

Family reunion not available to all refugees

A recent decision in *MS & Ors (Family Reunion: 'in order to seek asylum')* Somalia [2009] UKAIT 00041 has been criticised in some quarters for creating two classes of refugees.

The matter came before the Tribunal on reconsideration of the decision by Immigration Judge Mr James Devittie. It involved a polygamous Somalian man who came to the UK in 2005. He came to join his second wife under the Family Reunion rules, leaving behind his first wife and a child. A second child was born to the first wife after he left for the UK.

In 2007, the man divorced his second wife, the woman who had brought him to the UK. He then invited his first wife and their two children to join him in the UK, using the Family Reunion rules.

The question before the 3 member panel was whether the Family Reunion rules can be extended to the family of someone like the sponsor whose own status derives only from those Rules.

Just a quick point on the particular attraction of the Family Reunion rules. A Family Reunion application is completely free of charge. In addition, the UK-based sponsor does not even need to demonstrate that they work or have adequate accommodation in the UK. This is in marked contrast to applying under any other category of the Immigration Rules where there is a fee to pay at the point of application, and the sponsor must invariably prove that they can maintain and accommodate the person applying, without recourse to public funds.

On the main question of whether this man could be a sponsor, having himself been sponsored, the Tribunal said it would look at the words of the Family Reunion rule and consider their ordinary meaning.

In this case, the words in question stated that the person granted asylum in the UK (who is the sponsor) must have left the country of his former habitual residence in order to “seek asylum in the UK”.

As the Somalian man had come to join his first wife, and not to seek asylum, it could therefore not be said that he left Somalia “in order to seek asylum”.

In other words, an individual seeking family reunion is not “seeking asylum”, said the Tribunal.

Family reunion is, therefore, restricted under the Immigration Rules only to the spouse and children of a refugee as defined in the Refugee Convention.

The reconsideration appeal therefore failed on the main point.

The obvious concern is that such a strict interpretation may mean that those people who left their countries for other purposes, and then subsequently claimed asylum in the UK because of their activities in the UK, or a change of circumstances in their countries, do not come within this narrow interpretation of the rule.

There is now further litigation in this matter and an update will be made as soon as the court have rules on the matter.

Anyone who thinks that their immigration status may be affected by this opinion should seek professional legal advice. At Genesis Law Associates, we specialise in all areas of immigration, asylum and nationality law.

