



# Asylum Laws

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## AUSTRALIA

## ASYLUM LAWS

*Executive Summary*

*Australia requires all non-citizens to have a visa, which must be granted before arrival. There are many types of visas, some of which are for refugees and others for people admitted on humanitarian grounds. Most refugee visas, which grant permanent residence and access to government benefits, are issued to persons who have been certified by the United Nations High Commissioner for Refugees as requiring protection. Asylum-seekers who arrive without a visa, either by boat or by air, are subject to mandatory detention while their claim for refugee status is processed. If the application is refused, they are subject to immediate removal from Australia.*

**I. Legislative Framework**

Migration to Australia by all persons, including refugees claiming asylum, is governed by the Migration Act 1978, as amended, and by the Migration Regulations 1994, as amended.<sup>1</sup> These are voluminous and detailed texts, with the most recent printed version of the Migration Regulations (Reprint 4, March 2004) totaling 1702 pages in two volumes. These laws are administered by the Department of Immigration and Multicultural and Indigenous Affairs (DIMA).

Australia practices a “universal visa” system. Every non-citizen in the country must apply for and have an issued visa before arrival in Australia. The Migration Regulations provide for an extremely elaborated system of types and subtypes of visas, with the number of subtypes reaching into the hundreds. All visa-holders are referred to as “lawful non-citizens.” A non-citizen without a visa, such as persons arriving on the coasts in small boats, is referred to as an “unlawful non citizen.” Sections 189 and 196 of the Migration Act require that all unlawful non-citizens be detained until they are either removed from Australia under sections 198 or 199, deported under section 200 (which is applied to non-citizens convicted of serious offenses or deemed to pose a threat to the security of Australia), or are granted a visa. If they are granted a visa, it will be a limited-term, temporary visa, which permits them to stay in Australia while they apply for migration under the government’s Refugee and Humanitarian Program.<sup>2</sup>

The Migration Act, sections 36 through 37A, provides for the issue of visas on refugee and humanitarian grounds. Different subtypes of visas are issued to those who apply from foreign countries (offshore applicants) and to those who apply from within Australia (onshore applicants). Persons who are lawfully in Australia, such as those with tourist or student visas, may apply for refugee status, which, if granted, would lead to the issuance of another type of visa. The offshore resettlement program provides

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<sup>1</sup> Migration Act 1958; *See also* Migration Regulations 1994. Both texts are available, as updated and authentic electronic files, as part of the Australian Government, Attorney-General’s Department online database called COMLAW, at <http://www.comlaw.gov.au/>. The most direct way to access the texts is to select the Commonly Viewed Legislation section on the left side of the homepage.

<sup>2</sup> DEP’T OF IMMIGRATION AND MULTICULTURAL AFFAIRS, AUSTL. GOV’T, POPULATION FLOWS: IMMIGRATION ASPECTS 2003-04 ED., ch. two, pt. four HUMANITARIAN PROGRAM 35 (Jan. 2005), *available at* [http://www.immi.gov.au/statistics/popflows2003\\_04/ch2\\_pt4.pdf](http://www.immi.gov.au/statistics/popflows2003_04/ch2_pt4.pdf).

for two categories of permanent visa (i.e. permanent residence) and two categories of temporary visa. The onshore program provides for either a permanent Protection Visa or a Temporary Protection Visa, usually valid for three years.<sup>3</sup>

Australia's refugee and humanitarian migration program is organized under the 1951 International Convention Relating to the Status of Refugees, as modified by the 1967 Protocol Relating to the Status of Refugees.<sup>4</sup> The Migration Act and the Migration Regulations echo the Convention and Protocol by making a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion the criteria to be used by Australian authorities when deciding whether or not to grant a visa.<sup>5</sup> The majority of applicants issued visas under this program are those who have been identified as refugees by the United Nations High Commissioner for Refugees and referred to Australia by this body. The Refugee and Humanitarian Program also offers protection to asylum seekers who have entered Australia, either as lawful temporary entrants or as unlawful non-citizens, and are owed protection under the 1951 Convention or the 1967 Protocol.<sup>6</sup>

The decisions of the Department of Immigration and Multicultural Affairs on granting or refusing a Protection Visa may be appealed to the Refugee Review Tribunal or the Administrative Appeals Tribunal, depending on the grounds for the refusal.<sup>7</sup> In some cases, it may be possible to appeal decisions of the tribunals to the Federal Courts.

