

UASC leave

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

What is UASC leave?

The Home Office defines an unaccompanied asylum-seeking child ('UASC') 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.

On 6 April 2013, the Home Office policy of granting leave (then called 'discretionary leave') to unaccompanied asylum-seeking children was incorporated 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 17½ 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.

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 17½ 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.

A grant of UASC leave is a refusal of refugee status and humanitarian protection. The child will normally receive a right of appeal against a refusal and they will often be able to pursue that appeal, arguing that they are entitled to refugee status or humanitarian protection.

It is important to note that the decision should consider the risk of return of the child at the time of the decision. This means that if someone is refused asylum on the basis they will be returned as an adult (i.e. after their UASC leave ends), this is the incorrect. The same principle applies for an asylum appeal.

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 the young person will need good legal advice about appealing their asylum or humanitarian protection claim if it is refused and they are granted UASC leave.

Some children may be refused asylum and humanitarian protection but granted 'Dubs/section 67' leave or 'Calais' leave. This is not the same as UASC leave but is still a refusal of asylum and humanitarian protection. For further information on these types of leave, see our fact sheet on children's asylum claims:

www.childrenslegalcentre.com/resources.

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.

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.

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. [2] 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.

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 UASC leave following an asylum refusal should normally make their application online.

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. [3] 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 but a care leaver is not.

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 within the further leave to remain application, 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.childrenslegalcentre.com/resources.

It has been announced that legal aid is to be re-introduced for 'immigration matters' for children in care. This is yet to occur and the scope of legal aid is still to be determined. Please note that exceptional case funding ('ECF') can be applied for and children in care are currently prioritised for ECF. See our fact sheet on legal aid for further information:
www.childrenslegalcentre.com/resources.

NOTES

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

[2] Section 3C, Immigration Act 1971
<http://www.legislation.gov.uk/ukpga/1971/77/section/3C>

[3] Gov.uk website, Visa fees
<https://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-29-march-2019>

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
– mcpadvice@coramclc.org.uk.