Asylum & Humanitarian Protection Webinar– 1 March 2021
FAQS & Useful Guidance

Recorded Webinar and Slides

The recording of the webinar and the slides can be viewed on our website which can be accessed using the following link:

https://dglegal.co.uk/webinars/asylum-humanitarian-protection/

FAQs

Q How long does a CG case remain valid. MN case 2012 has become outdated in view of APPG report July 2020 on persecution of Ahmadis and escalating incidents taken place after July 2020 to date

A They continue to apply until such a time as they are replaced with something else, but an FtT Judge may depart from a CG case if there are 'very strong grounds supported by cogent evidence for not so doing': see paragraph 47 of SG (Iraq) v SSHD [2012] EWCA Civ 940

Q How do you know which person, from which country needs asylum and therefore needs humanitarian protection. can it be anyone from any country?

A Any one is entitled to claim asylum in the UK if they believe that their life is in danger in their home country. Their claim will then be assessed by the Home Office on the basis of available country information and the applicable rules and regulations in place at that time

Q I have a 33 year old client with very limited mental capacity (she has downs syndrome and is from Mauritius). She was rescued from her parents' home where she was being neglected and treated very badly. She was brought to the United Kingdom by her half sister and she claimed asylum in the UK with the help of her half sister. How can we argue that a decision should be made on papers without the requirement of an interview, since the claimant have very limited capacity to understand the asylum claim and process.

A EM: Obviously I can't advise you about your particular client, but you may find the following things useful:

Home Office guidance: Asylum screening and routing
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947899/screening-and-routing-v6.0ext.pdf
this confirms that there may be circumstances in which reasonable adjustments are required in order to carry out the screening interview. It also notes that "special needs" may be required throughout the asylum process. This is no more than what is required of the HO under the Equality Act.

HO Guidance: Asylum interviews
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf
This states:
"If a GP's or consultant's letter is received confirming that the person is unable, for the foreseeable future, to cope with an interview, you should consider omitting the personal interview and take written evidence in accordance with paragraph 339NA of the Immigration Rules. You should discuss this with the legal representative if possible, and record on the case file the arrangements for the submission of written evidence within an agreed timescale. See also guidance on article 3 and article 8 ECHR medical claims and safeguarding hub referral process."

Para 339NA of the Immigration Rules states that the substantive interview can be omitted where "it is not reasonably practicable, in particular where the Secretary of State is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond their control ... Where the personal interview is omitted, the applicant and dependants shall be given a reasonable opportunity to submit further information.".

Obviously you will need to consider whether the best option is to request reasonable adjustments to enable your client to participate in the interview (something perhaps to explore with client and sister?) or to request that she not have one. You will need to make sure the HO gives you the "reasonable opportunity" to submit further information and that the information submitted covers everything, including legal submissions.

If you were to find yourselves in a position of needing to appeal to the FtT, note that where an applicant lacks capacity (see Mental Capacity Act 2005 for definition) to properly engage with proceedings it is possible for them to have a litigation friend - see JS (Litigation friend – Child) [2019] UKUT 00064 (IAC).

Q I have clients who were not sent back under the Dublin convention before the 31st Dec but they were served letters under the Dublin convention. What will happen to them will they have their asylum cases decided in the UK now? Or will the Dublin convention still apply to them ?

A It is difficult to be certain without knowing exact details but it seems likely that these cases will still be covered by Dublin. From what you say it sounds like the HO requested another state to take responsibility for the applications, that the other state agreed, and so a decision was made to return your clients - all before Dublin provisions (for the UK) came to an end. The only step that has not been taken is physical removal. It may well be the case that there is scope for JR - in the particular circumstances.

Q If a couple fled their country of origin due to civil war. They separately land in two different countries. The wife applies for asylum and she is granted. The husband applies and he is refused. But later learns that his wife is alive and living in another country and made a successful asylum application and granted asylum. Can the husband be allowed to join her wife?

A Yes. The husband would be entitled to apply for family reunion with his wife who has been recognised as a refugee.

Q I have a client who was previously granted asylum in Italy, however, his leave to remain has now expired. Can he still be returned to Italy post Brexit or can we request his case be decided substantively in the UK?

A I assume you are referring to leave to remain in the UK. The reality is that if he did make an application for asylum in the UK he would probably find it declared inadmissible - on the basis of it being safe to return to Italy. I don't know, however, what position the Italian authorities are taking on this - either on 'new' cases or on ones Italy has already decided.

Q I thought almost always HR claims accompanies asylum claim, so the inadmissibility will not apply in these cases?

A The new inadmissibility rules apply to asylum claims. If a person makes both an asylum claim and a HR claim they could find their asylum claim inadmissible but their HR claim considered. Where the HR claim is Article 2 and 3 (the kind of claim where we often talk about them standing and falling together) it will be interesting to see how this is handled - the HO will quite possibly argue there would be no breach of its HR obligations, on the basis that the person will be sent to a safe third country- i.e. it won't consider the real substance. I would also not be surprised to see more use of certification (clearly unfounded). Article 8 cases based on family/private life in UK bring a new dimension to a case - and may require the HO to apply itself more carefully where it is proposing return to safe 3rd country.

Q So only cases of the ecj could be referred as persuasive?

A ECTHR cases, where relevant still apply. ECJ cases in general will only be relevant where they are about EU law that the UK has retained; courts and tribunals are not bound by cases decided after 31/12/20 but "may have regard" to them. So if you want to rely on one refer to this bit of the Withdrawal Act and arm yourself with arguments as to why the case is one the judge should have regard to - perhaps it covers something not covered elsewhere? perhaps it relies on principles (public law, human rights) of wide application?

Q My question is- what criteria to is used to differentiate an asylum seeker, coming from a country where there is a civil was- but only this war is coming from one region of the country. when this asylum seeker applies for asylum, they normally mention a name of the country but not the region. that mean a person coming from the same country but not from the region affected can apply for asylum. so how do you different the two?

A The definition of a refugee is in article 1 of the 1951 Convention: someone who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

What this means is that where a person can secure protection in another part of their country they can return there.

You might notice that this definition does not always cover people fleeing civil war - they might not be in fear of "persecution" for one of the listed reasons - they are often simply fleeing the

violence. Such people are more often afforded "humanitarian protection", rather then refugee status. The same principle regarding other parts of their country applies though. The UK (and other countries) can lawfully return someone to a safe part of their country. The legal term for this is "internal relocation" and there is a lot of case law that assists tribunals in deciding when "internal relocation" is possible.