



April 2003

## Update: Withdrawal of in-country asylum support

On 8<sup>th</sup> January 2003, the Government implemented Section 55 of the Nationality, Immigration and Asylum Act 2002 (NIA Act). This allowed the Home Office to deny access to the National Asylum Support Service (NASS) to asylum applicants who did not apply for asylum 'as soon as reasonably practicable'. This effectively denied support to most in-country applicants.

Refugee organisations and lawyers joined forces and successfully challenged the Home Office's implementation of Section 55 in the High Court. In his ruling, Mr Justice Collins stated that the Government was wrongly interpreting the law in denying basic food and shelter to the asylum applicants concerned. He asked for a radical overhaul of procedures relating to Section 55. The Home Office appealed against this ruling. The Court of Appeal dismissed the appeal and upheld the original High Court ruling.

This means that although the Home Office will continue to make decisions on eligibility for support under Section 55, it will have to overhaul procedures relating to Section 55 to make the screening and decision process fairer and more reasonable.

### Who is now eligible to apply for NASS support?

**1. Eligibility for NASS support:** Under Section 55 of the NIA Act, asylum applicants will still only be eligible to apply for NASS support if

- they can prove they have applied for asylum (this only happens once they have been through the asylum screening procedures); and
- they meet the criteria for destitution; and
- they apply for asylum 'as soon as reasonably practicable' after arrival in the UK.

However, when determining whether an application has been made 'as soon as reasonably practicable', caseworkers should now consider

- physical or practical impediments to applying (for example, unable to get to the authorities);
- the mental state of the applicant (for example, the applicant may have been scared or confused);
- anything the applicant may have been told by an agent assisting him or her in getting into the UK.

**2. Withdrawal of NASS support:** Section 57 allows the Home Secretary to introduce secondary legislation to withhold access to NASS support for all those in-country asylum applicants who

- are unable to provide a clear and coherent account of how they came to the UK;
- are unable to provide coherent and accurate information about their circumstances (such as how they have been living in the UK so far);
- do not co-operate with the authorities with further enquiries.

## Who is exempt?

Asylum applicants will not have their eligibility to apply for NASS support restricted if they

- have dependant children under 18 (such families can apply for NASS support in the normal way in line with Section 122 of the Immigration and Asylum Act 1999);
- have special needs (if the needs are over and above the needs arising out of destitution, local authorities are responsible for relevant care arrangements);
- applied for asylum in-country due to changed conditions in their country of origin and proved that they applied at the earliest opportunity following that change of circumstance;
- can show that they would otherwise suffer treatment which is contrary to Article 3 of the European Convention on Human Rights (ECHR) (Article 3 provides that no one should be subjected to torture or any other inhuman or degrading treatment – destitution alone is not contrary to Article 3). However, to qualify, applicants have to prove that they would suffer any of the following:
  - Actual bodily injury
  - Intense physical or mental suffering
  - Humiliation and a lack of respect for, or diminution of human dignity
  - Feelings of fear, anguish or inferiority
  - Worsening of an illness, physical or mental, due to detention, expulsion or any other measures for which the authorities can be held responsible

A mere risk of being reduced to this state of degradation is not a breach of Article 3 in itself.

## How will screening procedures change?

The Court of Appeal found that Section 55 had not been operated fairly because

- the purpose of the screening interview was not explained to the applicant clearly;
- screening officers did not have a relevant test for what was 'reasonably practicable';
- the applicant's state of mind was not taken into consideration;
- interviewers did not have appropriate interviewing skills;
- the screening officer and the person deciding on eligibility should be the same person;
- the authorities should give the applicant an opportunity for further explanation if the Secretary of State does not believe they gave enough information.

The judgement concludes that if the Home Office addresses all of the points above, they should be able to implement Section 55 fairly and effectively.

'Restricted access to NASS support' (RANS) screening will still be carried out. However, this is likely to include more in-depth questions. They may vary from one applicant to another depending on why the applicant did not apply 'as soon as reasonably practicable'. It is also likely that the same person who carried out the screening interview will decide on the applicant's eligibility for support under Section 55. If the interviewer denies access to support under Section 55, s/he will have to consider whether denial of support would constitute inhumane or degrading treatment under Article 3 of the ECHR.

Until RANS screening is modified, NASS staff will take the advice of lawyers on Section 55 decisions. This is likely to draw out the decision making time. Applicants can be admitted into emergency accommodation while decisions are pending.

## How will advisers know who can be admitted into EA?

Asylum applicants presenting themselves to emergency accommodation will need to show one of the following:

- An IS96 document which has been stamped by NASS for port applicants
- A letter from NASS confirming eligibility to apply for NASS support for in-country applicants
- A Section 55 'holding' letter acknowledging that a decision cannot be made
- A Section 55 'pending' letter acknowledging that a decision is pending

Applicants issued with a negative Section 55 decision cannot be admitted into emergency accommodation unless their solicitor raises an injunction. For them, judicial review will still be the only way to appeal against a negative Section 55 decision.

## What is the likely impact?

If the Home Office overhauls its procedures relating to Section 55 in line with the Court of Appeal judgement, applicants who do not apply for asylum at the port of entry should be given a fairer opportunity to apply for support. However, the voluntary sector is concerned that many asylum seekers will still be made destitute under Section 55.

## Further information

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