

POLICY BULLETIN 33

AGE DISPUTES

1. PURPOSE

1.1. The purpose of this bulletin is to provide guidance in determining an applicant's age or a dependant's age with regard to providing Asylum Support.

2. APPLICATION OF THIS INSTRUCTION IN RESPECT OF CHILDREN AND THOSE WITH CHILDREN

2.1. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

3. CONTENTS

4. Overview
5. Registration and Validation Caseworkers
6. Assessment Caseworkers
7. Single Person who may or may not be 18
8. Asylum seeker states on arrival that s/he is over 18 and is detained in Oakington
9. Asylum seeker states on arrival that s/he is a minor
10. Applicant assessed by social services to be over 18
11. Asylum supported main applicant who states that s/he is aged under 18
12. Other disputed dates of birth

Annex A: Proforma letter

4. OVERVIEW

4.1 Asylum seekers may arrive in the UK with incomplete identity documents or, in many cases, no personal documentation whatsoever. When they claim asylum an Immigration Officer will interview them if they claim at port of entry; if they claim in-country, they may be interviewed by an IO or, if they make their way to Croydon, they will be interviewed by the Asylum Screening Unit. The person's identity and nationality will be established at this interview. S/he will be asked to state his/her date of birth (dob) and those of any dependants. These details will be included on the Standard Acknowledgement Letter (SAL).

4.2 Problems can arise when an asylum seeker applies to UK Border Agency, stating different date(s) of birth to those stated at the asylum application interview, or when their claim to be a minor is disputed.

4.3 A person genuinely aged under 18 is not entitled to Asylum support, and should be referred promptly to the local social services department for assessment of need under the Children Act 1989.

5. REGISTRATION AND VALIDATION CASEWORKERS

5.1 When an application for support is made, the applicant may include the information that s/he, or one of his/her dependants, has a different date of birth from the one given at the asylum application interview.

5.2 Registration and Validation should:

- i) check ASYS against all dates of birth given on the application;
- ii) make a note on ASYS about the dispute;
- iii) check ACID and record the dob(s) stated on ACID as well as those stated on the Asylum Support application form.

5.3 Applications from main applicants who may or may not be under 18 should not be refused without careful consideration as below.

6. ASSESSMENT CASEWORKERS

6.1 Section 94(7) of the Immigration and Asylum Act 1999 states “For the purposes of this Part, the Secretary of State may inquire into, and decide, the age of any person”.

6.2 This means that when a date of birth is disputed, caseworkers should make enquiries as necessary, and, on the basis of all the available information, decide the person’s date, or at least year, of birth.

7. SINGLE PERSON WHO MAY OR MAY NOT BE 18

7.1 Most commonly, this situation occurs when a person who has arrived in the UK, either claiming to be an adult, or believed to be an adult by the Immigration Service, is detained in Oakington. S/he will be assisted by the Refugee Council with, among other things, completing the Asylum Support application form. S/he makes a statement that s/he is actually a minor – i.e. under age 18 – and should be released from Oakington into the care of the local social services department.

7.2 It is Asylum Support policy to offer support to an asylum seeker who has stated that s/he is an adult, who is destitute and who has made a formal application for support. Where there is a subsequent claim that s/he is a minor, then the burden of proof of this change of status lies with the asylum seeker. It is up to him/her to prove that s/he is a minor.

8. ASYLUM SEEKER STATES ON ARRIVAL THAT S/HE IS OVER 18 AND IS DETAINED IN OAKINGTON

8.1 The documentation available may be limited to the SAL and the IS96 issued at the port or entry, or, for in-country applicants, the record of the asylum application interview, and the Asylum Support application form. A copy of the Statement of Evidence Form (SEF) from Oakington should be requested as soon as the formal asylum interview has been held. The Immigration Officer will have questioned the asylum seeker as to why s/he stated that s/he was an adult on arrival. There will be

questions about his/her education, siblings etc. which may well assist in reaching a decision about his/her age. S/he will be accepted as a minor only where his/her appearance **strongly** suggests that s/he is under 18, otherwise the applicant will be treated as an adult until such time as credible documentary or medical evidence is produced which demonstrates that s/he is the age claimed.

8.2 Each and every case must be considered carefully by UK Border Agency, and decided on its own merits. Always consider whether there is any other information that would assist in making the decision, such as statements by other interested parties (police, solicitors, GPs, social workers etc.)

8.3 However, the general rule of thumb is that if the decision has to be made based solely on the asylum seeker's first statement - that s/he is an adult - against his/her second statement – that s/he is a minor – then s/he should be deemed to be an adult for Asylum Support purposes until such time as s/he can prove otherwise. The applicant should be advised accordingly. A proforma letter, to be adapted as necessary, is attached at Annex A.

9. ASYLUM SEEKER STATES ON ARRIVAL THAT S/HE IS A MINOR

9.1 If the applicant claims to be a minor but his/her appearance **strongly** suggests that s/he is over 18 the applicant will be treated as an adult until such time as credible documentary or medical evidence is produced which demonstrates that s/he is the age claimed. In borderline cases the Immigration Service will continue to give the applicant the benefit of the doubt and to deal with the applicant as a minor. In accordance with existing policy they will continue to inform the Refugee Council's Panel of Advisers of anyone who has claimed to be a minor, even when the age is disputed and the decision has been taken to treat the applicant as an adult.

