Welcome

... to the fifth issue of Lasa’s Asylum Support Briefing

In this issue we –

❖ focus on new rules being introduced to clamp down on unscrupulous immigration advisers
❖ revisit the “lawfully present” benefit issue
❖ provide an “at a glance” overview of the asylum support system

Please feel free to photocopy the briefings and distribute to colleagues and other agencies

Regulation of Immigration Advice – new rules from April 2001

In addition to providing for the introduction of new regulations impacting on asylum seekers’ rights to welfare benefits and support, the Immigration & Asylum Act 1999, is also set to fundamentally influence the way that immigration advice is provided.

Designed to address the long standing problem of unscrupulous immigration advisers, Part V of the Act provides for the establishment of the Office of the Immigration Services Commissioner (OISC), to ensure that those who provide immigration advice or immigration services –

❖ are fit and competent to do so
❖ act in the best interests of their clients
❖ do not knowingly mislead any court, tribunal or adjudicator or seek to abuse any procedure … in connection with immigration or asylum
❖ do not advise any person to do something which would amount to such an abuse

This is to be achieved by promoting and encouraging good practice within the advice sector and through the introduction of regulatory measures.

In consequence, from April 2001, it will be a criminal offence – punishable by a maximum term of imprisonment of two years or to a fine, or to both – for an individual to provide immigration advice/services at an agreed level, and that the organisation complies with standards relating to it’s policies and procedures.

To this end, the OISC has produced –

❖ a Code of Standards – which closely relate to the Community Legal Service’s Quality Mark standards – General Help, General Help with Casework and Specialist Help; and
❖ Guidance to Advisers: Competences – that provides detail as to the levels of activity referred to in the Code and the knowledge, competencies and resources required in respect of each level of activity

Whilst those organisations that already hold a CLS Quality Mark are not automatically exempt – they will still need to apply to the OISC – the QM will act as a passport in respect of the Organisational Standards section of the Code (however, advisers will still need to show that they comply with the competency requirements).

Applying to the OISC for exemption is free. However if an organisation does not apply before April 2001, or has not received formal notification of exemption from the OISC by this date, continuing to provide immigration advice could lead to prosecution.

Copies of the OISC’s Code and Guidance are available on its website at www.oisc.org.uk For those without Internet access, the OISC can be contacted at – 6th Floor, Fleetbank House, 2–6 Salisbury Square, London EC4 8JX (telephone – 020 7211 1500).

Are asylum seekers “lawfully present”?

In issue one, we noted that lawfully present nationals of countries that have ratified the European Convention on Social and Medical Assistance (ECSMA) or the Social Charter are entitled to, for example, Income Support and Housing Benefit. However, whilst “lawfully present” is not defined in the benefit regulations, DSS guidance advises that “persons who have come to the UK to seek asylum are not lawfully present”.

As a result, whilst a person who applied for asylum whilst already in the UK, eg as a student, falls within the DSS’s definition of “lawfully present”, what of a person who applied for asylum “on arrival”?

Whilst we are not aware of any benefit case law having been established in relation to this question, (although a recent appeal tribunal in London, in allowing an appeal on behalf of an “on-arrival” Polish national, did conclude that the term should be given its ordinary everyday meaning), evidence that could be used in support of a benefit claim/appeal includes –

“… those who claim asylum at the port… are here lawfully”

“O” v L.B. Wandsworth & Bhika v Leicester CC. CA. 22 June 2000

“A person who claims asylum on arrival… will by definition have entered the UK lawfully”

Barbara Roche – Hansard. 6 April 2000

(On arrival) … “applicants who have … temporary admission… are lawfully present in the UK”

Home Office website
Overview of the Asylum Support System
(asylum seeker/appellant in England & Wales, aged 18 or over)

Entitled to, for example, Income Support?

- On-arrival applicant (pre 3 April 2000)
- Significant upheaval (nationals of Sierra Leone and Zaire only)
- February 1996 transitional protection

(NB – if ECSMA / Social Charter national, argue that entitled to, for example, “ordinary” Income Support / income-based JSA on basis of being “lawfully present”)

On-arrival after 2 April 2000
- New in-country case, in
  - Kent from 17 April 2000
  - London from 24 July 2000
  - Yorkshire/Humberside, NE or Wales from 31 July 2000
  - E. Midlands, Eastern, NW, SW & South Central from 14 August 2000
  - W. Midlands and Sussex from 29 August 2000

Support under the interim scheme from local authority*
(NB – it is possible that the Govt may, at some point in the future, transfer responsibility for those supported by local auths to NASS)

Negative Home Office decision, and person appeals…

- If previously supported by benefits, transfer to interim scheme (or NASS if in Kent after 17 April 2000, or elsewhere after 25 Sept 2000)
- If previously supported by interim scheme / NASS, support continues

Positive Home Office decision

Entitled to full range of welfare benefits

Urgent Cases Payments of Income Support/ income-based JSA plus Housing Benefit/ Council Tax Benefit

Children?

Support continues (whilst child under 18 and child & adult remain in UK)

Support ends after 14 days (consider NASS Hard Cases Fund)

* If need for care/attention is for reason other than destitution or its physical effects, person can access National Assistance Act support.
A family can access Children Act support if they are outside the scope of asylum support.