

How to support a child with UASC leave

This fact sheet provides information on the type of leave granted to unaccompanied children who are not granted refugee status or humanitarian protection but who the Home Office decides cannot be returned to their country of origin.

If you have any questions about this issue relating to a refugee or migrant child, young person or family, you can call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

What is UASC leave?

On 6 April 2013, new Immigration Rules came into force which incorporated the Home Office policy of granting leave (then called 'discretionary leave') to unaccompanied asylum-seeking children into the Immigration Rules. The relevant provisions are now contained in Immigration Rules 352ZC to 352ZF. [1] Under the Rules, a child who is under the age of 17 ½ and who has applied for asylum but been refused refugee status and humanitarian protection will be granted a form of limited leave if there are no adequate reception arrangements in the country to which they would be returned. This kind of leave is called UASC leave, despite the fact that the child is no longer an unaccompanied asylum-seeking child (UASC) because their asylum claim has been refused.

In order to qualify for this form of leave, the unaccompanied minor must also not be excluded from refugee status or humanitarian protection. This would be the case if, for example, they had dual nationality or had committed war crimes.

There must also be no reasonable grounds for regarding the child as a danger to the security of the UK and he or she must not have been convicted by a final judgment of a particularly serious crime. Finally, the child must not be the subject of a deportation order or a decision to make a deportation order.

If the requirements are met, limited leave is granted for a period of 30 months or until the child turns 17 ½ years old, whichever is shorter.

Who is granted this type of leave?

Unaccompanied children who are refused asylum (refugee status) or humanitarian protection in the UK may be granted limited leave to remain by the Home Office if they meet the criteria noted above and are an unaccompanied asylum-seeking child. The Home Office defines an unaccompanied asylum-seeking child as a person who is:

- Under 18 years of age when the asylum application is submitted;
- Applying for asylum in their own right; and
- Separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

It is very important to recognise that a grant of limited leave occurs after a refusal of the child's claim for asylum or humanitarian protection. The child will normally receive a right of appeal against a refusal and they may be able to pursue that appeal, arguing that they are entitled to refugee status or humanitarian protection.

Asylum and humanitarian protection are both more secure types of leave than UASC leave. Furthermore, once a child turns 18, the reasons for granting UASC leave no longer apply and it will be very difficult to argue for further leave to remain. Therefore it is important that a young person receives full legal advice about appealing their asylum or humanitarian protection claim if it is refused and they are granted UASC leave.

What if a child is over 17 ½ years when the Home Office makes a decision on their asylum claim?

A child who receives a decision on their claim for asylum when they are over 17.5 years old but before they turn 18 is treated by the Home Office as a child for the purposes of determining their asylum claim. However, if the child is refused asylum or humanitarian protection they will not be granted

UASC leave if they are between 17.5 and 18 years of age. If they are refused asylum or humanitarian protection they will normally get a right of appeal against that decision.

What happens if a child turns 18 before the Home Office make a decision on their asylum claim?

If a child applies for asylum when they are under 18 the Home Office must treat them as a child. However, once the child turns 18, child-specific policies and procedures no longer apply. For example, if the child claimed asylum and had not been substantively interviewed by the time they turned 18, they would not receive child-specific protections at their interview unless their solicitor made representations as to why this should be provided.

Further, if the Home Office makes a decision on the asylum claim when the child has turned 18 and the asylum and humanitarian protection claim is refused, the Home Office will not grant the child UASC leave. The Home Office will also make a decision on risk on return on the basis that the young person was returning as an adult, rather than as a child, to their country of origin.

However, the Home Office should still consider the elements of an asylum claim on the basis that any exploitation or trauma that occurred was experienced by a child. This must be taken into account alongside other factors such as culture and levels of education when assessing credibility and determining an asylum claim.

The Home Office sometimes takes a long time to make a decision on someone's asylum claim. In a child's case there should not be a long delay. A delay can seriously prejudice a child's case because it may preclude them from being treated as a child when their claim is decided and from being granted UASC leave. If there is a delay in the Home Office making a decision, the child's solicitor may chase the Home Office to try to get the decision made while they are still a child.

The problem of children 'ageing out' of child-specific policies and procedures is evidenced in Home Office statistics. In 2014, for example, initial decisions were

made by the Home Office on 1,269 asylum claims from children and in 95 of these cases the child had turned 18 when the decision was made. The grant rate is much lower for those whose claims are decided after they have turned 18: just 8.4% of the 95 cases resulted in a grant of asylum, compared to 42.3% of cases where the child was 17 or under. **[2]**

Can UASC leave be extended?

