

PROCESSING FAMILY CASES

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1.Introduction

1.1 Purpose of instruction

This Asylum Instruction sets out the policy, processes and procedures to be followed when considering an asylum claim from a family with at least one child under 18 years of age.

This instruction does not provide guidance on how to process cases where the family unit does not include a child under 18 years of age, for example a married couple with no children.

It should be noted that the family unit may constitute a variety of different members, and need not be a conventional “father, mother, child” unit. The unit must contain at least one child under 18 years of age, however, in order to fall within the guidelines in this instruction.

This instruction does not provide guidance on how to process non-asylum family cases.

This instruction should be read in conjunction with [Chapter 45 of the Enforcement Instructions and Guidance on Family Cases](#).

1.2 Review into ending the detention of children for Immigration purposes

On 15 May 2010, the government announced a review into ending the detention of children in the UK for immigration purposes. The UK Border Agency began work to establish a radically different approach to the way it manages the departure from the UK of failed asylum seeking family groups. This new approach was designed to secure departure without the need for immigration detention. The UK Border Agency’s approach to this work has been underpinned by these key principles:

- The new process must take full account of the need to safeguard and promote the welfare of children in the UK in accordance with our statutory and international obligations.
- The new process must treat families with children humanely and with compassion.
- Independent expertise should be brought to bear at the most difficult stages of the process.
- Families with no legal right to be in the country need to leave.
- Parents should have the opportunity to make some choices about the manner and timing of their departure.
- The new approach must be affordable.

In designing a new approach, we re-examined all of UK Border Agency’s interactions with families from the point of first contact. For the purposes of this instruction, that is when the family claims asylum (see [Point of claim](#)). This instruction outlines how to process asylum claims from families in line with this new approach, which reflects the outcome of the child detention review.

A new four stage process for working with families who no longer have the right to remain in the UK was introduced in March 2011, which gave them greater support and advice when considering their options for voluntarily leaving the UK. Families are now given the opportunity to leave of their own accord and offered assistance on their return, before enforcement action is considered. The new process also ensures that the welfare of children is explicitly addressed in planning family returns.

The four stages of the process are decision-making, assisted return, required return, and ensured return.

1.3 Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act) requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must comply with the section 55 duty in carrying out the actions set out in this instruction, in respect of children and those with children. The UK Border Agency statutory guidance under section 55 [Every Child Matters - Change for Children](#) sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's best interests are a primary, although not the only consideration, in any decision affecting the child;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

Safeguarding and promoting the welfare of children is defined in Part 1, Paragraph 1.4 of the statutory guidance under section 55 as:

- Protecting children from maltreatment;
- Preventing impairment of children's health or development (where health means "physical or mental health" and development means "physical, intellectual, emotional, social or behavioural development");
- Ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and
- Undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

The best interests of the child, whilst a primary consideration, is not the sole consideration when considering whether a child should be granted leave to remain in the UK or return to the country of origin. Other factors, including the need to control immigration, are also relevant.

In *ZH (Tanzania) v the Secretary of State for the Home Department* [2011] UKSC 4, the Supreme Court addressed the weight to be given to the best interests of children who are affected by the decision to remove or deport one or both of their parents from the UK.

Key points to note are:

- The "best interests of the child" broadly means the well-being of the child. A consideration of where those best interests lie will involve asking whether it is reasonable in all the circumstances of the case to expect the child to live in another country.
- The best of the interests of the child is not a factor of limitless importance: it can be outweighed by the cumulative effect of other considerations, including the need to

maintain a proper and efficient system of immigration control. But it is a factor that must rank higher than any other: it is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course must be followed unless countervailing reasons of considerable force displace them.

- An important part of discovering the best interests of the child is to discover the child's own views. The appropriate method of doing so will vary from case to case, but will be determined, at least in part, by:
 - (i) the extent to which the child's best interests and those of its parent(s) (or any accompanying adult who has parental responsibility for the child) are synonymous; and
 - (ii) the child's age and willingness to express its own views independently.

1.3.1 Other useful information regarding children

The Asylum Instruction [Processing Asylum Applications from a Child](#) contains useful information that Case Owners must be familiar with before dealing with children, or processing claims that involve a child, even when the child is not the main applicant but a dependant on the claim. Please see that instruction for further information on:

- The United Nations Convention on the Rights of the Child (UNCRC)
- Considering the Best Interests of the Child
- UK Border Agency's statutory duty under section 55 of the 2009 Act, to have regard to the need to safeguard and promote the welfare of children in the UK

1.3.2 Referencing consideration of section 55 and the best interests of the child

When considering the best interests of the child and applying section 55 of the 2009 Act, Case Owners must explain in any Reasons for Refusal Letter (RFRL) what information they have considered, and how they came to a decision to refuse leave to remain in the UK in the light of this information.

