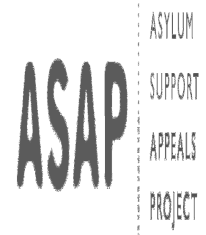


SECTION 9—WITHDRAWAL OF SUPPORT FOR FAILED ASYLUM SEEKERS



“Section 9” is part of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 which changes the Nationality Immigration and Asylum Act 2002. It means that families who are failed asylum seekers (so at the end of the process with no further right of appeal) can have their NASS support withdrawn if *certified* (see “Procedure for Withdrawing Support” below) by the Secretary of State as having failed *without reasonable excuse* to take *reasonable steps* to leave the UK voluntarily or place themselves in a position where they can leave the UK voluntarily.

Reasonable Steps – there is no statutory definition as to what constitutes reasonable steps however these could include obtaining travel documents/asking IND to obtain travel documents, complying with IND requirements to complete the removal process, attending relevant appointments at the IND and/or Embassy etc.

Reasonable Excuse – again there is no statutory guidance however BIA have given examples of what could constitute a reasonable excuse such failing to attend an appointment/provide information due to emergency medical care or due to transport problems.

Human Rights

Before BIA withdraws support they will need to be satisfied that to do so will not result in a breach of a person’s rights under the European Convention on Human Rights (ECHR) and the Human Rights Act 1998. (see “Procedure for Withdrawing Support” below for details of when a Human Rights assessment should be carried out.)

The Human Rights Act 1998 can be viewed at:

<http://www.opsi.gov.uk/acts/acts1998/19980042.htm>

The European Convention on Human Rights can be viewed at:

<http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/>

The “rights” most likely to be affected by Section 9 are Article 3 of the ECHR (no-one shall be subjected to torture or to inhuman or degrading treatment or punishment) and Article 8 of the ECHR

FACTSHEET NO: 6

24/4/07

In This Factsheet

What is Section 9?

Who is affected?

BIA procedure

Client options

The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact the ASAP.

(respect for private and family life).

BIA should be sure such rights are not breached before withdrawing support. BIA do argue however that any breach of human rights could be avoided if a family were to return home.

It is advisable to contact a solicitor or the Asylum Support Appeals Project for further advice should a human rights issue arise in connection with Section 9.

Procedure for Withdrawing Support

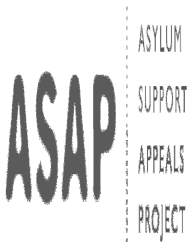
The process of withdrawing support takes around 8 weeks so will not be immediate. Families who receive notification that they are to be affected by section 9 should seek advice as early in the process as possible.

The process of withdrawing support is a five stage procedure. BIA have published a document which explains the procedure which should be followed. This document can be viewed at:

www.ind/homeoffice.gov.uk/ind/en/home/applying/asylum_applications.Maincontent.0002.file.tmp/instruction%20to%20caseworkers%20final%2015%20Nov%2004.pdf

It is useful to know the procedure as it is important to check that BIA has followed it but in brief the process is as follows:

1. Checks on asylum claim and warning letter - a check will be made that the family are at the end of the asylum process and should take steps to leave the UK. This letter will warn families that their support may be cut off if they do not take steps to leave the UK.
2. Second warning letter and interview appointment – this will repeat the warnings given in the first letter and invite the family for an interview where they can provide evidence that they are taking steps to leave the UK or to show why their support should not be withdrawn.
3. The interview – Only the principle asylum seeker in the family has to attend the interview. The interview should gather as much relevant information about the families circumstances as possible. This information is used to decide whether support should be terminated and whether to terminate support would breach the family's human rights. After the interview the family will receive another letter which will inform them whether or not the Secretary of State is likely to issue a certificate confirming the family are not taking steps to leave the UK. If it is thought that the family are not taking reasonable steps then a letter warning them of possible certification is sent and a human rights assessment carried out.



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4. Human rights considerations and issuing the certificate – at this point it is decided whether or not support should be continued and if support is to be terminated whether this would breach the family’s ECHR rights. The family will be informed of the decision in writing.
5. Termination of support.