## II. The Refugee and Asylum Program in Practice

Most of the visas granted under the Refugee and Humanitarian Program provide for permanent residence in Australia. Permanent residence carries entitlement to most of the educational, welfare, and health benefits normally available to Australian citizens. The qualifying condition for an individual's application for Australian citizenship is two years residence in Australia as a permanent resident.<sup>8</sup> The temporary visas, which are issued to those already in Australia, whether in a lawful or unlawful status, are valid for periods from eighteen months to five years. Persons holding them may apply for a refugee visa granting permanent residence. The temporary visas, also referred to as bridging visas or protection visas, entitle their holders to a more limited set of benefits and may or may not permit employment. On August 27, 2004, new measures for holders of temporary protection visas went into force. These included a "reintegration assistance package" for those who wished to return to their home country, and a new Return Pending Visa, which would provide an additional eighteen months stay in Australia for those who

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<sup>3</sup> DEP'T OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, AUSTRAL. GOV'T, MIGRATING AS A REFUGEE OR HUMANITARIAN ENTRANT, [http://www.immi.gov.au/refugee/migrating\\_refugee.htm](http://www.immi.gov.au/refugee/migrating_refugee.htm); DEP'T OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, AUSTRAL. GOV'T, FACTSHEET 61, SEEKING ASYLUM WITHIN AUSTRAL., <http://www.immi.gov.au/facts/61asylum.htm>.

<sup>4</sup> Texts of these Conventions are available from the Office of the United Nations High Commissioner for Human Rights: <http://www.ohchr.org/english/law/refugees.htm> and <http://www.ohchr.org/english/law/protocolrefugees.htm>.

<sup>5</sup> Migration Regulations, Schedule 2, Subclass 200 – Refugee, 646; *see also* JOHN VRACHNAS ET AL., MIGRATION AND REFUGEE LAW: PRINCIPLES AND PRACTICE IN AUSTRALIA, chs. 14-16, 190-262 (2005).

<sup>6</sup> DEP'T OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, AUSTRAL. GOV'T, SEEKING ASYLUM WITHIN AUSTRAL., [http://www.immi.gov.au/refugee/seeking\\_asylum.htm](http://www.immi.gov.au/refugee/seeking_asylum.htm).

<sup>7</sup> *Id.*

<sup>8</sup> DEP'T OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, AUSTRAL. GOV'T, AUSTRAL. CITIZENSHIP, FREQUENTLY ASKED QUESTIONS ON AUSTRALIAN CITIZENSHIP, <http://www.citizenship.gov.au/faq.htm>.

were no longer owed protection.<sup>9</sup> Those with a Return Pending Visa could apply for a permanent refugee visa if they moved to a rural area and secured employment, or if they married an Australian citizen.<sup>10</sup>

The most recent figures on migration to Australia, made public on December 31, 2005, show a total of some 123,000 persons settling in Australia in 2004-2005 (presumably from July 1, 2004 to June 30, 2005, the Australian government's fiscal year).<sup>11</sup> Of these persons, about 13,000 entered under the refugee and humanitarian program. Some 680 refugees were to arrive in February 2006. Assistance to refugees included torture and trauma counseling, intensive reception and case management services, accommodation support, help in establishing a household, health and psychological services, links to essential services such as Centrelink (employment assistance), Medicare, and banking.<sup>12</sup> The Department of Immigration notes that Australia is one of only ten countries in the world that operates an annual program dedicated to resettlement and consistently ranks in the top three countries for number of persons resettled.<sup>13</sup> In 2003-2004, some 11,802 refugee visas were issued to applicants from offshore locations, and 2,049 to applicants from within Australia. Some of these were for temporary protection visas.<sup>14</sup>