1.4 Involving children in decisions that impact on them

Case Owners must take account of the views of any children likely to be affected by a decision of the UK Border Agency. Provided they are able and willing to do so properly, the role of representing those views to UKBA should be performed by the child's parent(s), or any other accompanying adult who has parental responsibility for the child.

However, the UK Border Agency should not assume that the best interests of a child, on the one hand, and those of its parents (or any adult with parental responsibility for the child), on the other, will be the same. Where those interests are not aligned, appropriate steps must be taken to elicit and assess the child's views, as well as those of the parent(s) or any other adult with parental responsibility for the child.

2. Point of claim

The main applicant within a family may claim asylum at their port of entry, at the Asylum Screening Unit, or in some circumstances, via a Local Immigration Team.

All members of the family wishing to be dependent on the asylum claim should be present when the claim is made, including children.

2.1 Screening

For general information regarding screening procedures, see the following instructions:

- Asylum Instruction - [Registering an asylum claim in the United Kingdom](#)
- Asylum Instruction – [Third Country Cases: Referring and Handling](#)

Other instructions to look at, specific to families, include the following:

- Asylum Instruction - [Processing Asylum Applications from a Child](#)

During the screening interview, applicants will be asked whether due to their personal circumstances, they would prefer a male or female Case Owner. Where requested, the UK Border Agency will make every effort to fulfil such a request.

3. Contact Management

Regional Asylum Teams undertake contact management in order to inform families about the asylum process, the family's own responsibilities, and of the possible outcomes to their asylum claim including information regarding integration, along with the possibility of an ensured return should their application be refused and they choose not to leave the UK of their own volition. Contact management may also be a good opportunity to raise awareness of assisted voluntary return programmes and the benefits they can provide to families (see [Managing promotion of Assisted Voluntary Returns appropriately](#) below).

Contact management meetings should always be used to continuously gather information about the family's personal circumstances, health and the well being of each member of the family, with particular emphasis on identifying the welfare needs of any children.

3.1 Reporting restrictions

Case Owners are responsible for setting reporting restrictions for the main applicant of a family, and should do so on a case-by-case basis.

The main applicant of a family case will be put on a reporting regime, however family members will only be asked to report on an infrequent / irregular basis.

3.2 Family Welfare Form

The Family Welfare Form (FWF) is a multi-purpose document consisting of eight sections. It is the basis upon which key operational decisions including job-specific risk assessments will be made for each family case. It is also used as part of the referral process to the Family Returns Panel, and by the Family Returns Unit to assist in the booking of accommodation for families.

It is very important that a FWF is included on each family case file from the start of each family claim, and that the information in the FWF is detailed, fully accurate and regularly updated with any changes to the family's circumstances.

The FWF provides evidence of the family's behaviour throughout the asylum process, and if being returned, demonstrates their willingness to take responsibility for their return. Any evidence of child welfare concerns, medical issues, or non-compliance recorded in the FWF will inform key operational decisions regarding the family, including in planning their return. This information is also crucial for the Family Returns Panel to consider whether the case should proceed to the Ensured Return route.

For further information on the Family Welfare Form, please see Section 45.1 of the Enforcement Instructions and Guidance. Case Owners should be aware that this guidance **must** be followed.

3.3 Referrals to Local Authorities

Case Owners must make a referral regarding a child to the Local Authority or to other agencies with child protection responsibilities, in the following circumstances:

- Where there are concerns about the current or future abuse of child for example:
 - Neglect
 - Physical abuse
 - Emotional abuse

- Sexual abuse
- Where there are concerns about the lack or poor level of support a child may be receiving
- When the child is in a private fostering arrangement
- Where there are concerns that a family or care provider is not meeting a child's developmental needs
- Where there are concerns about trafficking

This is an intrinsic part of the UK Border Agency's obligations under section 55 of the 2009 Act to have regard to the need to safeguard and promote the welfare of children in the UK.

For further information on when and how to make a referral to the Local Authority and other agencies, please see [Processing Asylum Applications from a Child](#).

For further information on section 55 of the 2009 Act and safeguarding children, see the statutory guidance [Every Child Matters - Change for Children](#).

