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Policy briefing



Refugee Family Reunion and Unaccompanied Minors

This paper seeks to outline the problematic situation of separated children who have been granted refugee or humanitarian protection status in the UK and want to be reunited with their parents. The proposed amendments to the rules on family reunion for 'other dependants' - the only possible route through which separated children can make use of their family reunion rights – are of no practical use to this particularly vulnerable category. As a consequence, refugee children will continue to live in uncertainty and will have to rely on the discretion of UKBA and the existence of 'compelling and compassionate circumstances' in order to be reunited with their parents.

The paper presents a number of legal and practical considerations which suggest that family reunion for separated refugee children should no longer be granted as a concession outside the immigration rules but should be enshrined in law. Such change will not only allow the UK to meet its obligations under the UN Convention on the rights of the Child, the European Convention on Human Rights and Section 55 of the Borders, Citizenship and Immigration Act 2009 but will also bring UK's policy in line with the rest of Europe. The fact that UK policy on family reunion for separated children is the most restrictive one in the EU makes UKBA's commitment to safeguarding children and acting in the best interest of the child seem questionable.

1. Legal Considerations

The current policy does not recognise the refugee child's right to be reunited with their parents but regards it as a matter of discretion to be exercised only when there are 'compelling, compassionate circumstances'. It is difficult to see how such permission, granted in exceptional circumstances amounts to compliance with the UK's obligations under UN CRC and especially Article 8 (right to preserve family relations), Article 9 (right not to be separated from parents against the child's will) and Article 10 which obliges states to deal with applications for family reunification in a positive, expeditious and humane manner.

Moreover, the differential treatment of adult refugees who are entitled to family reunion under the immigration rules and of child refugees who are only entitled to family reunion under circumstances outside the immigration rules amounts to discrimination and contradicts both UN CRC and the Equality Act 2010 which explicitly prohibit it.

The treatment of children who have been granted refugee or humanitarian protection status is also problematic in light of UK's obligations under Article 8 of European Convention on Human Rights. While the right to family life is a qualified right, it is certainly not one that can only be enjoyed on discretionary basis under compelling and compassionate circumstances.

Finally, under Section 55 of the Borders, Citizenship and Immigration Act 2009, UKBA has a duty to safeguard and promote the welfare of the children who are in the UK. The current restrictions on

family reunion for refugee children may lead to exposing these vulnerable individuals to an even greater risk (see below): something which cannot be reconciled with the duty under Section 55.

In a number of recent cases (ZH (Tanzania) v SSHD [2011] UKSC 4; DS (Afghanistan) v SSHD[2011] Civ 305), courts have clarified the application of Section 55 duty to both the care that children receive while in the UK and to any decisions taken in relation to them. They have stated that in any decision relating to a child, 'the best interest of the child must be a primary consideration', i.e. it is a factor which must be ranked higher than any other. DS (Afghanistan) clarified further that this statement of principle is not limited to decisions relating to return. UKBA has admitted that existing discretion in the area of family reunion for other dependant relatives, is "currently confusing and inconsistently applied" (Rob Jones letter to NASF subgroup, 27 May 2011) and has proposed to introduce a new route under the immigration rules. It is difficult to see why the decision on family reunion for parents of unaccompanied refugee children should nevertheless continue to be subject to such discretion outside the rules. There is a clear risk that inconsistent decisions will not only impact negatively on the child's well-being but will also lead to an increase in the number of appeals.

While courts have acknowledged that, under certain circumstances, the best interest principle could be outweighed by other considerations, we do not believe that the current discretionary approach provides sufficient guarantees that the assessment will be carried out accurately and consistently in all cases. Enshrining the right to family reunion for unaccompanied refugees in the immigration rules and improving the cooperation between the relevant UKBA department in the UK and the ECO who have the necessary knowledge of the local context and resources to evaluate the family's situation, would ensure that the best interest of the child is properly assessed.

2. Practical Considerations

2.1 Restrictive rules for family reunion and applications by unaccompanied minors

One of the justifications for the current restrictions on family reunion rights for refugee children has been the argument that relaxing them would lead to an influx of asylum-seeking children. Statistical evidence, however, suggests that this argument is untenable.

Currently, the UK has the most restrictive rules for family reunion for refugee children in the EU. Most EU countries, except for the UK, Ireland and Denmark are obliged under the Council Directive 2003/86/EC on the right to family reunification to authorise the entry and residence for the purposes of family reunification of the refugee child's first-degree relatives in the direct ascending line. They may also allow the entry and residence for the purposes of family reunification of their legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced. The latter is an optional provision which has been implemented by around a third of all EU countries.

Even though it has not opted into the Directive, Ireland entitles refugee children to reunification with their parents under the Refugee Act 1996. In Denmark family reunification with unaccompanied minors may be permitted on a discretionary basis according to Section 9 of the Aliens Act. Even though Danish policy may seem similar to the UK position, it is still more favourable as the possibility for family reunification is enshrined in law and is not a matter of discretion outside the rules.

If the argument that having a humane family reunification policy leads to more asylum applications by unaccompanied minors were correct, we would expect countries with such policies to attract the highest number of asylum applications. In fact, the opposite is true: the number of asylum applications in such countries in 2008 and 2009 is lower than in the UK which suggests that there

is no correlation between the provisions for family reunion for refugee children and applications for asylum.

