

NORTHERN CONSTABULARY

TWO YEAR RULE

The following information provides guidance for women with restricted immigration status on what their options are when they experience domestic abuse.

A woman can be granted 24 months stay in the United Kingdom on the basis of her marriage or unmarried relationship with a person settled in the UK. "Settled" means either a person of British nationality or a person who has indefinite leave to remain in the UK. The person settled in the UK is called the sponsor. The 24-month period is called the "probationary period". A woman can apply for settlement just before the end of the probationary period.

If the marriage or relationship breaks down due to domestic abuse during the probationary period the woman may apply for settlement if she meets the criteria for Indefinite Leave to Remain under the Domestic Violence Rule.

To qualify it must be shown that:

- (i) The woman still has leave to remain as a spouse or unmarried partner of a person settled in the UK.
- (ii) The applicant is no longer living with the sponsor.
- (iii) The domestic abuse occurred during the probationary period and there is evidence that the couple were living at the same address at the time of the domestic abuse.
- (iv) The domestic abuse was the reason for the breakdown of the marriage or relationship.
- (v) There is proof that the domestic abuse took place.

Evidence

The evidence that must be provided is either:

(A) One of the following:

- (i) An interdict, harassment order or other protection order made against the sponsor.
- (ii) A relevant court conviction against the sponsor.

(B) Or more than one of the following (where evidence of the above is not possible):

- (i) A medical report from a hospital doctor confirming that the applicant has injuries consistent with being a woman who has experienced domestic abuse.
- (ii) A letter from a family practitioner who has examined the applicant and is satisfied that the applicant has injuries consistent with being a woman who has experienced domestic abuse.
- (iii) An undertaking given to court that the perpetrator of the abuse will not approach the applicant who is the woman who has experienced the violence.
- (iv) A police report confirming the attendance at the home of the applicant as a result of a domestic abuse incident.
- (v) A letter from Social Work Department confirming its involvement in connection with domestic abuse.
- (vi) A letter of support or report from a women's refuge (this condition has been extended to other recognised organisations providing support to victims of domestic abuse).

You may also consider using the following:

- (i) A report from a psychiatrist.
- (ii) An affidavit from a neighbour, landlord, friend or family member who is the witness to the domestic abuse or to the subsequent injuries.

It has been reported that the Home Office have been rejecting medical reports on the basis that the medical practitioner has merely reported that the woman had said she had experienced domestic abuse. The importance of having as much supporting evidence as possible cannot be underestimated.

It may be that a woman may not seek advice until the end of the probationary period when her sponsor refuses to sign the application for settlement. It is then very important to gather evidence listed under (B) as soon as possible and take the woman to a GP.

Applications

The application for settlement for a woman who has experienced domestic abuse is on form SET (0). It is strongly recommended that it is completed by a solicitor to ensure that all the necessary information is included.

Overstayers

Applications made "out of time" (ie after the expiry date of the probationary period) should be accepted by the Home Office if the delay can be explained. Acceptable reasons could be that the applicant's passport has been withheld by the sponsor or that she was locked in the house.

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Long-term overstayers may run the risk of the Home Office suggesting they have invented the history of violence during the probationary period. It may be difficult to prove they experienced domestic abuse during the probationary period if a long time has elapsed. It is imperative that overstayers seek legal advice.

Alternatives

It may be that the woman comes from a cultural or religious background that makes it impossible for her to return home if she is refused settlement under the domestic abuse rule. It is necessary in these circumstances to look at whether there are alternatives for her to remain legally in the UK.

It maybe that she has employment skills that could be assessed to see whether there is an alternative under the Immigration Rules. The possibility of an asylum and human rights applications would also need to be assessed. For example, Pakistani women have been recognised as suffering persecution for reasons of their membership of a particular social group. The persecution is not related to their gender but to the fact that they were "women accused of transgressing social mores", in particular adultery and disobedience to husbands, and that they were unprotected by the state. This can be argued for women from other countries. It can also be argued that it would be unduly harsh to return a woman to a country where she will have no family support given that she has transgressed social rule by leaving her husband. In many countries it is impossible to survive as a single woman. This would raise a claim under Article 3 of the Human Rights Act 1998. Despite the evidence you have to bear in mind that an asylum claim is rarely successful.

Support

There is a "no recourse to public funds" restriction on the leave to stay as a spouse or unmarried partner. The "no recourse to public funds" requirement dictates that people coming to the UK must be financially supported by their partner or must support themselves by working. This means that the woman is not entitled to any benefits except contribution-based jobseekers' allowance.

The legal process can take several months, which creates a major problem for women who want to leave their partner because of domestic abuse. In these circumstances they are left with nothing unless they are working or are entitled to work.

Children

Children also suffer by the "no recourse to public funds" condition because it prevents women from accessing housing or welfare benefits if they leave an abusive partner. Local authorities have a statutory power under Sections 22 and 25 of the Children's (Scotland) Act 1995 to make appropriate provisions for children to ensure that their needs are being met (e.g. being adequately fed, housed and cared for). This should involve the whole family being housed and supported.

Refuges such as Karma Nirvana in Derby have been successful in negotiating temporary support with social services even for women without children. Women's organisations such as Women's Aid and Southall Black Sisters are lobbying the Home Office on issues surrounding the recourse to public funds restriction.

Appeal If The Application Is Refused

The refusal of Indefinite Leave to Remain as a woman who has experienced domestic abuse can be appealed under Section 82(d) of the Nationality, Immigration and Asylum Act 2002. This is an appeal to an adjudicator. The refusal is notified in writing to the applicant. It should explain why the application is refused and how to appeal. The deadline is usually 10 working days to lodge an appeal. There are grounds of appeal if the Home Office did not apply the rule properly or if they did not consider the facts properly. Alternatively, or in addition, it is possible to make an appeal on Human Rights grounds.

Overstayers may not have the right to appeal or may have to appeal from abroad. But overstayers may also have the possibility to argue that the decision was made in breach of their Human Rights, in particular in breach of articles 3 and 8 of the Human Rights Act 1998. The answer to this last point depends on the not yet established interpretation of the new immigration rules which were brought into force in April 2005.

Conclusion

It is important to contact a solicitor as soon as possible as an interdict granted during the probationary period is the best evidence for the application. The solicitor will also wish to gather other evidence in support of the application.