

Family reunion for over 18 children

Under the Family Reunion provisions, UK refugees are entitled to bring to the UK their pre-flight family. 'Pre-flight family' means the spouse to whom the refugee was married or children born to him before he fled to the UK.

For children, one of the key requirements to be met by a person seeking leave to enter to join a parent who has been granted asylum under the family reunion provisions is that the child must be under 18 in age.

That is where a lot of families face a real difficulty. The usual scenario is that a spouse and other children will obtain entry clearance, but one of the children may already have turned 18 at the time of application, but not yet financially independent. This means that the child may be left behind and the family is separated yet again, defeating the whole idea of family reunion.

There are ways around this problem, and basically, it is difficult, but not impossible, to bring a child who has already turned 18 to the UK under the Family Reunion provisions.

The starting point is the Entry Clearance Guidance, which is guidance and internal policy for the Entry Clearance Officers. It confirms that there may be situations where because of compassionate and exceptional circumstances, a child who is over 18 years old may be allowed to enter the UK and rejoin his family under the Family Reunion rules. It states;

“Where it is clear from the outset that an application clearly does not meet the requirements set out above (e.g. where the sponsor has not had ELR/ELE for at least 4 years, the children are over the age of 18 or the applicants are related in some other way to the sponsor), ECOs should advise the applicants that there is no provision in the Rules for the application, that they do not meet the policy criteria and that their applications might not be successful. If, in spite of this advice, the applicants decide to

proceed, the fee should be taken and an interview conducted to establish the background and circumstances to the application with a view to determining whether there are compelling compassionate circumstances involved”.

The Guidance is therefore very specific on what the Entry Clearance Officer has to do. He must follow his own policy, and conduct an interview and make enquiries about the circumstances of the applicant. If he does not do so and he refuses the application simply on the basis that the applicant is now over the age of 18, his decision is defective.

What is more important, however, is that the applicant must demonstrate why the Entry Clearance Officer should exercise discretion by showing what serious and compassionate circumstances there are. In other words, an applicant who is over 18 years old who wants to join his sponsoring parent in the UK must show more than the normal emotional ties to that parent.

These could be that the applicant will be destitute on his own, or that he has no other relatives that he could live with, or that he suffers, or has suffered from ill-health, as a result of the separation with other family members, or otherwise. There are many more possible permutations and each case is decided on its own facts.

The case of *Haider v SSHD* [2009] EWHC 3008 (Admin) is an example of a fact-set which was accepted as amounting to compassionate and exceptional circumstances by the High Court recently. In that case, there was evidence that the appellant had difficulty in looking after herself and that if she was left in Iraq she would have only a very elderly aunt who would have had difficulties looking after her properly, and indeed the other way around. She had never worked and therefore had no means of supporting herself. More importantly, she would be left alone in circumstances of an internationally recognised armed conflict. The appellant also had mental health problems and it was

accepted that she was the most vulnerable member of the family who was wholly reliable on her mother for emotional and psychological support.

As I said, there are always different permutations and cases are always fact-specific.

Separately, in these cases, Article 8 of the Human Rights Convention is very relevant. Article 8 refers to the right to the right to a family life. In the majority of cases, the Entry Clearance Officer simply does not address Article 8 as he should, which would make such a decision defective.

Article 8 is particularly relevant because it requires a state not only to refrain from interference with existing life, but also from inhibiting the development of a real family life in the future. Article 8 is therefore forward looking.

In practice what should happen is that if you have a decision which shows that the Entry Clearance Officer did not conduct an interview, or properly consider Article 8, the Tribunal should order the matter back to the ECO for re-consideration. It is also possible to persuade an Immigration Judge to make a note on his file that the matter should be expedited so that the interviews are conducted and a decision made as soon as possible. He cannot issue a specific direction as he has no such power but a note on the file usually produces the desired result.

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.