

## **Exceptional leave to remain: suspected war criminals and perpetrators of crimes against humanity and genocide**

The purpose of this notice is to:

- Provide guidance on how to deal with persons with Exceptional Leave to Remain (granted for four years in one block) who have applied for Indefinite Leave to Remain and are suspected of involvement in war crimes.
- Throughout this notice the term “war crimes” includes war crimes, crimes against humanity and genocide.

### **Background**

1. In the 2002 White Paper “Secure Borders, Safe Haven” the Government made a specific commitment that the United Kingdom should not provide a safe haven for war criminals or those who commit crimes against humanity. In order to meet this commitment the War Crimes Unit (WCU) was set up in March 2004 with the specific remit of introducing screening processes in order to identify people involved in the commission of atrocities in connection with modern day conflict situations. In conjunction with this, Managed Migration Directorate (MMD), who handle applications for ILR from persons previously granted four years ELE/R, have introduced a new screening process for identifying persons suspected of participating in war crimes.

### Policy

2. Applicants granted Exceptional Leave to Enter or Remain for a block period of four years are not entitled to ILR where there are serious reasons for considering that the applicant has committed or been involved in war crimes. They may also be excluded from ILR where background character and conduct checks have otherwise rendered them ineligible.

This notice sets out the procedure to be followed in such cases. Each case will be considered in light of all the available information.

Where the MMD refers an applicant to the WCU and the WCU decides that further investigations are necessary the following provisions will apply in relation to an application for variation of leave to enter or remain. These mirror relevant provisions set out in paragraph 322 of the Immigration Rules, which covers the grounds for refusal when dealing with applications for variation of leave to enter/remain.

Grounds on which an application will normally be refused:

- The making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave

- The undesirability of permitting the person concerned to remain in the UK in light of his character, conduct or associations or the fact that he represents a threat to national security
- Failure by an applicant to produce within a reasonable time information, documents or other evidence required by the Secretary of State to establish his claim to remain
- Failure, without providing a reasonable explanation, to comply with a request made on behalf of the Secretary of State to attend for interview

How to deal with ELR-ILR applicants suspected of war crimes

3. In order to determine whether an applicant is suspected of involvement in war crimes, Ministers have agreed that MMD will refer cases to the WCU for further investigation in accordance with criteria set out in MMD guidelines relating to war crimes.
4. The WCU will consider whether any further action is required. If the WCU considers that further information is required they will ask for an interview to be conducted to gather that information. WCU will pass the case to Asylum Casework Directorate (ACD) to arrange for the interview to be conducted, and will normally provide advice on the type of questions/areas they would like covered during the interview. The caseworker should conduct the interview in accordance with this advice. For further information, see ***Asylum Process Manual on Considering applications for ILR from applicants previously refused asylum, but granted 4 years' Exceptional Leave to Enter or Remain, and who are suspected of involvement in War Crimes*** (to be published shortly).
5. **Where an applicant fails to attend an interview** full consideration should be given to any explanation provided by the applicant or their representative for the non-attendance. If the explanation is not deemed to be reasonable the case should be sent back to the WCU for consideration of all the evidence. WCU will then provide a full minute setting out their view of the case and how to proceed. WCU will either recommend that ILR should be refused on the basis that they have failed to comply with a request made on behalf of the Secretary of State to attend for interview, or will recommend that the ILR application should also be refused because of concerns about the applicant's character, conduct or associations. This refusal will be based on the grounds set out in paragraph 2 above.

Where the allegations of involvement in war crimes are thought to be reliable without further investigation then they should form part of the reasons for refusal of ILR.

6. Where there is considered to be a human rights claim (note paragraph 11 below) but the applicant has failed to attend for interview the application should be considered on the basis of the information on file including that on the file and relevant objective background information. If it is decided that the applicant has not established their human rights claim their application for protection should be refused on the basis that they have failed to establish their claim for protection. In such circumstances the human rights claim should also be refused under paragraph 340 of the Immigration Rules. The fact that the applicant failed to attend for interview should be set out in the

reasons for refusal letter. See the API on non-compliance for further information.

7. In all cases where an applicant is being refused ILR for failure to attend an interview Presenting Officers Unit will be able to apply the guidance provided by WCU e.g. full case report, at any subsequent appeal.
8. **If an applicant attends the interview**, once the interview has taken place the file should be sent back to WCU for consideration of all the evidence. WCU will then provide a full minute setting out their view of the case and how to proceed. WCU will either recommend no further action on the basis that there is insufficient evidence or will recommend that the ILR application should be refused on the grounds of the undesirability of permitting the person concerned to remain in the UK in light of his character, conduct or associations.
9. Where WCU are satisfied that no further action should be taken the file will be returned to MMD to be dealt with as normal.
10. Where the recommendation from WCU is to refuse the ILR application this will be because there are serious reasons for considering the applicant has been involved in war crimes and it is therefore undesirable to permit him to remain in the UK in light of his character, conduct or associations. In these cases the file will be returned to ACD.
11. For cases decided prior to 1<sup>st</sup> April 2003 claimants were not routinely notified of a decision on any human rights claim they have made where it had been decided to refuse asylum and grant exceptional leave. As grants of ELR ceased in April 2003 all applications for ILR from those granted ELR for a block period of four years will be regarded as fresh human rights claims unless the applicant very explicitly states otherwise.
12. This means that in these cases claims for further leave that raise human rights issues must be considered as a fresh human rights claim where we are intending to refuse ILR. Human rights issues should therefore be considered in the ILR refusal letter.
13. In making a decision on any human rights claim all information should be considered including that on the file and relevant objective background information. Consideration should be given to all the available facts. ACD should take into account the reasons for the original refusal of asylum, and all the available current country information and should consider any ECHR issues raised. If refused, the fact that the claimant failed to attend the interview should be set out in the RFRL.
14. ACD will also need to consider whether there is evidence of a fresh asylum claim and, in accordance with the API on Fresh applications/Further reps, whether that new evidence can be dealt with as further representations under paragraph 353 of the Immigration Rules. If the senior caseworker considers that the new evidence amounts to a fresh asylum claim they should exclude the claimant from Convention protection in accordance with the **API on Articles 1F and 33(2) of the 1951 Refugee Convention** and as instructed in the **APM on Identifying, Handling and Considering asylum claims by war**

***criminals and perpetrators of crimes against humanity, including genocide.***

15. NB: the fresh applications/further representations criteria should not be applied to a case where the application to remain is based on human rights grounds alone (see paragraph 11 above). Such a case should be considered in the normal way, and if assessed as 'clearly unfounded' consideration may be given to certifying the claim under section 94 of the Nationality Immigration and Asylum Act 2002 – see **API on *Certification under s94 of the NIA Act 2002*** for further guidance.
  
16. Where an applicant does not qualify for ILR or any other form of further leave, their application will be refused and, subject to the outcome of any in-country appeal, they will be expected to leave the UK. Should they fail to do so, they will be liable to enforcement action.
  
17. Where it is considered that applicant has a continuing protection need based on the objective evidence caseworkers will need to consider whether the applicant qualifies for a grant of Discretionary Leave or should be placed on Temporary Admission (see **API on *Discretionary Leave*** for further guidance). This applies equally where the applicant has failed to attend for interview.
  
18. For information on rights of appeal see the **API on *Appeals – Rights of Appeal***.