



U.K. / An Oromo family, who came to the UK as refugees from Ethiopia under the Gateway Protection Programme, going shopping in a local vegetable market. The GPP is the UK refugee resettlement programme implemented by the UNHCR and the UK Government Home Office. Eighty refugees from Ethiopia, many of whom had been living in Kakuma camp in northern Kenya, were resettled in Brighton on the south coast of England. © UNHCR / H. Davies

Key Findings

Positive findings

The audit revealed a number of examples of good practice in UKBA's processing of family claims. These include:

- ◆ Evidence of some decision-makers identifying expressions of fear of harm to family members, assessing the likelihood of that harm and thereby granting or refusing status to the family member(s) as appropriate.
- ◆ Examples of decision-makers considering and giving appropriate weight to the existence of family members in assessing the relevance and reasonableness of an internal flight alternative.
- ◆ Recent progress made by UKBA to improve the treatment of women in the asylum process, including through the development of gender-specific guidance and training to decision-makers.

In addition, UNHCR is aware of positive changes that have been implemented during the course of the audit in the Asylum Screening Unit to ensure that all adult family members are interviewed separately, ensuring confidentiality.

Shortcomings

Despite evidence of good practice, the audit identified areas in which procedure and decision-making standards would benefit from strengthening. As outlined below, UNHCR's findings indicate that the current asylum procedure does not facilitate the discharge of the duty of decision-makers to establish and evaluate the facts of an asylum claim in the family context. Furthermore, the current procedures do not provide sufficient scope to dependant family members to present their protection needs during asylum processing.

Access to procedure and identification of claims

Significant restrictions on access to procedure for family members were identified by UNHCR. In the current asylum process the only opportunity for an adult dependant to be heard verbally is at the Asylum Screening Unit (i.e. prior to the main applicant's asylum interview). After the main applicant is designated, adult dependants are not given further opportunity to be interviewed; children being considered for derivative status do not have adequate opportunity to participate and provide evidence during the asylum process. Further, dependant family members are not adequately counselled in a private setting (i.e. in the absence of other family members) with respect to their right to present separate asylum claims during the RSD procedure.

This raises serious concerns regarding not only the facility for dependants to put forward evidence relevant to the assessment of the main claim, but also the ability of dependant family members to present their individual protection needs.

The audit identified cases in which UKBA staff assessed only the evidence provided by the main applicant despite statements being made indicating that dependant(s) had serious protection needs in their own right. In one case involving a female Pakistani applicant, in addition to her own personal fear of persecution as a Christian, she recounted that her teenage daughters had been previously attacked in Pakistan and her fear that, if returned, they would be at specific risk of kidnapping by Muslim extremists due to their religion. The teenage daughters were not interviewed and only the mother's claim was assessed in the decision.

Burden of proof: shared duty

Some of the decision-makers demonstrated a lack of appreciation of the shared duty to ascertain and evaluate the facts of an asylum claim in the family context. Where it would have been relevant to the consideration of the claim, it was apparent that 'family evidence' such as statements from family members, files relating to previous applications by the applicant or relatives, and country of origin information specifically relevant to family members, had not always been considered before adjudicating the claim.

Credibility

UNHCR observed that a number of decision-makers did not proactively gather evidence from family members despite its potential relevance and as a consequence the credibility assessment was negatively impacted. For example, a male applicant's credibility was doubted where he was unable to answer questions about his dependant wife's family members and their political affiliation despite his insistence that she would be better placed to provide such information. The dependant's wife was not interviewed by UKBA staff.

Further concerns relating to the assessment of credibility were identified in the 'swap over' claims audited. 'Swap over' claims involve an applicant making a claim in their own right having previously been a dependant on an asylum claim which has already been decided (the 'previous claim'). In the cases examined, adverse credibility findings were drawn due to the delay in making the claim in their own right. The current law provides that delays can negatively impact upon credibility unless 'a reasonable explanation' for the

delay is given. The UKBA guidance on 'swap over' claims provides no further detail as to what is meant by 'reasonable explanation', thereby leaving the term at the discretion of the decision-maker. In addition, when assessing credibility in 'swap over' claims, undue weight was given to the negative credibility findings reached in the previous claim in which the applicant was a dependant.

For example, UNHCR observed a case of a Pakistani woman whose 'swap over' claim was supported by several letters from her solicitor providing an explanation for her delay in making her individual claim, which was due to her experiences of domestic violence at the hands of her husband (the main applicant in the previous family claim) and her mental health. In the decision on the 'swap over' claim these explanations were not assessed for reasonableness nor given any weight when assessing her credibility and refusing her claim. The decision was subsequently overturned at appeal.

Furthermore, the 'swap over' claims audited reflected inadequate consideration of new evidence provided after the previous claims were decided as well as unwillingness to apply the benefit of the doubt. These issues compound the challenges faced by dependant family members presenting their claims in the UK asylum procedure.

