

Outstanding Legacy asylum cases: Delays and decisions

In the light of the fact that a number of people are still to have their immigration matters regularised and finally decided by the UKBA, I thought it important to discuss issues arising with regards to legacy and any such outstanding asylum matters which are yet to be resolved. In doing so I have taken into account investigations and representations made by the Immigration Law Practitioners Association (ILPA), to the Chief Inspector of the Borders and Immigration to help readers understand the true position with regards to legacy matters.

Legacy asylum cases were to have been concluded by July 2011. This has not been the case with many cases as a large number of applicants are still waiting for decisions. Decisions have not been communicated and or made on the basis that the Agency has been unable to locate the individual to whom the case relates or the Agency has not delivered on its commitment to conclude the individual's case.

It is evident that the Agency has treated many cases as relating to individuals whom the Agency has been unable to locate in circumstances where the Agency holds current contact details for the individual and/or his or her legal representative; and in some cases where the Agency has been in touch with the individual and/or his or her legal representative, including repeatedly and including in response to requests for information by the Agency. It is unclear as to why the Agency's wrongly treating large numbers of such cases as relating to individuals whom the Agency has been unable to locate. It is important to note that there was a delay in the implementation of the legacy process after it was announced which aspect explains one such other reason as to why many matters remain unresolved.

The commitment to conclude all legacy cases by July 2011 was a commitment that by that date all individuals with outstanding legacy cases would have been removed from (or otherwise have left) the UK or would have been granted indefinite leave to remain. Anyone granted limited leave to remain, or not granted leave to remain and not removed, would remain a person in respect of whom the Agency would have ongoing, potentially unchanged, responsibilities, whether to ensure the person's removal or to deal with any new application for leave to remain or any application to extend leave to remain on expiry of the person's current leave.

As July 2011 approached, it became apparent that the Agency was making grants of discretionary leave and treating this as a "conclusion" in legacy cases. This continues to be the position taken by the Agency in many legacy cases. Whilst a person granted discretionary leave would be happy about it after such a long wait, a number of people have been granted indefinite leave to remain outside the immigration rules in the recent past. Either way of these grants the whole purpose is to make it difficult for family reunion.

Current policy is that those granted discretionary leave must complete six years of discretionary leave before they may apply for and be granted settlement, and at every stage an application for further leave requires reconsideration by the Agency of the applicant's entitlement to discretionary leave.

Many people have challenged delays and wrong decisions made in their cases by way of judicial review processes. The Agency's response to pre-action protocol letters and judicial review claims has been inconsistent. There is often no response to a pre-action protocol letter. However, in the majority of cases where a pre-action protocol letter or the lodging of a claim for judicial review has prompted the Agency to conclude a case. Thus it is important to keep on seeking a resolution of one's case than to consider oneself forgotten by the system. Even delays can be challenged in courts.

Legal representatives have faced considerable difficulties in contacting the Case Assurance and Audit Unit over the time of its existence. At times, the Unit has failed to provide contact details save for a general address or general telephone number. Where effective contact with the Agency is not possible, it is very likely that there will be higher incidence of pre-action protocol letters and judicial review claims being issued. It is recommended that at all times one is represented and that each person continues to update the UKBA with one's correct details lest one is considered lost in the system and continue to leave without status.

Those people whose cases remain in the legacy have suffered additional prejudice to the "excessive" delay and detriment suffered by many even before the establishment of the legacy programme. It is argued that so far as the Agency is now able, it must treat these individuals no worse than those whose cases were dealt with within the five years. Moreover, given conclusion (removal or grant of indefinite leave to remain) was to have been reached within those five years (i.e. by July 2011), the appropriate response is, as quickly as possible, to make and give effect to grants of indefinite leave to remain to those individuals, whom the Agency has had no good reason to treat as unable to be located. The clearest indication was given that if they waited, remained in contact and responded to e.g. any legacy questionnaire served upon them, and they were not removed within the five years, they would be granted indefinite leave to remain since that was the only other way in which their case could be concluded.

One serious and matter of complaint has been the continual failure of the Home Office to respond to or even acknowledge receipt of correspondence. Measures should be taken to minimise any prejudice to applicants occasioned by the delay. Thus those who were being given support should continue to receive it, those who were able to work should continue to be permitted to do so. Applicants should not suffer anymore than is inevitable because of delays which are not in accordance with good administration even if unlawful. It is apparent that, for many of those whose cases have wrongly not been concluded within the five year's timeframe they should not remain idle but continue to pursue their cases to ensure that a response and a final decision is made. A number of people who had long outstanding cases have been granted discretionary leave. All hope is not lost after all as some action can still be taken to regularise your stay in the UK. People are urged not to lose hope with their cases as the UKBA continues to resolve these matters.

Vitalis Madanhi is the Principal solicitor of Bake and CO Solicitors, a firm specializing in Immigration and asylum law in Birmingham, UK. He can be

contacted at vmadanhi@bakesolicitors.co.uk, Phone 01216165025, mobile 07947866649 www.bakesolicitors.co.uk

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