

NOT SO STRAIGHTFORWARD:

the need for qualified legal
support in refugee family reunion

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Executive Summary

Before the Legal Aid, Sentencing and Punishment of Offenders 2012 Act, refugees seeking family reunion were eligible for legal aid. However, since its implementation, refugees wishing to reunite with their families must apply without legal help, or must pay to hire legal advisers.

While refugee family reunion has been described as a straightforward immigration matter, there is clear evidence to demonstrate that this is not the case. This report looks at the cases of refugees who accessed time-limited British Red Cross services to support their applications for family reunion. It examines their experiences, from the documentation gathering stage through to the submission of their application. By necessity, the report does not explore issues arising after initial submission, although we know that appeals and reapplication procedures can often be difficult.

Far from being straightforward, many refugee family reunion cases are affected by a range of 'complexities'. Complexities are events that disrupt or undermine an application and that require qualified legal support to mitigate or overcome. They arise in different ways and at different stages of the application process, and require the flexibility, expertise and experience of legal advisers to deal with them.

This report also highlights the humanitarian and protection needs of family members abroad who wish to come to the UK through refugee family reunion. Family members can be exposed to security risks, and this can create further challenges in developing and submitting applications. In some cases the application process itself, in particular travelling through areas of armed conflict or violence in order to submit documentation, can put family members at risk.

This report concludes that refugee family reunion is not a straightforward immigration matter, and that it should be more closely associated with asylum policy than immigration. It further concludes that only qualified legal advisers can deal with and resolve the significant and diverse complexities experienced throughout the refugee family reunion process.

KEY FINDINGS

Of the 91 cases of refugee family reunion in the study:

- > The majority of sponsors were adult men, while 95 per cent of applicants were women and children. Among applicants, there were more children than women.

- > Even sponsors with some English language skills required translation support during the application process. 62 per cent of sponsors required English language support with their refugee family reunion applications.
- > 10 per cent of applicants in third countries did not have legal status in that country.
- > 51 per cent of applicants were exposed to security risks. 96 per cent of applicants exposed to security risks were women and children.
- > 74 per cent (67) of all cases were missing at least one form of required documentation. This figure is further broken down into the kind of documents that were missing:
 - Of the 67 cases with child applicants, 46 per cent (31) did not have birth certificates.
 - Of the 61 cases with a spousal applicant, 34 per cent (21) did not have a marriage certificate.
- > 33 per cent (30) of sponsors relied on witness statements and statutory declarations, produced by legal advisers, to support their applications.
- > Cases where applicants were stepchildren, adopted, de facto adopted or siblings presented both procedural and legal challenges. These accounted for 23 per cent (21) of all cases, and affected 25 per cent of all child applicants.
- > Of the 67 cases involving children, 36 per cent (24) were made on behalf of children in uncertain living arrangements, i.e. children without a permanent carer or parent, who do not have social, economic or physical security. This represents 19 per cent of all applicants and 29 per cent of all child applicants.
- > 25 per cent (23) of all cases featured an interview or documentation discrepancy, each of which required a different response from legal advisers and caseworkers.
- > Applicants who did not have a British embassy available in their country of residence, and who had to travel internationally to gain such access, faced potential financial and security risks. In 20 per cent (18) of cases, applicants did not have access to an embassy within their country of residence. This affected 20 per cent (44) of applicants, 43 of whom were women and children.

- > Administrative complexities arose at the point of submitting, or shortly after submitting, an application. Of the 51 cases in the submission stage, 35 per cent (18) involved complexities with a British embassy or entry clearance officers – usually either the applicants were refused access to the British embassy or they had problems with online tools.

RECOMMENDATIONS

Recommendations to the Ministry of Justice

Many of the processes involved in refugee family reunion applications depend on legal expertise, experience and professional networks, and are rarely 'straightforward'. The Ministry of Justice should therefore:

- > Seek a mechanism for legal advice to be made available through public funding to legal providers, specifically for refugees seeking family reunion. Any further appeal work should also be funded publicly.
- > Work with the British Red Cross and the sector to develop a better understanding of data in the area of family reunification to inform understanding of the current application process and its difficulties for many families. This would include number of applications, family members, refusals, reasons for refusals and reasons for initial failure in cases of successful appeal.

Recommendations to the Home Office

The Home Office needs to design a purpose-built application form to improve the family reunification process. As such the Home Office should:

- > Simplify the application form and provide consistent, easily accessible guidance.
- > Be specific and coherent about documentation and eligibility requirements.
- > Consider and address documentation challenges relating to specific countries of origin.
- > Not require refugees who have clearly mentioned family members at their asylum claim to provide a high threshold of evidence of 'subsisting relationship' or dependence.

- > Be flexible and responsive in guidance for atypical cases including those involving stepchildren, siblings, de facto adoption and adoption.
- > Ensure that refugee family reunion applications are treated sensitively and effectively by British embassy staff.
- > Make the submission process safer for applicants.
- > Give more opportunity to applicants to submit further evidence for their application if the supporting documentation is not sufficient to grant family reunion visas.

Recommendations to the Foreign and Commonwealth Office and across government.

There are critical components involved overseas to make a successful family reunion application. As such the FCO and government more widely should:

- > Acknowledge the diverse protection and humanitarian needs of refugees' families. Consider that the protection and humanitarian needs of refugees' families often relate to those experienced by refugees themselves and that refugee family reunion claims are often far-removed from generic immigration procedures, and are more akin to asylum claims.
- > Acknowledge commitments to protect women and children who may be vulnerable to violence or exploitation in situations of armed conflict.
- > Work to develop a better understanding of how families access British embassies and develop an action plan to ease the access of applicants to embassies.
- > Find innovative ways to make access to family reunion rights safer for refugee families, for example by setting up mobile biometrics clinics where needed or allowing dossier-based applications for particularly vulnerable families.
- > Consider as a priority applications from people fleeing a humanitarian crisis and where assistance and shelter in neighbouring countries fall short.
- > Work with the British Red Cross and the refugee sector to develop a better understanding of data in the area of family reunification so as to improve the safety of applicants. This would include analysis of cancellations or difficulties with appointments.



1 Introduction

The British Red Cross helps people in crisis, whoever and wherever they are. We help vulnerable people in the UK and abroad prepare for, withstand and recover from emergencies. Our refugee services help people deal with destitution, trace family members abroad and make applications for family reunion.

Before the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), refugees who wanted to reunite with their families were eligible for legal aid to support their applications. That is, they received guidance from legal advisers who were funded by government. This included the provision of advice on filling out the application form as well as in preparing application materials. However, it excluded filling out the application form on behalf of clients.

Following the implementation of LASPO, legal aid is no longer made available for refugee family reunion as a matter of course, and refugees have been left to fund their own applications. Sometimes they have done this by taking out high-risk loans, borrowing from community members and religious institutions, or by living sparingly to save enough money to hire a solicitor. British Red Cross research, published in 2013,

examined the consequences of the lack of legal aid funding on refugees (British Red Cross 2013).

The British Red Cross recognised the need for legal support for refugee family reunion. Funded by Comic Relief, it established three time-limited pilot projects in Leeds, London and Manchester. In each project, a caseworker (qualified to Office of the Immigration Services Commissioner (OISC) level one (see section 2.3.4)) worked alongside experienced legal advisers (solicitors and a senior immigration caseworker qualified at Legal Services Commission accreditation level two) on refugee family reunion cases. This research draws primarily on these pilot projects, as well as on the experiences of clients in the British Red Cross Glasgow office, as LASPO only applies in England and Wales. It aims to better understand the different elements of the refugee family reunion process, and to highlight when and how qualified legal advice and caseworker support are vital in advancing applications.

In particular, this research examines the 'complexities' experienced within cases. Complexities are events that disrupt or undermine an application and that require qualified legal support to mitigate or overcome. They arise

in different ways and at different stages of the application process, and must be explored further to fully understand the requirements for legal support.

1.1 Structure

This report focuses on the experiences of sponsors and applicants, from their first contact with British Red Cross caseworkers and legal advisers through to submitting their application for refugee family reunion. Due to the timing of the projects, this report does not include refusals, appeals and reapplications. This is significant because many complexities are known to arise after receiving a decision – in particular, a refusal.

Section 2, 'Policy background', provides a summary of international and domestic policy frameworks around refugee family reunion and commitments to protecting vulnerable groups, such as women and children. It also provides a short analysis of existing policy and guidance around legal service provision and eligibility criteria for refugee family reunion.

Section 3, 'Introducing sponsors and applicants: the human side of family reunion', introduces the reader to real experiences of refugees based in the UK (known as 'sponsors') and their family members abroad with whom they are seeking to reunite (known as 'applicants'). It documents their eligibility for legal aid and highlights the insecurities experienced by applicants.

Section 4, 'Documentation gathering stage', discusses difficulties in acquiring documentation for submitting applications and explains the nature of inherently complex cases.

Section 5, 'Submission stage', examines how refugees and their families formally submit applications to the Home Office, online or in person. This section highlights protection issues and administrative complexities.

Section 6, 'Control group – Birmingham', looks at how refugees make applications independently, demonstrates their understanding of the application process and provides some insight into how they cope with complexities without qualified legal advice.

Section 7, 'Conclusion', distils findings to inform policy recommendations.

1.2 Methodology

The research used qualitative and quantitative analysis of caseworkers' case notes as well as interviews with service users (refugees seeking family reunion), caseworkers and legal advisers.

Four caseworkers, situated in Leeds, London, Manchester and Glasgow, were the primary data gatherers. They submitted case notes, referral forms and other relevant documentation to a shared database. The researcher co-ordinated the data gathering and ran thorough checks on the data. Detailed discussion of cases with caseworkers was undertaken when necessary.

Data was organised into 'general' and 'complexity' data. The general data included demographic information on sponsors and applicants, as well as their financial and security status.

Complexities investigated included:

- > documentation to substantiate an application
- > communication between sponsor and applicant¹
- > relationship between sponsor and spouse, as well as sponsor and children¹
- > age of child applicants: 18 or above, or near 18
- > adopted, de facto adopted or stepchildren
- > embassy access for applicants
- > interview discrepancies
- > administrative complexities e.g. logistical issues around planning TB or DNA tests, or embassies refusing entry to applicants who have booked appointments
- > date and place of conception and birth of child¹
- > sponsor and applicant siblings.

Each of these complexities has been identified by the British Red Cross through its work on refugee family reunion.

Sampling relied on self-selection. Only British Red Cross service users who received support for refugee family reunion beginning in spring 2014 were included in the analysis. Data collection ended in September 2014. Service users were eligible for support if they met financial requirements associated with legal aid and had refugee family reunion cases that satisfied existing rules. Cases that did not fit the existing rules –

¹ These complexities were investigated and analysed. However, because the former two factors tend to emerge as complexities upon an application's decision, they are outside the scope of this analysis. With regard to the third complexity, no such cases were identified in the data set; however, the British Red Cross and legal advisers have known this issue to arise with other clients.

discretionary cases – were taken on only when legal advisers felt they were feasible according to precedent, or could satisfy compelling and compassionate circumstances. As such, this sample cannot be said to be representative of all refugee family reunion cases and so should not be used for extrapolation. However, it does provide significant insight into the refugee family reunion process and should be seen as indicative of common experience.

Applications were characterised as either initial or fresh applications, applications that had some preparation of materials before the refugee approached the British Red Cross, or as appeals or reapplications. The majority were initial applications, without previous work undertaken. Appeals were few in number and were fundamentally different as they required attendance at a UK-based court for consideration. For the purpose of this study, the analysis aggregates all types of applications because they all required the same type of support and preparation, particularly in relation to documentation gathering.

While the experiences of refugees and their families are diverse, this report highlights key trends. As such, much of the variation within cases is under-represented and these findings should be considered as a small part of the real experiences of people making applications.

1.3 Terminology

A 'sponsor' refers to a refugee based in the UK who is sponsoring an application and who has direct engagement with caseworkers and legal advisers. An 'applicant' refers to a family member of the sponsor, who is living abroad and is seeking reunion with the sponsor in the UK.

The number of applications corresponds to the number of applicants. 'Cases' represent the contractual relationship between a sponsor and the British Red Cross. Therefore, cases and sponsors are of equal number. Throughout this report, summary statistics are expressed in terms of cases, sponsors and applicants as is relevant to the topic discussed.

A 'legal adviser' refers to a solicitor, an LSC 2-qualified immigration caseworker, or an OISC-qualified caseworker at either level three or level two. The distinctions between OISC qualifications are explained in the policy section on chart four (page 21). A significant assumption made throughout this report is that 'qualified' legal advisers are individuals with experience and proficient understanding of the refugee family reunion application process. 'Administrative' or 'procedural' support refers to support provided by OISC one caseworkers and does not require advanced legal expertise.



2 Policy background

2.1 Refugee family reunion in international policy

While the 1951 Refugee Convention is silent on refugee family reunion, the Final Conference of Plenipotentiaries at the 1951 Convention describes “the unity of the family, the natural and fundamental group unit of society, [as] an essential right of the refugee”. The privileging of family unity is also highlighted in other international instruments, such as Article 16 of the Universal Declaration of Human Rights, Article 23 of the International Covenant on Civil and Political Rights, and Article 23 of the European Council Qualification Directive (Jastram and Newland 2003; Council Directive 2004/83/EC).

The parameters of eligibility for reunion are articulated by the United Nations High Commissioner for Refugees (UNHCR). These include what constitutes a ‘family’, defining the concept of ‘dependency’, and the eligibility criteria with regard to age (Jastram and Newland 2003). Despite UNHCR’s view, these parameters tend to be established at the domestic rather than international level.

As well as emphasising the right to refugee family reunion, UNHCR highlights the protection and

humanitarian implications of reunion. Similarly, the British Red Cross believes refugee family reunion has protection implications for the families of refugees who remain in insecure or armed conflict environments.²

These protection concerns reflect the fact that the majority of sponsors are men and the majority of applicants are women and children – whose vulnerability in insecure environments is universally recognised.

UN Security Council Resolution 1,325 articulates “concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements” (United Nations Security Council 2000, 1). In response, the Security Council at the time “called on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and

² As reflected in relevant EU law: “Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status”; “While the benefits provided to family members of beneficiaries of subsidiary protection status do not necessarily have to be the same as those provided to the qualifying beneficiary, they need to be fair in comparison to those enjoyed by beneficiaries of subsidiary protection status” (Council Directive 2004/83/EC).

other forms of sexual abuse, and all other forms of violence in situations of armed conflict” (ibid., 3).

The UK is one of the pioneering states that has implemented a National Action Plan on Women, Peace and Security, following from United Nations Security Council Resolution 1,325. This emphasises the protection of the “rights and safety of women and girls during and after conflict” and the prevention of conflict and violence against women and girls (Foreign and Commonwealth Office 2014, 28). Authored by the Department for International Development, the Foreign and Commonwealth Office, the Ministry of Defence, and the Stabilisation Unit, the Action Plan calls on officials “to see gender as central to their work on conflict, stability and security, and routinely integrate, assess and evaluate the gender implications of policies, legislation and programming where appropriate” (ibid. 8).

The UN Security Council has also emphasised the protection of children in armed conflict. The UK Permanent Representative to the UN said that states must “provide the world’s children with a safer future, we must spare no effort” (Grant 2014). This aspirational policy is reflected in part two of the UK’s statutory guidance, *Every Child Matters: Change for Children*. Included in section 55 of the *Borders, Citizenship and Immigration Act 2009*, the guidance emphasises the welfare of children throughout the immigration process and upholds that “every child matters even if they are someone subject to immigration control” (*Every Child Matters 2009*, 15). While the statutory duty in section 55 does not apply to children outside the UK, the guidance states that entry clearance officers overseas “must adhere to the spirit of the duty and make enquiries when they have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention” (ibid., 19).

While prioritising protection is recognised by the UK at both an international and domestic level, refugee family reunion policy appears to overlook protection considerations. When examining recent developments in the UK in refugee family reunion, there is a conflict between protection priorities and the assumptions made in the application process.

2.2 Refugee family reunion in the UK

LASPO implemented sweeping changes to the availability of legal aid in England and Wales from April 2013. The rationale for these changes was

to reduce government spending and to empower individuals to take responsibility for their own legal matters (Hansard HC June 2011).³

LASPO addressed civil and criminal legal aid. Refugee family reunion falls into the former category and is treated as an immigration matter. In doing so, it has been disassociated from the asylum process and ignores the insecurity and vulnerability experienced by refugees’ families abroad. Schedule one, paragraph 30 of LASPO determines that legal aid be made available for asylum applications only (ibid. Clark, 2011b).

For cases that are ineligible for legal aid under LASPO, ‘exceptional case funding’ (ECF) can be sought. ECF, articulated in part one, section ten of LASPO, describes an exceptional case as one where failure to provide funding would breach “the individual’s Convention rights (under the Human Rights Act 1998) or any rights of the individual to the provision of legal services that are enforceable EU rights” (Lord Chancellor’s Exceptional Funding Guidance). Guidance on ECF explicitly excludes immigration matters on the premise that they “do not involve the determination of civil rights and obligations” or “procedural requirements of Article 8 ECHR” (ibid.). While it is not explicitly stated, this exclusion is likely to affect refugee family reunion. However, because there is no coding mechanism for ECF applications, there is no public record of successful or unsuccessful ECF applications for refugee family reunion to verify this conclusion.

The rationale for excluding refugee family reunion from legal aid can be seen in the evidence below. During a parliamentary debate on the LASPO bill – on 31 October 2011, before it was enacted – former parliamentary under-secretary of state Jonathan Djanogly explained:

“[refugee family reunion cases] are immigration applications, rather than asylum

³ “I am determined to reform the justice system in this country. Keeping the public safe, ensuring that those who break the law face the consequences and providing swift, cost-effective access to justice are fundamental responsibilities of the state towards its citizens [...] I have said that ordinary citizens find the civil law a rather nightmarish experience when they resort to it [...] I accept that access to justice for the protection of fundamental rights is vital for a democratic society – something on which I will not compromise. However, our current legal aid system can encourage people to bring their problems before the courts when the basic problem is not a legal one and would be better dealt with in other ways. The scope of legal aid has expanded too far. It cannot be right, for example, that the taxpayer is forced to pay for legal advice to foreign students whose visa applications are turned down.

“Our legal aid system also faces a completely unignorable problem of affordability. I have listened to arguments in the media today challenging that, but we have by far the most expensive system in the world, after Northern Ireland [...] It costs £39 per head of population in this country, each year [...] In any circumstances our system would need reform; in the country’s current financial crisis reform is imperative.” Jonathan Djanogly MP, former parliamentary under-secretary of state for justice.

ones, and they are generally straightforward. The UK Border Agency guidance on these cases sets out the presumption of the granting of an application if the relevant criteria are met. The evidence required, such as marriage and birth certificates, should not require legal assistance to collate. The entry clearance officer may, on occasion, ask for DNA testing to prove the family relationship, but that testing would be free of charge to the applicant. These cases should not require specialist legal advice, and it is not therefore necessary for them to remain within the scope of civil legal aid” (Hansard HC October 2011).

Mr Djanogly’s comments effectively represent the government’s understanding that refugee family reunion applications are straightforward and administrative in character, which is far removed from the real experiences of sponsors and applicants. The analysis of complexities within this report also shows that the government’s assumption that refugee family reunion is straightforward does not hold true.

Since the implementation of LASPO, there have been legal challenges on this issue. In the case of *R (Gudanaviciene and others) v director of legal aid casework and Lord Chancellor, the Queen’s Bench* considered what the correct interpretation of LASPO should be in light of the wording that: “Civil legal services (should be) provided in relation to rights to enter, and to remain in, the United Kingdom arising from the Refugee Convention”, in Schedule 1, Part 1, Section 30(1)(a). The government’s contention that refugee family reunion was excluded from legal aid while being maintained for asylum claims – was claimed by the applicant to rest on a spurious distinction as the right to reunion is a right “arising from the (refugee) convention” as written in the Act.