The mandatory detention of asylum seekers who arrive without visas has generated considerable controversy in the international arena and within Australia and it has been an issue in Australian election campaigns. In oversimplified terms, the controversy pits humanitarian concerns, exemplified by children who have spent several years behind barbed wire in detention camps in remote desert locations, against the control of Australia's borders and the orderly program of admitting refugees who have been certified as deserving by the United Nations High Commissioner for Refugees. These issues are examined in a July 2005 Current Issues Brief prepared by the Australian Parliamentary Library.<sup>15</sup>

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<sup>9</sup> DEP'T OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, *supra* note 2.

<sup>10</sup> *Go Bush, Get a Job or Fall in Love, Visa Hopefuls Told*, SYDNEY MORNING HERALD, Aug. 25, 2004, <http://www.smh.com.au/>.

<sup>11</sup> Media Release, Senator Amanda Vanstone, Minister for Immigration and Multicultural Affairs, Settler Numbers Continue to Grow (Dec. 31, 2005), [http://www.minister.immi.gov.au/media\\_releases/media05/v05163.htm](http://www.minister.immi.gov.au/media_releases/media05/v05163.htm).

<sup>12</sup> Media Release, Senator Amanda Vanstone, Minister for Immigration and Multicultural Affairs, Australia to Welcome 680 Refugees in February (Feb. 8, 2006), [http://www.minister.immi.gov.au/media\\_releases/media06/v06014.htm](http://www.minister.immi.gov.au/media_releases/media06/v06014.htm).

<sup>13</sup> DEP'T OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, *supra*, note 8, p. 30.

<sup>14</sup> *Id.* at 32.

<sup>15</sup> Parliament of Australia, Parliamentary Library, Current Issues, *The Detention and Removal of Asylum Seekers* (E-Brief: Online Only, July 5, 2005), [http://www.aph.gov.au/library/intguide/SPasylum\\_seekers.htm](http://www.aph.gov.au/library/intguide/SPasylum_seekers.htm).

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**CANADA**

**ASYLUM LAWS**

*Executive Summary*

*Canada's standards for assessing refugee claims are derived from international conventions. Claims usually can be made within the country or upon entry, but the United States and Canada have a safe third country agreement that limits the ability of persons to present refugee claims at border crossings. Claims are heard by a quasi-judicial tribunal and are appealable to the courts. Refugee claimants have rights to work and receive social services while their cases are being processed.*

Canada has signed the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Convention Relating to the Status of Refugees (Refugee Convention), signed in 1951, and the Protocol to the Refugee Convention, signed in 1967.<sup>1</sup> Prior to 2001, the major provisions of these international agreements were incorporated in the Immigration Act.<sup>2</sup> However, in that year, Canada repealed that Law and replaced it with its current Immigration and Refugee Protection Act.<sup>3</sup> The new Act contains a statement of its objectives that, in effect, summarizes Canada's refugee policies. Included in this summary are the following aims:

1. To recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;
2. To fulfill Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement; and
3. To offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment.<sup>4</sup>

However, the statement of objectives also recognizes that Canada's obligations toward refugees are qualified by its obligation "to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals."<sup>5</sup>

The Immigration and Refugee Protection Act confers refugee protection on persons found to be a Convention refugee and persons found to be in need of protection from being subjected to torture or cruel and unusual punishment. A claim for protection can be made at a point of entry or at a Canada

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<sup>1</sup> Immigration and Refugee Protections Act, 2001 S.C. c. 27, § 2 and Sched.

<sup>2</sup> R.S.C. c. I-2 (1985).

<sup>3</sup> 2001 S.C. c. 27, as amended.

<sup>4</sup> *Id.* §§ 3(2)(a), 3(2)(b) and 3(2)(c).

