living together in a relationship akin to either marriage or civil partnership which has subsisted for two years or more.” Finally, marriages and civil partnerships cannot have taken place after the refugee sponsor left their country of “habitual residence” in order to seek asylum.



Resettled refugees face further challenges. Many resettled refugees now in the UK may have spent several years or even decades as refugees in third countries awaiting resettlement. The rules insist that any marriage or relationship cannot have occurred after the refugee left their country of origin in order to seek asylum. This can and does undermine their prospects of family life in the UK - when marriages are formed and children are born while refugees remain in third countries awaiting decisions on resettlement, the immigration rules exclude these families from reuniting via family reunion as they are deemed “post-flight family”. It is unrealistic and unfair to expect them not to form relationships during this period – we believe the rules should offer greater understanding and flexibility to reflect the realities of people’s lives.

A key characteristic for children is a demonstration of ‘dependence’ of applicants upon the sponsor. Refugee Action believes the scope of the eligibility criteria are problematic, as dependence can – and often does - exist within broader family relationships.

For example, frequently within contexts of war, insecurity, and persecution, refugees may present applications on behalf of their younger siblings. In such cases, the parents may have died and the older sibling may be responsible for their younger brother or sister. There are also instances where refugees may be the primary carer of their nieces or nephews where the refugee’s adult sibling has been killed and his or her children are taken in and become dependent on the refugee. Alternatively, adult children, siblings or parents of sponsors may well be dependent on the sponsoring refugee. Government policy exists that addresses cases such as these, under part 8 of the Immigration Rules; however, the financial requirements are prohibitive for many new refugees.

### **Recommendation**

If refugee family reunion rules in the UK are to ensure the security of refugees’ family members and family unity, they must address relationships of dependence beyond those currently permitted within the Immigration Rules. Therefore, Refugee Action believes that the eligibility criteria for refugee family reunion should be expanded to prioritise and permit all relationships where there is dependency of applicants upon the sponsor. This should be extended to include, but not limited to, children over 18; parents; grandparents; grandchildren; and siblings.

Finally, the government should broaden the eligibility criteria for sponsors as well as for applicants, enabling unaccompanied child refugees to reunite with their families.

## **2. Evidence Requirements**

Presently there are two sources of evidence requirements for refugee family reunion: internal Home Office and VAF4 guidance. The former is directed at Home Office staff, whereas the latter is a non-specified guidance document required for applicants for various kinds of immigration applications. While there is some coherence within the two bodies of guidance, there is also discordance. As a consequence, evidence requirements are at best ambiguous, and often profoundly confusing.

We understand that the government is currently undertaking a review of its guidance which will attempt to remedy this ambiguity. Refugee Action would welcome this development.

Furthermore, given the nature of fleeing an insecure, dangerous environment, it is often the case that sponsors and applicants alike have lost or are unable to produce some or all of the required evidence. In such instances, legal advisers play a fundamental role in developing alternative evidence including, for example, witness statements.

### **Recommendation**

We hope the current government review will result in a clear, single comprehensive evidence list of what is normally expected, or preferred, for refugee family reunion applications. In addition, the government should acknowledge that some families are simply unable to produce evidence to the expected standard – whether because it does not exist or because it is out of reach. The government should ensure that its guidance prioritises the safety of applicants by not expecting them to endanger themselves to obtain evidence.

In such cases, the government should accept alternative forms of evidence, which might include, for example, letters from friends or community members, affidavits, witness statements and self-certified documents.

## **3. The security of applicants abroad**

A fundamental procedure within the refugee family reunion application process requires that applicants attend appointments at British consulates or embassies in order to register their fingerprints and, where necessary, submit results for tuberculosis, malaria, or DNA tests.

However, in a number of environments British diplomatic offices are inaccessible on a permanent or temporary basis. Where this occurs, applicants must travel to nearby



countries where they are available. An alternative scenario is that the family members are based in a country where there is a diplomatic office, but they are located far from it, requiring individuals to travel through areas of armed conflict or violence. Where the only means of reuniting with the family is to travel through such insecure environments, individuals will inevitably put themselves at real risk of harm or even death. Because the majority of applicants are women and children, the risk of harm is more severe, and is in contradiction to the UK's principled policy positions around the protection of women and children.

Ultimately, refugee family reunion is in principle a safe and legal route to the UK through recognised channels. Where applicants are exposed to insecurity during the application process due to protocol, then refugee family reunion may be legal, but it becomes profoundly unsafe.

### **Recommendation**

There are many ways of ensuring that applicants are not exposed to great risk while attending appointments at British diplomatic offices. These include offering alternative means of submitting required information. For example, where a diplomatic office is closed or temporarily unavailable, the British government could liaise with close partner states to facilitate the submission of essential information to their offices. Alternatively, where technology is available, mail or digital services could be made available to ensure the identification of the senders.

Where international travel is absolutely necessary, Refugee Action believes the Home Office should enable applicants to choose the destination office they feel is safest.

### **4. Access to high-quality legal advice**

High quality legal advice is essential to ensuring that complexities within applications are dealt with effectively, and do not delay or undermine an application. Since the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, refugees applying for family reunion have been unable to access legal aid. As a consequence of this, they have either attempted applications on their own, relied on insights from friends, or saved money to the detriment of their health and wellbeing in order to be able to hire a solicitor.

Ultimately, because of the challenges refugees are exposed to in progressing their family reunion applications, legal advice is essential. However, legal advice must be of a high quality in order to ensure that applications are developed efficiently and effectively.

The current regulatory framework does not support or encourage specialisations such as the provision of specialist advice on refugee family reunion; instead, it forces knowledge and competence of a wide spectrum of immigration issues. This serves to prevent non-governmental organisations from addressing the need for very specialist advice in an affordable or sustainable manner.

## **Recommendation**

The optimum policy solution would be to bring all refugee family reunion in scope for legal aid. Failing this, the government should consider measures to at least partially fund legal advice for refugee family reunion cases. In addition, Refugee Action would support calls for an easing of regulatory restrictions to enable the provision of affordable specialist advice in the not-for-profit sector.

## **Summary**

Refugee Action believes that existing UK government policy, guidance, and practice relating to refugee family reunion must be improved. We recommend action in the following four key areas:

- **Widen the eligibility criteria**

The eligibility criteria for refugee family reunion should be expanded to recognise all relationships where there is dependency of applicants upon the sponsor - including children over 18; parents; grandparents; grandchildren; and siblings. In addition, child refugees should be permitted to reunite with their families.

- **Simplify evidence requirements**

The government should develop a single, comprehensive evidence list of what is normally required for refugee family reunion applications. For families unable to produce this evidence through no fault of their own, the government should allow alternative forms of evidence to be considered.

- **Offer additional means to submit evidence**

The government should ensure that applicants are not exposed to risk by offering alternative means or locations for submitting required information, where circumstances mean that using established routes is either dangerous or impossible.

- **Ensure provision of good quality legal advice**

Legal aid should be fully, or at least partially, reintroduced for refugee family reunion cases; and the greater provision of specialist, affordable advice should be permitted.