

Information for Migrant Parents of Irish citizen children

PLEASE NOTE: The Information in this leaflet is provided by the *Coalition Against Deportation of Irish Citizens* (CADIC). The Coalition is a network of organisations and individuals who are concerned by the recent steps of the Irish Government to deport the families of Irish citizen children. The information provided does not constitute legal advice and should not be taken as such.

Information valid as of 5th September 2003

1. On 23rd January 2003 the Supreme Court ruled that the Minister of Justice **did have the power** to deport a non-Irish national, even if they were parents of an Irish citizen child. The Court confirmed that anyone born in Ireland is entitled to Irish citizenship and the ruling does not and cannot change this fact. The Supreme Court also ruled that when the Minister considers the deportation of parents of an Irish citizen child, the Minister must consider each case on its individual merits and due process must be followed. The constitutional rights of the Irish citizen child must be considered and the rights of the immigrant parents and any other siblings must be respected.
2. The ruling has no impact on the decision of whether to recognise an individual as a refugee, or the existing status of those already recognised as refugees in Ireland or on those with permission to remain on other grounds such as employment or study etc.
3. On 19th February 2003 the Minister decided to remove the process whereby an immigrant parent could seek permission to remain in Ireland solely on the grounds that they were the parent of an Irish citizen child. Any application for leave to remain made exclusively on the basis of a person being the parent of an Irish citizen child which had not been determined by the 19th February appears not to have been processed any further. The situation of such parents will now be determined on a case-by-case basis upon the making of representations by them to the Minister.
4. Letters from the Department of Justice are being sent to parents whose residency applications remained pending on 19th February 2003. There appears to be a number of different letters. Two of the first types of letters are:
 - (i) Individuals who had been in the asylum process or were undocumented migrants when they made their application for residency, receive letters informing them of the Minister's intention to deport them and are informed that they have **three options**: to **leave Ireland voluntarily within 15 working days** of the date of the letter, to make

themselves available for **deportation** or to **make representations in writing within 15 working days** of the date of the letter, setting out the reasons why they should be allowed to remain in Ireland.

(ii) Individuals who were legally resident in Ireland at the time they applied for permission to remain on the basis that they were the parent of an Irish citizen child, simply have their application and supporting documentation returned to them and receive no further information on the options open to them or any further process they might be able to engage in.

5. The Minister of Justice has failed to provide clear information on what exact procedures immigrant parents of Irish citizen children should follow now that he has removed the right to apply for leave to remain solely on the grounds of being a parent of an Irish citizen child. The Minister is however as a minimum bound by the ruling of the Supreme Court to consider the situation of each family on its individual merits.
6. Where the Minister proposes to make a deportation order, under Section 3 (6) of the Immigration Act 1999, the factors that must be taken into account by the Minister are:
 - (a) The age of the person
 - (b) The duration of residence in Ireland
 - (c) The family and domestic circumstances of the person
 - (d) The nature of the person's connection with Ireland, if any
 - (e) The employment (including self-employment) record of the person
 - (f) The employment (including self –employment) prospects of the person
 - (g) The character and conduct of the person both within and (where relevant and ascertainable) outside Ireland (including any criminal convictions)
 - (h) Humanitarian considerations
 - (i) Any representations duly made by or on behalf of the person (eg references etc)

The Minister will also consider:

- (j) The common good;
- (k) Issues of national security and public policy

7. If you receive a letter telling you that the Minister is intending to issue a deportation order against you and you want to make representations to the Minister for permission to remain, we recommend that you seek legal advice if you can. Unfortunately if you cannot afford to pay the costs of a solicitor it may be difficult to access legal advice. More information about this is provided at paragraph 14.
8. If you do want to make representations to the Minister about why you should be allowed to remain in Ireland, it is very important that you provide as much information as possible about the factors listed at point 6 of this information leaflet as they apply to **yourself**. For example, you should make clear how long you have been in Ireland, how you have integrated into Irish society (membership of clubs, voluntary work etc.), what contributions you are already making to Irish society and/or would be able to make if allowed to enter employment, and you should provide information relating to your health and personal circumstances you would face if you had to return to your country of origin.
9. When you are providing information about your family and domestic circumstances, and the nature of your connection with Ireland it is very important that you provide as much information as possible about the situation of **all of your children** and **in particular any Irish citizen** member of the family. In the event that you have to make a representation, you should be able to provide the following information:
 - The number and ages of children in the family
 - How long the children have been in Ireland
 - How the children have integrated into Ireland – for example, have they been in school, or play groups, are they members of sports teams or other social clubs?
 - Do the children have any special connection with Ireland, for example an Irish god parent or other relatives residing in Ireland?
 - Whether the children have any special needs – either in terms of medical care, or education needs?
 - The language skills of the children – would the children have problems integrating in a non- English speaking country?

- Would there be a threat to the children in the country to where they might be deported – e.g from health conditions, conflict, laws, cultural practices?
- Is the country to which the child could be taken a party to international human rights treaties to which Ireland is also a party – in particular the United Nations Convention on the Rights of the Child? (Ireland is a party to the United Nations Convention on the Rights of the Child, which obliges the government to place the best interests of the child at the heart of decisions, which will impact on the child.)