Appeals

If a family has their support terminated under Section 9 they can appeal to the Asylum Support Tribunal. The Asylum Support Tribunal can annul the certificate, require the IND to reconsider the case, substitute its own decision or dismiss the appeal.

The following is a list of possible challenges:

- BIA failed to follow the correct procedure – If the procedure has not been followed then it may be possible to get the decision remitted to BIA. This may also trigger Judicial Review proceedings. This route may only have the consequence of delaying the termination of support as BIA may return the same decision once the procedure has been properly followed. For more information on Judicial Review refer to the ASAP “Judicial Review” Fact Sheet.
- The family has a reasonable excuse for not taking steps to leave the UK - this for example could include being unfit to travel. Documentary evidence from a GP or other medical expert is required which states specifically that the person concerned is unfit to travel, the reasons why and a date (if possible) confirming when the person will be fit to travel.
- The family has taken reasonable steps to leave the UK - For example, the family may go to the Embassy but be unable to obtain travel documents due to a nationality dispute or because the family could not produce identification or others that could confirm their nationality. See ASA/005/05/9315 where a Somali asylum-seeker had been to the Kenyan High Commission because the Home Office said he should be removed to Kenya. He said he was Somalian so was not issued with travel documents. He successfully argued he was taking reasonable steps to leave the UK. Decisions made by the Asylum Support Tribunal can be read at www.asylum-support-adjudicators.org.uk.
- Breach of ECHR rights in country of origin - if removing the family to their country of origin could lead to a breach in their Convention rights this may be a reason not to travel. It may be argued it would lead to a breach of a person’s convention rights to be returned to a time of civil war or where they could not access adequate medical conditions for a particular condition. (Note there is a high threshold regarding medical treatment as was established in the case of *Nigatu*. In this

case a woman who was HIV positive was returned to her country of origin despite the fact she would not have been able to access the required medication to keep her well. This case may be subject to appeal in the near future).

- **Unrecorded fresh claim** - if the family have a change of circumstances or additional information that could amount to a fresh claim this should be put to the Home Office and the family should not be deprived of support until further representations have been considered and rejected.

Social Services

If BIA support is withdrawn and there is no successful appeal to the Asylum Support Tribunal the family can approach Social Services and request accommodation and support under Section 17 of the Children Act 1989. Although asylum seekers who have been “certified” as not taking reasonable steps to leave the UK are ineligible for support under the Children Act (see Paragraph 7A Schedule 3 to the Nationality Immigration and Asylum Act 2002) Social Services can only refuse to support the family if they are satisfied this would not breach the family’s ECHR rights. Social Services must carry out their own human rights assessment and not rely on the assessment carried out by BIA (see “Procedure for Withdrawing Support” above).

Social Services should be involved from the beginning of the section 9 process and BIA should inform them of the families going through the process and the areas in which the families are residing.

If Social Services deem that it is necessary to accommodate the child to avoid a breach of their ECHR rights it may be possible to argue that the family should also be accommodated to avoid a breach of Article 8 (private and family life). This was successfully argued in *R (J) v Enfield LBC*. Note the court does not seem to follow this approach when there is no Convention reason why there is no reason why the adult(s) in the household cannot return to the country of origin (*R (K) v Lambeth*).

Social Services may need to accommodate the family whilst the assessment is carried out.

If Social Services have concerns for the child’s welfare they are able to take the child into care (s.20 Children Act 1989)

For general information on Social Services and Community Care refer to the ASAP “Community Care Fact Sheet”.

For more information and factsheets, visit www.asaproject.org.uk

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ASAP Fact-sheets:

No 1: Asylum Support

No 2: Section 4 Support for Failed Asylum Seekers

No 3: What to Bring to the AST

No 4: Proving Destitution

No 5: After a Negative Decision at the AST

No 6: Section 9 Withdrawal of Support for Failed Asylum Seeker Families

No 7: Introduction to Community Care

No 8: Introduction to Judicial Review

No 9: The European Convention on Human Rights and The Human Rights Act 1998

No 10: Medical Briefing

No 11: Section 4 Breach of Conditions

No 12: Section 4: New Ways to Apply