The British Red Cross intervened as a neutral party in this case and provided the relevant context under refugee law for the applicant’s view to be credible.

However, the most recent judgment from the Court of Appeal on this particular point ruled that such a distinction can indeed be upheld.

That noted, the Court of Appeal did find that ECF was required to ensure that individuals had an involvement in the decision-making process in relation to some family reunion cases because of the human rights considerations that such cases may involve, even though they are immigration cases.

The appeal court went on to conclude that the refusal of legal aid violated the human rights of the specific family reunion sponsor in the case (although this may not be extrapolated widely).

Both parties are appealing on these points but, as such, ECF may be made available in cases of family reunion, on a case by case basis. The particular applicant in the case (who is a family reunion sponsor) has requested that the Supreme Court hear a further appeal on this matter. She is awaiting permission to do so.

2.3 Refugee family reunion within the immigration rules, Home Office guidance and the Office of the Immigration Services Commissioner

2.3.1 Refugee family reunion: part 11 of the immigration rules

Rules regarding refugee family reunion are elaborated in paragraphs 352A to 352FI of part 11 of the immigration rules. Eligible applicants for family reunion, to be sponsored by a person granted refugee or humanitarian protection status within the UK, include married or civil partners, same-sex partners and children (aged 17 years and younger at the time of application). In cases of compelling and compassionate circumstances, otherwise ineligible applicants may be permitted to apply at the discretion of the Home Office.

All applications made under part 11 share the following requirements: a family life must exist prior to flight of the refugee and applicants must not be excluded from “protection by virtue of article 1F of the [UN] Convention and Protocol relating to the Status of Refugees” should they apply for refugee status in their own right (19).⁵ See chart one below for more detail.

Unlike other parts of the immigration rules, under part 11 the sponsor does not have to satisfy financial requirements to apply for refugee family reunion.

⁴ See *Gudanaviciene and others v Director of Legal Aid Casework and Lord Chancellor*: Neutral Citation Number: [2014] EWHC 1840 (Admin) Cas No: CO/16894;17381;17279;16732;12441/2013 & CO/27/2014.

⁵ “1F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”

2.3.1.1 Spouses and partners

The relationship between the sponsor in the UK and the partner abroad must begin prior to the sponsor’s flight from their country of “former habitual residence”, and sponsor and partner must demonstrate an intention to live permanently together (19). Both sponsor and partner must also demonstrate that the relationship is “subsisting” (20). Unmarried or same-sex partner applications are eligible only where sponsors achieved refugee status on or after 9 October 2006 and where the relationship is not consanguineous, i.e. with a blood relative.

2.3.1.2 Children

Child applicants must be the child of a parent who currently holds status within the UK and must be under 18 years old. Children must not be “leading an independent life”, and must be unmarried or without a civil partner (21). Finally, they must not have “formed an independent family unit” (21).

Other conditions include that the child “was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum” (21).

There are no qualifications on stepchildren or adopted children within part 11. However, SET10 guidance, used by entry clearance officers for cases brought forward under part 11, outlines parameters for adopted and de facto adopted children. Furthermore, the Home Office’s Statement of Intent: Family Migration holds that refugees and persons with humanitarian protection “will be able, in exceptional circumstances, to sponsor a child relative, e.g. the child of a dead or displaced brother or sister, and without having to meet the income threshold” (Home Office 2012, 33).

CHART ONE PART 11 QUALIFICATIONS ON FAMILY MEMBER APPLICANTS SEEKING REUNION WITH SPONSORING REFUGEE

| | Children (17 years and younger) | Heterosexual spouse, civil partner | Same-sex partner |
|--|---------------------------------|------------------------------------|------------------|
| Applicant must be currently married or the civil partner of the person with refugee status | | | |
| The applicant and sponsor intend to live permanently with each other as partner or spouse, and the marriage/relationship is subsisting | | | |
| Marriage or partnership did not take place after the person granted asylum fled country of former habitual residence | | | |
| The applicant and sponsor have been living together in a relationship akin to either a marriage or a civil partnership that has subsided for two years or more | | | |
| Sponsor and applicant are not involved in a consanguineous relationship (i.e. incest) | | | |
| Applicant is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit | | | |
| Applicant was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum | | | |
| Under 18 years old | | | |
| No reasonable grounds for regarding applicant as a danger to the UK: applicant would not be excluded from protection by Article 1F of the 1951 UN Convention on Refugees if applying for refugee status in their own right | | | |

2.3.2 Other relatives: Appendix FM and part eight of the immigration rules

Part eight and appendix FM of the immigration rules address family members outside of part 11 and provide instructions on both indefinite leave to enter and indefinite leave to remain. While part 11 addresses children making applications for refugee family reunion, paragraphs 309A to 315 of part eight clarify definitions and requirements regarding adoption and de facto adoption. It is here, in particular paragraph 309A, wherein ‘de facto adoption’ is defined in such a way that prohibits refugees from claiming a parental relationship with their de facto adopted child. This challenge is raised later in the report and rests on requirements regarding the period of cohabitation between applicant and sponsor. Part eight also articulates financial and accommodation requirements, including no recourse to public funds. This discrepancy in financial and accommodation requirements conflicts with part 11 and requires legal advice to coherently understand.

Appendix FM (sections EC-DR to D-ILRDR) focuses on adult dependants seeking entry through a sponsoring refugee. This includes, for example, parents, grandparents, adult siblings, as well as children 18 years or older. Unlike part eight, there is no ambiguity as to whether these applicants fall under part 11, save for discretionary cases characterised by compelling and compassionate circumstances. As such, applications under appendix FM are conditional on financial requirements being satisfied. This includes being able to maintain and accommodate such dependants without recourse to public funds. There is also a fee on making the application. Chart two below summarises some of the requirements regarding adult dependants found within appendix FM. A final point to raise regarding appendix FM is that documentation requirements are provided in detail in appendix FM-SE. This articulation of documentation requirements is unlike that found in part 11 or SET10 guidance (which is oriented at entry clearance officers and not applicants). Appendix FM-SE provides greater clarity around the types and limitations of particular documentation.

CHART TWO APPENDIX FM REQUIREMENTS ON ADULT DEPENDENT FAMILY MEMBERS SEEKING REUNION WITH SPONSORING REFUGEE

| | |
|--|--|
| Grandparent and parents | Must, as result of age, illness or disability require long-term personal care to perform everyday tasks |
| | Must be unable, even with practical and financial help of the sponsor, to obtain the required level of care in the country where they are living |
| | Must not be in subsisting relationship with a partner unless the partner is also the sponsor’s parent or grandparent and is also applying |
| Children (18 years and older) Siblings (18 years and older) | Must provide evidence that they can be adequately maintained, accommodated and cared for without recourse to public funds |

2.3.3 Home Office and VAF4 guidance

Guidance for making applications for refugee family reunion can be found in SET10 (Home Office guidance) and also in SET18 for post-flight families. This guidance is aimed at decision-makers, or entry clearance officers, to enable them to make determinations on applications submitted by family members of sponsors. The VAF4 form, required at submission of an application⁶, also provides guidance and is aimed at applicants. However, this form is not specific to refugee family reunion and there are inconsistencies between it and Home Office guidance, outlined in chart three below.

SET10 guidance on refugee family reunion stipulates that “applications for pre-existing family members under part 11 [...] are gratis and the sponsor will not be required to meet any maintenance and accommodation requirements in the immigration rules”. This information is absent from part 11 of the

⁶ This is the form to apply for a visa to join a partner, child or other family member who is settled in the UK.

immigration rules and contradicts financial requirements laid out in part eight, relating to adoption and de facto adoption cases. Legal expertise on refugee family reunion helps clarify any financial requirements that may be irrelevant to refugee family reunion.

2.3.3.1 Evidence

While much of the Home Office guidance echoes the immigration rules, it contains additional information about evidence requirements. Evidence is a crucial element of making an application for refugee family reunion as it is used by entry clearance officers to make their determinations. Chart three provides a list of evidence outlined in the Home Office guidance. There is inconsistency between what entry clearance officers are instructed to look for when considering applications and what is defined as necessary within VAF4 guidance.

Furthermore, VAF4 guidance is not solely aimed at refugee sponsors and applicant children, and is therefore not always appropriate. For example, where it sets out requirements for proof of relationship between applicant and sponsor:

“Please provide evidence to show that you are in contact with your child(ren) in the UK. This could be letters, emails, cards, photographs, evidence that you have visited the child(ren) or that the child(ren) have visited you. This is not an exhaustive list.”

This is not appropriate in cases of refugee family reunion, as child applicants are outside the UK and parent sponsors are within the UK.

CHART THREE DISCREPANCIES BETWEEN HOME OFFICE AND VAF4 GUIDANCE: DOCUMENTARY EVIDENCE REQUIREMENTS

| | Home office guidance | VAF4 guidance |
|---|--|---------------|
| Proof of relationship | Required | Required |
| Marriage certificate (original copy preferred) | | |
| Wedding photos | | |
| Original letter from UK Visas and Immigration confirming sponsor’s status | At discretion of entry clearance officer | Required |
| Family photos (“where possible”) | | |
| Details demonstrating a “genuine subsisting relationship between sponsor and applicant” | Not required: “In certain circumstances, the applicant will not process a travel document or a passport recognised by HMG. If so, entry clearance officer should seek the authority of their manager to issue entry clearance on a UFF (Uniform format form).” | Required |
| Passport | | |
| DNA tests | | |
| Phone number | | Required |

2.3.4 The Office of the Immigration Services Commissioner

The Office of the Immigration Services Commissioner (OISC) regulates legal services provided by non-qualified lawyers or caseworkers. Lawyers are also sometimes registered.

The OISC received its powers from the Immigration and Asylum Act 1999, which enables the Commissioner to determine the competency of individuals providing legal advice in relation to immigration, as well as to enact punitive measures in cases where such individuals breach established rules. Avoiding a ‘breach’ requires that legal providers follow a code of standards established by the Commissioner and her office. This includes the three levels of OISC qualification, which reflect increasing knowledge, requirements and responsibilities of caseworkers. Chart four provides a summary of these requirements according to each level (OISC 2012b).

CHART FOUR OISC LEVELS AND REFUGEE FAMILY REUNION

| OISC | Level one | Level two | Level three |
|---|---|------------|-------------------------------|
| Asylum applications | ‘Limited assistance’ | Yes | Yes |
| Refugee family reunion applications | No | Yes | Yes |
| Taking instruction from clients | No | Yes | Yes |
| Knowledge of types of evidence to support cases and how to get it | Yes (but cannot work on refugee family reunion) | Yes | Yes |
| Knowledge of case law and ability to engage this in representations | No | ‘Detailed’ | ‘Sufficiently thorough’ |
| Drafting client statements | No | Yes | Yes |
| Drafting witness statements as evidence | No | No | Yes |
| Representations to the Home Office | No | Yes | Yes |
| Representations to MPs | No | Yes | Yes |
| Representations in court | No | No | Yes (excluding higher courts) |
| Advocacy skills | No | No | Yes |
| Appeals | No | No | Yes |

As chart four shows, thorough support through to appeal can only be provided by caseworkers with an OISC 3 qualification, while many of the qualities enumerated can also be satisfied by OISC 2. Those qualified at OISC 1 are not able or permitted to work on refugee family reunion. However, individuals with OISC 1 qualifications working towards OISC 2 may support refugee family reunion applications in much the same way as a person with an OISC 2 qualification, though with oversight from either an OISC 3 caseworker or a solicitor.⁷

⁷ Two of the four caseworkers in this study were qualified at OISC 1 and working towards OISC 2.



3 Introducing sponsors and applicants: the human side of family reunion

Key findings:

- > The majority of sponsors were adult men, while 95 per cent of applicants were women and children. Among applicants, there were more children than women.
- > Sponsors had limited income. They predominantly lived on state benefits while sending remittances to family members abroad.
- > Even sponsors with some English language skills required translation support during the application process. 62 per cent of sponsors required English language support while working on their refugee family reunion applications.
- > 10 per cent of applicants in third countries did not have legal status and were exposed to security and protection risks.
- > 51 per cent of applicants were exposed to security risks. 48 per cent of applicants were women and children and exposed to security risks.

3.1 Introduction

Section 3 highlights the real-life experiences of refugees and their family members, and discusses sponsors' eligibility for legal aid for refugee family reunion. The sex and age distribution of sponsors and applicants, as well as the security status of applicants, are also featured. A core finding is that applicants' experiences abroad demand attention in their own right, and highlight key protection and humanitarian needs. Furthermore, it gives reason to reconsider whether refugee family reunion is

simply an immigration matter, as espoused within parliament, or whether it is more fundamentally an extension of the asylum process.

3.2 Sponsors

A condition of being able to submit a refugee family reunion application is that the sponsor in the UK possesses refugee or humanitarian protection status. Each of the family members must also conform to the demographic parameters discussed in section 2.3.

3.2.1 Eligibility: immigration status, income and expenditure

All sponsors were eligible for refugee family reunion based on their immigration status. 99 per cent (90) of the sponsors in this study had refugee status, and only one had humanitarian protection status.⁸

10 per cent (nine) of sponsors were in low-wage employment, 13 per cent (12) did not clarify their income, and 77 per cent (70) received some kind of benefit. While the majority received Jobseeker's Allowance (JSA), the second highest benefit received was Employment Support Allowance. Some sponsors also received Income Support and Disability Living Allowance. Ultimately, all sponsors met income eligibility requirements for legal aid.⁹

As well as receiving limited income, 32 per cent (33) of sponsors reported sending remittances to their families abroad for whom applications were being submitted. Remittances are a crucial, and often the only, means by which primary caretakers or heads of household can continue to support their families abroad. In the case of JSA, for example, this means dividing a limited income of around £70 per week among, on average, 3.5 people. This includes paying for food and other essentials, housing and even schooling for children. It may also include phone services.

Crucially, refugee family reunion applications require that sponsors demonstrate a 'subsisting relationship' with their partners and that their children are not considered to live an 'independent life'. Financial support is one way of demonstrating this and, therefore, becomes not only a humanitarian obligation but essential for fulfilling the requirements laid out by government.

"After I got my papers, I sought work and I'm working now [...] Before I came to ask for assistance to reunite, I thought it was an easy thing. But it was not. I went back to my lawyer who helped me with refugee status

and she said I didn't qualify for legal aid any more for refugee family reunion. My legal aid was for the application for [refugee] papers. She wanted £600 to help me with my family. I didn't have £600, I'm only working with agencies really. Sometimes I work, sometimes I don't. I didn't have £600. So I came back to the Red Cross and was introduced to [my caseworker].

"I could never have made the application on my own. I'm not earning enough money to hire a lawyer. I wouldn't know where to start. I don't agree with this being straightforward. There's a legal piece to everything. Like applying for family reunion. It's a legal thing to get approval from government. They want to see an argument being put across. I've heard of people struggling until now in bringing their family over. It's difficult." – Adult male sponsor, Zimbabwe

3.2.2 Age and sex

Of the 91 sponsors, all of whom were legal adults, 71 per cent (65) were men and 29 per cent (26) women, which reflects the fact that men are usually more likely to make the difficult journey from hostile environments. According to the Refugee Council, in 2012 (the most recent year for which data is available) women accounted for 28 per cent of asylum applicants within the UK and in 2011 they represented 27 per cent (Refugee Council 2014). The sample in this report is therefore consistent with the larger refugee population.

3.2.3 English language

English language skills have been previously identified as a major impediment for refugees making applications (Law 2013). While there is no English language requirement for either asylum or refugee family reunion applications, being able to write, read and speak in English is advantageous (UK Visas and Immigration 2012). This is particularly so given that the application form is available exclusively in English and that dependence on interpreters can disadvantage both sponsors and applicants during interviews.

It was found that 62 per cent (57) of sponsors required an interpreter either to comprehend the application process itself or to fill in the application form. For the purpose of this analysis, an interpreter was identified as necessary whenever the sponsor's English language skills did not permit them to understand a particular

issue or task, and where external services were employed to facilitate that understanding. Interpreters were often used for individuals who could speak and understand English to some extent, as well as for sponsors who had no English language skills whatsoever.

3.2.4 Health conditions

While the author of this report, the caseworkers and legal advisers are not qualified to make medical diagnoses, self-reporting by sponsors identified key health issues, although the statistics most likely under-report them.

28 per cent (25) of sponsors reported a health condition. Of these, 18 reported an emotional or psychological issue and 12 reported a physical issue. Most frequently, sponsors reported depression and often associated this with feelings of despair with regard to their families abroad.

Some sponsors with chronic health conditions, such as diabetes, also experienced mental health issues such as depression. In these cases, their concern about their family members prompted them to not adequately care for themselves. The compounding of health issues was observed to have severe impacts on sponsors. As a humanitarian organisation, the British Red Cross is concerned that psychological turmoil and physical health issues have a severe impact on refugees who have been granted protection status in the UK.

3.3 Applicants

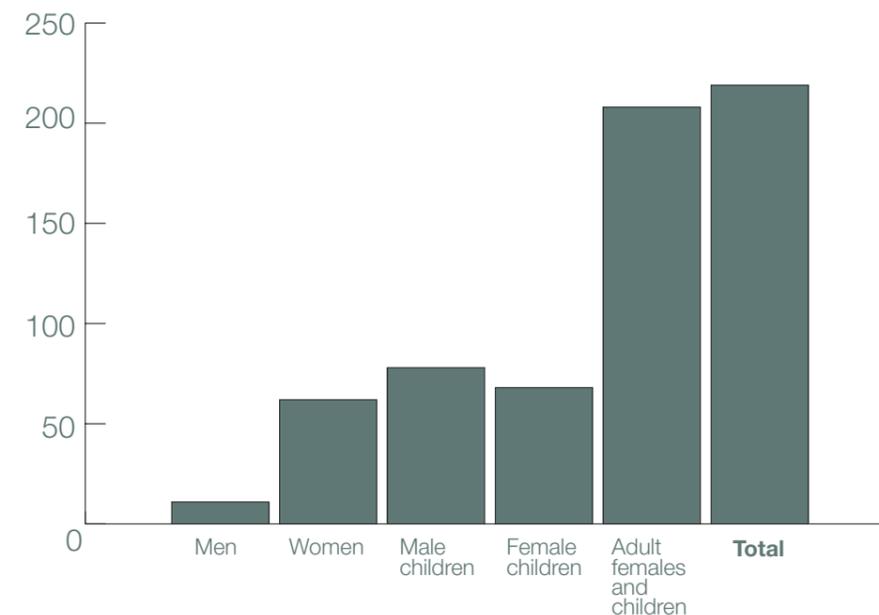
While applicants are not the rights bearers in refugee family reunion applications, their experiences and demographic details are causes for concern to the British Red Cross. This is particularly due to the age and sex distribution of applicants, as well as their experiences in insecure environments. There is a humanitarian and protection imperative that the British Red Cross feels must be addressed. As such, the British Red Cross must advocate on behalf of these often vulnerable groups.

3.3.1 Age and sex

The 91 cases involved 219 family members seeking reunion. Per case, there was an average of 2.5 applicants. The number of applicants per sponsor ranged from one to eight.

33 per cent (73) of the 219 applicants were adults. Of these, 62 were women, representing 28 per cent of all applicants. The other 67 per cent (146) of applicants were children aged 17 years old or younger. Of these, 78 were boys and 68 were girls. Women and children therefore accounted for 95 per cent of applicants.

CHART FIVE DEMOGRAPHICS OF APPLICANTS



⁸ Three sponsors received their status through the Gateway Protection Programme. This is a scheme operated by the British government in partnership with UNHCR, offering a legal route for a quota of UNHCR-identified refugees to settle in the United Kingdom. However, because they are applying for refugee family reunion through the same process as sponsors with refugee and humanitarian protection status, they have been qualified as having refugee status. This is an analytical simplification. There is debate as to whether they are eligible for refugee family reunion; however, this is beyond the scope of this paper.