10. In the case of an **Irish citizen child**, it is very important to highlight the impact which the child's Irish citizenship might have if the child were to leave Ireland with his/her parents and siblings. Therefore it will be important in the written representations to make clear:

- The nationalities of both parents of the Irish citizen child: Is one of the parents an Irish or an EEA national?
- Do the parents share the same nationality?
- What are the guardianship rights of each parent in relation to the Irish child?
- What other nationality could the Irish child be entitled to claim by virtue of their parentage?
- What are the rules on dual citizenship in the national countries of the parents?
- Will the Irish child be entitled to enter and reside in to the national countries of the parents?
- Will both parents be liable for deportation to the same country or would deportation lead to the separation of the family?
- If the child moves to a country as an Irish citizen, will the child be able to realise their right to a proper education, to decent health care, to protection from abuse etc?
- As a resident non-national in the national country of the parents, will the Irish child be able to access free or subsidised public education and health services?
- Are there laws or cultural practices in the national country of the parents that could breach the constitutional rights of the child – eg female genital mutilation, forced marriages?

- What will the capacity of the parents be to provide for the Irish citizen child in another country – for example, in the case of a single parent of an Irish citizen child, would the parent have difficulties finding work or child care for the Irish citizen child while the parent was working?
- Is there an Irish consulate in the national countries of the parents?

Please note that if you have a child born in Ireland, in order to ensure that their citizenship rights have been fully asserted it is recommended that you apply for a passport for the child, if you have not already done so. However, you should be aware that possession of an Irish passport could have implications for the child if s/he were to be taken to another country, or the national country of his/her parents.

11. In some cases, parents of an Irish citizen child who had applied for asylum, were advised by state agencies to withdraw their application for asylum and to seek permission to remain in Ireland on the ground that they were the parent of an Irish citizen child. If this was the case, it is important that you include this in your representations and make clear who advised you to withdraw your application for asylum.
12. You should also include information in your representations about the human rights situation in your country of origin – existence of an armed conflict, torture, practices such as female genital mutilation etc. Information on the human rights situation in your country may be available from Amnesty International, Irish Section (42 Fleet Street, Dublin 2 Tel: 01-6776361) and the following websites: <http://www.amnesty.org>, <http://www.hrw.org>, <http://www.irinnews.org>.
13. **Please remember – the Supreme Court decision has no impact whatsoever on the right of an individual fleeing persecution to seek asylum. An individual who had withdrawn from the asylum procedure, and continues to have a fear of persecution in their country of origin, may still re-apply for asylum.** If the individual withdrew before their first interview, they may make a new application in the Office of the Refugee Applications Commissioner. If an individual withdrew after a first interview, but before an appeal, having received a negative decision at first instance, they may only make a fresh application with the consent of the Minister, under Section 17(7) of the Refugee Act 1996. To do so, they must write to the Ministerial Decisions Unit of the Department of Justice, Equality and Law Reform and request that their application now be considered. Once an individual has re-applied for asylum, or re-opened an existing application, the

individual may then register with the Refugee Legal Service (RLS) or seek alternative legal advice.

14. Migrant parents of Irish citizen children will not receive assistance from the Refugee Legal Services (RLS) in making their representations or in seeking to re-enter the asylum process and will not be granted legal aid. There appears to be no proper basis for refusing legal aid in such cases and FLAC (an independent legal organisation that campaigns for right of access to legal services) will be seeking to challenge such refusals. If you have already received a letter and tried to seek legal assistance from the Refugee Legal Service or a Law Centre, but have been denied, you should contact FLAC (Tel: 01 – 67942399).

15. There are a number of organisations who may be able to provide further information to you depending on the particular circumstances of your case:

If you need information on the Asylum and Refugee process contact:
Irish Refugee Council, 88 Capel Street, Dublin 1. Tel. 01 – 8730042; Fax 01 – 8730088 or

Refugee Information Service, Tel. 01-838 2740, Fax 01-838 2482, e.info@ris.ie

If you need information on other Immigration matters contact:

Immigrant Council of Ireland, 42 Upper Dorset Street, Dublin 1. Tel: 01 – 8656526 ; Fax: 01 - 874 9695

If you need further information on legal representation or access to legal aid contact:

FLAC, 13 Lower Dorset Street, Dublin 1, Tel: 01 – 67942399; Fax: 01 - 8745320

If you need further information on the Rights of the Child contact: **Children's Rights Alliance, 13 Harcourt Street, Dublin 2 Tel: 01- 405 4823; Fax: 01 - 405 4826**

If you need further general information on human rights, the European Convention on Human Rights, or your constitutional rights contact:

Irish Council for Civil Liberties, Dominick Court, 40 – 41 Lower Dominick Street, Dublin 1 Tel : 01- 8783136; Fax: 01 – 8783109

Other Important Numbers

Department of Justice, Equality and Law Reform
Refugee Legal Service
Office of the Refugee Applications Commissioner

Tel: 01-6167700/1890 457032
Tel: 01-6310800/1800 502400
Tel: 01 -6028000

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