<sup>5</sup> *Id.* § 3(2)(h).

Immigration Centre in Canada (CIC).<sup>6</sup> CIC officers review claims to determine whether they are eligible to be referred to the Immigration and Refugee Board (IRB) for a decision. Included in the categories of persons who are not eligible to have a claim referred to the IRB are:

1. persons recognized as a Convention refugee in another country to which they can return;
2. persons who have arrived from a country with which Canada has a Safe Third Country Agreement;
3. persons determined to be inadmissible on grounds of security, serious criminality, or human rights violations;
4. persons who were already denied status or who withdrew or abandoned a previous application.<sup>7</sup>

Canada and the United States have had a Safe Third Country Agreement in place since the beginning of 2005. This Agreement was originally called for in the Action Plan to the Smart Border Declaration that Canada and the United States signed shortly after the events of September 11, 2001. In the discussions that followed September eleventh, U.S. officials expressed their fears that the Canadian refugee system could be abused by persons seeking to use Canada as a launching point for terrorist attacks in the United States. Canadian officials pointed out that most of the large number of outstanding claims for refugee status that were leading to long processing delays were from persons who had entered Canada from the United States. The Safe Third Agreement, therefore, is designed to help Canada reduce its backlog of refugee claims. Under the Agreement, persons from outside Canada and the United States generally are not allowed to present refugee claims at the U.S.-Canada border. Instead, persons wanting to present a refugee claim must go back across the border and present their claims in the country where they first had an opportunity. This Agreement is designed to discourage “asylum shopping,” but it is subject to major exceptions. The Safe Third Agreement does not apply to claims presented within a country, claims made at airports, claims made by persons who have certain types of relatives living in the country they wish to enter, or cases in which authorities believe that a refugee claim should be accepted notwithstanding the provisions of the Safe Third Country Agreement. Claims presented within a country are not subject to the Agreement because there are difficulties proving that a claimant actually came from the other country. Authorization for the denial of refugee claims presented by persons who are subject to the Safe Third Country Agreement is contained in Canada’s Immigration and Refugee Protection Act.<sup>8</sup>

Eligible refugee protection claims are referred to the IRB. The government appoints the quasi-independent judges of the Refugee Protection Division. Hearings are held in camera and are conducted in an informal, non-adversarial manner.<sup>9</sup> Representatives of the United Nations High Commissioner for Refugees are allowed to attend. Refugee claimants are allowed to explain why they believe they need protection. They also have a right to legal counsel. Persons denied refugee status can appeal their case to the Federal Court of Canada. Claimants usually are allowed to stay in the country while their case is being heard.

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<sup>6</sup> CITIZENSHIP AND IMMIGRATION CANADA, REFUGEE PROTECTION IN CANADA, <http://www.cic.gc.ca/english/refugees/asylum-1.html>.

<sup>7</sup> *Id.*

<sup>8</sup> 2001 S.C. § 101(1(h)).

<sup>9</sup> CITIZENSHIP AND IMMIGRATION CANADA, IMMIGRATION AND REFUGEE BOARD, <http://www.cic.gc.ca/english/refugees/asylum-2.html>.



Persons granted refugee status are allowed to apply for permanent resident status. Many successful refugee claimants are given permanent residence unless they are ineligible for health reasons or a past criminal history.

Despite the reforms contained in the Immigration and Refugee Protection Act that were designed to streamline the process, appeals in refugee cases still can last quite a few years. Claimants frequently have been able to delay or avoid deportation for over ten years. Canada also allows persons to apply for permission to remain in the country on humanitarian or compassionate grounds and to apply for a pre-removal risk assessment if they fear persecution, danger of torture, risk to life, or cruel and unusual treatment. These options can further delay the deportation process.