⁹ See <http://civil-eligibility-calculator.justice.gov.uk/> for the method for determining income eligibility for legal aid. Had sponsors been applying for legal aid, they would have been required to fill in a CW1 form, found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346196/legal-aid-controlled-work-1.pdf. All sponsors were assessed according to their income and financial situation, not that of their families.

3.3.2 Countries of origin and third countries

Applicants originated from 26 countries across Africa, the Middle East, and east and south Asia. Sudan and Eritrea were the two countries from which most applicants originated.

CHART SIX COUNTRIES OF ORIGIN AND APPLICANTS PER COUNTRY OF ORIGIN

| Country of origin | Cases per country of origin | per cent of all cases | Applicants per country | per cent of all applicants |
|------------------------------|-----------------------------|-----------------------|------------------------|----------------------------|
| Afghanistan | 2 | 2% | 8 | 4% |
| Bangladesh | 1 | 1% | 1 | 0.5% |
| Cameroon | 1 | 1% | 3 | 1% |
| Central African Republic | 1 | 1% | 7 | 3% |
| China | 1 | 1% | 1 | 0.5% |
| Democratic Republic of Congo | 4 | 4% | 7 | 3% |
| Eritrea | 17 | 19% | 41 | 19% |
| Ethiopia | 5 | 6% | 8 | 4% |
| Gambia | 2 | 2% | 4 | 2% |
| Ghana | 1 | 1% | 3 | 1% |
| Guinea | 1 | 1% | 4 | 2% |
| India | 2 | 2% | 3 | 1% |
| Iran | 8 | 9% | 18 | 8% |
| Iraq | 1 | 1% | 2 | 1% |
| Ivory Coast | 1 | 1% | 3 | 1% |
| Pakistan | 4 | 4% | 13 | 6% |
| Palestine/Gaza | 1 | 1% | 4 | 2% |
| Rwanda | 1 | 1% | 3 | 1% |
| Sierra Leone | 1 | 1% | 2 | 1% |
| Somalia | 6 | 7% | 18 | 8% |
| South Africa | 1 | 1% | 2 | 1% |
| Sudan | 19 | 21% | 37 | 17% |
| Syria | 5 | 6% | 12 | 6% |
| Stateless | 1 | 1% | 8 | 4% |
| Uganda | 1 | 1% | 2 | 1% |
| Zimbabwe | 3 | 3% | 5 | 2% |
| Total | 91 | | 219 | |

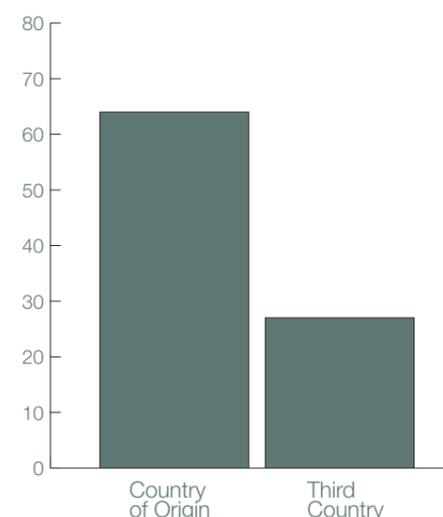
With 21 per cent (19) of all cases, Sudan was the country from which most cases originated. Eritrea, with 19 per cent (17) of cases, came in second. However, 19 per cent (41) of applicants originated from Eritrea, as compared to 17 per cent (37) from Sudan.

Iran (eight cases, 18 applicants), Somalia (six cases, 18 applicants) and Ethiopia (five cases, eight applicants) were the other countries from which most applications originated. However Pakistan, while having fewer cases, had more applicants (13) than Ethiopia.

3.3.2.1 Third-country residence

Country of origin information gives insight into the challenges that applicants may face in acquiring necessary documentation (section 4.2) or travelling internationally to submit application materials (section 5.2). However, many applicants resided in a third country due to protection concerns. As charts seven and eight demonstrate, in 30 per cent (27) of cases, applicants lived in a third country. This in turn represents 32 per cent (70) of all applicants.

CHART 7 COUNTRY RESIDENCE BY CASE



The reasons behind fleeing to third countries were diverse, and included persecution or ongoing armed conflict. It is worth noting that all Eritrean applicants resided in third countries, principally due to protection risks.

44 per cent (31) of the 70 applicants in third countries had immigration status, while the status of 26 per cent (18) of applicants was unreported. 30 per cent (21) of applicants in third countries did not have legal status, 20 of whom were women and children. Without legal status, applicants were exposed to other problems such as persecution by state agents, arrest and potential repatriation.

Importantly, even when having successfully obtained refugee status in third countries, protection concerns continued to exist. It was reported that adult male Eritrean applicants in Sudan experienced intimidation by locals, while children were threatened with abduction or imprisonment.

CHART EIGHT COUNTRIES OF ORIGIN AND APPLICANTS PER COUNTRY OF ORIGIN

| Country of origin | Third country | Legal status | | | No legal status | | | Legal status unspecified | | | Totals |
|----------------------------------|---------------|--------------|-------|----------|-----------------|-------|----------|--------------------------|-------|---|---|
| | | Men | Women | Children | Men | Women | Children | Men | Women | Children | |
| DRC | Burundi | | | | | | | | | 2 | 3 children |
| | Mali | | | 1 | | | | | | | |
| Eritrea | Ethiopia | | 1 | 2 | | | | | | | 5 men, 9 women, 27 children; 41 applicants |
| | Ethiopia | 1 | | 1 | | | | | | | |
| | Ethiopia | | 1 | 3 | | | | | | | |
| | Ethiopia | | | | | | 2 | | | | |
| | Ethiopia | | | | | | 2 | | | | |
| | Ethiopia | | | 1 | | | | | | | |
| | Ethiopia | | | | | | | 1 | 1 | | |
| | Greece | | 1 | 2 | | | | | | | |
| | Greece | | | | 1 | | | | | | |
| | Sudan | | | | | 1 | 2 | | | | |
| | Sudan | | | | | | 1 | | | | |
| | Sudan | | | | | 1 | 1 | | | | |
| | Sudan | 1 | | | | | | | | | |
| | Sudan | | 1 | 6 | | | | | | | |
| Sudan | | | 2 | | | | | | | | |
| Sudan | | | | | | | | 1 | 2 | | |
| Sudan | | | | | | | | 1 | | | |
| Uganda | | | | | | | 1 | | | | |
| Somalia | Ethiopia | | 1 | | | | | | | | 5 women, 10 children; 15 applicants |
| | Finland | | 1 | 1 | | | | | | | |
| | Kenya | | | | | 1 | 5 | | | | |
| | Kenya | | | | | 1 | 1 | | | | |
| Tanzania | | | | | | | | 1 | 3 | | |
| Sudan | UAE | | 1 | 3 | | | | | | 1 woman, 3 children; 4 applicants | |
| Syria | Greece | | | | | | | 1 | | 4 | 1 man, 6 children; 7 applicants |
| | Lebanon | | | | | | 2 | | | | |
| Totals by sex, age, legal status | | 2 | 7 | 22 | 1 | 4 | 16 | 3 | 4 | 11 | 70 |

3.3.3 Eligibility and discretionary cases

While the cases studied largely conformed to Home Office guidelines on eligibility (see section 2.3), a number of applications were initiated on a discretionary basis. This refers to cases where applicants do not conform to the immigration rules on refugee family reunion, but whose circumstances may be deemed compelling and compassionate enough that they still warrant consideration for the family to enter the UK (UK Visas and Immigration 2012).¹⁰

3.3.3.1 Eligibility and discretionary adult cases

Of the 73 adult applicants, 84 per cent (61) were spousal applications. The remaining 12 applicants were discretionary. The majority (ten) were children aged 18 or older who remained dependent on their families and who would be subject to life-threatening insecurity if left alone in their present location. Two applications were made on behalf of siblings aged 18 or older - one of whom, an 18-year-old Syrian woman without family locally, was sponsored by her sister in the UK.

3.3.3.2 Eligibility and discretionary child cases

Applications on behalf of de facto adopted children and child siblings represented 15 per cent (22) of the 146 child applicants. Like discretionary adult cases, both de facto adoptions and sibling applications fall outside part 11 of the immigration rules. However, each case demonstrated a family life characterised by the dependence of child applicants on the sponsors for material and emotional support. De facto adoptions present legal complexities – ten of the 12 applicants within this category were officially adopted in their countries of origin, but the adoption processes are not recognised by the UK government as the countries have not acceded to the Hague Convention. This is discussed further in section 4.3.

3.3.4 17-year-old applicants

9 per cent (13) of child applicants were 17 at the time of making their family reunion applications. Such applications are complex because they require legal advisers and caseworkers to expedite the application process to ensure that

applications are submitted before the children turn 18. Otherwise, once applicants do turn 18, they become ineligible according to the immigration rules.

The effective co-ordination and submission of applications on behalf of 17-year-olds requires a thorough knowledge of how applications progress, contacting the relevant British embassy to prepare it for an incoming application, and the ability to anticipate any problems that might arise and take measures to mitigate them.

“So I just waited to apply for my youngest girl who qualified. She was 17 when we did the application. We submitted the application before she turned 18, but she turned 18 by the time she received her visa.

“[The legal adviser] said we had to hurry.

“[My legal adviser] sped up the whole process because of my daughter’s age. She asked me to make an appointment with all the documents. She emailed the British embassy in Zimbabwe soon after our meeting. She was putting the groundwork for submitting the application. She gave me forms and urged me to send them as quickly as possible.” – Adult male sponsor, Zimbabwe

3.3.5 Insecurity of applicants

Insecurity of applicants was a key issue across many cases and countries. Defining and measuring insecurity of applicants is problematic as insecurity can be momentary or sustained, targeted or passive, and can relate to many different issues. Furthermore, insecurities can either reflect the experience of applicants or the fears of sponsors about what could happen. Part 11 of the immigration rules addresses this distinction between experienced and feared persecution, providing a useful comparative framework.¹¹ Overseas Development Institute research, written by Moser and Rodgers, defines insecurity as being a sense or feeling derived from various sources of violence – whether political, institutional or social (Moser and Rodgers 2005).

For this report, insecurity was documented only

¹⁰ “Compassionate and compelling” was an old policy that was not in the immigration rules. The policy disappeared but these terms still appeared on the Home Office website until November 2013. The clause was previously in chapter 16 of Entry Clearance Guidance (Home Office Guidance). Case law on the operation may help in establishing a case under Article 8 of the ECHR. See *Miao v Secretary of State for the Home Department*. See also paragraph 319X for child applicants whose sponsors are not their parents.

¹¹ Part 11 of the immigration rules on asylum refers to insecurity as the “direct threats of such persecution or such harm” as well as “the individual position and personal circumstances of the person, including factors such as background, gender and age, so as to assess whether, on the basis of the person’s personal circumstances, the acts to which the person has been or could be exposed would amount to persecution or serious harm”.

where sponsors explicitly discussed it: either due to actual violence committed, or due to threat or fear of violence. There are shortcomings to this approach. Sponsors may emphasise insecurity for some reason or they may not fully comprehend the nature of the insecurity experienced by their family members. In both cases, they may distort fears of insecurity by either over- or under-emphasising the conditions of their families abroad. Also, because the research relied on unsolicited self-reporting, the report may under-represent insecurity experienced by applicants.

Of the 91 cases investigated, 47 per cent (43) involved security concerns. This accounts for 51 per cent (112) of all applicants. The categories of insecurities identified are not mutually exclusive – so the same applicants may experience violence as well as imprisonment, for example.

Among the 112 individual applicants affected by insecurity, 106 were women and children. This represents 51 per cent of all women and children applicants, and 48 per cent of all applicants. Given that the majority of people affected by security concerns are women and children, this highlights the humanitarian and protection implications of refugee family reunion. Treating refugee family reunion as an immigration matter, therefore, is unsustainable. The case for this would be made stronger by a systematic examination of the sources of insecurity and relating these sources to the original asylum claims of sponsors.

3.3.5.1 Clarifying insecurities

The following examples of insecurities have been relayed by sponsors:

- > Abduction refers to when external actors, whether state or non-state, capture or abduct applicants. Abduction was associated with sexual violence or ransom.

- > Arrest or imprisonment refers to when applicants are legitimately or illegitimately imprisoned by state or non-state actors. Arrest was associated with military entities or police.
- > Domestic violence refers to physical violence committed against applicants by a family member within a home environment. This includes sexual violence as well as more general physical harm. Where cases involved multiple sibling applicants, and where only one was expressed as vulnerable to domestic violence, all siblings were documented as experiencing insecurity. This was due to the researcher's inability to ensure that such a home environment would be safe for all applicants.
- > Forced recruitment refers to when applicants are forced into military activity, whether by state or non-state actors, and are not able to opt out.
- > Violence refers to when sponsors explicitly mention their family members being physically assaulted with or without the use of weapons. Where applicants lived in armed conflict environments characterised by the indiscriminate killing of civilians, they are documented as having experienced physical harm or violence due to the nature of the environment and the uncertainty as to whether any kind of weapon deployment might harm or kill them.

If applicants experienced multiple kinds of insecurity, it was documented accordingly. Therefore, the total number of applicants within charts nine and ten exceeds the 112 individual applicants affected by insecurity.



CHART NINE NUMBER OF APPLICANTS WHO EXPERIENCED INSECURITIES AS REPORTED BY SPONSORS

| Type of insecurity experienced | Cases | Men | Women | Children |
|---|-------|-----|-------|----------|
| Abduction | 1 | | | 2 |
| Arrest/imprisonment | 2 | | 1 | 7 |
| Domestic violence | 6 | | 2 | 9 |
| Forced recruitment | | | | |
| Gender-based discrimination/persecution | 1 | | 1 | |
| Violence | 10 | 3 | 6 | 20 |
| Totals | 20 | 3 | 10 | 38 |

CHART TEN PERCEIVED THREATS TOWARDS APPLICANTS AS REPORTED BY SPONSORS

| Type of insecurity threat | Cases | Men | Women | Children |
|---|-------|-----|-------|----------|
| Abduction | 3 | | 3 | 5 |
| Arrest/imprisonment | 10 | 3 | 8 | 19 |
| Domestic violence/female genital mutilation | | | | |
| Forced recruitment | 2 | | 1 | 2 |
| Violence | 11 | | 6 | 24 |
| Totals | 26 | 3 | 18 | 50 |

“My family was persecuted by the authorities because I was wanted. They asked them every time ‘where is your dad’ and they don’t tell them that I had travelled to the United Kingdom. So every time they come they just told the authorities that I had gone somewhere. I was wanted because I was demonstrating for our rights as Bidoon. We wanted the same rights as other people. They were persecuted because they were Bidoon and because of my activities.” – Adult male sponsor, Bidoon

3.3.5.1.1 Arrest and imprisonment

Experience and threats of arrest and imprisonment were identified for Eritrean families in Ethiopia and Sudan who were there without legal status. However, it was also identified in cases of interpersonal conflict between sponsors, their families and the authorities in Middle Eastern and Asian countries. For many applicants in third countries without legal status, arrest and imprisonment were a threat to their security. It was also identified in cases where applicants had to

cross borders to make applications. In particular, Syrian applicants travelling to Lebanon cited arrest and imprisonment as a major concern. Indeed, one child applicant was imprisoned on his return to Syria following the submission of his application.

3.3.5.1.2 Violence

The drivers of violence were varied. In Pakistan, for example, Ahmadis were persecuted by other Muslims because of their religion and experienced various forms of targeted violence. Similarly, Somalis and Eritreans in Ethiopia, Kenya and Sudan experienced physical attacks due to their ethnicity and origin. Threats of violence were also observed where families of political activists were treated as proxies for their sponsoring family members based in the UK.

Applicants in armed conflict environments where conflict parties indiscriminately kill civilians were categorised as having ‘experienced’ insecurity because they were at risk of being attacked without precautionary measures available to them. This applies to applicants in Gaza and Syria in particular.

3.4 Conclusion and policy considerations

3.4.1 Financing and understanding family reunion

The first conclusion relates to the income of sponsors, the feasibility of hiring solicitors independently, and the purpose of LASPO. LASPO aims to enhance the legal independence of the general public so that they do not have to rely on solicitors for their legal matters. For refugee family reunion, however, sponsors must seek out legal advice and support. The majority of sponsors required English language support, indicating the difficulty they would have in undertaking applications independently. Furthermore, legal support is fundamental when dealing with complexities that arise during the refugee family reunion application process.

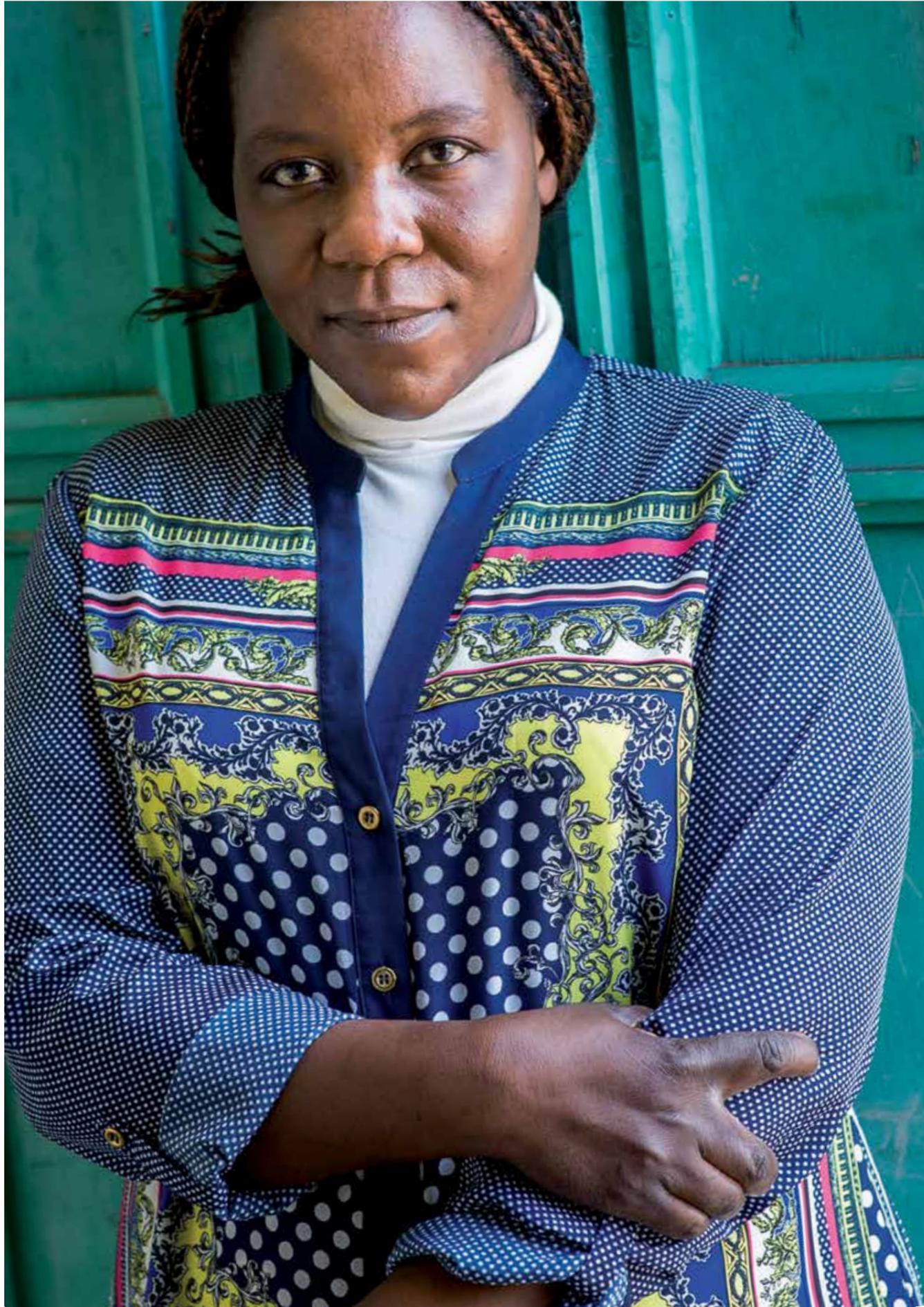
The majority of sponsors reported receiving benefits as their primary source of income. However, hiring a solicitor adds to sponsors’ financial insecurity. This is compounded by payments required for items like the translation of documents. While this is required by the Home Office, it can cost anywhere from £75 to £90 per 1,000 words. Ultimately, LASPO’s aim to increase the legal independence of sponsors is demonstrably ineffective and the theoretical costs saved are displaced onto already financially vulnerable refugees.