9.2 If the asylum seeker is detained at Oakington, then action as above.

9.3 If the asylum seeker is not detained at Oakington, consider why the person has made an application to UK Border Agency. Check whether s/he has presented to social services department (SSD) for assistance, and been refused on the grounds that social services do not believe that s/he is a minor. If so, obtain a letter or statement from the SSD.

9.4 Consider whether there is anyone else who could make a statement that would assist in making the decision. Consider whether it would be helpful to interview the applicant. Having considered all the facts carefully, if the decision lies between accepting the opinion of the Immigration Officer and the statement by the asylum seeker, then it is Asylum Support policy to offer support to an asylum seeker who has not been accepted as a minor, who is destitute and who has made a formal application for support.

9.5 S/he should be deemed to be an adult for Asylum Support purposes until such time as s/he can prove otherwise. The burden of proof lies with the asylum seeker.

It is up to him/her to prove that s/he is a minor. The applicant should be advised accordingly. A proforma letter, to be adapted as necessary, is attached at Annex A.

10. APPLICANT ASSESSED BY SOCIAL SERVICES TO BE OVER 18

10.1 An asylum seeker who declares on arrival that s/he is under 18 and given the benefit of the doubt by the Immigration Service, will be referred to the local authority social services department (SSD) for support under the Children Act 1989. The SSD will conduct an assessment and on the basis of that assessment may reach the conclusion that the person is aged over 18.

10.2 Where an application is received from an asylum seeker who declares that s/he is under 18, but it is accompanied by a letter from the SSD stating that, in their opinion, the person is aged over 18, s/he should be deemed to be an adult for Asylum Support purposes until such time as s/he can prove otherwise. The burden of proof lies with the asylum seeker. It is up to him/her to prove that s/he is a minor. The applicant should be advised accordingly. A proforma letter, to be adapted as necessary, is attached at Annex A.

11. ASYLUM SUPPORTED MAIN APPLICANT WHO STATES THAT S/HE IS AGED UNDER 18

11.1 Where an asylum seeker who has been offered support by UK Border Agency, who is not a dependant, provides new and/or additional documentation about his/her age, this evidence must be considered carefully.

11.2 If the evidence is such that the person is clearly aged under 18, support should be terminated, and the applicant should be advised to present to the local authority social services department for assistance in accordance with section 17 of the Children Act 1989.

12. OTHER DISPUTED DATES OF BIRTH

12.1 Other dates of birth which may need to be decided are those where the weekly level of subsistence is dependant on the person's age.

12.2 Decisions may need to be made where there are disputes as to whether a person is under 16; 16-17; 18-24 or 25 and over.

12.3 In all cases the process is to obtain as much information as possible on which to base the decision. Consider which dates of birth were stated on arrival, and the reasons given as to why they are now said to be incorrect. Each and every case must be considered carefully, and decided on its own merits. Always consider whether there is any other information that would assist in making the decision, such as statements by other interested parties (police, solicitors, GPs, social workers etc.) There may simply have been clerical errors that can be resolved on sight of the original documentation.

12.4 Where the available information is not sufficient to make a determination, the general rule should be to deem the person to be the younger of the disputed ages, until such time as they are able to provide evidence to the contrary.

12.5 The benefit of the doubt should not be given, nor the level of support awarded at the higher rate. Deeming the person to be the lower age, and awarding the lower level of support, gives the applicant the opportunity to provide documentation proving the higher age. The applicant should be notified accordingly.

12.6 Where documentation proving the older age is correct is provided subsequently, the higher rate should be awarded from the next possible opportunity. The difference between the two rates should be calculated from the commencement of the claim to the onset of payment at the higher rate and refunded to the applicant.

PROFORMA LETTER TO APPLICANT DEEMED TO BE AN ADULT FOR THE PURPOSE OF PROVIDING ASYLUM SUPPORT

Dear

Application for Asylum Support

I note from your application that you have stated that your date of birth is/...../....., and you are therefore under the age of 18. Asylum seekers who are under the age of 18 are not eligible for support under the section 95 of the Immigration and Asylum Act 1999. However, the age you have given has been disputed by

.....

Under section 94(7) of the Immigration and Asylum Act 1999 the Secretary of State may decide a person's age for the purpose of providing support.

The Secretary of State has considered carefully the information currently available, and has decided that you should be treated as adult, i.e. over the age of 18, solely for the purpose of providing you with support, pending the outcome of your asylum application.

If at any time you are able to provide further documentation or other evidence in support of your claim to be a minor, you should send this to UK Border Agency as soon as possible. The Secretary of State will consider carefully any information you provide, and if at any time it is found that you are a minor you will be referred to the local authority social services department for assessment of need under the Children Act 1989.

Yours sincerely,

DOCUMENT CONTROL

Change Record

Version	Authors	Date	Change Reference
2.0	M.M	21/11/08	Update branding only
3.0	SM	05/10/09	Children’s Duty paragraph added

