

Family Amnesty Changes – policy update

The Family Indefinite Leave to Remain (ILR) Amnesty was introduced on 24 October 2003. This is a one-off exercise to clear approximately 15000 asylum seeking family cases. Under the amnesty the Home Office may grant ILR to certain families who had been in the UK for more than three years. Since its introduction the Home Office has revised the qualifying criteria and the manner in which families must apply. To date 16,870 Families have benefited from the Family Amnesty.

The amnesty application process is not time limited, that is, *if a family meets the criteria they can still apply now*. Also, single parent families are included in the amnesty.

Please note: **the amnesty criteria have not changed**. However, there are several legal challenges that will be heard shortly, which aim to challenge the amnesty's criteria, which may have positive implications for clients.

Who is eligible?

Families must meet the following criteria to be eligible for ILR under the amnesty. The main applicant must have:

- Made an initial claim for asylum before 2 October 2000.
- had at least one dependant aged under 18 (other than a spouse) in the UK on 2 October 2000 or 24 October 2003. This includes families who were joined by a child between those two dates.

The following criteria regarding the asylum application must also be met:

- The asylum application is still awaiting an initial decision from the Home Office; Or
- The asylum application has been refused and is subject to an appeal hearing; or
- The asylum application has been refused and there is no further avenue of appeal but he applicant has not been removed.

Also:

- Families where the main applicant's asylum claim was refused but she/he was granted limited leave to remain will be considered.
- Kosovar families who came to the UK under the Humanitarian Evacuation Programme before 2 October 2000 and did not apply for asylum until after this date will be considered if they meet the necessary criteria.

Families will not be eligible if they have been removed or have left the UK voluntarily after their initial asylum application has been refused.

The family must also meet the following ***dependency criteria***:
Who is defined as 'dependant'?

Under the amnesty the Home Office defines a dependant as a child of the applicant or a child of the applicant's spouse who was under 18 years of age on 2 October or on 24 October 2003, or who was financially and emotionally dependant on the main applicant.

The Home Office case workers will consider whether the dependant:

- Is related as claimant to the main applicant, and
- Formed part of the family unit in the UK on 2 October 2000 or 24 October 2003.

The applicant must demonstrate the dependency relationship, by providing the following evidence:

- the dependant has been listed on the asylum case file before the 24 October 2003
- UK birth certificate if the dependant was born in the UK and is not listed on the asylum file
- strong evidence demonstrating the dependency relationship to the main asylum applicant, and that they resided in the UK on 2 October 2000 and/or 24 October 2003, where a dependant may not be listed on the asylum file nor born in the UK.

Who is excluded?

Currently the concession does not apply to a family where the main applicant or any of the dependants:

- Have a criminal conviction
- Have or have had an anti-social behaviour order or sex offender order;
- Families where the youngest child turned 18 before 2 October 2000
- Have made or tried to make an application for asylum in the UK under more than one identity
- Should have their asylum claims considered by another country (for example if they are subject to removal to a 'safe third country')
- Present a serious risk to national security
- Have committed crimes against humanity or against the purpose of the United Nations as outlined in Article 1F of the 1951 Refugee Convention
- Whose presence in the UK is otherwise not conducive to the public good.
- Unaccompanied minors

Who is eligible to apply?

Asylum seekers covered by the family 'amnesty' provided they fit the basic criteria, include:



1. Families who had lost their claim and were facing removal from the UK, but who then lost contact with the Home Office. It doesn't matter whether this was because the Home Office had lost contact with the family or vice versa.
2. Families who were living as a family unit on 24 October 2003, but who no longer live as a family unit due to divorce, separation, one partner leaving the relationship due to domestic violence, also qualify for the 'amnesty', as long as they continue to have contact with their children.
3. Families who entered and remained in the UK without permission before 24 October 2003 with minor children in order to join a partner who was already in the UK and who had already applied for asylum before 2 October 2000.
4. A prospective spouse who entered the UK with out permission, married an asylum applicant who was already in the UK and who had already applied for asylum before 2 October 2000 and where children were born of marriage before 24 October 2003

What has changed?

Several recent legal challenges have contested the Home Office Family ILR Amnesty criteria.

- **Criminal convictions:**

The Home Office accepts, in principle, that people who have 'points convictions' on their driving licence should not be excluded from the amnesty. The High Court will soon hear cases where people who have been convicted of various offences have been refused ILR under the 'Family Amnesty'.

- **Youngest Child turned 18:**

A legal challenge is in progress examining whether the Home Secretary was right to exclude children with families where the youngest child had turned 18 before the 2 October 2000 or 24 October 2003.

- **Unaccompanied minors:**

A legal challenge is examining whether unaccompanied minors should have been excluded from the amnesty.

Anyone fitting the above criteria should seek legal advice about whether to apply to the Home Office or seek judicial review.

How to apply?

People who fit the Family ILR Amnesty criteria may have a claim under the family 'amnesty'. To apply clients should write to the IND Casework providing: **their name, date of birth, Home Office Reference Number, and details of why they think that they are eligible**, and send it to:



IND Casework
Home Office
PO Box 1541
Croydon
CR9 2YS.

The Home Office should send an acknowledgement letter to the client on receipt of the application with a questionnaire for the family to complete.

If the family does not receive the questionnaire within six weeks, it should ask an adviser to contact the **ILR Helpline on 020 8760 4779**. *Please note that this helpline will only deal with enquiries from advisers and not from families themselves.*

ICT will keep you updated.