3.4.2 Policy implications of protection and humanitarian needs

Acknowledging the protection and humanitarian needs of sponsors and applicants provides an opportunity to locate refugee family reunion in broader policy discussions around aspirations to protect vulnerable populations. Indeed, as was discussed in section 2.1, the UK has made commitments to develop and enhance internationally agreed priorities to protect women and children, in and outside of armed conflict. Given that the majority of applicants are women and children and given that at least half of them were exposed to insecurities detrimental to their wellbeing, then refugee family reunion should be considered and treated as a protection matter. Accepting this argument, the discussions in parliament, which determined refugee family reunion as a straightforward immigration matter, demand reconsideration.

The findings from this section serve to bridge the refugee family reunion and asylum application

processes by way of illuminating the hardships and threats experienced by applicants. It is for this reason that refugee family reunion should be re-associated with the considerations around asylum applications and the international and domestic policy discussions around the protection of women and children. Data from section 3 supports the following two sections, which discuss complexities experienced during the documentation gathering and submission stages of the refugee family reunion application process. Ultimately, protection and humanitarian need factor into the subsequent discussions around complexities. Administrative and legal support provision are not isolated from the circumstances of applicants and, as will be shown, much of the support provision examined in this study responded to these experiences.



4 Documentation gathering stage

Key findings:

- > Documentation complexities arose frequently during the application process. Legal advisers play an essential role in identifying alternative evidence that can support an application, while caseworkers are pivotal in co-ordinating and obtaining such evidence.
- > Essential documentation may be unavailable for a variety of reasons, including the nature of flight and the environments from which sponsors and applicants originate. Legal advisers play a critical role in helping to explain this in cover letters to applications and in identifying alternative evidence.
- > Some documentation, like communications records via text messaging and email or IDs, requires legal advisers to qualify what is sufficient and effective for an application.
- > Applications involving adoption, de facto adoption, stepchildren and siblings are inherently complex. They require legal advice in determining the eligibility of the applications, support in documentation gathering, and reference to precedent and existing policy and guidance.
- > Children in uncertain living arrangements are exposed to financial and security risks. Application complexities, such as documentation gathering, can increase those risks.
- > There were a number of interview discrepancies between asylum applications of sponsors and refugee family reunion applications for their family members. Legal advisers are essential in identifying such discrepancies, as well as in dealing with them by making representations to the Home Office.

4.1 Introduction

At the beginning of a refugee family reunion case, legal advisers will first gain a preliminary understanding of the case and both parties will agree to a contractual relationship. Legal advisers then take instruction from clients on the details of cases and what documentation is available for an application. Caseworkers and legal advisers will then explain the timeline of an application, often previously unknown to sponsors, in order to inform their expectations.

Sponsors must explain what documentation they have and legal advisers will identify what is necessary for a strong application. Legal advisers' experience, and their understanding of the immigration rules and guidance on refugee family reunion, informs their advice on documentation gathering. Caseworkers provide significant procedural support by locating sources and helping acquire documentation.

"I'm trying to seek out how to get evidence, and [the legal adviser] says what evidence is needed. The legal part is advising, taking extra instructions from clients. I'm filling a practical role, something the solicitor wouldn't normally do." – OISC 1 caseworker

As discussed in section 2.2, refugee family reunion applications were described in parliamentary debate as straightforward, merely requiring an aggregation of evidence and the submission of the relevant form without need for legal intervention.

This view of refugee family reunion applications is based on four main assumptions:

1. That cases conform to the immigration rules seamlessly, so that applicants may be understood as either eligible or ineligible with some simplicity.
2. That documentation requirements are clear.
3. That documentation is available or at least easy to access.
4. That documentation is consistent in its ability to prove a purported relationship.

This section demonstrates that these assumptions are seldom fulfilled in practice.

"Me proving that my children were my children. I thought it would be straightforward. But it wasn't." – Adult male sponsor, Zimbabwe

Among the projects studied for this research, collating documentation proved difficult in the majority of cases. Four of the 91 cases were described as straightforward by caseworkers: documentation was easily accessible, proof of communication between sponsors and applicants readily available, and no logistical or administrative challenges arose upon submitting applications. For the remaining 87 cases, there were difficulties in logistical co-ordination and in progressing applications in instances where required documentation was unavailable.

This section argues that the aggregation of documentary evidence relies on administrative

support as well as legal expertise. Legal advisers were vital for their understanding of the law, their experience with similar cases and the professional networks available to them.

4.1.1 What constitutes a documentation complexity?

Effective understanding of complexities around documentation gathering requires a benchmark against which evidence can be measured. Therefore, Home Office and VAF4 guidance on refugee family reunion have been used to set the benchmark for what qualifies as a documentation problem.

Chart three demonstrates that there are inconsistencies between Home Office and VAF4 guidance on what documentation is required for applications. Home Office guidance, for example, requires a marriage certificate and wedding photos for spousal applicants. For children, birth certificates are necessary. Family photos and DNA tests for children are described as discretionary, i.e. they are only necessary where other evidence is lacking or where entry clearance officers request them. Evidence is required that establishes that the relationship between the sponsor and the applicant is genuine, such as living together as a family unit prior to the sponsor having fled and intending to continue to do so (Home Office 2014, part 11). However, Home Office guidance stipulates that "failure to produce evidence of cohabitation during the period they were apart would not alone provide reasons to refuse the application. Requests for documents should be sensible and realistic" (Home Office 2011b). Under Home Office guidance, passports and other identification are not deemed necessary.

VAF4 guidance requires a marriage certificate for spousal applications and photos for child applications. Because a number of questions on the form refer to passports, they also appear to be necessary. Otherwise, VAF4 guidance asks that spousal applications "provide details[...] that demonstrate that you have a genuine subsisting relationship" and evidence that shows the applicant is "in contact with [their] child(ren) in the UK. This could be letters, emails, cards, photographs, evidence that you have visited[...] This is not an exhaustive list".

As the above quote shows, applicants, not sponsors, have to demonstrate a relationship with children in the UK. This is not relevant to refugee family reunion applications as the children are based outside the UK and have to demonstrate their relationship with a parent based in the UK. Furthermore, the term "genuine subsisting" is

unclear and unhelpful to refugees with limited English language skills as there is no indication of what kind of evidence might substantiate this.

"I haven't seen any of the Home Office guidance. I didn't know it existed." – Adult male sponsor, stateless Bidoon

Chart 11 shows the required documentation as per the Home Office and VAF4 guidance. Thus, 'required' documents are featured in both sets of guidance. For the purpose of this report, required documents are those regarded as necessary for making refugee family reunion applications.

CHART 11 REQUIRED DOCUMENTARY EVIDENCE FOR REFUGEE FAMILY REUNION APPLICATIONS

| | Spousal applicant | Child applicant |
|-------------------------------|--|-------------------|
| Home Office and VAF4 required | Marriage certificate | Birth certificate |
| | Wedding photos | |
| | Family photos | |
| | Communication record | |
| VAF4 required | Passport | |
| | Evidence of cohabitation/family life prior to flight | |

Where any one of the forms of required documentation was missing or unavailable for an application, it was identified as a complexity and the case required legal intervention.

4.2 Identifying documentation complexities

74 per cent (67) of all cases¹² were missing at least one form of required documentation. This figure is further broken down into the kind of documents that were missing. For 23 per cent (21) of cases, either caseworkers provided support in acquiring required documents, or sponsors and applicants were able to obtain such documents on their own.

4.2.1 Photographic evidence

Photographs were most frequently unavailable for applications. From the cases examined, 58 per cent (53) of all sponsors did not have access to photographic evidence of relationships purported in applications.

4.2.2 Evidence of communications/contact

The types of communication tools used were wide-ranging and many sponsors had multiple

methods of staying in touch with their family. Among the 91 cases, 79 per cent (72) of sponsors reported the method of communication used. 67 per cent (61) of sponsors depended on phones to maintain contact with their families abroad, and web-based applications such as Skype, Viber, and WhatsApp were used by 30 per cent (27) of sponsors. Only 8 per cent of sponsors used email and 2 per cent relied on intermediaries.

The guidance offers no indication as to what period of time communication records should cover. Too short a period is known to result in insufficient proof of a relationship, though this is not substantiated by this study. There were also procedural challenges with back-dating, in particular, where phone companies only provided six months of records.

Another problem with phone records relates to the use of phone cards, which 25 sponsors (41 per cent of phone users) reported using. While phone cards offer cheaper rates in comparison to contract or 'pay-as-you-go' options, they do not offer proof of contact as they cannot provide records.

¹² Where there were multiple applicants per case, if at least one applicant had some kind of missing documentation, then the case was identified as having missing required documentation. This was due to the observed impacts: legal advisers had to co-ordinate multiple applications associated with one case and if one applicant had a missing document, it necessarily impacted other family members' applications.

As discussed in section 3.2.1, sponsors' income is often limited and financial obligations are varied. As a result, phone cards are appealing, despite the fact that they do not provide evidence of contact. For such cases, phone cards were still submitted with applications as evidence of communication. This does not qualify as a complexity, but caseworkers and legal advisers alike acknowledged that phone cards were imperfect evidence. As a consequence, the findings on unavailable documentation relating to communications records are likely to under-report documentation complexities.

45 per cent (41) of sponsors were unable to provide evidence of communication with family members. They were either unable to maintain contact, provide evidence of contact, or both.

4.2.3 Birth certificates in child applications

Birth certificates were unavailable for 46 per cent (31) of the 67 cases with child applicants. In their absence, legal advisers may suggest pre-emptively conducting DNA tests to prove the relationship or they may use alternative evidence such as passports with children listed, Syrian family books, reference to asylum interviews, or witness statements from friends and family. Entry clearance officers may request a DNA test following the initial submission of an application, at their discretion.

4.2.4 Marriage certificates

Of the 61 cases with a spousal applicant, 34 per cent (21) were without a marriage certificate. Like birth certificates, legal advisers may recommend clients use alternative forms of evidence to prove the nature of a spousal relationship, including witness statements, wedding invitations, Syrian family books, national ID cards, reference to asylum interviews, and photographs.

4.2.5 Passports

Passports were unavailable in 41 per cent (37) of cases. In these cases, applicants experienced difficulties with their applications.

While not an explicit requirement within Home Office guidance, passports are essential when traveling to embassies outside countries of residence.¹³ Furthermore, they (or other official ID) are required for TB or DNA tests in many cases and are used in biometric registration. As such,

not having a passport can adversely impact application processes.

Home Office guidance explains that “in certain circumstances, the applicant will not possess a travel document or a passport recognised by Her Majesty’s Government. If entry clearance is granted, the entry clearance officer should seek the authority of the entry clearance manager to issue entry clearance on a UFF (Uniform Format Form)” (UK Visas and Immigration 2012).

Knowing whether a passport is indeed essential to an application requires legal expertise and experience with country-specific issues. As an example, cases were identified where applicants were turned away from embassies due to not having passports. While this will be discussed in greater detail in section 5.3.2.1, it is worth noting that legal advisers and caseworkers play an essential role in ensuring that passports are available where necessary and in defending applicants where embassies’ or visa application centres’ conduct runs contrary to Home Office guidance.

“I have a client with a son who doesn’t have a passport. It’s a young person who has already been detained and so going to the national authorities to get a passport puts him at risk. Procedurally, what do you do?”

“I as a lawyer would have a look at entry clearance guidance because you know entry clearance officers have guidance notes that are given out to them[...]so if I have a look at the entry clearance guidance notes, that will say that if a person doesn’t have a passport, this is the procedure you’ll have to follow.”

“I can then make representations to the entry clearance officer referring to policies in place for people without a passport, saying they have to satisfy this policy. If they then refuse my client and cite the fact that he doesn’t have a passport when I’ve made all these representations citing policy in place for people without passports and who are unable to get one[...]then I’m arguing that that’s a breach of their policy and guidance.” – Solicitor with 15 years’ experience in refugee family reunion

4.2.5.1 Official identification documents

Official identification documents are not mentioned in either VAF4 or Home Office guidance, though they are mentioned in

paragraph 320 of the immigration rules. Despite this, legal advisers recognise their use. Such documents, like passports, particularly affect applicants’ ability to register for DNA or TB testing. They also facilitate biometric registration. Deciding what qualified as a credible, official ID required legal advisers’ scrutiny. IDs had to meet a threshold: they had to be produced by a legitimate administrative body and they had to provide enough detail to credibly represent the applicant.

“I wouldn’t want to make a judgment call about whether something counted as a valid form of ID. In one case, the husband didn’t have ID but he did register in his country of flight and was given a slip of paper with his name and date of birth. I wouldn’t have known if that was good enough, [the legal adviser] had to look at it.”

“One lady came in with a photo of a ration card, and that wasn’t enough because it didn’t have nationality or date of birth. What can be argued as good enough requires legal expertise. It can also be based on knowledge of country of origin...so Eritrea might not produce any valid forms of ID.” – OISC 1 caseworker

4.2.6 Witness statements and statutory declarations

33 per cent (30) of sponsors relied on witness statements and statutory declarations to support their applications. Witness statements can support a purported relationship and legal advisers play a pivotal role in identifying the necessity of such statements, as well as in producing them.

Providing witness statements from individuals in the country of origin, who may have known the family in some capacity, required logistical support from caseworkers. By liaising with sponsors, they were able to contact or track down potential witnesses. Legal advisers were then able to co-ordinate and produce a statement. Statements are legal documents, written in a particular way to the satisfaction of the Home Office and, if necessary, courts. Interviews with legal advisers revealed that witness statements produced without legal support have been unsatisfactory: they may be poorly written, non-comprehensive, too colloquial or non-specific. Ultimately, legal advisers are fundamental to understanding what a witness statement or statutory declaration is meant to achieve. This is due not only to their understanding of the application process, but also their experience as legal professionals.

¹³ Uniform Format Forms may replace passports once visas have been granted and passports are unattainable.

CHART 12 DOCUMENTATION MISSING BY COUNTRY OF ORIGIN

| | Passport, percentage based on all cases | | Marriage certificate, percentage based on spousal cases | | Birth certificate, percentage based on child cases | | Photos, percentage based on all cases | | Communication records, percentage based on all cases | |
|--------------|---|------|---|------|--|------|---------------------------------------|------|--|------|
| Afghanistan | | | | | | | | | 2 | 100% |
| Bangladesh | 1 | 100% | | | | | | | | |
| Cameroon | 1 | 100% | | | | | | | 1 | 100% |
| CAR | | | | | | | 1 | 100% | 1 | 100% |
| China | 1 | 100% | | | 1 | 100% | 1 | 100% | 1 | 100% |
| DRC | 1 | 25% | | | 2 | 50% | 2 | 50% | 2 | 50% |
| Eritrea | 14 | 82% | 6 | 50% | 10 | 77% | 9 | 53% | 7 | 41% |
| Ethiopia | 2 | 40% | 1 | 33% | | | 3 | 60% | 2 | 40% |
| Gambia | | | 1 | 50% | 1 | 50% | 1 | 50% | | |
| Ghana | 1 | 100% | | | 1 | 100% | 1 | 100% | 1 | 100% |
| Guinea | | | | | | | | | | |
| India | | | | | 1 | 50% | 1 | 50% | 1 | 50% |
| Iran | | | 2 | 29% | 1 | 14% | 4 | 50% | 4 | 50% |
| Iraq | | | | | | | | | | |
| Ivory Coast | | | 1 | 100% | | | 1 | 100% | 1 | 100% |
| Palestine | | | | | | | | | | |
| Pakistan | | | | | | | 1 | 25% | | |
| Rwanda | 1 | 100% | | | 1 | 100% | 1 | 100% | 1 | 100% |
| Sierra Leone | 1 | 100% | | | | | 1 | 100% | 1 | 100% |
| Somalia | 3 | 50% | 4 | 80% | 4 | 67% | 5 | 83% | 3 | 50% |
| South Africa | | | | | | | 1 | | | |
| Sudan | 6 | 32% | 4 | 22% | 3 | 30% | 12 | 62% | 6 | 32% |
| Syria | 4 | 80% | 1 | 50% | 5 | 100% | 5 | 100% | 4 | 80% |
| Stateless | 1 | 100% | 1 | 100% | 1 | 100% | 1 | 100% | 1 | 100% |
| Uganda | | | | | | | | | 1 | 100% |
| Zimbabwe | | | | | | | 2 | 67% | 1 | 33% |
| Totals | 37 | 41% | 21 | 34% | 31 | 43% | 53 | 58% | 41 | 45% |

4.3 Missing documentation

Chart 12 depicts cases with missing documentation by country of origin. While many of the countries have too few cases to draw any correlation, Sudan and Eritrea have sufficient cases to argue for country-specific consideration of applications.

For Eritrea, 50 per cent of spousal applications were missing marriage certificates, 77 per cent of applications with children were missing birth certificates, 53 per cent of cases were missing photographs and 41 per cent were missing communication records. For Sudan, 22 per cent of spousal applications were missing marriage certificates, 30 per cent of child applications were missing birth certificates, 62 per cent of cases were missing photographs and 32 per cent were missing evidence of communication.

“If you see an Ethiopian family applying or a Sudanese family applying, I could probably tell you what documents they can get, what they can’t get, what that application is going to look like, exactly what they’ll have to do at the embassy and the likely outcome of that.”
– OISC 1 caseworker

In such cases, where sponsors and applicants are unable to produce required documentation, legal recourse is fundamental. This is because legal advisers can use their expertise to identify alternative evidence. While this does not guarantee success, it helps develop applications in a way that many clients would have not known about or considered.

“There are issues that come up, which you know straight away when you know the nationality of the sponsor. So you know if they come to see you and they’re Syrian, then you know issues will come up.” – Solicitor with 15 years’ refugee family reunion experience

If such data became available for other countries of origin, it might be worthwhile investigating whether similar trends exist. Understanding limitations associated with different countries could lead to alternative guidance being offered by the Home Office and non-governmental sector as to what supplementary documentation would suffice to prove the nature of the relationships claimed in applications.

4.3.1 Causes of missing documentation

In the analysis of the 91 cases, documents were missing for a variety of reasons. Although many cases demonstrated unique circumstances, three trends were observed and are discussed below.

4.3.1.1 Institutional and external factors

Causes of missing documentation that are outside the control of sponsors and applicants fall mainly into two categories: the location of birth or marriage or the nature of flight.

In the former case, administrative functions of some localities may be limited or may not work in the same way as they do in the UK. Certificates documenting birth or marriage may not exist as a matter of practice or, if they do exist, they may not appear the same as would be expected in the UK. Alternatively, documentation that is available may not meet the threshold of what entry clearance officers require because it is produced by a non-state entity such as a religious institution or community leader. While customary documentation was provided in only six cases, the documents were not counted as missing and so are not included in the figures above.

The nature of flight was also highlighted as a cause for missing documentation. Often, families left their homes under duress and without time or capacity to collect documents, if they existed. Furthermore, some applicants’ fears of imprisonment or persecution prevented them from contacting administrative institutions in their countries of origin.

“In some cases, people will have marriage or birth certificates with names of family members. In a lot of other cases, marriage and birth certificates won’t be available. They’ll say: ‘Well, my village was bombed and I ran out in the middle of the night. Of course I don’t have those things.’ That’s tricky to advise because then you have to think about what you can provide to support an application. You have to think laterally.” – LSC 2-qualified legal adviser

Applicants from Syria – arguably the most systematically repressive and violent environment from which applicants originated – provide a case in point. Chart 12 shows the near-total lack of evidence available for making refugee family reunion applications for Syrians. This situation is not restricted to Syria alone.