It is very important that children whose UASC leave is soon due to expire apply for further leave before their current leave expires. For those nearing the age of 17 ½ this would not be an application for further UASC leave (as they would soon be an adult) but an application for an extension of leave to remain in the UK as a person who was refused asylum but given another type of permission to stay in the UK. Please note that such an application should be made within 28 days of the end of their leave period.

The application must be made on the correct form and the correct fee must be paid. As long as an in-time, valid application is made the conditions of the individual's leave remain the same while the application is pending, including throughout any appeals. **[3]** This means that they will still be eligible for the same support, to work etc.

Legal representation for the further leave to remain application should be sought 3-6 months before the UASC leave expires. This will allow a solicitor or immigration adviser to prepare the application for further leave properly and submit the application in time.

The Home Office provides guidance and details of its policy on limited leave to remain and how it considers further leave to remain applications. **[4]**

A young person will need to have accrued ten years leave to remain before being eligible for indefinite leave to remain ('settled status'). It is therefore unlikely that a child granted UASC leave will become eligible for settlement without varying their status at some point.

Those initially granted discretionary leave before 9 July 2012

The information in relation to UASC leave is only relevant if the child or young person was first granted leave after 9 July 2012. If the child received their initial grant of leave prior to 9 July 2012, they would have been granted 'discretionary leave to remain' for three years. The reason that this is important is because they will be on a different route to settlement. They will be on a six year route to settlement under the Home Office's 'Discretionary Leave' policy. [5] This includes leave accrued while awaiting a decision or appealing a subsequent negative decision.

Applications for further leave to remain

Applications for further leave to remain for unaccompanied minors or former unaccompanied asylum seeking minors who have been granted discretionary leave/UASC leave following an asylum refusal should make their application on form FLR(DL). [6]

It is important that an individual uses the most up to date form and you can check for the most recent form on the government website. Previously, making an application in this situation carried no fee. However, a fee was introduced in April 2015. The fees normally change on a yearly basis and these should be checked on the government website. [7] Depending on the circumstances, an individual may be able to apply for a fee waiver or may be exempt from paying a fee. A looked after and accommodated child is exempt from paying a fee.

Young people approaching the age of 17 ½ who are applying for leave might do so on the basis that they still need protection in the UK and/or on the grounds that due to the length of time spent in the UK and the life they have built here that they should be allowed to stay on Article 8 grounds. For more information see our fact sheet on Article 8 – the right to respect for private and family life at:

www.coramchildrenslegalcentre.com/resources. It should be noted that legal advice for making and submitting human rights arguments under FLR(DL)

applications is not covered by legal aid. Although the Home Office will normally expect any protection arguments to be made in a fresh claim, it is best that any protection arguments are outlined in any representations with the FLR(DL), along with a fresh claim for asylum being made separately. Legal aid is available for fresh claims and protection claims. If the child or young person is looked after and accommodated by the local authority, they may have responsibility for paying for the legal advice. Please see our fact sheet on obtaining legal representation for further information:

www.coramchildrenslegalcentre.com/resources.

How can you help?

If you are working with a child or young person who is making a further leave to remain application, their solicitor or immigration adviser may ask you to provide a letter or report in support of their application. This information will be important to show the private life that the child or young person has developed during their time in the UK, particularly if you are their social worker, key worker, teacher or accommodation provider. Medical information and education achievements will also be important to any private life application. Information you may be able to provide includes:

- How long you have known the child or young person
- How you have been involved in their life
- Any significant achievements or difficulties they have overcome
- Any comments on the person's character.

Once an application has been submitted, it can take at least 4-6 months for a decision to be made. Any negative decision will normally come with a right of appeal. If this occurs, the child or young person should obtain further advice as soon as possible.

NOTES

[1] Home Office, Immigration Rules 352ZC-352ZC <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>

- [2] Home Office statistics, Asylum: Volume 3
<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/list-of-tables#asylum>
- [3] Section 3C, Immigration Act 1971
<http://www.legislation.gov.uk/ukpga/1971/77/section/3C>
- [4] Home Office, Asylum Policy Instruction: Discretionary Leave
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460712/Discretionary_Leave_2_v7_0.pdf
- [5] Home Office, Asylum Policy Instruction: Discretionary Leave
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460712/Discretionary_Leave_2_v7_0.pdf
- [6] Gov.uk website, FLR(DL) Application
<https://www.gov.uk/government/publications/application-to-extend-stay-or-settle-in-the-uk-form-dl>
- [7] Gov.uk website, Fees information webpage
<https://www.gov.uk/government/publications/visa-regulations-revised-table>

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.