Application of the Refugee Convention criteria

The audit identified a number of cases in which the criteria of the 1951 Convention were not correctly applied due to an apparent lack of appreciation of the significance of family characteristics in the claims. Examples include:

- ◆ **Well-founded fear analysis:** when assessing the likelihood of risk to the main applicant, decision-makers did not always factor relevant family-related characteristics into their assessment. For example, one decision-maker did not include in her assessment of the likelihood of harm to an Iraqi applicant, the impact of his being in a mixed-faith marriage.
- ◆ **Persecution analysis:** there were examples of a lack of recognition that, depending on the facts of the individual claim, fear of what might happen to a family member can be persecutory to the main applicant.
- ◆ **Convention grounds:** there were examples whereby decision-makers did not identify family-specific Convention grounds. Most often the examples pointed to the possible existence of a particular social group such as 'family' or 'woman with a child outside of marriage'.

Refugee Status and derivative status

UNHCR observes that UKBA policy allows minors dependant on adult claims to receive full derivative status as a refugee while adults dependant on children's claims (e.g. fearing female genital mutilation on behalf of one's daughter) are only granted Discretionary Leave. The lesser status given to adults has the potential to jeopardise family unity and undermine the attainment of a durable solution for the family.

In practice, decision-makers demonstrate a lack of understanding of this policy in regard to which status (refugee status, Humanitarian Protection or Discretionary Leave) should be granted to whom (main applicant or dependant), when it has been recognised and accepted that a minor child is the family member to whom the risk applies. For example, in a case where it was accepted that there was a reasonable likelihood of persecution (in the form of female genital mutilation) to the main applicant's dependant daughter, the claim was nevertheless maintained in the mother's name. Despite the daughter having established a valid refugee claim, the mother was granted Humanitarian Protection with the daughter then granted Humanitarian Protection status in line with her mother.

Non-suspensive appeals

UNHCR audited a number of cases where the main applicant's claim was refused, certified 'clearly unfounded', and the right to an in-country appeal of the decision denied. In the family context, this significantly increases the risk of dependant family members being removed from the UK without having their protection needs identified and assessed.

Information management and statistics

In preparing for and conducting the audit it became evident that UKBA information management mechanisms do not facilitate easy identification of disaggregated information and statistics in relation to both family and 'swap over' claims.

Gender issues

UNHCR found that dependants, many of whom were women, did not have sufficient opportunity to present any independent protection needs they may have had through confidential asylum interviews. This increased the risk of individual protection needs not being properly identified, assessed and documented, and as a result, appropriate status and rights may not have been given. UNHCR also found there was inadequate counselling of the whole family - and dependants in particular - about their rights, the asylum process and the outcomes of various options.

The procedural shortcomings were highlighted strongly in one example of a Pakistani female applicant who was suffering domestic violence at the hands of her husband and, amongst other issues, feared return to Pakistan with him. However, she was not sufficiently counselled about the asylum process or the implications of not making a claim in her own right. She was not interviewed separately and in confidence away from her husband at any stage of the process. As such, her protection needs were not identified and the family's claim was refused.

Recommendations

UNHCR is of the view that the shortcomings in the family asylum procedure identified above could be addressed through the strengthening of training and guidance to Home Office staff involved in decision-making and changes to the current asylum procedure. UNHCR would welcome the opportunity to work with the Home Office to address these issues.

Access to procedure and identification of claims

In order to achieve the meaningful participation of family members in asylum procedures and to strengthen the ability of decision-makers to identify protection needs, the Home Office should:

- ◆ **Provide information** (written and verbal counselling) to family members in an age, gender and child-sensitive manner throughout the asylum process to ensure that all family members understand their right to make an independent asylum claim, the refugee criteria, and the distinction in process and outcome between being a dependant and a main applicant.
- ◆ **Strengthen the asylum screening process** for family members by ensuring that, with due regard to age and maturity, each individual family member is afforded the opportunity (via an appropriately structured interview) to communicate experiences of previous or current harm and to express fears of future harm if returned to the country of origin.
- ◆ **Provide training and guidance** to staff involved in decision-making for families to heighten sensitivity and strengthen the ability to recognise protection issues which may arise in the family context, the capacity to proactively identify cases in which family members have claims separate from that presented by the main applicant, and the ability to proactively gather and assess information provided by family members in adjudicating refugee claims.
- ◆ **Separately and confidentially interview** all family members, with due regard to age and maturity, during substantive asylum processing (i.e. after screening) in order to ensure that they understand the refugee criteria and to provide them with an opportunity to discuss any independent protection needs they may have.
- ◆ **Implement procedural safeguards** to ensure that the level of the child's participation in the asylum process is appropriate to the child's age and maturity, and in accordance with what is in the best interests of the child.

Burden of proof: shared duty

Guidance and training should be provided to ensure that decision-makers understand their shared duty in the asylum process and their obligation to ascertain and evaluate the relevant facts of an asylum claim in the family context. This includes the obligation on the part of the decision-maker to gather, review and consider relevant evidence, including statements from family members, files relating to previous applications by the applicant or relatives, and country of origin information specifically relevant to family members, while respecting confidentiality.