4.3.1.2 Procedural factors

In some cases, missing documents were due to procedural factors, where the production of evidence was challenging. An example of this is providing proof of contact. For many sponsors, in particular those with limited English language skills, understanding how to extract text messages or print phone records was both a foreign concept and difficult to undertake.

Such difficulties arose in relation to specific means of communication. Skype and Viber, used to exchange text-based and verbal messages, and WhatsApp, exclusively a text-based messaging service, were difficult for many sponsors to extract records of contact from. In this situation, caseworkers often helped them either by contacting companies directly or by taking ‘screenshots’.

Many sponsors who used ‘pay-as-you-go’ and phone card services also had difficulty downloading messages. The former generally required authenticating and registering a SIM card with a phone company. This proved exceptionally challenging for sponsors with limited English as it required either speaking to someone in English or finding instructions online then understanding and executing them. For sponsors unable to understand this process, caseworkers provided indispensable support.

Also, when making phone calls with ‘pay-as-you-go’ and phone card services, you cannot get a simple printout of phone records. Such records may only have phone numbers, not associated with sponsor or applicant. Furthermore, where phones are shared, either in the UK or abroad, and they are associated with individuals not relevant to the refugee family reunion application, this may also present a problem.

While caseworkers played a pivotal role in facilitating the extraction of records of communication, legal advisers delineated what level of content was essential and what was, in their view, sufficient to prove the nature of the relationship between sponsor and applicant. Understanding what length of records was sufficient fell to legal advisers. Such decisions depended on learning from past cases as well as coping with limited available resources. Decisions about length of records also had financial implications, in particular where sponsors and applicants communicated in languages other than English, as translation was essential. Outside the pilot projects, this cost would fall to the sponsor and could be a significant expense.

4.4 Inherently complex cases and documentation: adoption, de facto adoption, stepchildren and sibling applications

Cases where applicants were stepchildren, adopted, de facto adopted or siblings presented both procedural and legal challenges. Such applications accounted for 23 per cent (21) of all cases. There were 38 applicants affected, 36 of whom were children. This represented 25 per cent of child applicants.

These four categories of cases are not evenly covered in the VAF4 and Home Office guidance, though chapter 8 of the Family Members of the Immigration Directorate Instructions, aimed at entry clearance officers, provides some guidance. As chart 13 below demonstrates, there are no clear instructions for preparing applications on behalf of stepchildren. Adopted children are discussed only in Home Office guidance – as are de facto adoptions and sibling cases, which are deemed ineligible. The Home Office webpage on refugee family reunion does not provide clarity on any of these categories of applicants, nor does part 8 of the immigration rules indicate whether or not adopted and de facto adopted children should qualify for part 11.

Due to this lack of clarity, legal expertise was essential in making applications in each case. The legal support provided was wide-ranging and covered: identifying the validity of discretionary applications, documentation gathering, writing client and witness statements, making reference to case law, and writing convincing and coherent cover letters.

CHART 13 GUIDANCE COVERING ADOPTION, STEPCHILDREN, DE FACTO ADOPTION AND SIBLING APPLICATIONS

| | Adoption | Stepchildren | De facto adoption | Sibling |
|----------------------|---------------|---------------|-------------------|---------------|
| VAF4 guidance | Not mentioned | Not mentioned | Not mentioned | Not mentioned |
| Home Office guidance | Discussed | Not mentioned | Discussed | Discussed |
| Home Office webpage | Not mentioned | Not mentioned | Not mentioned | Not mentioned |

Charts 14a and 14b provide a summary of the four types of cases, and the numbers and percentages of applicants affected.

CHART 14A NUMBER OF ADOPTED, DE FACTO ADOPTED, STEPCHILD AND SIBLING APPLICANTS

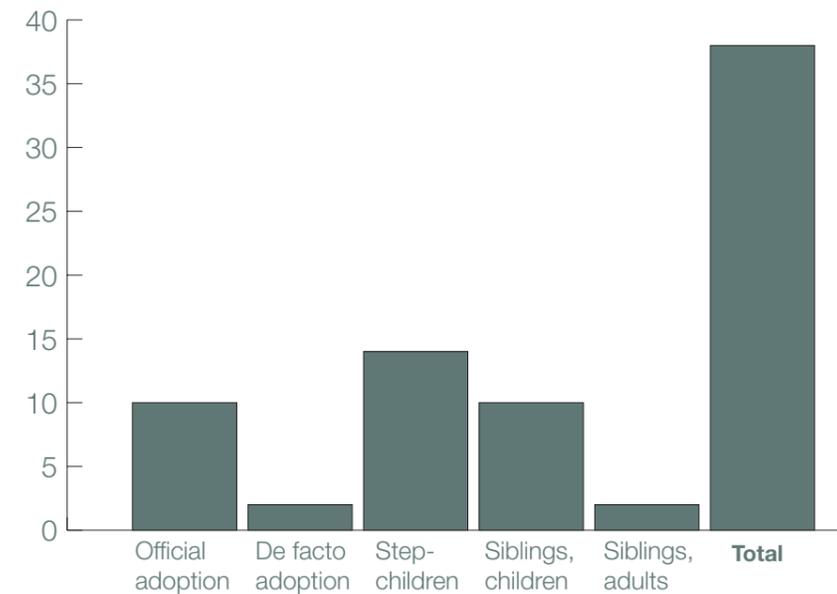
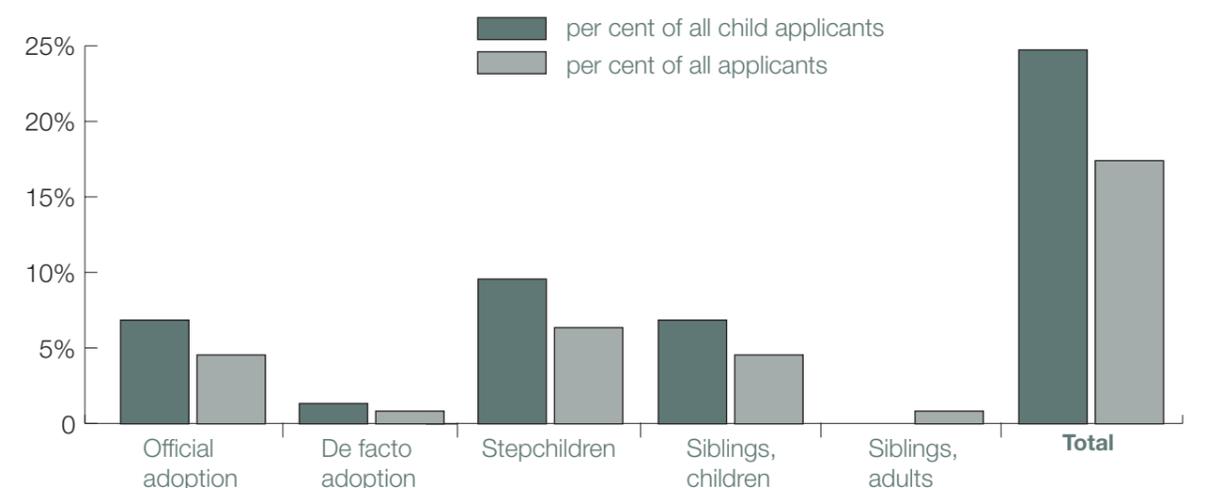


CHART 14B PERCENTAGE OF ADOPTED, DE FACTO ADOPTED, STEPCHILD AND SIBLING APPLICANTS



4.4.1 Adoption

There were five cases where sponsors in the UK were seeking reunion with adopted children abroad, affecting 7 per cent (ten) of all child applicants. All sponsors were able to provide documentation attesting to the adoption. However, there were two significant challenges: firstly, that some adoption papers were customary or produced by a non-state body and secondly, that the countries of origin, where the adoptions took place, had not acceded to the Hague Adoption Convention, or ‘Hague Convention’ (HCCH 2014; Home Office 2011a).

Coping with these two complexities required different legal strategies. Legal advisers had to identify, and caseworkers had to acquire, alternative supporting evidence that demonstrated the purported relationship.

If an adoption took place in a country that has not acceded to the Hague Convention, the UK does not acknowledge it as an official adoption as per part 8 of the immigration rules. The reason for this discrimination is to prevent child trafficking. Therefore, adoptions in countries that have not acceded to the Hague Convention are inherently complex. Legal advisers must ensure that the nature of the adoption is accurately understood for the purpose of the application, identify that a discretionary application must be made, then strategically develop evidence that conveys that the nature of the purported relationship is one of parent and child.

Chart 15 below provides a breakdown of adoption cases by country of origin. None of the countries represented – Afghanistan, Central African

Republic, DRC and Ethiopia – have acceded to the Hague Convention. As such, despite the families considering it to be an official adoption, they must prepare their applications as if their children are theirs unofficially or by de facto adoption. This requires meeting eligibility criteria set out in 309A of part 8 of the immigration rules.

UK practice around non-Hague Convention countries is a legal contingency that is unexplained within government guidance. Identifying from the outset that this problem might arise requires legal expertise or previous experience with such cases.

CHART 15A COUNTRIES OF ORIGIN AND ADOPTION APPLICANTS

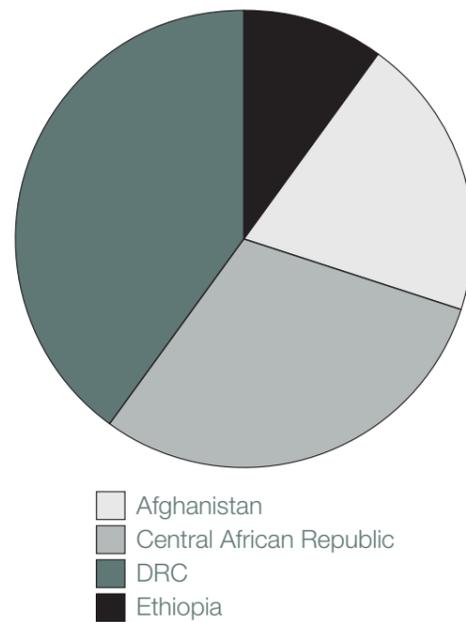


CHART 15B ADOPTION CASES, COUNTRIES OF ORIGIN AND APPLICANTS

| Number of cases | Country of origin | Number of applicants | Rationalisation |
|-----------------|--------------------------|----------------------|---|
| 1 | Afghanistan | 2 | Two nephews of the sponsor. Their father died in a bombing. The sponsor and applicants lived together even when the applicants' father was alive. |
| 1 | Central African Republic | 3 | Three younger siblings who were adopted when their and the sponsor's parents died. |
| 1 | DRC | 2 | Applicant daughters officially adopted in DRC but are not aware of this. Not formally adopted according to Hague Convention. |
| 1 | DRC | 2 | Their mother died and the sponsor, their aunt, adopted them in DRC before she fled. |
| 1 | Ethiopia | 1 | Nephew of sponsor, formally adopted at a young age. |

4.4.2 De facto adoption

The adoptions within the previous section occurred in countries that had not acceded to the Hague Convention. Therefore, those cases and the respective applicants are considered de facto adoptions and are aggregated into the figures in this section. Given this, there were a total of seven cases of de facto adoption affecting 12 children, which represents eight per cent of all child applicants.

De facto adoption, according to the immigration rules in part 8, paragraph 309A, has requirements for the length of time parents and children must have lived together. In particular, paragraph 309A explains that adoptive parents or parents must have “lived together for a minimum period of 18 months, of which the 12 months preceding the application for entry clearance must have been spent living together with the child”. Due to the nature of flight from persecution and waiting periods for asylum, for example, this restriction is not easily fulfilled in the case of refugee family reunion. This section looks at cases where there is a parental relationship between sponsor and applicant, who are not blood-related and where an official adoption procedure, in the view of the UK, has not been undertaken.

As de facto adoption is excluded from refugee family reunion, these cases were made on a discretionary basis. Deciding the validity of such applications depended on legal advisers' capacity to gauge whether they met the threshold of being compassionate and compelling, and whether the cases would be successful in court should they reach an appeal. It also meant determining whether the child applicants were dependent on their sponsors in a way similar to a parent-child relationship.

4.4.3 Stepchildren

Stepchildren are not mentioned in either Home Office or VAF4 guidance, nor are they mentioned in parts 8 and 11 of the immigration rules. Elsewhere, in the introduction to the immigration rules produced by the Home Office, it is stipulated that a stepfather and stepmother are defined as:

- “(a) the stepfather of a child whose father is dead and the reference to stepfather includes a relationship arising through civil partnership
- (b) the stepmother of a child whose mother is dead and the reference to stepmother includes a relationship arising through civil partnership” (5).

Within the research, there were six cases where stepchildren applied to be reunited with sponsors based in the UK, affecting 14 children or 10 per cent of all child applicants.

Two complexities arose in the cases of stepchildren: proving that the stepparent and spouse had sole responsibility for the child applicant and providing essential documentation.

The first complexity required administrative support from caseworkers and legal expertise from legal advisers. Legal advisers had to understand whether the child's other birth parent presently cared for them in any way, whether they were living or dead, whether they posed a threat to the child, or whether their location was unknown to the family making the application. Each of these potential outcomes required different responses.

If the other birth parent had a relationship with the child, or if they were simply alive and their whereabouts known, a statement giving consent to the child moving to the UK was required. If the parent was dead, a death certificate or witness statement was necessary to substantiate this. If they posed a threat or if the family making the application did not know the parent's location, a witness statement attesting to this was necessary. Sponsors, applicants, or friends and family abroad provided witness statements. Such procedures require the specialist knowledge of legal advisers.

“Another type of case is where an application is made for a child and there is a parent in the country of residence abroad. On the face of it, it looks like they're eligible. They might have all the documents. The parent in the country of origin might be very willing for the child to go. In this situation, they need legal advice to determine eligibility.” – OISC 1 caseworker

The second complexity of missing documentation also required legal support. In particular, when sponsors did not have a marriage certificate or when birth certificates were unavailable, legal advisers had to identify ways to prove purported relationships.

Missing marriage documentation proved problematic to applications with stepchildren. Without proof of marriage between spouses, any relationship between the sponsor and stepchild is necessarily unclear. Similarly, without birth certificates for the stepchild, the child's relationship with their birth parent (and spouse to the sponsor) was uncertain, so the link between the sponsor

and stepchild had to be substantiated with evidence. In such cases, legal advisers intervened, knowing that the relationship between sponsor and stepchild was contingent on the sponsor's marriage to the birth parent. Missing birth certificates might require other means of proving the relationship between the birth parent and child applicant, such as DNA tests.

The current guidance on stepchildren does not address the various issues that arose. Legal advisers therefore proved essential in identifying challenges to applications, including determining the eligibility of applicants and advising on alternative documentation.

Case study: a refused stepchild application

'Z' is a refugee from Ethiopia. She was married to a man who had a son, 'T', from a previous marriage. Although already the boy's stepmother by marriage, she and her family agreed to a formal adoption.

Z's husband eventually died. With both of T's birth parents dead, Z became T's primary and sole guardian.

Z ultimately fled to the UK to escape persecution. Z's mother, the boy's stepgrandmother, agreed to look after him until Z could bring him to the UK. They agreed that this would be a temporary arrangement as she would be unable to care for him until he reached adulthood.

Z worked with the British Red Cross and a legal adviser to put together her and T's application for refugee family reunion. She was able to get her and her husband's marriage certificate, T's birth certificate and national ID, as well as the adoption certificate. Z seldom spoke to T by phone as she feared her mother's phone was tapped, and that somehow T and her mother might be tracked down and linked to her. To supplant T's father's death certificate and lack of communication records, Z's legal adviser also recommended a witness statement attesting to her and T's relationship.

Despite documentation provided, the application was initially refused. The entry clearance officer gave these reasons:

1. "You are applying to join your stepmother in the UK who is not your biological parent. Therefore I am not satisfied you are the child of a parent who has been granted refugee status in the UK. 325(i)."

- 2. "I note that your parents have passed away and you are currently living with your grandmother. You have not provided satisfactory evidence that you cannot continue to live with her. I am therefore not satisfied there are serious and compelling family or other considerations which make your exclusion undesirable. 319(ii)."
- 3. "You have not provided any evidence of your sponsor's income and employment. You have failed to prove to me that you will be adequately maintained and accommodated in the UK without additional recourse to public funds. 319(vi)(vii)."

Although the third reason has no basis in a refugee family reunion application, the other two were addressed in Z's application. Z did not understand how she could not be conceived of as T's mother, given her marriage to his father and the official adoption. With the help of her legal adviser, they decided to make an appeal. Upon going to court, the Home Office reversed its decision.

4.4.4 Siblings: sponsor and applicant

Sibling relationships between sponsor and applicant have been treated as a separate category to de facto adoption. This is due to the fact that there was not enough clarity about the time period for which sponsors had parental responsibility over their sibling applicants nor were official adoption papers mentioned by sponsors. Applications to reunite with siblings are seen as discretionary.

10 per cent (nine) of cases involved sponsors making applications to reunite with their siblings abroad. This represented 6 per cent of all applicants. Two of these applications were made on behalf of adult siblings and the other six were made on behalf of child siblings.

All applicants were either currently unaccompanied – or would be if the sponsor's spouse, and their current caretaker, were to travel to the UK through an eligible application. As unaccompanied children, many faced or would face financial and security hardships. Some children were situated in areas of armed conflict such as Syria. Others were without any support networks in Sudan and DRC, or in refugee camps in third countries. There were significant protection risks for siblings of sponsors and, without support networks, they also experienced many logistical and procedural challenges.

As they were treated as discretionary applications, legal advice was essential. Firstly, to identify

whether the cases would potentially be successful and secondly, to ensure that adequate documentation was provided to demonstrate the dependence of the applicants on sponsors and the threats to which they were exposed.

CHART 16A SIBLING APPLICANTS

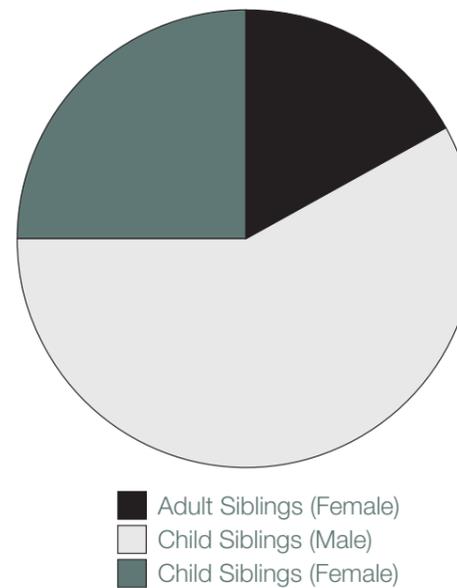


CHART 16B SIBLING APPLICANTS BY COUNTRY

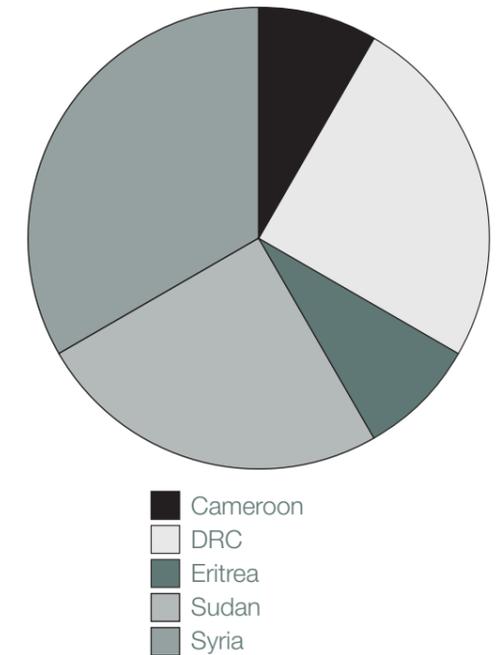
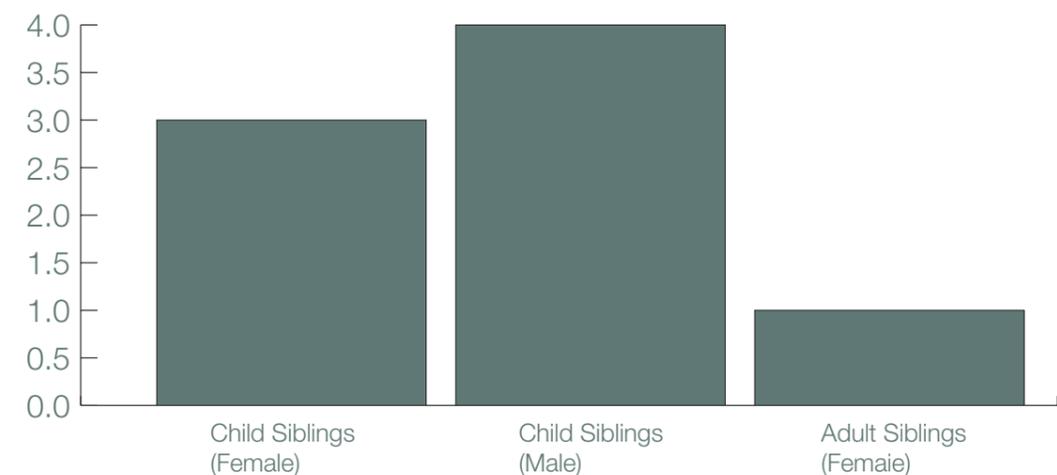


CHART 16C SIBLING APPLICANTS WITHOUT CARERS OR FAMILY MEMBERS PRESENT



“[One of the most frequent complexities is when] someone doesn’t exactly fit part 11 of the immigration rules. Meaning they wish to sponsor someone but it’s not necessarily their child. It could be their younger sibling...then we need to look at it and decide if we need to make a discretionary application. It’s a tough judgment call.

