



army families federation
the voice of army families

Briefing

Access to UKBA domestic violence concessions for spouses of soldiers

Current UKBA policy prevents spouses of foreign and commonwealth (F&C) soldiers from accessing the domestic violence concessions available to other spouses on the same route to settlement. AFF believes that this policy is discriminatory. The exclusion of F&C spouses on the basis of marriage to a soldier with an exempt stamp represents a serious threat to the lives and health of those affected.

Katherine Houlston
AFF Foreign & Commonwealth Specialist

Background Information

Current UKBA policy grants victims of domestic violence in the UK ‘on a route to settlement’ entitlement to the following under the destitution domestic violence concessions (DDV):

- Eligibility to apply for ILR
- Ability to waive ILR fees if can prove destitution
- Public funding for 3 months whilst application is being considered so that the spouse/family can find safe accommodation
- Fast-tracked application

The domestic violence guidance produced by UKBA states that the provision to apply for these concessions if you are a victim of domestic violence does not apply to (amongst others):

The spouse or civil partner of a foreign or Commonwealth citizen who is or has served in Her Majesty’s (HM) Forces. This is because these people were not admitted to the UK for the purpose of settlement¹.

Do spouses come to the UK on a route to settlement?

We contend that spouses/civil partners of soldiers are admitted to the UK for the purpose of settlement. This was confirmed in April 2010 when UKBA changed the category under which spouses of soldiers enter the UK. Prior to this date all spouses and families were expected to enter under an ‘employment (non-points based) category.’ In April 2010 this changed to the ‘settlement’ category and led to a subsequent increase in application fees of £429. Today spouses pay £810, £300 more than someone coming into the UK on a non-settlement route, such as the spouse of a qualified nurse in the UK on the points-based system.

As further evidence that spouses/civil partners of foreign and Commonwealth soldiers are admitted to the UK for the purpose of settlement we enclose a letter (dated 24th February 2011) from Philip Duffy, the Acting Head of Policy & Strategy for UKBA. In the letter he explains that the significant increase in the cost of visas for families of Commonwealth soldiers, *‘is because they come to the UK with an expectation of acquiring settlement and the government has already carved out specific immigration rules to ensure that their rights to settlement are protected and enhanced.’*

According to the explanation given in the DDV FAQ’s², the justification for granting the DDV concession only to those who would qualify for settlement is that those on spousal visas are here, *‘solely because of their relationship and it is one that leads to permanent residency - whereas other routes are only temporary and migrants are expected to return home once their visa expires’.*

¹ UKBA Guidance – Victims of domestic violence – version 9.0. 3rd April 2013

² UKBA FAQ’s Destitution Domestic Violence (DDV) concession

We contend that spouses/civil partners of soldiers do not enter the UK on a temporary route and that they are not expected to return home once their visa expires.

The status of the soldier whilst serving

However despite this evidence to prove that spouses do come to the UK on a route to settlement, UKBA continue to insist that Armed Forces spouses are not eligible for the domestic violence concessions and recently seemed to have changed tactics to question the status of the soldier. The Statement of Intent³, detailing the proposed changes to the immigration rules, states '*although an F&C member of HM Forces is exempt from immigration control whilst serving, this is not considered to be the same as having settled status*'.

However this is not evidenced by the facts. F&C soldiers are able to apply for Citizenship without first having to apply for ILR; their children born in the UK are born British; their spouses are eligible to apply for ILR once five years have been served; they can apply for benefits and tax credits for their children. All of these are possible only because the soldier is considered to be settled whilst serving.

From 1st December 2013, a spouse will be required to meet all of the requirements of the Family Migration rules in place since 9th July 2012. These rules are for family members applying for '*leave to enter or remain in the UK on the basis of their family relationship with a British Citizen or a person settled in the UK*'. If F&C soldiers are not considered to be settled, why are these rules being applied to their spouses?

The sticking plaster approach

*'Applications from victims of domestic violence where the partner is a serving Foreign and Commonwealth citizen will not routinely be granted settlement but will continue to be dealt with outside the rules and will be granted only where exceptional circumstances apply. This is in line with the position for the spouses of other migrants with limited leave such as those here under the Points Based System.'*⁴

This is an insufficient and discriminatory 'solution.' Granting leave outside the rules does not allow the spouse access to any of the generic provisions of the DDV concession. Instead, if leave is granted (which is only likely if good legal representation is gained at considerable cost), it will be under the following provisions:

- No eligibility for ILR
- Only eligible for limited leave for 30 months if stringent criteria are met
- Will have to apply four times before being eligible for ILR (total cost £3,363)

³ Home Office. Family members of HM Forces. Statement of Intent: changes to the Immigration Rules from December 2013. July 2013.