Number of asylum applications by unaccompanied minors in selected EU countries:

	2008	2009	2010
Germany	765	1305	1948
Netherlands	725	1040	N/A
Sweden	1510	2250	2393
Austria	695	1040	687
Hungary	175	270	150
Finland	705	505	329
UK	4285	3175	1595

Source: eurostat, Separated Children in Europe Programme, UKBA

The absence of correlation is not surprising. Numerous studies have shown that asylum seekers have very little, if any, knowledge of national asylum policy provisions and are primarily guided by the need to find safety. A recent study by UNICEF dealing with separated children from Afghanistan coming to the UK and Norway demonstrated that at least half of them had no destination in mind when they left their country of origin. Another report on the experiences of unaccompanied children arriving in the UK conducted by the Office of the Children's Commissioner demonstrated that the countries from which most of the young people came are subject to armed conflicts, ethnic divisions or human rights abuses.

While in 2008 and 2009 the UK was receiving a higher number of asylum applications compared to other EU countries, the situation in 2010 has changed markedly towards a more equitable distribution of such claims across the EU, accompanied by a sharp decline in numbers in some countries, especially the UK. UKBA has insisted that the decline in the number of applications for asylum justifies reductions in the funding allocated to service providers because the funding levels were set when the number of applications for asylum was much higher. The same argument, however, could be made in relation to some asylum policy provisions which were introduced in order to deal with the large increase in the number of applications in 2000. These policies, including provisions on family reunion for child refugees, should also be revised in order to reflect the current situation.

2.2 The risks of seeking protection: human trafficking

Another argument against changing the UK's policy on family reunion for refugee children has been the concern that it would provide an incentive for parents to put their children at risk of human trafficking by sending them to the UK in the hope of joining them after they have received protection. To our knowledge, UKBA has never presented evidence to support this claim. The insistence on the existence of a relationship between human trafficking and refugee protection is even more surprising in light of Damian Green's recent claim that the two issues must be kept separate. In response to the Scottish Parliament's Equal Opportunities Committee's report on Migration and Trafficking (2010), the Minister observed that the trafficking victim identification process and the asylum process are to be considered independently of each other according to the Council of Europe Trafficking Convention and the Geneva Refugee Convention respectively. Separated children who have been granted refugee status have obviously been recognised to be in need of protection. They may or may not also have become victims of trafficking while fleeing to seek protection but this certainly does not mean that they should have stayed in their country of origin and faced persecution.

Moreover, it is not reasonable to assume that parents would send one of their children to seek protection with the aim that the rest of the family could join them later. If families were driven by such ulterior motives – contrary to available evidence – they would send an adult member of the family instead for two reasons. First, while the recognition rate for adults at first instance is slightly higher than that for separated children, when the greater access to appeals for adults is taken into account, it becomes clear that an adult has a higher chance of receiving protection than a child. Second, an adult can be reunited with their entire family (spouse and minor children) under family reunification rules while a separated refugee child would only be allowed to be reunited with their parents but not with their siblings.

2.3 Integration

Compared to adults, refugee children receive very little help with the integration process. For example, there has been no targeted UKBA provision for integration support for this group. Separated children have to rely on a social worker who deals with a number of children with different needs and is not necessarily familiar with the specific needs of refugee children.

Many of the barriers to integration that refugees face are magnified for separated child refugees. Due to separation from their family, they may be isolated and often experience particular difficulties in accessing mainstream services such as education, accommodation and health. They are more likely to suffer from mental health problems, social exclusion, bullying, discrimination and racism. It is the lack of legal guardianship or parental care which puts children at risk of exploitation and deprives them of the possibility to lead a normal life despite being granted protection.

We contend extending the family reunion rights to refugee children would significantly reduce the risks to which they are exposed in the UK. It would result in a negligible increase in the number of people coming to the UK. In 2010 the number of applications by unaccompanied minors in the UK decreased markedly to 1595. Only 265 children were granted refugee status and further 10 were given humanitarian protection.

The data on the number of family reunion applications lodged by refugee children is incomplete but the experience of a number of countries shows that it is not very high. For example, between 2003 and 2009, Finland received a total of 229 applications for family reunification by refugee children. In 2008, when a record number of unaccompanied minors sought asylum, the number of applications was 46. In general, around 80 per cent of the applications were successful. One reason for the low number of such applications is that family reunion rights extend to the parents but not necessarily to the siblings of the refugee child. Thus, an overwhelming majority of parents prefer to stay in their country of origin. Therefore, we do not expect that enshrining the refugee children's right to family reunion in law would lead to a significant increase in the number of people arriving in the UK but we do believe that the benefits to refugee children would be significant.

2.4 A fair asylum policy

Even though UKBA has always placed an emphasis on delivering 'balanced' and 'fair' asylum policy, recent developments show that the balance has tilted heavily on one side, namely that of return while the support of those who have been granted protection has declined. UKBA has just announced the new family returns process which "aims to return those with no right to remain in the UK with dignity, ensuring the welfare of children at all times". While the concern about the welfare of children who are being returned is welcome, it is unclear why it does not extend also to those children who have been granted protection. If the claim about developing a fair, efficient and legitimate asylum policy is to be taken seriously, then the unfair treatment of separated refugee children with regard to family reunion must come to an end.