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Refugees (Family Reunion) Bill – Second Reading 15th December 2017

What is the Private Members' Bill?

Baroness Sally Hamwee has introduced a Private Members' Bill that would allow more refugee families to be reunited in safety in the UK. The bill will receive its second reading on 15th December 2017. We hope Peers will support this call by attending the second reading debate and voting to make these changes a reality.

What is Refugee Family Reunion and who is eligible?

Separation of families can have a devastating impact on peoples' lives, their rehabilitation from experiences of trauma and their ability to integrate and adapt to their country of asylum. The only family members explicitly allowed to join adult refugees in the UK are their spouse/partner and their dependent children who are under the age of 18. Where there are routes under the immigration rules for other types of family members to join, these are made exceptionally narrow by stringent requirements.

This means that those family members who have become separated and remain outside the UK are left with the invidious choice of staying put in what can be insecure and dangerous places or embarking on treacherous, expensive, unregulated journeys.

In July 2016, the Home Office published updated guidance on refugee family reunion that set out in more detail some of the types of cases where exceptional circumstances may apply. In particular, the updated guidance sets out the case of dependent children who are over the age of 18. While this is a welcome move and an acknowledgement on the part of the Government of the importance of family reunion, leaving these cases to the discretion of Home Office decision makers does not give families the same level of certainty a change to the rules would provide. It must also be noted that the current guidance is complex and the threshold for exceptional circumstances outside the rules is set very high. Indeed, the current guidance specifically notes that such cases will be "rare". Without legal aid, making an application for family reunion outside the rules is very difficult due to the complex rules and guidance and the expertise required to collect, organise and present evidence.

In addition, making this change via guidance rather than expanding the definition of family in the rules causes practical problems for families once they have been reunited in the UK. Individuals joining relatives in the UK through the rules receive rights and benefits enjoyed by the family member they are joining, e.g. leave in line with the family member, access to welfare support, and convention travel documents. In the cases where leave is granted outside the rules, it is usually granted for 33 months and may be subject to restrictions that refugee status is not, including not having recourse to public funds.

Muhammed and Amal are from Syria. They fled to Libya with their four children shortly after the conflict began. Life in Libya became increasingly dangerous while they were there and after two years Muhammed decided to make the journey to Europe.

Muhammed was granted refugee status in the UK. Aware that his son, Kusai, was due to turn 18 very soon, making him ineligible for family reunion, Muhammed immediately began the process of applying to bring his family to the UK.

That application was rejected. Muhammed knew that his 20 year old daughter, Athar, might not be accepted but also knew that, under family reunion law, he had the right to bring his wife and

any children under the age of 18 to the UK. It turned out that the reason for the rejection was Kusai's passport expiring while the family was in Libya. While awaiting that decision Kusai turned 18 and became ineligible for family reunion.

Muhammed appealed, and a judge ruled that while Muhammed's wife and two youngest children were eligible for family reunion and could come to the UK, Kusai and Athar were rejected on the basis of being over 18 years old.

While Athar has remained in the region, Kusai decided to take matters into his own hands and took the dangerous journey across the Mediterranean to a makeshift camp in unthinkable conditions in Calais*.

**Case study accurate as of May 2016*

What about unaccompanied refugee children in the UK?

Unlike adult refugees, children who are in the UK alone and who have refugee status have no right under the immigration rules to be reunited with even their closest family members. As a result of this rule, children living in the UK are unable to grow up safely with their family. The Home Affairs Select Committee has said that:

“It seems to us perverse that children who have been granted refugee status in the UK are not then allowed to bring their close family to join them in the same way as an adult would be able to do. The right to live safely with family should apply to child refugees just as it does to adults.”ⁱ

In not allowing child refugees to sponsor even their closest family members to join them, the UK is an outlier within Europe. Article 10 of the EU Directive on Family Reunionⁱⁱ sets out that unaccompanied child refugees are entitled to be reunited with their family members and this applies to the vast majority of EU countries. Only the UK, Denmark and Ireland, chose not to opt-in to the directive and so are not bound by it. However, it is noteworthy that Ireland has enshrined the right for unaccompanied child refugees to act as sponsors for the purposes of refugee family reunion in their own domestic law.ⁱⁱⁱ

Being reunited with close family is a way to ensure the welfare and safety of child refugees in the UK and would improve their chances of integration and recovery. Allowing them to sponsor their immediate families would be a straightforward change which would affect a small number of child refugees but one that would have a transformational impact on their lives.

“These are already some of the most vulnerable children that have been through a terrible time to get here. They then face endless barriers from language, culture, accessing appropriate support... To say, at the end of all that, that they are not allowed to be reunited with their

family is one of the most difficult things that the children we work with face...We see a lot of self-harm, problems with sleep, post traumatic stress disorder. You have to remember these are children who have often been through unimaginable things and now they are being told they cannot be reunited with their families.”