3.4 One Case Owner throughout the claim

In order to strengthen the relationship between a family and the UK Border Agency, and thereby to reassure family members and encourage compliance from them at all stages of the asylum claim, Regional Asylum Teams should enable the same Case Owner to deal with the family throughout their asylum claim, wherever practicable. This may not always be appropriate at the Family Return Conference stage, however. Regions should take the decision on a case-by-case basis, according to the needs of the family, and the wider practicalities.

Where several members of the same family unit claim asylum in their own right, they may be allocated to different Case Owners within the region. Regional Asylum Teams should enable the same Case Owner to deal with all members of the same family throughout each of their asylum claims, wherever practicable. Where this is not possible or appropriate, Case Owners must liaise with each other, for example to coordinate events such as the Family Return Conference.

For general information regarding contact management and reporting regimes, see the following instructions:

- Asylum Instruction - [Case management following onward movement of Applications](#)

In addition, for families see the following instructions:

- [Chapter 45 of the Enforcement Instructions and Guidance on Family Cases](#)

3.5 Managing promotion of Assisted Voluntary Returns (AVR) appropriately

Contact managers must ensure that one full explanation of the benefits of leaving the UK under an AVR scheme is given during the asylum process, at a stage appropriate to the family. This option for departure will be explored again at the Family Return Conference. In order to assist with this, the following are currently available from the Assisted Voluntary Return team:

- Basic guidance
- Stories of Return
- Nationality scripts

- Frequently Asked Question sheets
- Information in various languages

For further information, please see [Voluntary Assisted Return and Reintegration Programme](#).

For case specific advice, please email UKBA AVR (duty inbox).

3.6 Absconders

Where one or more members of the family abscond, including the entire family unit, see the following for advice:

- [Chapter 45 of the Enforcement Instructions and Guidance on Family Cases](#)

4. Interviewing

For general information regarding interviewing, see the following instructions:

- Asylum Instruction - [Conducting the asylum interview](#)

Interviewers should be ready to ask searching questions while being sensitive to the difficulties an applicant may have in disclosing all the relevant information. Each applicant will have been asked at screening to indicate a preference for a male or female interviewer, and it should normally be possible to comply with a request for a male or female interviewer or interpreter that is made in advance of an interview. Requests made on the day of an interview for a male or female interviewer or interpreter should be met as far as is operationally possible.

It is the UK Border Agency's duty to avoid the undermining or weakening of family relationships that can occur, for instance, by undue or inappropriate questioning of parents in front of their children. UK Border Agency staff must ensure that parents are not required to give an account of personal victimisation if their children are present. Children should therefore not be present at an asylum interview, in the interests of all concerned, and in the interests of the child in particular, bearing in mind the statutory duty to safeguard and promote the welfare of children. In some cases, however, children may be required to attend at the beginning of the interview, for re-documentation purposes only.

For those without satisfactory childcare arrangements of their own, each UK Border Agency regional office has its own arrangements in place to ensure that children are not present when parents are interviewed about their reasons for seeking asylum. This can include rescheduling the asylum interview date to accommodate childcare arrangements, or the provision of childcare at or near UK Border Agency premises.

5. Decision-making

For general information regarding considering an asylum claim and making a decision, see the following instructions:

- Asylum Instruction – [Considering the protection \(asylum\) claim and assessing credibility](#)
- Asylum Instruction – [Considering human rights claims](#)
- Asylum Instruction – [Article 8 of the ECHR](#)

Other instructions to look at, specific to families, include the following:

- Asylum Instruction [Processing Asylum Applications from a Child](#)

6. Possible outcomes

6.1 Successful outcome

As with any case, the possible successful outcomes of an application for asylum made by a main applicant with family members dependent on the claim are a grant of refugee status, humanitarian protection (HP) or discretionary leave (DL).

For general information regarding the implementation of a grant of status and/or leave (refugee status, HP or DL), see the following instructions:

- Asylum Instruction – [Guidance for Issuing Status Documents and No Photos](#)
- Asylum Instruction – [Implementing Substantive Decisions](#)
- Asylum Instruction – [NI No Guidance](#)
- Asylum Instruction - [Refugee Integration and Employment Service](#)

6.2 Unsuccessful outcome

For general information regarding implementing an outright refusal decision, see the following instructions:

- Asylum Instruction – [Implementing Substantive Decisions](#)
- Asylum Instruction - [The Reason for Refusal Letter](#)

7. Appeals

It should be noted that the cases of family members each with an asylum claim in their own right should, where possible, be linked at the appeal stage. Linking the cases enables common issues to be heard together, and ensures that cases within a family unit progress through the asylum process at the same pace.

