



## ASYLUM SEEKERS – A SERIOUS CASE OF MISUNDERSTANDING

### Summary

1 Confusion continues to reign over the distinction between an asylum seeker and a refugee. In the period 1997 – 2007 three quarters of asylum applications were refused after a process with a reduced burden of proof and opportunities to appeal. Asylum seekers should not be confused with genuine applicants who are, rightly, granted refugee status. Claims that asylum seekers do not get a fair hearing are unjustified.

### Introduction

2 On 5 November 2008 an article was published in The Independent, headed “Britain closes door on 80,000 asylum-seekers”. It begins:

“Almost 80,000 asylum seekers from countries described by the Foreign Office as dangerous and unstable have been refused refuge in Britain in the past five years.

The Government was last night accused of double standards for registering alarm about 21 “major countries of concern” at the same time as refusing sanctuary to 77,000 of their citizens who fled persecution and bloodshed. Refugees from turbulent nations such as Iraq, Afghanistan, Zimbabwe and Sudan are being turned down at the rate of nearly 40 a day, The Independent has learned.”

There is then much more in the same vein, followed by the following remarks attributed to Paul Holmes, the Liberal Democrats’ justice spokesman:

“This country has a proud record of providing refuge for people fleeing persecution but that tradition is being undermined. It is staggering so many asylum applications are being refused for people from countries the Government admits it is concerned about.”

3 The article is based on a serious misconception of the United Kingdom’s obligations in relation to applications for asylum. The same misconception underlies an article published in “The Guardian” of 20 November 2008, written by Caroline Slocock, Chief Executive of the Refugee Council, a publicly funded body which looks after the interests of asylum seekers and provides them with legal representation. The article attacks a recent statement by Phil Woolas, the Immigration Minister, that most asylum seekers are economic migrants and not genuine refugees fleeing persecution. I quote from the article:

“According to the Independent Asylum Commission” [see paragraph 9 below] “within the Home Office there is a “culture of disbelief” against asylum seekers. Woolas is leading from the front, acting as judge and jury when others have rightly been paid to do the job. Each should be judged objectively on its merits, not general prejudice.”

4 Further and recent example of confusion and lack of understanding comes from Scotland. Ian Duncan Smith, former Conservative Party leader, set up an asylum working party under the auspices of his Centre for Social Studies, which published a report in December 2008. One of the members of the working party was Bob Holman, described as a retired professor of social policy and a community worker in Easterhouse, Glasgow. On 18 December 2008 an article by him on the subject of the working party's conclusions was published in The Herald, a leading Scottish daily. This article included the following statement:

“Asylum seekers are not economic migrants. They are people who seek protection from persecution because of their race, religion, nationality or politics.”

5 In January 2006 we published a paper entitled “The distinction between asylum seekers and refugees” (see Legal Paper MW 70) but from the evidence of the newspaper articles just quoted and evidence from other sources quoted in paragraphs 11 and 12 below, the message clearly needs to be reiterated.

### **The 1951 Refugee Convention**

6 The United Kingdom, in common with all other Member States of the European Union, the United States, Canada and many other countries, is a Contracting State to the 1951 Geneva Convention relating to the Status of Refugees, as amended by a Protocol of 1967. The main obligation which the Convention imposes is expressed in Article 33.1:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

7 In line with this, applicants for asylum are required to show a well-founded fear of persecution for a Convention reason – i.e. one or other of the reasons listed in Article 33.1. Their applications are made in the first instance to the civil servants of the UK Border Agency (UKBA) and if they are refused they have a right of appeal to the Asylum and Immigration Tribunal. It has long been recognised that asylum seekers may have difficulty in proving that they have any such fear, justifying acceptance by UKBA or Tribunal that they should be granted asylum and cannot be returned to their countries of origin. The House of Lords in the case of **Sivakumaran** [1988] AC 988 ruled that asylum seekers should enjoy the benefit of a relaxed burden of proof. In civil proceedings generally the court has to be satisfied that a complainant has proved his case on “a balance of probabilities” if he is to be successful. All that an asylum seeker has to show, in accordance with **Sivakumaran** is that if he is returned to his country of origin there is “a reasonable degree of likelihood” that he will be at risk of persecution for a Convention reason, a much less demanding standard. This normally has to be demonstrated by showing that the asylum seeker was persecuted or had good reason to be apprehensive of persecution by the authorities or others in his country of origin, and was justified in seeking international protection under the Convention.