Hayley Cohen, case work manager - Young Roots - supporting young asylum seekers, Croydon

For families who are eligible, is it a straightforward process?

Legal aid was removed from refugee family reunion cases following the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The impact of this on refugees separated from their loved ones has been profound. Many are left to try and navigate complex legal processes, with similarly complex immigration rules, as they face prolonged separation from their family and the many harms which flow from this such as isolation, emotional distress and lack of confidence and practical difficulties to their integration and rebuilding lives.

Even for those who do, in theory, qualify for family reunion, the process is long and complicated. The report by the British Red Cross, ‘Not So Straightforward’, sets out the many bureaucratic and practical barriers families face.^{iv} To make an application for family reunion, the family members wishing to join their relative in the UK need to go to their closest British embassy however the British Red Cross have highlighted examples where families are risking their lives to travel to an embassy, required to travel through conflict zones. Additionally, a number of people were turned away upon reaching the embassy, even though they have made appointments. For example, children who attempted to submit their applications in Rwanda were turned away from the British High Commission because they didn’t have passports, even though such practice runs contrary to Home Office guidance.^v

Other complexities include cases requiring DNA tests or those involving adoption and de facto adoption. Such cases require legal advice in determining the eligibility of the applications, support in documentation gathering, and reference to precedent and existing policy and guidance.^{vi}

Despite the complexity of the process legal aid is not available to support families going through the refugee family reunion process. In their response to the consultation on the legal aid changes, the Ministry of Justice stated that "applications to join family members are treated as immigration cases, and are generally straightforward because they follow a grant of asylum."^{viii} In the experience of many families seeking to reunite, the process is anything but straightforward.

Is refugee family reunion the same as family reunion under the Dublin III Regulation?

No. Refugee family reunion allows refugees present in the UK to be joined by their family members (who may or may not be refugees themselves). When family members come to the UK, they are given the same immigration status as the person they are joining. The Dublin III Regulation is a piece of European Union legislation that is used to determine which member state is responsible for deciding a specific individual's asylum application. One of the criteria for deciding which Member State is responsible is whether the applicant has family members in a different Member State to the one they have made their asylum claim in. If the individual does have family members in a different Member State, then the first Member State can request that the application is transferred to the Member State where the applicant's family members are.

What about British Citizens with refugee family members abroad?

Refugee family reunion rules do not allow people identified as refugees living abroad to be reunited with family members in the UK, if the family members in the UK do not have either refugee or humanitarian protection status. For example, a British citizen who is married to a Syrian man, who is living in Turkey and recognised as a refugee would not be allowed to bring her husband to the UK through the family reunion rules, but would instead need to meet the income and other requirements of the spousal visa route. Last year, newspaper reports highlighted the cases of two British citizens who had previously been granted refugee status in the UK but had since been awarded citizenship. Unable to bring their family members to the UK due to the spousal visa income threshold, the two men are currently living with their wives and children in a camp in Dunkirk.

What does the Refugees (Family Reunion) Bill do?

The Refugees (Family Reunion) Bill would allow more families to be reunited in safety by:

- 1) Expanding the criteria of who qualifies as a family member for the purposes of refugee family reunion
- 2) Giving unaccompanied refugee children in the United Kingdom the right to sponsor their family members to join them under the refugee family reunion rules
- 3) Giving British citizens the right to sponsor their family members recognised as refugees to join them under the refugee family reunion rules
- 4) Reintroducing legal aid for refugee family reunion cases.

ⁱ House of Commons Home Affairs Committee, 'The Work of the Immigration Directorates (Q1 2016)', Sixth Report of Session 2016-

17 ⁱⁱ Council Directive 2003/86/EC on the right to family reunification

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF> ⁱⁱⁱ See section 18 of the Refugee Act 1996

^{iv} British Red Cross, 'Not So Straightforward: the need for qualified legal support in refugee family reunion' ^v The complexity means that some families are forced to wait months, even years, before being reunited. A recent answer to a written parliamentary question showed that in 2015 at least one family has had to wait nearly a year (357 days) to have their application processed. In 2013, one case took more than three times as long to conclude, taking 1184 days. ^{vi} British Red Cross, 'Not So Straightforward: the need for qualified legal support in refugee family reunion'

^{vii} See, for example, Lord Wallace of Tankerness' response to an amendment tabled by Lord Thomas of Gresford, HoL 18 Jan 2012, c675 ^{viii} Ministry of Justice, 'Reform of Legal Aid in England and Wales: the Government Response', June 2011