For general information regarding asylum appeals, see the following:

- Modernised guidance pages - [Unified Tribunal Appeals System](#)
- [The Procedure Rules](#)

Where the family's appeal against the asylum refusal is successful, please refer to [Successful outcome](#).

8. Leaving the UK

Once a decision has been taken that a family must leave the UK, and any in-country appeal rights have been exhausted, the new approach to family cases has three elements:

Assisted Return – The UK Border Agency will ensure that families have a dedicated Family Return Conference to discuss future options and the specific option of assisted return. UKBA has incorporated its findings having examined how best to bring strong family engagement skills to bear at these conferences and when engaging families throughout the process.

Required Return – The UK Border Agency will give families who do not choose to take up the offer of assisted return at least two weeks' notice of the need to leave the country and the opportunity to leave of their own accord without any enforcement action. This extended notification period – increased from 72 hours – will ensure that the family can prepare properly for their return and give them time to raise any further issues or seek further legal redress.

Ensured Return – Once the new assisted and required stages have been exhausted, the UK Border Agency will consider enforcement action, the aim being for families to depart before reaching this stage of the process. An independent Family Returns Panel has been created to help to ensure that individual return plans take full account of the welfare of the children involved.

It should be noted that although the expectation is that families will be given the opportunity to go through both the Assisted and the Required Return stages, it will not be appropriate in all cases. For example, the Assisted Return stage may not take place because consistent attempts to hold a Family Return Conference fail for reasons within the family's control. Similarly, the Required Return stage may not take place for reasons such as compelling evidence that self check-in is likely to fail because of reasons within the family's control, or because there is a risk of harm to family members or the wider public to the extent that we believe we will need to use an element of control at the point of departure.

For more information on what to consider before making the decision that a family should or should not proceed to each stage, [Chapter 45 of the Enforcement Instructions and Guidance on Family Cases](#).

8.1 Assisted Return

The Assisted Return stage aims to make sure that all families correctly understand their current immigration status in the UK, and are informed of their options for returning home. Families will have a dedicated Family Return Conference to discuss the options available to them, and are encouraged to start making arrangements for their return.

The Assisted Voluntary Return for Families and Children (AVRFC) programme is for families who have either sought asylum or who are in the UK illegally and wish to return home permanently. Returnees receive up to £2,000 worth of reintegration assistance per person including a £500 relocation grant on departure for immediate resettlement needs and, once home, a range of reintegration options which are delivered "in kind". The scheme offers flexibility of reintegration for the whole family and increased emphasis is placed on the use of reintegration assistance for educational needs as well as income generation.

For more information regarding Assisted Returns, see:

- [Voluntary Return](#)
- [Chapter 45 of the Enforcement Instructions and Guidance on Family Cases](#)

8.2 Required Return

The Required Return process is the UK Border Agency's first attempt to secure the return of those families who are not prepared to return voluntarily. The key objectives of the process are to:

- Ensure that removal directions are served with at least 2 weeks' notice while the family remain living in the community – providing the family with ample final opportunity to present further submissions and ensuring they have access to justice;
- Achieve successful departures without the need for ensured return;
- Ensure that further submissions, legal challenges, or other issues raised by families are addressed promptly and professionally;

The family will be given notice of the time and manner of their departure while they are still in the community so that they have the opportunity to comply with the arrangements made for them and to make their own preparations for departure. A planned departure of this sort, over which the family is able to exercise some control, is preferable to an Ensured Return. A Required Return involves the setting of Self Check-In removal directions, either where the family make their own way to the airport or where we send transportation (for example a taxi) if the family request this. The Required Return route must not involve the use of arrest.

For more information regarding Required Returns, see:

- [Chapter 45 of the Enforcement Instructions and Guidance – Family Cases](#)

8.3 Ensured Return

If a family has exhausted the new assisted and required stages (as appropriate), the UK Border Agency will consider enforcement action. However, our aim is for families to depart before reaching this stage of the process. The Ensured Return route is overseen by an independent Family Returns Panel, which ensures that the welfare of the children involved is fully considered in a tailored returns plan. Cases are referred to the Panel, who will consider the family returns plan and advise on its suitability.

For more information see [chapter 45 of the Enforcement Instructions and Guidance – Family Cases](#).

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Change Record

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1.0	CC	2011-03-01	First publication