Canadian refugee policy has been a highly contentious issue within the country for many years. Critics contend that the relatively high acceptance rate of almost fifty percent demonstrates that Canada has an overly generous asylum program. Officials for the government administration that was replaced at the beginning of 2006 defended their record by claiming that the acceptance rate in Canada was not significantly higher than the acceptance rate in the United States. Critics of the present system also believe that Canada has been overly generous in recognizing the rights of refugee claimants. Canada's courts have held that refugee claimants are protected by the Canadian Charter of Rights and Freedoms.<sup>10</sup> This protection generally gives refugee claimants the right to work in Canada while their claims are being considered, as well as the right to study within the country. Refugee claimants also are covered by the provincial health insurance plans, which provide medical care and other social services to all provincial residents.<sup>11</sup> Free medical care, immediate access to social services, the immediate right to work, long processing times, low deportation rates, and the high acceptance rate are all cited as major reasons why many refugee claimants often prefer to present their claim in Canada rather than in the United States.

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<sup>10</sup> *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177.

<sup>11</sup> CITIZENSHIP AND IMMIGRATION CANADA, RIGHTS TO EMPLOYMENT, EDUCATION AND HEALTH SERVICES, <http://www.cic.gc.ca/english/refugees/asylum-5.htm>.

## LAW LIBRARY OF CONGRESS

## UNITED KINGDOM

## ASYLUM LAWS

*The legal framework for asylum in the United Kingdom is highly complex and is contained in numerous pieces of legislation and rules made under the authority of such legislation. The granting of asylum is made in accordance with a number of factors, is directed by the United Nations Convention Relating to the Status of Refugees, and meets the UK's obligations under the European Convention on Human Rights. Asylum is granted in cases where the applicant has a well-founded fear of persecution and is likely to face persecution if forced to return.*

**I. Introduction**

The policy surrounding and law governing, immigration and asylum is highly complex, with the government attempting to balance the needs of those seeking genuine protection against those that wish to enter the UK for undesirable purposes. The statutory regime governing immigration and asylum in the United Kingdom is contained in the Immigration Act 1971<sup>1</sup> and the Immigration Rules<sup>2</sup> made under this Act. The law requires that individuals who are neither British or Commonwealth citizens with the right of abode in the UK, nor members of the European Economic Area<sup>3</sup> obtain leave to enter the United Kingdom from an immigration officer upon their arrival.<sup>4</sup> Asylum in the UK also is governed by the Immigration and Asylum Act 1999<sup>5</sup> and directed by the European Convention on Human Rights<sup>6</sup> and the United Nations Convention relating to the Status of Refugees.<sup>7</sup> The Refugee Convention has not directly been incorporated into the domestic law of the UK; however, its provisions are taken into account when making immigration rules. Practices contrary to the convention are not permitted.<sup>8</sup> A series of Asylum Policy Instructions made by the Secretary of State guide immigration officers in making decisions to grant or deny a claim of asylum.

**II. Background to Asylum in the UK**

Asylum in the United Kingdom has been a contentious issue for the current Labour government, which has been struggling to reduce the numbers of people entering the country to claim

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<sup>1</sup> Immigration Act 1971, c. 77.

<sup>2</sup> Immigration Rules, H.C. 395, as amended.

<sup>3</sup> The European Economic Area consists of the Members of the European Union, plus Norway, Iceland and Liechtenstein.

<sup>4</sup> Immigration Act 1971, c. 77, § 3 and Immigration Rules, H.C. 395, ¶ 7.

<sup>5</sup> Immigration and Asylum Act 1999, c. 33.

<sup>6</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222. The European Convention on Human Rights was incorporated into the national legislation of the United Kingdom by the Human Rights Act 1998, c. 42.

<sup>7</sup> United Nations Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 U.N.T.S. 150.

