

Independent Chief Inspector of Borders and Immigration call for evidence: family reunion

Coram Children's Legal Centre response – June 2019

Coram Children's Legal Centre (CCLC), part of the Coram group of charities, is an independent charity working in the UK and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. The Migrant Children's Project at CCLC provides specialist advice and legal representation to migrant and refugee children and young people on a wider variety of issues related to immigration, asylum, care and services. CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the European Court of Human Rights, the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children's rights and best interests.

The Migrant Children's Project at CCLC has worked for over ten years to ensure that young refugees and migrants in the UK receive the support and protection they need. Our main issues of concern relating to family reunion in the UK are: (1) the lack of routes for children and young people to be reunited with family members in the UK, (2) application issues for parents making applications under the rules, and (3) the impact of legal aid on the ability of children and young people to access advice and representation on family reunion.

(1) Home Office rules, policy and guidance – fit for purpose?

While there are routes for adults to reunite with children, the UK has some of the most restrictive rules around family reunion for refugee children in the EU. The UK has opted-out of the Family Reunification Directive, which allows for wide discretion for EU member states and provides the right to family reunification for refugee children of the child's first-degree relatives in the direct ascending line. By not opting-in, and imposing harsh rules for unaccompanied minors in the UK seeking to reunite with family members, the UK has created a legal framework for family reunion that is contrary to children's best interests.

It is very difficult for a UK-based refugee child or young person to be reunited with family members. If a family member is in a European country, they may be able to be reunited under the Dublin process. However, if their parents, siblings or family members remain in the country of origin or another non-EU country, including refugee camps outside the EU, the child has an extremely limited chance of bringing their family into the UK.

The current rules do not recognise the refugee child's right to be reunited with their parents, and regard it as a matter of discretion to be exercised only when there are compelling circumstances.¹
It is thus difficult to see how the UK complies with its obligations under the United Nations

¹ Pages 18-19, Home Office, Family reunion: for refugees and those with humanitarian protection, March 2019

<https://www.gov.uk/government/publications/family-reunion-instruction>

Pages 65-82, Home Office, Appendix FM 1.0a: Family Life (as a Partner or Parent): 5 year routes and exceptional circumstances for 10 year routes, <https://www.gov.uk/government/publications/chapter-8-appendix-fm-family-members>

Convention on the Rights of the Child (UNCRC) and especially Article 8 of the European Convention on Human Rights (right to family life). The Upper Tribunal has recognised that a refusal to permit family members of a child who has been granted asylum to enter or remain in the UK can constitute a disproportionate breach of Article 8.²

It should also be noted that such policies and rules are arguably in breach of the Home Office's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 – to ensure that a child's welfare is safeguarded while in the UK, including decisions taken about them or that could impact their welfare.

A common argument against allowing refugee family reunion for children recognised as refugees in the UK is the theory that this would encourage families to send their children to the UK on precarious journeys, with high risk of being trafficked or exploited. It is important to note that there is no specific evidence in support of this theory, and that many child refugees in EU countries have this right to reunion without this generating any concrete evidence in support of this theory. This lack of evidence has been recognised by the Upper Tribunal.³

(2) Application process and decisions

Family reunion applications are complex, whether it is an inside the rules application made by a parent in the UK or an outside of the rules application made by a child. Attempts to introduce simpler and more relaxed rules around family reunion have so far been unsuccessful.⁴

Crucially, refugee family reunion was removed from scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO').⁵ The British Red Cross have examined issues surrounding family reunion in great detail and found that the majority of sponsors required legal assistance to make family reunion applications.⁶ Sponsors are therefore in great difficulty – they are unable to make applications themselves and are unlikely to have the funds to pay for a legal representative to assist them. It is possible to apply for Exceptional Case Funding (ECF) to be awarded legal aid for such an application, but this can also be complicated and creates an additional barrier to making an application.⁷

² *AT and another (Article 8 ECHR – Child Refugee – Family Reunification) Eritrea* [2016] UKUT 00227 (IAC) <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UK%20AT%20and%20others%2000227%20IAC%20Feb%202016.pdf>

³ Paragraph 41, *AT and another*, at 2 above

⁴ <https://www.amnesty.org.uk/press-releases/mps-challenge-government-unfair-rules-refugee-families>

⁵ <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

⁶ British Red Cross, Not so straightforward: the need for qualified legal support in refugee family reunion, <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/improving-the-lives-of-refugees/refugee-family-reunion>