8 Although asylum seekers have the benefit of a reduced burden of proof, most of their applications fail. It is a regrettable fact that most applications/appeals are dismissed because of lack of credibility. Asylum seekers whose applications are so dismissed are usually economic migrants who have no proper way of obtaining leave to enter the United Kingdom and concoct a story in the hope of persuading the decision takers that they are entitled to asylum. An analysis of typical cases where the conclusion of the decision taker is that the applicant's case lacks credibility is taken from an earlier Migration Watch paper and appended as Annex 1 below. The statement by the Chief Executive of the Refugee Council, quoted in paragraph 2 above, that there is a “culture of disbelief” which leads to asylum applications being rejected shows a serious lack of appreciation of the considerable efforts made by civil servants of the UKBA and immigration judges to deal fairly with applications and appeals. Even in cases in which the evidence is believable, it will often fall short of showing a well-founded fear of persecution. Thus, to take a common example, many Sri Lankan nationals have been able to show at various times that they were caught up in the cross fire of the long running civil war between the Sri Lankan government and the Tamil Tiger rebels who control much of the north of the country. The civil war may have caused damage to their livelihoods or even resulted in the destruction of their homes, *but such events on their own do not amount to persecution and do not entitle them to a grant of asylum*. However, in many cases the UKBA acknowledges that although the applicant's asylum claim must be dismissed it would be unsafe to return him to his country of origin, not because of any particular jeopardy affecting the applicant personally but because conditions in the country generally make it unsafe to do so. In such cases applicants may be granted humanitarian protection or discretionary leave for a limited period.

### **Statistics of outcomes**

9 The Home Office Statistical Bulletin for 2007, published in August 2008, shows that of 23,430 applications for asylum in 2007 6,450 resulted in grants of asylum, humanitarian protection or discretionary leave. 14,935 asylum appeals were determined during the year, 23% were allowed and 72% dismissed. Because of the time delays it is difficult to disentangle the figures but it would seem that 90 % of refusals are appealed. Comparable figures for earlier years, as shown by the following percentage figures, are published in the same Bulletin.

|   | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|------|
| Percentage granted asylum   | 4    | 7    | 11   | 17   |
| Percentage granted Humanitarian protection or Discretionary leave | 8    | 10   | 11   | 10   |
| Percentage of appeals allowed <sup>1</sup>                        | 19   | 17   | 22   | 23   |

10 Home Office asylum statistics have been thrown into chaos by the “discovery” of some 450,000 files lying in a warehouse. These “legacy” cases are now being examined. About one third have been resolved, of which 40% have resulted in grants of asylum, not infrequently because the long delays have allowed the applicants to acquire a “Right to family life” claim to remain. Over a longer period 1997 – 2007 there were 751,000 asylum claims of which 206,000 (or 27.5 %) were granted some form of protection<sup>2</sup>. As already mentioned in paragraph 8 above, it is a regrettable fact that most applications/appeals are dismissed because of lack of credibility.

11 It is all too common for well meaning organisations and individuals to assume that anyone who arrives in the United Kingdom and applies for asylum must have a good case and should be given protection. One is the self-styled Independent Asylum Commission which seems to have ignored the powerful statistical evidence available which shows that genuine refugees are a small minority among asylum seekers. In paragraph 2 above I have quoted the reference to the Commission’s allegation of a “culture of disbelief” relied on by the Chief Executive of the Refugee Council. The Commission claims not to be interested in economic migrants and chooses to ignore the clear evidence that the majority of asylum seekers should properly be described as such. See Legal Paper MW 83 for Migrationwatch comment on their interim report.

12 Another body which shows a similar lack of understanding is, regrettably, the Church of England. In 2005 Church House Publishing issued a book entitled “A place of refuge – a positive approach to asylum seekers and refugees in the UK”. The book was compiled in response to a request made by the General Synod in February 2004 for “a study of the arguments for a more positive approach to asylum seekers”. The foreword by the Bishop of Southwark describes the book as “a carefully researched report [which] advances a case for policies based on compassion and solidarity”. So far from being carefully researched, the book is full of errors. In the opening pages care is taken to differentiate between the terms “refugee” and “asylum seeker”. The former is a person who has been granted the status of refugee, having satisfied the authorities that he has a well-founded fear of persecution for a Convention reason. The latter is a person who has applied for refugee status but whose initial application for asylum or appeal against refusal has not yet been decided. So far so good, but very soon the two expressions become confused. The book claims (page 13) that: “Asylum seekers are extremely marginalized and vulnerable people. They have ceased to be under the protection of the governments of their own countries and are unable to return home through fear of persecution.” This would be true of *genuine* asylum seekers, but it is clear from the figures quoted earlier that the overwhelming majority of asylum seekers are not genuine. If the unidentified author of the book had followed his own clear definitions he would in the passage quoted have referred to refugees, not asylum seekers.