<sup>8</sup> *Id.*; see also Asylum and Immigration Appeals Act 1993, c. 23, § 2.

asylum and rid itself of the image that the UK has a ‘soft touch’ for asylum seekers. Considerable negative public opinion and cynicism surrounds asylum seekers in the UK for a number of reasons. The most notable critiques are the alleged link between failed asylum seekers and those involved in terrorism; the granting of asylum to extremist Islamic preachers; abuse of the asylum system by economic migrants; and the costs associated with caring for these individuals.<sup>9</sup> A large proportion of those seeking asylum in the UK originate from countries with a predominantly Muslim population, resulting in the treatment of asylum seekers being a concern to local Muslim communities and organizations. The asylum process also is an important factor for the integration of those that eventually receive refugee status and are permitted to remain in the UK.<sup>10</sup>

In an attempt to remove the perception that the United Kingdom has a ‘soft touch’ for asylum seekers, and the public perception that asylum seekers are taking away money from benefits that citizens of Britain are entitled to, the government introduced a number of controversial measures. Asylum seekers can be detained at any point during their asylum application without a judicial hearing; are not permitted to work; can be required to reside in a particular place for up to fourteen days in order to undergo an induction program; and can be tagged to detect their whereabouts. Asylum seekers receive limited benefits that can be withdrawn if it is believed they did not make a claim for asylum within a reasonably practicable time.<sup>11</sup> Asylum seekers from countries that are deemed ‘safe’ and those whose claims are ‘clearly unfounded’ both can be detained and removed from the UK while they appeal the decision to deny them asylum from a third country.<sup>12</sup>

### III. Application Process for Asylum Seekers

The legislative basis governing the process for asylum seekers is contained in the Immigration and Asylum Act 1999,<sup>13</sup> with all claims being considered by officers of the Home Office’s Immigration and Nationality Department (IND). The main basis required for a claim of asylum under the Immigration and Asylum Act is a “well founded fear of persecution,” as provided in the UN Refugee Convention. The standard of proof for determining a well-founded fear of persecution has been considered to equate to a “reasonable degree of likelihood.”<sup>14</sup>

The UK considers a person to be an asylum seeker if they:

- are 18 years of age or older;
- in the UK;

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<sup>9</sup> OPEN SOCIETY INSTITUTE, MONITORING MINORITY PROTECTION IN THE EU: THE SITUATION OF MUSLIMS IN THE UK 75 (2002).

<sup>10</sup> *Id.*

<sup>11</sup> Nationality, Immigration and Asylum Act, 2002, c. 41 and Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19.

<sup>12</sup> HOME OFFICE, CONTROLLING OUR BORDERS: MAKING MIGRATION WORK IN BRITAIN, FIVE YEAR STRATEGY FOR ASYLUM AND IMMIGRATION, 2005, Cm. 6472, Annex c and Nationality, Immigration and Asylum Act, 2002, c. 41.

<sup>13</sup> Immigration and Asylum Act 1999, c. 33.

<sup>14</sup> R v Secretary of State for the Home Department, ex p Sivakumaran [1988] Imm AR 147.

- has made a claim for asylum at a place designated by the Secretary of State who has recorded the claim, which remains undecided.<sup>15</sup>

The practical results of this section is that asylum seekers must make an application either at the port of entry or at a place designated by the Secretary of State. The alternative is to not be considered an asylum seeker and lose the subsequent benefits that this status brings.<sup>16</sup>

Asylum applicants are fingerprinted to prevent multiple asylum and entry attempts in the UK.<sup>17</sup> Fingerprints taken are typically retained in the Immigration Fingerprint Bureau (IFB) for ten years unless the Secretary of State provides other directions.<sup>18</sup> The fingerprint is placed on an Application Registration Card (ARC), an electronic ‘smart’ card given to asylum seekers, which also contains the holder’s photograph and personal details. It constitutes an identity document and shows the individuals proof of status in the UK.<sup>19</sup> The cards have features designed to “improve document security and allow fast identity verification.”<sup>20</sup>

### A. Port of Entry Applications

Most often, individuals claim asylum at the port of entry and may do so at any point during the entry process. Once a claim for asylum has been made, the immigration officer is bound to refer the application to the Secretary of State.<sup>21</sup> While the Secretary of State determines the merits of the case, the applicant and any of his dependents cannot be removed from the UK, although these individuals are not granted leave to enter and can be either detained or given temporary admission. Applicants also typically have conditions, such as residing at a certain address, attached to their admission.<sup>22</sup>

### B. In-Country Applications

Individuals that are in-country can apply in person to the Secretary of State at an Asylum Screening Unit or Public Enquiry Office for asylum as a refugee or under the European Convention for Human Rights, where the applicant requests a variation of their leave to enter or remain for humanitarian purposes.<sup>23</sup> If the individual’s original leave to enter or remain expires during the

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<sup>15</sup> Nationality, Immigration and Asylum Act 2002, c. 41, § 18.

