

United Nations High Commissioner for Refugees and the British Refugee Council
BORDERS, CITIZENSHIP AND IMMIGRATION BILL
House of Commons Committee Stage

I. Clause 40: ‘Application Requirements: general’

At page 30, after line 44 *insert*:

(g) a pending application for leave to remain pursuant to an asylum claim, a human rights claim or in reliance on Council Directive 2004/83/EC

Objective: To ensure that time spent by refugees prior to determination of the application and any appeals counts as part of the qualifying period for citizenship. Delays in deciding applications for asylum should not slow down refugees’ route to citizenship.

The Government has stated that in the case of refugees, it could be expected that a discretion would usually be exercised to waive the requirement for a person to have qualifying immigration status throughout the qualifying period where there is an undue delay in determining a claim, and this delay is not attributable to the claimant.¹ UNHCR and the Refugee Council therefore urge the Government to set out on the face of the Bill that this discretion will apply to refugees, unless there are exceptional circumstances why it should not.

II. Clauses 40 & 42: ‘Application requirements’ and ‘The qualifying period’

At page 29, at line 31, *insert*:

or refugee status or humanitarian protection;

and

At page 34, after line 42, *insert paragraph*:

- (6) in the case of an applicant with refugee status or humanitarian protection –
- (a) the number of years in the period is 5; and
 - (b) the activity condition is waived.

Objective: To ensure that refugees remain eligible for naturalisation after five years of residence. This amendment also removes the requirement for refugees to participate in ‘community activity’ or ‘earned citizenship’ activities.

¹ HL Deb, 25 March 2009, col 717

UNHCR and the Refugee Council consider that as a matter of best practice, the required period of residence for refugees in order to be eligible for naturalisation should not exceed five years. This is in order to ensure an effective nationality and to promote their full integration within society. Article 34 of the 1951 Refugee Convention requires that:

‘Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.’

The ‘community activity’ requirement should include a specific exemption recognising that there may be refugees who are unable to participate in community activities for reasons pertaining to their past experience of persecution, torture or other form of ill-treatment. Refugees may have faced specific forms of persecution in the past and the association with community activities may have an unintended impact on their emotional and physical well-being. UNHCR and the Refugee Council welcome the discretionary power of the Secretary of State to exempt individuals from the activity condition, but share the view of the Home Affairs Select Committee that

‘The Government should make public its intentions for the operation of the discretionary power, and in addition should make an explicit exemption for certain abused groups, including refugees.’²

III. Clause 49: ‘Meaning of references to being in breach of immigration laws’

At page 40, after line 42 *insert*:

(h) a refugee pursuant to the provisions of the 1951 Convention Relating to the Status of Refugees and any dependant family member shall not be regarded as being in the UK in breach of the immigration laws pursuant to the British Nationality Act 1981, Schedule 1(2)(f) if at any time during the qualifying period A was subject to penalisation for illegal entry pursuant to section 31 of the Asylum (Treatment of Claimants, etc) Act 2004.’

Objective: Under Article 31 of the Refugee Convention, States are prohibited from imposing penalties on refugees ‘on account of the illegal entry or presence’. It is well-established that the need to escape persecution frequently compels refugees to resort to irregular means of entry into host countries, including reliance on facilitators and/or the use of false documentation. Article 31 of the Refugee Convention is specifically aimed at protecting persons in this situation from prosecution for the measures that they were forced to use to reach safety. Refugees should not therefore be required to satisfy the condition that they were not at any time during the qualifying period in breach of the immigration laws once the 1951 Convention Relating to the Status of Refugees are met.

For further information please contact:

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² Home Affairs Committee, Borders, Citizenship and Immigration Bill [HL] Fifth Report of Session 2008-9; p.17