“The secretary of state has the remit to exercise discretion where there are compelling and compassionate circumstances. There’s that balance of saying we could make a discretionary application in a lot of cases but there’s the question of whether we want to put a client through that. You don’t want to do that if you’re taking a long shot. You only want to make a discretionary application when you think there’s really a chance.

“That’s where it comes down to having the experience and colleagues who have spent a lot of time in court, to be able to say even if the application is refused that that will be a really good case in court and that a judge will be really sympathetic to the case.” – LSC 2 legal adviser

4.5 Children living in uncertain arrangements

Defining what constitutes an ‘unaccompanied child’ is problematic due to differing definitions at a national and international level. According to the immigration rules – part 11, paragraph 352ZD – an ‘unaccompanied child’ is a person who:

- a) is under 18 years of age when the asylum application is submitted
- b) is applying for asylum in their own right
- c) is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

Elsewhere ‘separated children’ is defined by the Separated Children in Europe Programme as “children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver” (3).

As both definitions provided are particular to either asylum seekers or children in third countries, respectively, unaccompanied children are described as having ‘uncertain living arrangements’. Such arrangements are those that are not permanent and where the caretaker,

if there is one, is not legally or by any other means obliged to care for the child. Often in such cases, informal caretakers look after children upon request of the birth parent or on receipt of funds. While a number of child applicants stayed with friends of sponsors or extended family, sponsors stated that the temporary caretakers expressed the hardship it caused and their lack of commitment to the children. ‘Uncertain living arrangements’ can also include children who live alone, within or outside their country of origin. All cases of ‘uncertain living arrangements’ share the following characteristics: the child is without a permanent caretaker or parent, and they do not have social, economic or physical security.

Of the 67 cases involving child applicants, 36 per cent (24) were made on behalf of child applicants living in uncertain living arrangements. This represents 26 per cent of all cases. Children in these circumstances accounted for 19 per cent of all applicants and 29 per cent of all child applicants.

These cases involved challenges with documentation gathering and accessing embassies. For example, some child applicants without a parent present, and who were based in a refugee camp, could not leave the camp to submit applications to the British embassy. Children based in India and Pakistan, who did not have access to passports, could not acquire them due to laws around parental consent. Ultimately, in such cases, legal advisers were able to draft affidavits or formal consent letters to solve administrative problems. Without their work, outcomes may have been negative.

There were many protection considerations and legal complexities for children in uncertain living arrangements. But, with the support of legal advisers, they could often be mitigated. And with the help of caseworkers, many logistical issues, such as travelling to embassies, could be overcome.

4.6 Interview discrepancies

Interviews conducted with sponsors for their asylum applications are scrutinised by entry clearance officers for evidence of familial relationships purported within refugee family reunion applications. Legal advisers also use them to legitimise claims of familial relationships. Where discrepancies are discovered, the credibility of claims can be undermined and applications for refugee family reunion can be refused.

Among the 91 cases, 25 per cent (23) demonstrated a discrepancy. They were varied and

required distinct responses from legal advisers and caseworkers. Four trends in discrepancies were found: documentation provided and interviews; personal histories; reported relationships between sponsors and applicants; and omissions.

4.6.1 Variations in documentation provided and interviews

There were two key ways in which documentation provided and interviews varied. Firstly, the names of applicants may have been spelled differently during sponsors’ interviews and on identifying documentation. Secondly, dates of birth may not have matched. There were numerous causes for these errors. The simplest was that sponsors had simply misspelled names or incorrectly recalled dates. More complicated causes involved languages that lent themselves to varied transliteration of names, poor interpretation due to variation in dialects, or dates in non-Gregorian calendars not being consistently converted.

4.6.2 Variations in personal histories

When applying for asylum, sponsors must provide detailed personal histories in order to convince UK representatives that their claims are credible and legitimate. They are also essential for demonstrating familial relationships purported in refugee family reunion applications. Where the histories provided during asylum interviews and within family reunion applications do not perfectly match, the credibility of claims may be doubted and a legal adviser’s intervention is necessary. The variation in personal histories occurred where dates of sponsors’ flight or the dates of sponsors’ arrival in the UK were incorrectly given by applicants interviewed for family reunion.

4.6.3 Variations in reported relationships with applicants

There were some variations in sponsors’ relationships to applicants, with sponsors identifying family members incorrectly during their interviews for status. As an example, sponsors may have named their children as siblings. Such mistakes were often attributed to anxiety during the interview process and, for those who realised the mistake had been made at the time, they said they feared the consequences of making corrections.

4.6.4 Omissions of family members

Omissions in asylum interviews were also a source of discrepancy. These, too, occurred in a number of ways. For example, sponsors may not have

mentioned their families at all. In other situations, they may have mentioned that they had family members who would be eligible for refugee family reunion, but did not state their names. There were a number of reasons why omissions were made. Some said they thought that mentioning family members might work against their asylum applications, others said they were never asked their family members’ names. In one exceptional case, a son was thought to be dead and so was excluded from the sponsor’s interview, only to be discovered alive following the sponsor’s attainment of refugee status.

Legal advisers were essential in addressing all discrepancies. Rectifying mistakes required taking instruction from sponsors then making representations to the Home Office. Where documentation provided had misspellings or typos, caseworkers helped facilitate the production of corrected documentation.

“Gathering evidence might seem administrative – you get a copy of this birth certificate or whatever. But we have certain things like discrepancies between the date of birth in an asylum screening interview and their certificates; or between marriage certificate and the passport. Different dates, that kind of thing. You might put all this together thinking that’s what [the guidance] tells me I need and not notice those discrepancies. [The legal adviser] would notice and then would take instruction as to why they’re there and then explain it in the cover letter to the application.” – OISC 1 caseworker

4.7 Coping with complexity: the role of legal support in the documentation stage

There were four areas identified where legal support is required during the documentation stage:

- > Identification of eligible and compelling discretionary cases.
- > Identification and production of evidence capable of supporting an application.
- > Co-ordination of evidence gathering.
- > Identification and resolution of discrepancies in interviews.

4.7.1 Identification of eligible and compelling discretionary cases

For the purpose of the pilot projects, cases were selected that generally fitted with the immigration rules. Despite this, a number of discretionary cases were undertaken. Cases were discretionary as they did not conform to the immigration rules but were seen as eligible as they had a good chance of being deemed “compassionate, compelling circumstances” by the secretary of state. Being able to determine whether a case fits this framework relies on past experience of similar cases, as well as legal and procedural knowledge.

“A legal practitioner has much more of an idea of what sort of refusal grounds might crop up, where an application might go wrong. A legal practitioner understands how strict the Home Office is from their experience. They can tell you whether you’re wasting your time or not and whether an application can be submitted under a different part of the immigration rules. They can help determine whether a client’s life fits with the rules. It stops people from wasting their time, their heartache, their levels of stress... whatever you go through when you’re making that application.” – OISC 1 caseworker

As the examples in section 4 demonstrate, knowledge of legal precedent is fundamental to assessing whether or not a discretionary case has merit and is feasible. As one legal adviser explained, identifying compelling discretionary cases is also helped by having a professional network, such as a firm in which colleagues might have courtroom experience that enables them to assess whether a case might succeed at appeal stage.

“You’d use the immigration rules but you wouldn’t simply rely on the immigration rules. Of course you wouldn’t, they’re so narrow. So what you would do is use precedent cases. We very often use EIN, the Electronic Immigration Network. We’d use the Immigration Law Practitioners’ Association (ILPA) case notes, we’d use previous cases where the law was slightly bent or slightly expanded. [...] Ultimately, what happens overseas is that they are simply relying on the immigration rules and guidance, so you’d have to make very weighty representations in order to convince them to look beyond those immigration rules. Very often that didn’t happen overseas and it would come back...

into court in the UK and, again, you’d have to reiterate all of that again. Yes, certainly, immigration rules, plus the guidance, plus the discretionary guidance, plus the UN Convention on the Rights of the Child, human rights legislation obviously and previous cases.” – Solicitor with 11 years case work experience

Legal advisers must have an understanding of refugee family reunion, case law and legal precedent, where it might support a discretionary application and may require the drafting of client and witness statements attesting to the purported relationship. Should any complications arise with discretionary cases, legal advisers are likely to make representations to Home Office officials. Only OISC 3-qualified caseworkers and solicitors meet all the necessary requirements to identify and develop discretionary cases

4.7.2 Identification and production of evidence capable of supporting applications

Understanding evidence requirements requires legal expertise, proficiency in the immigration rules and guidance on refugee family reunion, and knowledge acquired through experience working on cases over time.

When required documentation is missing, legal advisers must ‘think laterally’ to provide alternative evidence that will satisfy requirements. An unofficial toolkit of alternatives exists, though none are guaranteed to ensure that entry clearance officers are convinced of the purported relationship.

“You look basically at the circumstances in which it’s easy for you to meet the rules and what you need to meet the rules. And you consider the problems, how to deal with them, how to frontload an application, what documents you need, how you can get them, and what documents you need from third parties.” – Solicitor with 15 years’ experience in refugee family reunion

It may be possible to submit supporting documentation that is similar to the required documentation as found in the guidance, with an explanatory note giving some context.

“Sometimes it will be a situation when a person claims asylum on their own and in their asylum interview they mention their kids, so when it’s mentioned there it [can be used

towards a family reunion application]. I ask [sponsors] what do you have? Who back home could write a statement supporting what you’re saying?

“I think it is from experience because you can refer to past cases, like contacting a school to have a headmaster write a statement. And so it’s just a question of brainstorming a bit with the client. I don’t think clients would produce the evidence I help them present. It’s hard to know. [...]

“We have to shift thinking to what we can get – at least we’re showing what evidence we do have and that we’re trying to meet the requirements of the immigration rules. If clients were left to their own devices, they’d submit the application with a document explaining they don’t have any documents and that it’s not their fault. And that won’t get them anywhere.” – LSC 2 legal adviser

Legal advisers must understand refugee family reunion and take instructions from clients to find out what documents are available and what is missing. They must understand types of evidence and how to get it and, where the production of statements is required, they must instruct individuals contributing them. Finally, where non-typical evidence is provided, legal advisers may write a cover letter explaining why such documentation has been provided. Either an OISC 3-qualified caseworker or a solicitor can do all these tasks.

4.7.3 Co-ordination of evidence gathering

Caseworkers, either OISC 1 or working towards OISC 2, provided support in acquiring documentation using various methods. This included liaising with sponsors, developing an understanding of the administrative entities in countries of origin, and contacting friends and family of sponsors and applicants. Where caseworkers felt that tasks within evidence gathering required legal advice, or when any of their work took the form of ‘representations’ on behalf of a client, they would appeal to the legal adviser for clarification.

4.7.4 Identification and resolution of discrepancies in interviews

There may be many different types of discrepancies in interviews and legal advisers play a crucial role in resolving them, in order to mitigate their impact on an application. Caseworkers also

play a significant role in co-ordinating logistics. In interviews, legal advisers explained that they played a significant role in the identification of discrepancies as well as in remedying them. This depended on their attention to detail and their awareness that even small discrepancies might work against an application. Remedying discrepancies, however, relied on making representations to the Home Office using a cover letter.

OISC 2 or 3-qualified legal advisers could support efforts to mitigate interview discrepancies. However, OISC 3 legal advisers and solicitors are equipped to address any arising issues, some of which OISC 2 advisers are excluded from working on.

CHART 17 SUMMARY OF LEGAL SUPPORT IN THE DOCUMENTATION STAGE COMPARED TO OISC REGULATIONS

| Legal support in the documentation stage | OISC | Level 1 | Level 2 | Level 3 |
|--|---|---|------------|-------------------------|
| 4.7.1; 4.7.4 | Refugee family reunion applications | No | Yes | Yes |
| | Taking instruction from clients | No | Yes | Yes |
| | Drafting client statements | No | Yes | Yes |
| | Drafting witness statements as evidence | No | No | Yes |
| | Representations to the Home Office | No | Yes | Yes |
| 4.7.2; 4.7.4 | Knowledge of case law and ability to engage this in representations | No | 'Detailed' | 'Sufficiently thorough' |
| 4.7.2; 4.7.4 | Knowledge of types of evidence to support cases and how to get it | Yes (but cannot work on refugee family reunion) | Yes | Yes |

5 Submission stage: the humanitarian impact of complex family reunion procedures



Key findings:

- > Applicants who did not have a British embassy available to them in their country of residence, and who had to travel internationally to gain access to one, faced potential financial and security repercussions. In 20 per cent (18) of cases, applicants did not have access to an embassy within their country of residence. This affected 20 per cent (44) of applicants, 43 of whom were women and children.
- > Applicants in third countries without legal status faced security and logistical challenges that made it difficult for them to access the relevant British embassy.
- > Administrative complexities arose at the point of submitting, or shortly after submitting, an application. Among the 51 cases in the submission stage, 35 per cent (18) experienced complexities with a British embassy or entry clearance officers – usually either the applicants were refused access to the British embassy or they had difficulties with online tools.

5.1 Introduction

Applicants are required to make an appointment at a British embassy and submit their applications in person. This is so that they can contribute biometric information and also provide TB tests when required by the Home Office.

Submitting applications in person poses serious challenges, including protection risks, such as in cases where international travel, travel through an armed conflict environment or the travel of minors in uncertain living arrangements is necessary. These challenges require careful co-ordination by sponsors and caseworkers, with input from legal advisers. Both co-ordination of submission, which involves communicating with agents on the ground, and travel are expensive.

The research also revealed administrative complexities – for example, a British embassy refusing entry to applicants despite having pre-arranged appointments or the failure of online tools for registering

appointments. In such cases, legal advisers make representations on behalf of clients to government representatives and caseworkers, and facilitate the co-ordination of logistics. Both of these tasks depend on their expertise, networking ability and experience.

Many tasks in the submission stage demand legal representation and therefore require a legal adviser at either OISC level 2 or 3, or a solicitor. Successful co-ordination of applications at submission stage also depends on administrative support from non-legal experts such as OISC 1 caseworkers.

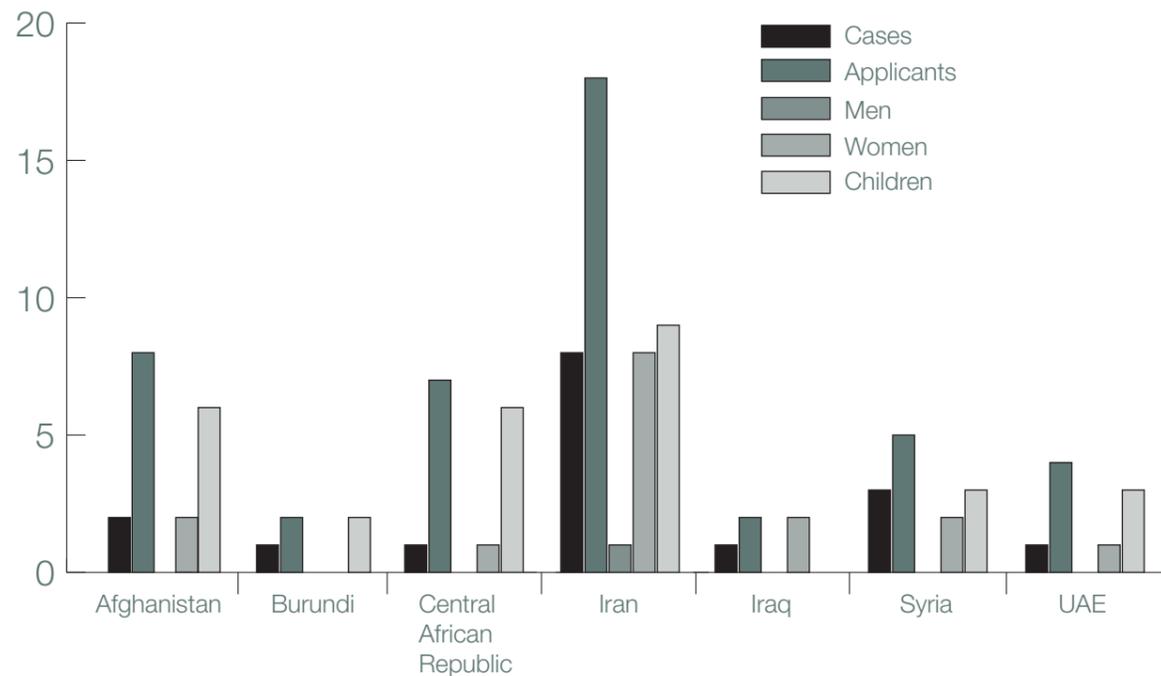
5.2 Embassy access: protection risks and international travel

Applicants who did not have a British Embassy available to them in their country of residence, and who had to travel internationally to gain access to one, faced potential financial and security risks. Some applicants did not have travel documents available, some had difficulties accessing means of travel, and some needed somewhere to stay while submitting applications. In many cases, caseworkers helped sponsors co-ordinate the logistics.

“People are saying to me that their families are risking their lives to get to the places that they need to get to, and in terms of children, they’re having to be ferried from one country to another country by people they don’t really know, to submit applications. And if that then doesn’t work it’s incredibly distressing for the child and incredibly distressing for the parent.” – OISC 1 caseworker

In 20 per cent (18) of cases, applicants did not have access to a British embassy within their country of residence. This affected 20 per cent (44) of applicants, 43 of whom were women and children. Chart 18 provides a summary of the countries of origin that require international travel and the applicants within this study who were affected.

CHART 18 COUNTRIES OF RESIDENCE REQUIRING INTERNATIONAL TRAVEL AND NUMBER OF APPLICANTS AFFECTED



“What would cause me to designate a case to be particularly complex is what I know about the country of origin; some countries in which the British post is closed, like Syria or Iran, and so if someone were to come to me – even if the case were legally straightforward – but the complexities most often arise from [when] someone can’t lodge an application in Iran so they have to lodge an application in Istanbul and the Turkish government is being more difficult in letting people enter Turkey. And what happens when they come back home after lodging an application – will they have political trouble, will they have money to support themselves? Complexities arise from country conditions and administrative problems.” – LSC 2-qualified legal adviser

Many women and children are left to their own devices to try to access British embassies. They face substantial protection risks when they cross borders and areas affected by armed conflict or violence. While the nature and extent of the insecurity is varied, the vulnerability of women and children is clear.