<sup>16</sup> MARK SYMES AND PETER JORRO, *ASYLUM LAW AND PRACTICE*, 2003, ¶ 11.1.

<sup>17</sup> Immigration and Asylum Act 1999, c.33, § 141.

<sup>18</sup> Immigration and Asylum Act 1999, c. 33, §§ 141-4 and Home Office, Asylum Policy Instructions ¶ 11.3.

<sup>19</sup> HOME OFFICE, *CONTROLLING OUR BORDERS: MAKING MIGRATION WORK IN BRITAIN, FIVE YEAR STRATEGY FOR ASYLUM AND IMMIGRATION*, 2005, Cm. 6472, annex C.

<sup>20</sup> House of Commons Research Paper, *The Identity Cards Bill, No. 9 of 2005-6*, Research Paper 05/43 at 13 and Home Office Press Notice 266/2001, *Radical Reform Unveiled For More Robust Asylum System*.

<sup>21</sup> Home Office, Immigration Rules, H.C. 395, ¶ 328.

<sup>22</sup> Nationality Immigration and Asylum Act 2002, c. 41, § 77; Home Office, Immigration Rules, H.C. 395, ¶ 329; Immigration Act 1971, c. 77, sch. 2, ¶ 21.

<sup>23</sup> Immigration and Asylum Act 1999, c. 33, § 5; Home Office Asylum Policy Instructions ¶ 2.1; see also the European Convention on Human Rights, art. 3, Nov. 4, 1950, 213 U.N.T.S. 222.

consideration of the application, it is automatically extended, under the same terms it was initially granted, until a decision is made and any appeals are exhausted.<sup>24</sup>

#### IV. Decision Making Process

IND officers examine submitted applications. If the application contains a substantive claim, its processing continues. Officers can decline an application if it does not contain a substantive claim or the asylum seeker passed through a safe third country en route to the UK.

Applications from asylum seekers whose country of origin is listed on the Fast Track Process Suitability List and whose application is considered to be straightforward can be decided based on an interview in which the substance of the claim and the credibility of the applicant is assessed. These applicants are sent either to a reception or removal facility and are detained during the seven to fourteen day processing of their applications.<sup>25</sup>

#### V. Factors Taken into Consideration when Determining Applications for Asylum

In determining the merit of asylum applications a number of factors are taken into account to determine whether the individual has a well-founded fear of persecution. These include discrepancies in the applicant's information; fear of authorities; vagueness; dishonesty; exaggeration; plausibility; any corroboration; the demeanor of the applicant; past history of the country of origin; delays in claiming asylum; "adduced manifestly false evidence in support of [the] application; [has lodged concurrent applications for asylum in the UK and other countries]; ... false representations;"<sup>26</sup> or failure to claim asylum in a third country or at the border.<sup>27</sup> Asylum applications are reviewed under the Immigration Rules and "in accordance with the UK's obligations under the United Nations Convention and Protocol relating the Status of Refugees."<sup>28</sup>

Asylum is granted to individuals if the refusal will "require [them] to go to a country of persecution whether immediately or after the time limited by an existing leave to enter or remain."<sup>29</sup>

Claims for asylum can be refused if the applicant fails to "make prompt and full disclosure of material factors, failure to assist in determining the claim or on the basis of a lack of credibility in the applicant's account."<sup>30</sup>

#### VI. Individuals Not Covered by the Asylum Process

In certain instances, it is believed that individuals who claim asylum but fail to meet the criteria under the Immigration and Asylum Act need to be protected. The person faces serious risk to their life arising from "the death penalty, unlawful killing or torture or inhuman or degrading treatment or

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<sup>24</sup> Immigration Act 1971, c. 77, § 3C.

