

Clear guidelines on whether FGM justifies asylum



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The asylum policy instruction: Gender issues in the asylum claim

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The UK provides its immigration officials with guidelines on how to take gender issues into account when assessing asylum claims, and this includes specific reference to female genital mutilation (FGM).

The initial guidance issued in 2004 was updated in 2006 and 2010. During the last review, the Home Office consulted NGOs and professionals working on asylum, and incorporated some of their suggestions into the instruction, making it a strong document which explains the cultural factors that may leave women unable to protest against FGM and gives clear examples of cases where FGM may justify asylum being granted.

The instruction is a more effective tool to support caseworkers because it was developed in consultation with expert organisations, and is made easily available through being published on the UK Visas and Immigration website. Staff are given extensive training on considering asylum claims, including a specific course covering gender issues, and quality control procedures are in place to monitor decision quality and to ensure policy is kept up-to-date.

The international asylum rules

The UK has no specific national asylum legislation dealing with female genital mutilation (FGM), apart from its obligations under the 1951 Refugee Convention and the European Convention on Human Rights (ECHR), and the minimum standards for protection set by the EU qualification directive. However, there are international and national legal instruments which impose obligations on the UK to eliminate discrimination and gender-based violence. These include the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified by the UK in 1986, the ECHR as implemented by the Human Rights Act 1998, and the Gender Equality Duty introduced into the Sex Discrimination Act 1975 by the Equality Act 2006.

Women and girls may claim asylum because they fear FGM if returned to their country of origin. They would need to show their fear was well-founded, that they could not seek protection from the authorities, and that they could not relocate to another area in their country.

However if a woman has already been subjected to FGM, UK Visas and Immigration would not consider that she would face a risk of persecution on the basis of FGM in the future. This would only be considered if there were a reasonable degree of likelihood, or a real risk of forced marriage, that the procedure might be redone after the birth of a baby, or that FGM might be performed on her daughters.

In 2004, the Home Office issued an asylum policy instruction to caseworkers, which guides them as to how they should address gender issues, including gender-based violence and the need to ensure gender-sensitive procedures throughout the asylum system. FGM is specifically mentioned several times within the instruction. The asylum policy instruction was revised in 2006 and reviewed again in 2010. During the last review process, a number of organisations were consulted, including Asylum Aid, the UN High Commissioner for Refugees (UNHCR) and the Immigration Law Practitioners Association (ILPA). The asylum policy instruction is considered to be a very strong policy document that includes suggestions made during the consultation process. UK Visas and Immigration recently introduced gender training for its staff to enhance their knowledge and to reinforce the key points in the asylum policy instruction.

FGM is a form of persecution

The asylum policy instruction contains the following references to FGM, which recognise that cultural factors may leave women helpless and unable to protest against FGM or seek protection from the authorities in their country of origin:

- “FGM is identified as a form of gender-specific persecution and as a form of harm that is more frequently or only used against women and that can occur in the family, the community or at the hands of the state;
- “The fact that violence against women is common, widespread and culturally accepted in a particular society does not mean that protection on an individual basis is inappropriate. FGM, for example, is widely practised in some societies but it is a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution. Each case should be considered on its own merits in the light of country of origin information and guidance;
- “In cases of failure or inadequacy of state protection, ‘the state may make illegal an act that can amount to persecution, such as FGM, but continue to condone or tolerate the practice, or be unable to put an effective end to the custom because of its widespread cultural acceptance. It is not always reasonable or possible for a woman to alert the authorities to her need for protection. This may be because protection is not forthcoming or because by requesting protection she risks violence, harassment, rejection by her society or even further persecution. In some societies it may not in fact be possible for a woman to approach the authorities, for example, without being accompanied by a male. The ways in which particular laws, social policies or practices (including traditions and cultural practices) are implemented may constitute or involve a failure of protection.”

The instruction is a more effective tool to support caseworkers in addressing such issues in asylum claims because it was developed in consultation with expert organisations, and is made easily available through being published on the UK Visas and Immigration website. It gives clear examples of situations that can justify an asylum request. UK Visas and Immigration staff receive regular training, and quality control procedures are in place to ensure policy is kept up-to-date. The department is audited by the quality audit team, which is responsible for auditing asylum decisions, interviews and monthly reports. Caseworkers are supervised by their managers, and the asylum policy instruction is revised regularly.

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Further information

UK Visas and Immigration (replaced UK Border Agency in 2013)



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