⁴ Army Briefing Note 60/12. PS4(A) DPS(A). 4th July 2013.

- No recourse to public funds (NRPF)

With no access to public funds, the spouse is in no better a position than before, defeating the purpose of granting leave to remain as it still leaves the spouse vulnerable and dependent on others. Whilst a victim of domestic violence with children can turn to their Local Authority (LA) for assistance, the LA only has a duty to provide support under Section 17 of the Children Act 1989, limited to providing support to the children and not the parent.

AFF has worked closely with the NRPF Network⁵ on this issue. They are in agreement that the current policy preventing Armed Forces spouses from applying under the DDV concession is discriminatory and results in extra pressure being placed on local authority resources.

The human impact

One eight month pregnant spouse who had had to leave her Service Families Accommodation (SFA) after her 93 days had expired had managed to find shelter in a refuge with the help of the Army Welfare Service. However she was asked to leave the refuge after it transpired that she wasn't eligible for the DDV concession. She was put on a bus with only enough money for her journey and had no choice but to go to stay with her sister-in-law, sister of the man who had threatened to kill her and who had already physically abused her on more than one occasion.

AFF has evidence to show that some spouses are currently choosing to remain with their abusive partners rather than leave and face destitution. *'Many of the women whose marriages break down due to domestic violence cannot return to their countries of origin due to family rejection, stigma attached to divorced and separated women and the lack of state protection or support for such women. Thus they have little or no exit options and are faced with a stark choice: to remain in an abusive marriage or to return to countries of origin where they are at risk of discrimination and even persecution'*⁶.

Recent court judgements

To prevent spouses having to continue to endure domestic violence is the very situation for which the domestic violence policy was established.

The European Court of Human Rights⁷ emphasised that domestic violence is not a private or family matter, but is an issue of public interest that demands effective State action.

⁵ A network of local authorities and partner organisations focusing on the statutory response to migrants with care needs who have no recourse to public funds.

⁶ 'Abolish No Recourse to Public Funds Campaign.' Retrieved 15th July, 2013, from <http://www.southallblacksisters.org.uk/campaigns/abolish-no-recourse-to-public-funds/>

⁷ OPUZ v. TURKEY - 33401/02 [2009] ECHR 870 (9 June 2009)

‘Not all women in the UK who have experienced or who are at risk of domestic violence have the same access and rights and support. By excluding a vulnerable group of women on technical grounds, when in substantive respects they are spousal visa entrants and entitled to apply to remain in the UK under the DV Rule, amounts to government failure to respect its obligation under international human rights law and standards’

A recent order by Judge Anthony Thornton QC directing the Secretary of State to grant a spouse support under the DDV concessions, stated that *‘the defendant’s application of the black letter of the text of the DDV concession is unduly formalistic and unlawful’*. The claimant in this case had been granted discretionary leave on entry to the UK. Judge Thornton reasoned that this was only a difference between form and substance. In substance the spouse was entering the UK as the spouse of a person settled here.

Conclusion

The new Armed Forces rules due to come into effect on 1st December 2013 will have the key outcome of removing *‘unnecessary differences in treatment based on the immigration status of the Armed Forces sponsor.’*⁸ Spouses will have to meet all of the requirements regardless of the nationality of the soldier because the Home Office has recognised that *‘it is not right that the families of two people serving alongside each other should have different rules applied to them.’*⁹

AFF agrees with this, but we cannot understand why spouses of F&C soldiers are still being refused access to the DDV concessions despite all the claims that everyone is now going to be treated in the same way. Spouses of F&C soldiers share the same characteristics as those falling within the domestic violence policy. They are not the spouses of migrants who have entered under the Points-Based route and should not be treated as such.

*‘Other than in certain specified circumstances relating to service in the Armed Forces, Armed Forces families should be treated in the same way for immigration purposes as other families.’*¹⁰

The exclusion of F&C spouses on the basis of marriage to a soldier with an exempt stamp represents a serious threat to the lives and health of those affected who enjoy lawful leave in this country. There is no true and lawful reason as to why spouses enjoying leave as a spouse of a soldier should be treated differently.

We therefore ask that the policy is changed to allow these spouses access to the DDV concessions.

⁸ Home Office. Family members of HM Forces. Statement of Intent: changes to the Immigration Rules from December 2013. July 2013.

⁹ Ibid.,4

¹⁰ Ibid.,3

This written ministerial statement was laid in the House of Commons on 5 March 2012 by Theresa May, and in the House of Lords by Lord Henley.

“The Secretary of State for the Home Department (Theresa May):

‘Domestic violence is a dreadful form of abuse. The Government is committed to ensuring that the police and other agencies have the tools necessary to tackle domestic violence to bring offenders to justice and ensure victims have the support they need to rebuild their lives’