<sup>25</sup> 17 Nov. 2003, PARL. DEB., (H.C.) (6<sup>th</sup> ser.) 666W.

<sup>26</sup> Home Office, Immigration Rules, H.C. 395, ¶ 341.

<sup>27</sup> MARK SYMES AND PETER JORRO, ASYLUM LAW AND PRACTICE, 2003.

<sup>28</sup> Home Office, Immigration Rules, HC 395, ¶ 328.

<sup>29</sup> Home Office, Immigration Rules, HC 395, ¶ 334.

<sup>30</sup> Home Office, Immigration Rules, HC 395, ¶¶ 340-341.

punishment contrary to Article 3 of the Human Rights Convention.”<sup>31</sup> These individuals may be granted ‘humanitarian protection’ in which they are granted leave to remain in the UK for up to three years, which is then reviewed and renewed if necessary.<sup>32</sup>

## VII. Granting a Claim of Asylum

If the applicant meets the above criteria, the UK government will recognize the applicant as a refugee and grant indefinite leave to enter to those who claimed asylum at ports of entry or indefinite leave to remain to those that apply in country.<sup>33</sup>

## VIII. Support Provided to Asylum Seekers

Asylum seekers that are not detained during the application-processing period receive support if the Secretary of State subjectively considers them to be destitute and attaches conditions to the applicant’s receipt of support. The support is provided separately from the state benefit services and is under the control of the National Asylum Support Service. Asylum seekers receive support payments that are accessed via the applicant’s ARC. If asylum seekers fail to attend a reporting center meeting, their payments on the electronic ARC are automatically suspended.

## IX. Status of Asylum System

While these measures may deter asylum seekers from viewing the United Kingdom as having a ‘soft touch,’ they reportedly have had a wide-ranging negative impact that includes the deprivation of liberty, isolation and financial hardship for asylum seekers. The measures also have resulted in the breakup of families, as the state reportedly has removed children from parents who lost benefits from failing to file a timely claim for asylum.<sup>34</sup> Additionally, the ban on asylum seekers from working during the application process<sup>35</sup> has resulted in concerns that it “prevents these people integrating and forming bonds with local people.”<sup>36</sup>

Despite the various criticisms, the government claims that the measures above have achieved their aim and have resulted in a decline in the numbers of individuals seeking asylum in the United Kingdom from approximately nine thousand to three thousand per month and a sixty seven percent decrease from its peak.<sup>37</sup>

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<sup>31</sup> MARK SYMES AND PETER JORRO, *ASYLUM LAW AND PRACTICE*, 2003, ¶ 11.17.

<sup>32</sup> Home Office Press Notice 267/02, *Review of ELR*, Nov. 7, 2002.

<sup>33</sup> Home Office, Immigration Rules, HC 395, ¶ 335.

<sup>34</sup> *Asylum Act needs urgent review*, BBC NEWS, Aug. 24 2005, [http://news.bbc.co.uk/2/hi/uk\\_news/england/manchester/4181700.stm](http://news.bbc.co.uk/2/hi/uk_news/england/manchester/4181700.stm).

<sup>35</sup> Asylum and Immigration Act 1996, c. 49, § 8.

<sup>36</sup> *Attitudes risk race relations*, BBC NEWS, June 30, 2005, [http://news.bbc.co.uk/2/hi/uk\\_news/politics/4637925.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4637925.stm).

<sup>37</sup> HOME OFFICE, *CONTROLLING OUR BORDERS: MAKING MIGRATION WORK IN BRITAIN, FIVE YEAR STRATEGY FOR ASYLUM AND IMMIGRATION*, 2005, Cm. 6472, annex C.