



Immigration and Nationality Directorate  
Asylum & Appeals Policy Directorate

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Our Ref  
Your Ref

Date 2 April 2003

To members of the Asylum Process  
Stakeholders Group, the UASC  
Stakeholders Group and local authorities  
in England, Wales and Scotland

Dear Colleague

## **ENDING OF EXCEPTIONAL LEAVE POLICY**

On 27<sup>th</sup> February I wrote to you setting out details of the proposed Humanitarian Protection and Discretionary Leave procedures. These new procedures came into force yesterday. There have been no major changes to the policy as set out in that letter and Asylum Policy Instructions are now available on the website setting out the new procedures in greater detail.

In the annex to my letter, I stated that Humanitarian Protection would be added to the Immigration Rules. Whilst it remains our intention to add Humanitarian Protection to the Rules at some time in the future, this has not yet happened. As a result, all grants of Humanitarian Protection and Discretionary Leave will be made, for the time being, under the powers contained in the 1971 Act which allow the Secretary of State to make a grant of leave for a reason not covered by the Immigration Rules. This does not in practice affect appeal rights, given that a Humanitarian Protection claim would also be a human rights claim.

It remains our intention that Discretionary Leave will remain outside the Rules.

As Humanitarian Protection and Discretionary Leave have different conditions attached to them (for example, the length of time a person has to wait before they become eligible to apply for indefinite leave) the grant letter issued to an applicant will make it clear under which policy the grant of leave is being made, and under which category of that policy.

### Transitional Cases

In my letter, I also stated that the transitional arrangements for those previously granted exceptional leave were still being worked up.

Those granted exceptional leave for a one off period of four years before 1<sup>st</sup> April 2003 will be



considered, on the expiry on their leave, in line with the policy in place on 31<sup>st</sup> March 2003. Those granted less than four years leave will be considered, when their leave expires, under the new Humanitarian Protection and Discretionary Leave system. The APIs include a section on transitional arrangements.

### Family Reunion

The introduction of Humanitarian Protection and Discretionary Leave has given us the opportunity to clarify the position with regard to eligibility for family reunion. Individuals will be eligible for family reunion once they have been granted indefinite leave to remain in the UK. In the case of a person granted Humanitarian Protection they will be eligible to apply for indefinite leave after three years, whilst a person on Discretionary Leave will normally be eligible to apply for indefinite leave after completing six years in this category. Individuals will be required to meet the usual maintenance and accommodation requirements.

Family reunion will not be available whilst someone has Humanitarian Protection or Discretionary Leave, subject to it being permitted in special cases on an individual basis, for example, for Article 8 ECHR reasons.

### Unaccompanied Asylum Seeking Children from Non-Suspensive Appeals countries

Since 1 April there have been 17 States on the list of countries from which claims will be certified as clearly unfounded unless the Secretary of State is satisfied they are not clearly unfounded. Unaccompanied children from those countries are subject to the provisions of the Act and their asylum claims will be certified as clearly unfounded where this is appropriate. We do not at the moment have sufficient information to satisfy ourselves that there are adequate reception arrangements available in those countries so that, if a UASC has no family to return to, that child would not be removed. We are currently exploring with the NSA countries their reception arrangements for UASCs, with a view to determining whether adequate arrangements exist or can be established. For the present, a UASC from an NSA country who does not qualify for leave on a more favourable basis will be granted 12 months' Discretionary Leave or, where this is a shorter period, Discretionary Leave to their 18<sup>th</sup> birthday.

### Operational Guidance Notes

Partly as a result of the introduction of Humanitarian Protection and Discretionary Leave we are rewriting our Operational Guidance Notes. The old versions of these, which referred to Exceptional Leave to Remain, have now been withdrawn from the website and replacements will be published over the next few weeks. The first Operational Guidance Notes taking account of Humanitarian Protection and Discretionary Leave will appear on the website in the next few days.

### Claims under the ECHR

We will apply the "Ullah " test in considering whether a person's removal from the United Kingdom would breach the United Kingdom's obligations under the ECHR. This is based on the Court of Appeal judgment of 16<sup>th</sup> December in the case of Ahsan Ullah and Thi Lien Do. An updated API on the ECHR, reflecting this and other relevant caselaw, will be published shortly.

### Non-asylum cases



Information on the non-asylum side is still being worked up and should be published shortly. In the meantime, enquiries on the non-asylum side should be addressed to INPD Section 5.

Yours sincerely,

Ailish King-Fisher