“There was some difficulty to go to Lebanon because they abduct and rape women. It was maybe more secure for my family to go to Turkey. But they went to Lebanon in the end. In that area, they can take you as a hostage and take you for a ransom. This is different from the abduction I mentioned. They ask you lots of questions like ‘who are you, where is your husband, and why are you going to Lebanon?’ This would be the government asking.

“I didn’t understand why my family had to go to Lebanon where there’s a very real danger. It’s much safer to go to Turkey. I would like people to go to safer places rather than being sent to dangerous places like Lebanon.” – Adult male sponsor, Syria

Mitigating security risks is an almost insurmountable challenge. However, both Home Office policy and other support systems should have access to contemporary analyses of environments where security risks exist. Furthermore, Home Office policy should ensure that applicants are given access to a British embassy that poses the least risk to their security and safety, which may include granting permission to applicants to choose the embassy best suited to their needs.

5.2.1 Applicants in third countries illegally

Like applicants who must travel internationally to gain access to a British embassy, applicants who have already journeyed to third countries face protection risks. While they have already made what is often a difficult journey, applicants in third countries without legal status experience further difficulties in making applications.

As discussed in section 3.3.2.1 and demonstrated in chart 8, 32 per cent (70) of applicants were found to reside in third countries and 10 per cent (21) of all applicants lived in third countries without legal status. Living illegally in a third country is an unfortunate consequence of protection concerns, when families flee their countries of origin seeking more secure environments.

Applicants reported fearing arrest, imprisonment and repatriation. In some cases, in particular, Eritreans and Somalis in Kenya, Ethiopia and Sudan, applicants feared persecution by civilians and state actors alike. This prevented many from travelling to submit their applications. In some cases, countries were reported to have policies in place that made flights to the UK difficult or impossible for individuals in the country without status. Applicants potentially faced harsh fines and even imprisonment as punishment.

Legal advisers had to consider what means were available to applicants to ensure their protection and to facilitate their applications. They had to liaise with sponsors and humanitarian organisations in the field to understand the potential threats to applicants and to develop a strategy for submitting applications.

5.3 Administrative complexities

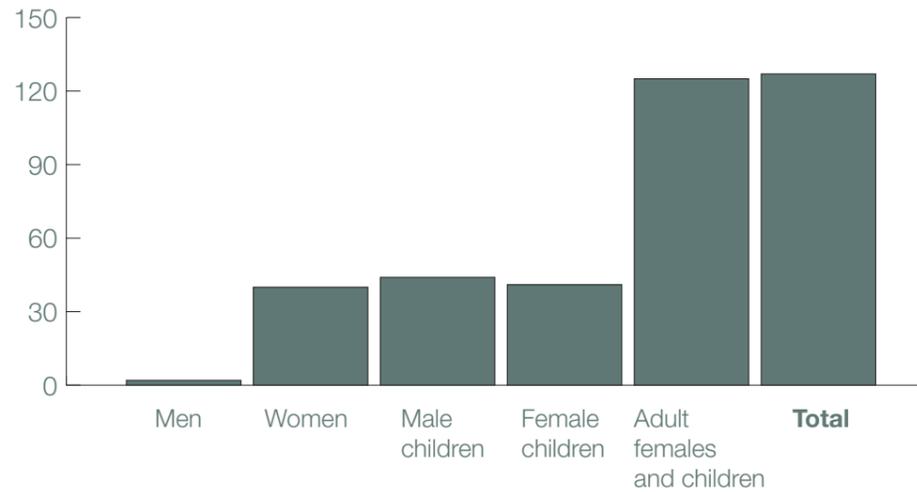
Administrative complexities arise at the point of submitting, or shortly after submitting, an application. Due to the nature of this research, many cases had not yet reached this stage.

5.3.1 Sample size and constitution

There were 51 cases and 127 applicants at the submission stage of their application at the time of data gathering. This represents 56 per cent of the original sample’s cases and 58 per cent of applicants.

Within the sub-sample, 33 per cent (42) were adult applicants and 67 per cent (85) were children. Among the adults, there were 40 women and two men. Therefore, women and children accounted for 99 per cent (125) of the sub-sample. A summary of applicants at the submission stage can be found in chart 19.

CHART 19 SUB-SAMPLE APPLICANT DEMOGRAPHICS



5.3.2 Administrative complexities: embassies and entry clearance officers

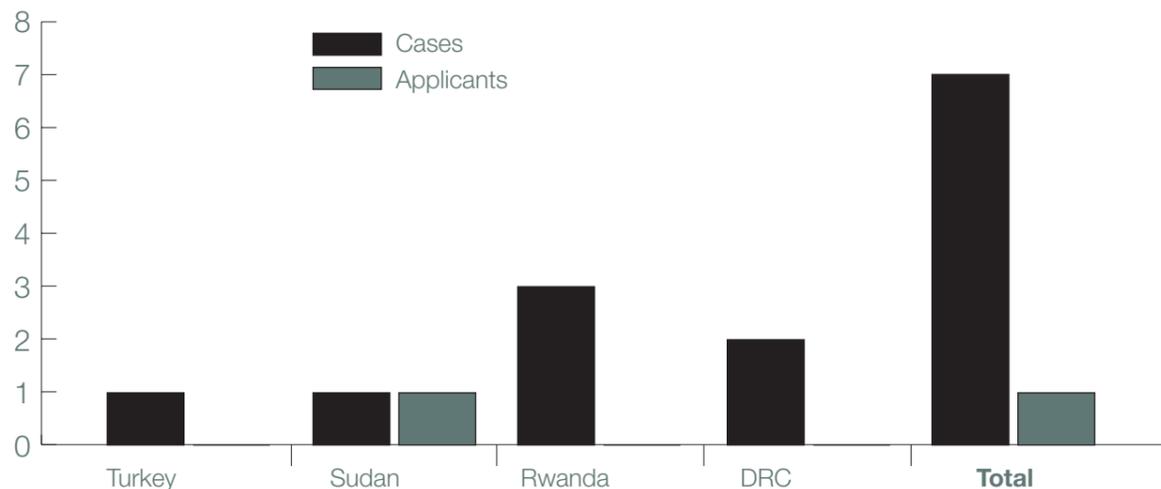
Among the 51 cases in the submission stage, 35 per cent (18) experienced complexities with a British embassy or entry clearance officers. In most cases, applicants were either refused access to embassies or had difficulties using online tools.

5.3.2.1 Refused access to embassies

In 10 per cent (5) of the 51 cases, applicants were refused access or turned away from embassies. This occurred despite having pre-arranged appointment times. A breakdown of countries in which this occurred, as well as applicant information, is found in chart 20 below.

The resolution of this problem required legal advisers to make representations on behalf of clients to immigration officers and their supervisors. Only qualified advisers (solicitors, or OISC 2 or 3 advisers) were able to address such issues as they required expertise, legal knowledge and experience, and the use of professional networks. Due to the observed use of legal precedent, relying on OISC 2 to conduct this work introduces potential challenges, or at least the need to refer onto a more experienced adviser.

CHART 20 NUMBER OF APPLICANTS IN COUNTRIES REFUSED ENTRY TO BRITISH EMBASSY



The reasons for refused entry were varied.

5.3.2.1.1 DRC

The two child applicants in DRC submitted their applications as adoptive children. Because DRC is not a signatory to the Hague Convention, their applications were considered discretionary by embassy staff and the children were therefore told that they had to pay fees and meet English language requirements. In response, the legal adviser contacted embassy staff and highlighted legal precedent affecting the children’s submission.

The legal adviser referenced the UK Supreme Court’s recent decision in AA (Somalia) v Secretary of State for the Home Department [2013] UKSC 81, which states that the Home Office should consider changing the immigration rules so that refugee sponsors with adopted children from countries that have not acceded to the Hague Convention can benefit from refugee family reunion procedures.

The legal adviser also drew on the fact that the referenced case reached the Supreme Court and was considered under refugee family reunion rules, and that an entry clearance officer initially accepted the applications without a fee being paid. By emphasising the interests of consistency and fairness, the legal adviser requested that the children be allowed to proceed and lodge their family reunion applications. While understanding that the entry clearance officer could still reject the children on the grounds of refugee family reunion, the legal adviser knew that requesting reasons for refusal would give them opportunity to appeal at tribunal. A rejection without consideration or written reasons could give rise to a judicial review.

5.3.2.1.2 Rwanda

Three child applicants who attempted to submit their applications in Rwanda were turned away from the British High Commission because they did not have passports. This conduct runs contrary to Home Office guidance, which stipulates that passports are not essential to submitting an application. In response, the legal adviser contacted appropriate High Commission staff and referenced the guidelines around submitting applications without passports. This was only possible due to the legal adviser’s thorough understanding of the immigration rules, and of Home Office policy and guidance on required documentation.

5.3.2.1.3 Sudan

Two Sudanese applicants attended an initial appointment at the British embassy in Khartoum, agreed to undertake a TB test as a matter of

standard practice and also agreed to return to the embassy to submit test results at an established time. However, the applicants were refused entry to the embassy upon returning to provide results and were instructed by staff to book an appointment online to submit their TB results. This, however, was impossible as the online booking system only allowed initial appointments to be made.

As both cases occurred in the same pilot project, learning from the first helped the Red Cross respond to the second. In the first case, the legal adviser made attempts to contact the entry clearance officer twice by email to request an appointment but did not hear back. Following this, the legal adviser lodged a complaint to the Home Office but, again, did not hear back. The caseworker, under the legal adviser’s supervision, also contacted the sponsor’s MP, although this did not help progress the application. Due to the lack of available options, the legal adviser decided to re-submit the application entirely. When the second case developed similar issues, the legal adviser knew to proceed by re-submitting. Without both legal and financial support from the pilot project, this may have cost the sponsor additional legal fees.

“I felt really bad about it when my family went to the embassy and they were turned away. It took us about one to two months to set up a new appointment. My children were very upset about it.”

“If it was me, I would have lost £400 because I would have had to do a fresh application and a new booking. I would have just started a new application. [My legal adviser] helped me because of what happened at the embassy, she called the Home Office and the embassy in Sudan. At the same time, she helped me with the forms and booking appointments at the embassy[...]without [my legal adviser and caseworker] I couldn’t have done anything.” – Adult male sponsor, Sudan

5.3.2.2 Online tools

Complexities involving online tools occurred in 16 per cent (eight) of the 51 cases. The complexities were varied and required different responses from caseworkers and legal advisers. The most common problem with making appointments online was that the default locations given to applicants were either dangerous or impossible to get to.

5.3.2.2.1 Inappropriate default locations in Syria and Ethiopia

Three Syrian applicants, a mother and two children, were directed by the online system to the United Arab Emirates. The sponsor wanted his family to apply in Lebanon so his wife would be able to return to Syria with an ID card, leaving her passport with the British embassy. While the issue had not happened with other Syrian cases at that stage, the legal adviser was told by colleagues that this was a glitch in the system and people had made formal complaints.

The other two cases with inappropriate default locations involved a Somali woman and two Eritreans respectively, all of whom were based in Ethiopia. For all applicants, the online system routed them to Kenya. However, because the applicants did not have passports, they were unable to access the Nairobi office. In each case, the legal advisers learned that this too was a common glitch with the new online application system. They dealt with the problem by contacting embassy staff in Ethiopia.

5.3.3 TB testing

Not all applicants are required to provide TB tests for refugee family reunion. Home Office requirements on TB testing change in accordance with the prevalence of the disease in the countries of origin. Significantly, as caseworkers reported, TB test requirements are not clarified on either the online or printed application form.

As a consequence of the lack of clarity around TB test requirements, some applicants faced considerable challenges in submitting their applications. The following case study, in which one of the caseworkers describes their experience with TB testing, serves to demonstrate this point.

“Every time I meet with a client, I check whether they have a TB test requirement. I speak to the client about whether the lawyer has told them. Quite often, the lawyer isn’t aware of it or just doesn’t consider it something they would need to advise on. Currently, TB test requirements are changing quite a lot, making it harder to clarify who needs one.”

“I had one case – a Pakistani unaccompanied child. The child and their informal carer had to travel to submit the application. Between the time we looked up the TB test requirements and submitted, the TB test requirement in Pakistan had changed. It became a total battle.”

“Because the carer of the child was assertive, she convinced the embassy staff that they didn’t need a TB test and submitted the application. I explained this to the lawyer and he said it was a public health requirement. We apologised to the client because we didn’t prepare her. The lawyer said there was a possibility that the case would be refused on those grounds.”

“The application was for a vulnerable child in hiding and it was important that it wasn’t refused. So we contacted IOM [the International Organization for Migration] and tried to get the TB test done. IOM said they couldn’t do it without a passport of the applicant. The passport had been submitted with the family reunion application to the embassy. IOM said we needed to withdraw the passport, which would have invalidated the application. I had a copy of the passport and by speaking to IOM, which also communicated with the embassy – going through IOM contacts in London and Pakistan – there was intense co-ordination.”

The IOM wrote to the embassy to confirm the copy of the passport. So we arranged for the child to get the TB test and then the lawyer had to write to the embassy to explain the situation and ask if they could make an exception to submit the TB test after the submission of the application. So the applicant and carer had to travel back to the visa application centre (VAC) in Lahore to submit the TB test. Despite all of this, the VAC wouldn’t initially accept it.” – OISC 1 caseworker

5.4 Coping with complexity: the role of legal support in the submission stage

There were four key areas where legal support was required during the submission stage:

1. Making representations on behalf of sponsors and applicants.
2. Understanding legal precedent, policy and guidance on refugee family reunion.
3. Using learning and professional networks.
4. Developing cases strategically.

5.4.1 Making representations on behalf of sponsors and applicants

Where administrative complexities occurred, legal advisers made representations on behalf of sponsors and applicants. This was critical because legal advisers could make contact with relevant British embassy staff as well as use their expertise to progress issues appropriately and effectively. In other cases, where embassy staff were unresponsive, legal advisers knew alternative means of drawing the government’s attention to an administrative complexity abroad e.g. by contacting sponsors’ MPs or Home Office officials in London. This might have been intuitive or based on past experience where similar tactics had proved useful. Ultimately, making representations on behalf of clients, whether to civil servants or entry clearance staff, required a solicitor or a caseworker with an OISC 2 or 3 qualification. While clients can contact MPs on their own, there was a feeling among caseworkers and legal advisers that when legal advisers make representation to MPs, they carry more weight.

Although making representations in court would not be necessary until the appeal stage, it is worth noting that only OISC 3 caseworkers are qualified to make such representations.

“The hard part is[...]. It’s not a terribly complex issue for me to contact an entry clearance manager and tell them that my client instructs me that he’s been refused entry to the embassy. It’s something that’s better for the legal representative to do because you’re still relaying the client’s instructions and making representations to the FCO [Foreign and Commonwealth Office] on behalf of your client.”

“The question might arise in the midst of that correspondence – ‘what kind of visa was he applying for again?’ – and so you’re making representations on the visa. If an entry clearance officer is getting correspondence from different sources, and if there’s an administrative person contacting the Home Office explaining the situation, and if the wires get crossed at all, then the entry clearance officer might feel they’re receiving conflicting stories and there might be uncertainty about who’s representing the client.” – LSC 2-qualified legal adviser

5.4.2 Understanding legal precedent, policy and guidance on refugee family reunion

Although understanding legal precedent, policy and guidance on refugee family reunion is arguably required throughout the application process, it is most useful in the submission stage. Understanding eligibility and policy is key to ensuring that applicants can submit their applications. This has been demonstrated in cases where applicants must travel to third countries (section 5.3.2.2.1) or where applicants are refused opportunity to submit on grounds that contravene Home Office guidance or policy (sections 5.3.2.1.1 and 5.3.2.1.2). Having a competent understanding of legal precedent, policy and guidance on refugee family reunion – and knowing when and how to use this knowledge – is coupled with the need to make representations on behalf of clients. While solicitors and OISC 2- and OISC 3-qualified caseworkers can undertake this work, solicitors and OISC 3 are better equipped to handle any issues that arise due to the depth of their knowledge.

5.4.3 Using learning and professional networks

While much of this analysis highlights the importance of legal expertise, legal advisers and caseworkers also highlighted the value of learning from previous experiences when developing applications. This was particularly the case where similar challenges and complexities occurred repeatedly across cases (sections 5.3.2.1.3 and 5.3.2.2).

Professional networks were also found to support applications in a number of ways. Legal advisers who worked in firms had resources available to them that caseworkers did not. In particular, they had colleagues experienced in court matters or others who had specialist knowledge that helped resolve arising complexities. Professional networks were also used to address logistical issues in the field. In such situations, caseworkers engaged partner organisations such as Save the Children, the International Committee of the Red Cross or the British Red Cross, for example, whose representatives could help applicants travel to and from the relevant British embassy. This was especially valuable for child applicants or families in dangerous environments, who required support in planning and undertaking secure travel.

5.4.4 Developing cases strategically

Refugee family reunion applications require strategic consideration, to decide whether a particular course of action is necessary. To do this, you need to have a thorough understanding of the generic application process, the contextual factors that affect a given case (such as protection risks) and the limitations present (such as documentation complexities or access challenges), and an ability to react and adapt to arising issues. Strategically developing cases requires a holistic understanding and flexibility, as well as an aptitude in law and policy. While OISC 2 caseworkers may be sufficiently qualified, OISC 3-qualified caseworkers and solicitors are more likely to adapt to arising complexities, take a holistic approach to refugee family reunion cases, and make effective use of their professional experience, and legal and policy knowledge.

CHART 21 SUMMARY OF LEGAL SUPPORT IN THE SUBMISSION STAGE COMPARED TO OISC REGULATIONS

| Legal support in the submission stage | OISC | Level 1 | Level 2 | Level 3 |
|---------------------------------------|---|---|------------|-------------------------------|
| 5.4.1; 5.4.2; 5.4.4 | Refugee family reunion applications | No | Yes | Yes |
| | Taking instruction from clients | No | Yes | Yes |
| | Knowledge of case law and ability to engage this in representations | No | 'Detailed' | 'Sufficiently thorough' |
| | Drafting client statements | No | Yes | Yes |
| | Drafting witness statements as evidence | No | No | Yes |
| | Representations to the Home Office | No | Yes | Yes |
| | Representations to MPs | No | Yes | Yes |
| | Representations in court | No | No | Yes (excluding higher courts) |
| 5.4.2; 5.4.4 | Knowledge of types of evidence to support cases and how to get it | Yes (but cannot work on refugee family reunion) | Yes | Yes |
| 5.4.4 | Advocacy skills | No | No | Yes |

6 Control group – Birmingham

The charitable sector is not a panacea

Key findings:

Many of the same challenges experienced by sponsors in the main study are reflected here. In particular, sponsors experienced:

- > income constraints and financial obligations to their families
- > poor English language skills
- > lack of documentation and lack of understanding about what was required
- > administrative complexities
- > lack of understanding around discretionary cases.

Applicants also faced similar problems, including insecurity in their country of residence and when travelling to British embassies.

6.1 Introduction

A control group, composed of seven sponsors, was set up in Birmingham's British Red Cross office to investigate how they were progressing their refugee family reunion applications without the legal support provided in pilot projects.

The control group was designed with the assumption that legal aid was unavailable. However, following R (Gudanaviciene & Others) v Director of Legal Aid Casework & the Lord Chancellor, legal aid was reinstated for refugee family reunion applications. This reinstatement was not guaranteed to be permanent.

Two out of the seven sponsors were interviewed for this report prior to legal aid's reinstatement, while the remaining five were undertaken once it had again become available. As a consequence, the five interviewees who were again eligible for legal aid were more relaxed about prospective legal support.

Due to legal aid's reinstatement, and due to there being only seven interviews, the control group was ultimately too small to demonstrate any general trends. However, the control group is useful for comparison against the report's

findings and for providing insight into the experiences of sponsors. Many of their experiences parallel the findings in the pilot projects. The control group also highlighted additional challenges in making refugee family reunion applications, as the sponsors had to seek out legal support – something not required of sponsors with access to the British Red Cross pilot projects.