⁷ The Ministry of Justice's 2019 legal aid review, *Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)*, found that: 'ECF is not working: this was intended to be the safety net to ensure that legal aid was available when an individual's human rights were breached (or at risk of being breached), should legal aid be refused. There were lots of criticisms over how the scheme operates, practically making it difficult for people to access' (p. 275)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf

One recent positive change is the proposed re-introduction of legal aid for children in care in relation to 'immigration matters'. This was announced in July 2018.⁸ Although the exact scope of 'immigration matters' is yet to be determined, CCLC anticipates that it should include family reunion applications. The re-introduction should occur this year and is good news for children in care but does not fully resolve the wider issue of lack of legal aid for family reunion.

Additionally, CCLC strongly believes that the principle of the best interests of the child being the primary concern in decisions affecting them must be at the heart of any law, policy and practice.

In the UK, legislation does highlight the best interests principle in immigration and asylum law, including family reunion applications, but this is not often reflected in practice. In June 2013 the Joint Committee on Human Rights (JCHR) in its report *Human Rights of unaccompanied migrant children and young people in the UK* urged the Government to "ensure that all those working with unaccompanied migrant children are given clear guidance about the importance of these best interests" and to "evaluate whether more formal processes are required to properly determine best interests in cases involving unaccompanied migrant children."⁹

There must be greater emphasis placed on ensuring that the best interests principle is something to which government departments pay lip-service, but instead is dealt with substantively in decisions relating to refugee family reunion, with clear reference to an assessment being carried out as to a child's best interests, and what, if anything, justified the departure from that position.

Many of the more practical issues relating to the application process itself are highlighted in the British Red Cross report referred to above.¹⁰ In addition, CCLC solicitors have experience in making family reunion applications, both inside of the rules and (the majority) on behalf of refugee children making outside of the rules applications.

From our casework experience, some issues relating to the application process and decision-making are as follows:

- The risks involved for children, siblings and parents who are in refugee camps not run by UNHCR – dangerous journeys and risk of exploitation, trafficking and debt bondage
- The difficulties of sponsor's family members providing evidence, obtaining DNA evidence, getting medical tests (like TB) and attending embassies
- Even where legal aid has been secured through ECF, it is still very difficult to obtain a legal aid representative to take on the work as the cases are complex, labour-intensive and will be carried out at fixed fee rate

⁸ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-12/HCWS853/>

⁹ <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>

¹⁰ British Red Cross, Not so straightforward: the need for qualified legal support in refugee family reunion, <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/improving-the-lives-of-refugees/refugee-family-reunion>

- Decision-making on child refugee family reunion applications is poor: applications are commonly refused and best interests determinations are often inadequate. Appealing the decision is very often required and this causes further delay
- The impact of delay and uncertainty is significantly detrimental to a child’s welfare.

Significant barriers exist for sponsors, and in particular child sponsors, seeking and making family reunion applications, for all the reasons noted above.

(3) Family reunion and integration

Child refugees often face barriers to integration, particularly due to separation from their family, isolation and access to correct information and services. The UNHCR states that, “Family reunification plays a significant role in meeting the long-term needs of resettled refugees...The family is often the strongest and most effective emotional, social and economic support network for a refugee making the difficult adjustment to a new culture and social framework.”¹¹

In *AT and another*, the Upper Tribunal recognised the benefits of families being reunited:

“On one side of the scales there is a strong family unit whose members are clearly united and fortified by strong bonds of love, affection and interdependency. They long to be reunited and have gone to substantial lengths and have made considerable sacrifices to achieve this goal. For as long as separation continues, this will be a disfunctioning, debilitated and under achieving family. The main feature of this under achievement will be the family’s inability to attain its potential as one of the key elements of modern societies throughout the world. The under performance of family members and family units, in this respect, does not further any identifiable public interest. On the contrary it is antithetical to strong and stable societies.”¹²

CCLC are firmly of the view that extending the family reunion rights to refugee children and young people would significantly reduce the risks to which they are exposed in the UK, and is crucial to ensuring that durable solutions in the best interests of children can be found for vulnerable unaccompanied refugee and asylum-seeking children in state care. Ensuring the availability and affordability of legal representation is crucial. Family reunification promotes, rather than undermines, the public interest and benefits society as a whole.

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¹¹ UNHCR, Family Reunification in the context of resettlement and integration, 2001
<https://www.unhcr.org/3b30baa04.pdf>

¹² Paragraphs 35-36, *AT and another*, at 2 above