## Conclusions

13 Towards the end of the article in “The Independent”, the chief executive of the Refugee Council is quoted as saying: “These figures” [i.e. the statement that Britain has closed the door on 80,000 asylum seekers] “show just how tough our asylum system is. People claiming asylum struggle to get a fair hearing...” This is a serious misrepresentation, particularly taking into account the fact that it is made

<sup>1</sup> These are percentages of those that go to appeal, that is roughly 75% of the original claims, so the percentage of the original claims granted on appeal is about 23% of 75% or 17 % so 44% of claims eventuate in a grant of some kind.

<sup>2</sup> Hansard 12 Nov 2008 Column 1214 – 1216 W

by the head of an officially recognised body in receipt of public funds. Asylum claims are dealt with strictly in accordance with the provisions of the 1951 Geneva Convention. The laws of the United Kingdom make provision for a system of appeals against refusal, something which is not required by the Convention. While appeals are pending, asylum seekers whose initial applications have been rejected cannot be removed. It is not at all uncommon for such appellants to spin out their appeals for years. Given the number of claimants, some decisions are bound to go wrong but every effort is made by all concerned to be as fair minded as possible. If their initial applications are rejected, the operation of the appeals system ensures that they may have two or more further hearings. There is no justification for alleging that asylum seekers do not get a fair hearing.

14 It is a matter for serious concern that two prominent national newspapers, the Independent Asylum Commission, the Church of England, the retired professor of social policy and the Chief Executive of the Refugee Council should apparently fail to understand the vital distinction between asylum seekers and genuine refugees. We have tried in this paper to clear up a wholly avoidable and sometimes pernicious confusion.

15 Our concern about correct use of these expressions is no mere legal quibble. We have always made it clear publicly that we support asylum for genuine claimants who are able to show that they have a well-founded fear of persecution, but we stress the word *genuine*. However, the overwhelming majority of asylum seekers are found not to have a genuine claim and are using the asylum process simply as a means of gaining entry to Britain which is otherwise not available to them by any lawful channel. For the most part these claimants are properly described as economic migrants. The publicised sympathy which they evoke from many well-meaning bodies is based on the implicit or sometimes explicit and in any event wrong assumption that anyone who seeks asylum must be deserving of it. Publicity given to the pronouncements of such bodies seriously misleads many members of the public

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20 January 2009

### **Annex 1 – from a Migration Watch paper on immigration appeals**

#### **Credibility**

17 Most asylum appeals are dismissed and the principal reason for dismissal is that the appellant's evidence is not believed. Reasons for not believing it include the following:

- The appellant has told a materially different story at the hearing from what he told the Home Office in interview. Such differences are infinite in number. The appellant may for example in a case where he was interviewed on arrival have said that he had reasons for coming to the United Kingdom which were not based on any alleged persecution or he may even admit that he has come here for economic reasons. This inevitably results in the refusal of asylum and he decides that he needs to improve on his story on appeal - but of course in so doing he digs a hole for himself. He may also give different dates for particular events from the dates he gave previously. He may relate facts which are completely at odds with what he said before.
- A seriously unbelievable story – e.g. an appellant from a large country such as Pakistan claims to fear persecution at the hands of a group of people found in only one part of the country and alleges that they have all pervasive powers throughout the country.
- Doubts about the country of origin. E.g. in recent years there has been a general awareness that the Home Office has not been returning asylum seekers from Somalia. This has resulted in people from Kenya claiming to be from Somalia. In the same way, asylum seekers from Pakistan have claimed to be from Afghanistan.
- Long delays in leaving his own country. The appellant may allege e.g. that he was tortured, imprisoned and the rest but nevertheless remained in his country carrying on a normal life for months or years before deciding that he needs to leave for his own safety.
- Long delays in claiming asylum, e.g. it is not unusual for people who come to the United Kingdom on a visit visa to claim when the six months allowed on such a visa has almost expired.
- A clearly opportunist claim - e.g. when the appellant has been arrested for an immigration or other offence and he thereupon claims asylum.
- The fairy godmother syndrome. This is a variant of the seriously unbelievable story which crops up frequently because the appellant obviously wishes to disguise the means by which he was brought to the United Kingdom. As one example of many, a Tamil from Sri Lanka once

told me that he was brought to the United Kingdom by an agent who travelled with him. The agent took him to an Underground station and left him, saying that the appellant should wait and the agent would shortly be back. He never returned, but the appellant alleged that he was saved by another Tamil who just happened to be on the spot, noticed him and immediately invited him to go to his home and enjoy free board and lodging indefinitely.

Credibility has always been a central issue in asylum and non-asylum appeals. Its importance is now recognised in statutory form by section 8 of the 2004 Act, on which the reader is invited to refer to paragraph 11 of the website paper on that Act.