6.2 Methodology

The researcher co-ordinated with a caseworker, OISC 1, based in the Red Cross Birmingham office to identify seven sponsors to interview. Interviewees were self-selecting in that they came into the office for support related to refugee family reunion or other refugee-related issues. They were then asked whether they would like to participate in the research.

The researcher designed a short interview template. Both the researcher and the caseworker conducted interviews. If, in the process of conducting interviews, sponsors discussed issues that the Red Cross could support them with, they were referred on appropriately.

6.3 Introducing sponsors and applicants

Two of the seven sponsors interviewed were men and five were women. The interviewees' experiences with the application process varied widely: some were just beginning their applications, some had already submitted applications and received refusals, some had dealt with solicitors through legal aid, and other interviewees had undertaken their initial applications without legal support.

Chart 22 provides anonymised identifiers of sponsors and a summary of the countries of origin of applicants, their sex and age, and the number of applicants per sponsor.

CHART 22 SPONSORS AND APPLICANTS IN THE CONTROL GROUP

| Sponsor identifier | Country of origin | Sex of sponsor | Applicants per sponsor | Relationship of applicant to sponsor | Age of applicant |
|--------------------|-------------------|----------------|------------------------|--------------------------------------|------------------------------|
| A | Eritrea | Female | 1 | Daughter | Child |
| D | Eritrea | Female | 1 | Husband | Adult |
| H | Eritrea | Female | 8 | Daughter, siblings, father | One adult and seven children |
| L | Iran | Male | 2 | Daughters | Adults |
| P | Somalia | Female | 8 | Daughters and sons | Children |
| T | Syria | Male | 1 | Spouse | Adult |
| X | Zimbabwe | Female | 1 | Son | Child |

Among the interviewees, two out of seven intended to make discretionary applications. They were from Iran and Eritrea.

The male interviewee from Iran, L, wanted to apply for refugee family reunion for his two adult daughters who were 20 and 21 years old. H from Eritrea wanted to apply for her father and younger siblings. She explained that her father was now blind, his wife dead and he was unable to care for his children (the sponsor's half-siblings). While she wished to apply for them, she also intended to apply for her birth daughter, and she remained uncertain as to the feasibility of making the discretionary applications without legal advice.

6.3.1 English language

Interviewees were asked to qualify their ability to write, read and speak/comprehend English. Following their self-assessments, they were then asked if they had sufficient English language skills to complete the application. Chart 23 provides a summary of findings.

CHART 23 ENGLISH LANGUAGE WITHIN CONTROL GROUP

| 'Name' | Requires assistance with reading | Requires assistance with writing | Requires assistance with verbal comprehension | Do your English language skills allow you to understand the application form? |
|--------|----------------------------------|----------------------------------|---|---|
| A | Yes | Yes | Yes | No |
| D | Yes | Yes | Yes | No |
| H | Yes | Yes | Yes | No |
| L | Yes | Yes | Yes | No |
| P | Yes | Yes | No | No |
| T | No | Yes | No | No |
| X | No | No | No | Has not yet seen form |

As chart 23 shows, only one interviewee, X, felt that their English language skills enabled them to read, write and speak in English without assistance but X had not yet begun their application. All the other interviewees felt that their English skills prevented them completing the application independently.

Discussions with interviewees revealed that it was not just their ability to speak, read or comprehend English that might prevent them from undertaking an application independently. It was also the technical language used in the application process and their experiences from previous applications such as the asylum application.

T, a Syrian national, studied in the UK before applying for refugee status. Having undertaken coursework at the post-graduate level, he felt confident in his ability to speak and write in English. However, when asked about his experience with the refugee family reunion application process, T explained:

"While I can communicate in English, I am not familiar with technical terms. In the actual application, there are quite a few of them which I fail to understand. An example is 'pre-flight spouse'."

Similarly, X's experience with the asylum process informed her estimation of her ability to undertake the refugee family reunion application.

"I moved to the UK in 2002 and got my refugee status in 2013. I was refused initially, then had to appeal and had to reapply a number of times. Legal aid was frozen for a period so I had to reapply on my own with a friend's help. I was refused again and again due to small errors in the application I prepared. I feel like if I did the refugee family reunion application on my own that it would destroy me. I would prefer to sit with a solicitor. I feel this way because of the asylum process."

6.3.2 Income, expenditure and prospect of funding an application independently

All interviewees reported receiving benefits. Five out of seven received Jobseeker's Allowance, one received Employment Support Allowance, and another received Income Support. Five of the seven interviewees also sent remittances abroad. Chart 24 summarises the rates at which interviewees provided remittances and the reasons why.

CHART 24 REMITTANCES

| 'Name' | Sends remittances | Frequency of sending remittances | Purpose of remittances |
|--------|---|----------------------------------|--|
| A | Yes | Sends money when possible | Basic necessities |
| D | Yes | Sends money when possible | Basic necessities |
| H | Yes | Sends money when possible | Phone to maintain contact |
| L | No | | |
| P | Yes | Sends money once a month | None |
| | Phone to maintain contact and basic necessities | Yes | None |
| T | No | | |
| X | Yes | Sends money when possible | Basic necessities, phone and bus fares so son can go to school |

Scarcity of funds was a shared concern for all seven interviewees. The five interviewees who reported sending money to support their families abroad also emphasised that this made life in the UK very difficult – for example, by reducing opportunities to travel locally or forcing them to go to food banks. The two who did not send remittances explained that they just could not afford it, but were always seeking out opportunities to earn extra money that they could then send to their families abroad. Interviewees mentioned seeking out employment and loans as the two primary means of acquiring funds.

Financial considerations affected whether interviewees felt it was feasible to hire a legal adviser to make a refugee family reunion application. Following discussions around income and expenditure, applicants were asked whether they thought they could afford hiring a solicitor to advise on their refugee family reunion applications. All seven interviewees explained that they could not afford it. P had previously taken out a loan to apply to reunite with her youngest son and explained that she was still paying off the debt on a monthly basis.

6.4 Seeking out support from the charitable sector

Interviewees were asked whether they had contacted any charitable services, other than the British Red Cross. All interviewees reported that they had come to the Red Cross first, then were signposted to other organisations. Three out of the seven visited the Citizens Advice Bureau (CAB), two visited other charities recommended by the

Red Cross, while the remaining two only visited the Red Cross.

Two of the three interviewees who approached CAB reported receiving limited services, explaining that, like at the Red Cross, they were signposted and provided with lists of solicitors who might be able to support their application. The third interviewee who approached CAB received full support in making their application. The remaining two interviewees who went to other charities explained that legal services were offered at a cost of either £350 or £250, but neither interviewee was able to afford this.

Once legal aid was reinstated, referrals to solicitors became feasible. Each of the five applicable interviewees then made contact with solicitors at the suggestion of their Red Cross support worker.

6.5 Comprehension of the application process and available documentation

Interviewees were asked a series of questions to find out their current understanding of the application process. They were also asked what documentation they had available.

6.5.1 Existing understanding of the application process

To assess interviewees' understanding and awareness of the application process, they were asked whether they had seen the application form

and the Home Office or VAF4 guidance.

Three out of the seven interviewees reported that they had seen the application form. All three interviewees who had seen the application form did so overseen by a legal adviser.

Only one out of the seven interviewees, H, had seen the VAF4 guidance. Having already had one application refused, H sought out the VAF4 guidance to understand the grounds for refusal. H explained that the guidance was inadequate in that it did not help her in making the application. She reported that there was no indication of success rates or warnings about quality of evidence (for instance, whether having one photo is insufficient and whether the age of photos matters). She also explained that the guidance did not state that phone cards were insufficient as evidence.

The six other interviewees who had not seen the guidance explained that they did not know it existed and were concerned that, even if they did come across it, they might not understand it.

6.5.2 Documentation available

Without being prompted as to what documents are required when making a refugee family reunion application, interviewees were asked what support documents they had available to them. As five of the seven interviewees were either resubmitting or appealing, many had a good understanding of what documents were necessary for submission. This was due either to a legal adviser's previous support or to the refusal letters they had received. Chart 25 provides a summary of documents available to interviewees.

CHART 25 DOCUMENTATION PER CASE IN THE CONTROL GROUP

| 'Name' | Country of origin | Type of application | Birth certificate | Marriage certificate | Customary documentation on marriage | Photos | Communication records | Passport/ID | Money transfer receipts |
|--------|-------------------|-------------------------|-------------------|----------------------|-------------------------------------|---------|-----------------------|-------------------------|-------------------------|
| A | Eritrea | Child | X | | | X (old) | X (phone card) | | |
| D | Eritrea | Spouse | X | | X | X | X | | X |
| H | Eritrea | Child, father, siblings | | | | X | X (phone card) | X (father and daughter) | |
| L | Iran | Adult child | X | | | | X | X | |
| P | Somalia | Child | | | | | | | |
| T | Syria | Spouse | | X | X | X | X | X | X |
| X | Zimbabwe | Child | X | | | X (old) | X | X | |

Both missing documents and the qualities of certain documents appear problematic. The use of phone cards by A and H, missing passports for Eritreans (A and D) and Somalis (P), D's customary marriage document and P's lack of communication records would all be likely to require legal intervention.

The reflections of interviewees whose applications had previously been refused also provide some insight. In particular, A mentioned that the single photo, which showed her with her infant daughter, was not deemed adequate by the entry clearance officer. Due to A being expelled from Ethiopia, where her daughter legally resided with a family friend, and living and working in Saudi Arabia for many years, she did not have contemporary photos of her and her daughter.

T's application provides insight into how applications missing one document required by the guidance can still be refused. It also shows the lack of confidence sponsors have when compiling documentation as they may not fully understand what is required for an effective application. T's case is presented in his words below.

"The main challenge that I am facing at the moment is that, despite having provided evidence of my relationship with my wife, the family reunion visa has been refused. And then refused again at the reconsideration stage.

"I provided photos, the marriage certificate, the marriage statement, the marriage contract and the family record book. All were translated into English by registered translators. When I applied for my student visa in 2010 and when I then claimed asylum in 2012, I also declared the name of my wife at the interviews.

"I am now trying to obtain 'call history' statements from my mobile provider but this is proving difficult as they can only provide short-term records of six months.

"I am also submitting letters I received from my wife in these years in which we have been separated and managed to translate a sample of them. This is very expensive.

"The problem is that without proper and qualified advice I am scared that at the hearing the judge might not reverse the British embassy's decision."

6.6 Administrative complexities

Two of the five interviewees, L and T, experienced administrative complexities. In both cases, the interviewees attempted to deal with them independently but failed to reach any resolution at the time of the research. The two administrative complexities are provided below.

L: Unresponsive embassy

L is an Iranian adult male who applied for refugee family reunion on behalf of his wife, 15-year-old son and two adult daughters in 2013, while living in Glasgow. As he was living in Scotland, legal aid was available and a solicitor advised him on his case.

L's daughters' applications were discretionary and while his wife and son were granted visas, he did not receive a determination from the embassy in Turkey regarding his daughters' applications.

As L explained:

"I did not receive any response from the British embassy in Istanbul regarding my daughters. I asked several times to my solicitor, with help of my English speaking friends, but my solicitor said 'I don't know anything about this.'"

L did not know how to contact the embassy in Istanbul. Now he would like to reapply for his daughters to come to the UK but is not sure what to do without a solicitor.

At the recommendation of a friend, L made an appointment with a Citizens Advice Bureau (CAB) to discuss the prospects of his daughters' discretionary applications. Upon meeting with a representative, he was asked to provide a refusal letter so that they could better understand the reasons as to why the daughters did not receive their visas upon first application. This was essential in order to make up for the first application's shortcomings. However, L never received a refusal letter and as such, L explained, the CAB representative could not help.

L and his wife remained concerned about their daughters' wellbeing – so much so that the family decided L's wife would return to Iran to look after them. Due to the lack of response from the British embassy in Istanbul, and due to a lack of accessible and affordable legal advice, his family was forced to break apart again.

T: Syrian spousal application

T, a Syrian national, applied to reunite with his wife who remained in Syria. T submitted an application in 2012 and received legal aid. After receiving a refusal in late 2012, T decided to undertake an appeal independently. While preparing his appeal case, the British embassy in Beirut contacted T.

As T explained:

"They contacted me by phone to advise that my wife's visa would be granted and that she should go to the embassy to collect it."

T's wife risked her life to cross the Lebanese-Syrian border. She arrived in Beirut and the day before her agreed appointment time, she received a call from the embassy. This time they apologised and explained that there was a mistake. The visa would not be granted.

The embassy decided to maintain the original decision, refusing the visa because of a lack of evidence of the relationship between T and his wife. In their view, the marriage was not 'subsisting' – there was insufficient evidence to prove intent to cohabit permanently and there was not sufficient evidence of contact.

T's appeal was scheduled before legal aid had been reinstated. His British Red Cross caseworker sought out a pro bono legal adviser in Birmingham but none would take his case. Ultimately, restricted by OISC 1 regulations, the caseworker provided as much support as he was able in organising documentation that had already been gathered for the appeal.

The embassy's lack of response meant that L was unable to further his daughters' reapplications. As his daughters were without a guardian in Iran, it subsequently became necessary for L's wife to return to care for them. T's wife, on the other hand, suffered from an administrative error by the embassy in Lebanon. As a result, she was exposed to grave insecurity at the Lebanese-Syrian border. If T had had a legal adviser, they may have been able to engage embassy staff and argue for a reconsideration. If L better understood why his daughters were refused, he may have been able to develop an application, preventing his family's disunion. Ultimately, in both cases representations on behalf of clients may have benefited them.

6.7 Conclusions

Through the control group, more has been learned about the individual experiences of sponsors. Additional insights not found in the main study were identified in the control group. In particular, support from the charitable sector is not a replacement for legal support for refugee family reunion. Furthermore, even in cases of charitable organisations offering discounted rates for legal support, it is not feasible for sponsors on low income to pay for it.

The control group also demonstrated that documentation complexities involve more than just missing documents – they include a lack of understanding as to what is necessary to support applications. Where sponsors were making second or third applications, they tended to have a good understanding of what documentation was required. However, this was only because refusal letters offered clarification from entry clearance officers and the opportunity to rectify mistakes. Yet, as some sponsors explained, while one mistake may be rectified, another can be identified and treated as the reason for a refusal the second or third time around. In other words, refusal letters did not provide insight into all errors, only enough to justify a refusal.

Observing how sponsors cope with administrative complexities without legal support demonstrates how vital caseworkers and legal advisers are. Neither of the cases in the control group that experienced administrative complexities – although involving different issues and pursued uniquely – were resolved. Sponsors had to adapt and, in the case of L, this meant breaking apart his family again.



7 Conclusions and policy recommendations

This report explores British Red Cross service users' experiences with refugee family reunion. Its goal has been to better understand the process up to the point of submitting an application, as well as what complexities can arise and how they are dealt with by legal advisers and caseworkers. Complexities are events that disrupt or undermine an application, and which require qualified legal support to mitigate or overcome.

The report shows that despite protestations from the government that family reunion cases "are immigration applications, rather than asylum ones, and they are generally straightforward", the evidence indicates this is untrue.

Up to the point of submitting an application, a number of complexities arose and the role of legal advisers, as well as caseworkers, was indispensable to successful submission. Furthermore, findings suggest that refugee and voluntary organisations cannot cover the amount of need, thus leaving the potential for 'advice deserts' for these groups.

An assumption made throughout this report is that 'qualified' legal advisers are individuals with experience and proficient understanding of the refugee family reunion application process. Given this assumption, the report does not and cannot

argue that all legal advisers can provide the same level of support.

The following recommendations are drawn from the report's findings and are aimed at specific audiences.

7.1 Recommendations to the Ministry of Justice

7.1.1 The Ministry of Justice should commit to a statutory funding regime for legal assistance for refugee family reunion cases, including for the application stage.

There are a substantive percentage of complex cases of refugee family reunion that, despite the government's claims, do not only require a "straightforward" application for sponsors to be reunited with their family in the UK.

This report has demonstrated that complexities arise throughout the application process, in immigration rules and guidance, when compiling documentation, and in preparing and submitting an application. Refugees are often unable to hire solicitors or legal advisers on their own due to financial insecurity.

This is leaving family members in highly dangerous situations, and may also be drastically affecting the wellbeing and chances of successful integration of sponsors.

Therefore the UK needs a statutory funding regime for these groups, to allow them to get to safety and put them in the best position to contribute to British society after fleeing persecution.

7.1.2 The Ministry of Justice should, in partnership with the Legal Aid Agency, gather regular and robust statistics for future understanding of refugee family reunion.

Such understanding would help transparency and ensure that the UK is meeting its international obligations and human rights commitments in regards to refugee family reunion.

Such statistics would include the numbers applying under the Exceptional Case Funding regime and make publicly available the costs of refugee family reunification that were calculated before the implementation of LASPO.

7.2 Recommendations to the Home Office and the Foreign and Commonwealth Office

7.2.1 Simplify the application form.

The application form is difficult to fill out for English and non-English speakers alike. It is an unnecessary complication that impacts sponsors, applicants and entry clearance officers.

7.2.2 Be specific and coherent about documentation and eligibility requirements. Provide consistent, easily accessible guidance.

Home Office and VAF4 guidance contain inconsistent documentation requirements for refugee family reunion. There is also no clarification on requirements for each type of documentation, such as age of photographs or length of communication records. By being more specific, the Home Office would enable stronger applications with less uncertainty for sponsors and applicants. This may require producing updated or new guidance documents on refugee family reunion.

7.2.3 Consider and address documentation challenges relating to specific countries of origin.

Identifying country-specific trends in the availability of documentation may present opportunities to identify, and perhaps formalise, alternative forms of evidence. This again reduces uncertainty for sponsors and applicants, and may facilitate decision-making for entry clearance officers.

7.2.4 Be flexible and responsive in guidance for atypical cases, including those involving stepchildren, siblings, de facto adoption and adoption.

Adoptions and de facto adoptions introduce considerable complexity to refugee family reunion. UK policy acknowledges adoptions undertaken within countries signatory to the Hague Convention. However, many countries from which refugees flee are not signatories to the Convention. As a consequence, cases with adoptions necessarily fall into part 8 and so require payment and the ability to satisfy financial requirements – though not being able to do this is no fault of refugees and their families. Furthermore, Home Office policy on de facto adoptions requires refugees to satisfy time requirements for cohabitation that they cannot. This is a consequence of their flight and the subsequent waiting periods for their status within the UK. Existing policy around adoptions and de facto adoptions significantly undermines, and may be regarded as disadvantaging, refugees and their families. Sibling applications also suffer in this way, largely due to the nature of the environments from which sponsors and their families flee – where parents are killed and older siblings become primary caretakers at short notice.

7.2.5 Ensure that refugee family reunion applications are treated sensitively and effectively by British embassy staff.

Administrative complexities are largely due to failings of the UK system and its contractors abroad. Without committed legal advisers, the burden of mistakes falls on sponsors and applicants. This burden can be financial, but it can also manifest as threats to life and limb. A number of applicants experienced threats or exposure to areas of intense armed conflict when trying to access a relevant embassy, only to find out that errors had been made by UK representatives.

Furthermore, the departments should seek to integrate commitments to protect women and children in situations of armed conflict and armed violence into policy on refugee family reunion, as women and children may be particularly vulnerable to violence or exploitation. These can, and do, relate to sponsoring refugees' experiences. Refugee family reunion is often far removed from generic immigration procedures and is more similar to asylum claims. This is particularly so for children and women, whose security is prioritised across government departments.

7.2.6 Make the submission process safer for applicants by acknowledging the diverse protection and humanitarian needs of refugees' family members who are seeking reunion.

Doing so would reduce insecurity experienced by applicants, in particular those crossing borders and armed conflict environments to submit their applications. This might be achieved by allowing applicants to select the British embassy they want to attend to submit their application.





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