

“I hate being idle”: Asylum Seekers and the Right to Work

Introduction

Asylum seekers are currently restricted from the labour market until at least twelve months of waiting for a decision on their asylum application. Those who are destitute receive a small living allowance and accommodation. The stated aim of this policy is to maintain a distinction between economic migrants and asylum seekers whilst discouraging the former from lodging false asylum applications. This essay challenges that argument, contending instead that the status quo leads to poverty amongst asylum seekers and fails to prepare them for life as refugees in this country. The proposed reform is to reduce the period asylum seekers must wait before being able to apply to work – henceforward called *the waiting period* – to six months. It is argued that this policy would be desirable, practical and useful.

Status Quo

As a general rule, asylum seekers are not allowed to work in the UK.¹ They can apply for permission to work if they have waited for over twelve months for an initial decision on their asylum claim²³; or they have been refused asylum but have made further submissions for asylum over twelve months ago.⁴⁵ The application for permission to work will only be considered if that delay was through no fault of the claimant.⁶⁷ If granted, permission to work only allows asylum seekers access to jobs on the UK's official shortage occupation list.⁸⁹ Permission expires as soon the asylum claim has been determined

¹ Gower, House of Commons Library, *Should asylum seekers have unrestricted rights to work in the UK?* Briefing Paper no.1908, p.3.

² Ibid.

³ Immigration Rules, Part 11B, para.360.

⁴ Op.cit. (Gower), p.3.

⁵ Immigration Rules, Part 11B, para. 360C-E.

⁶ Op.cit. (Gower), p.3.

⁷ Immigration Rules, Part 11B, para.360.

⁸ Op.cit. (Gower), p.3.

⁹ Immigration Rules, Part 11B, para.360A.

and any appeal rights are exhausted.¹⁰ Successful asylum seekers face no restrictions on their right to work.¹¹ Unsuccessful asylum seekers will be required to leave the country in most circumstances.¹²

Up until mid-2002, asylum seekers could apply for permission to work if they had been waiting for six months or more for an initial decision on their asylum claim.¹³ This policy concession was removed on 25 July 2002.¹⁴ Between this time and February 2005, Home Office caseworkers had discretion to grant permission to work in 'exceptional cases'.¹⁵ In February 2005 the UK introduced a new rule allowing asylum seekers to apply for permission to work if they had been waiting for over twelve months for an initial decision on their case.¹⁶ This rule was introduced in order to comply with the 2003 European Directive on Reception Conditions for asylum seekers.¹⁷

Article 15 of the recast Reception Conditions Directive was agreed by Member States of the European Union (EU)¹⁸ in June 2013; it requires all Member States to allow asylum seekers to work if they have waited for over nine months for an initial decision on their asylum claim.¹⁹ The UK, Ireland and Denmark have opt-outs from the rule.²⁰ Many Member States have lesser restrictions than this²¹: asylum seekers in Greece²² and Sweden²³ can apply for the immediate right to work; in Portugal²⁴ they can apply after roughly one month from submitting their application; in Italy²⁵ after two months; in

¹⁰ Op.cit. (Gower), p.3.

¹¹ Home Office, *Permission to work and volunteering for asylum seekers*. V.7.0. p.12.

¹² Lord Taylor, PQ HL1457 [on Asylum: Employment], answered on 30 July 2014.

¹³ Op.cit. (Gower), p.5.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Henceforward called *Member States*

¹⁹ Ibid. p.11.

²⁰ Ibid.

²¹ Asylum Information Database (aida) was used to find the following information:

<http://www.asylumineurope.org/>

²² Article 71 L 4375/2016, Greece.

²³ Aida Asylum Information Database, *Country Report: Sweden*, 2016 Update, p.47.

²⁴ Refugiados, *Refugee Guide*, http://www.refugiados.net/cid_virtual_bkup/integra/guia_ig.html.

²⁵ Article 22(1) LD 142/2015, Italy.

Switzerland²⁶, Austria²⁷, Bulgaria²⁸ and Germany²⁹ after three months; in Belgium³⁰ after four months; in Spain³¹, the Netherlands³² and Poland³³ after six months. Some of these rights to work have restrictions.

Proposed Reform

This essay makes three proposals. Firstly, asylum seekers should be able to apply for the right to work if they have waited for over six months for a decision on their asylum application, or they have been refused asylum but have submitted further submissions over six months ago. Secondly, an application for such a right should be granted unless the delay is to a substantial degree caused by the deliberate actions of the claimant. Thirdly, if permission to work is granted it should be on the same terms as for those with refugee status – it should not be restricted to jobs on the shortage occupation list.

Ultimately, it would perhaps be best to have no waiting period. However, this essay recognises that jumping from a twelve month restriction to zero is unlikely to receive cross-party support. The current UK Visas & Immigration (UKVI) target for making a decision on asylum applications is six months.³⁴ It seems sensible to coincide the restriction on asylum seekers working with this time period. Placing the waiting period at six months would incentivise UKVI to process applications according to their target; it would also remove a lengthy punishment to those asylum seekers whose applications are delayed through no fault of their own.

²⁶ Article 43 AsylA, Switzerland.

²⁷ Article 4(1), Aliens Employment Act (AuslBG), Austria.

²⁸ Article 29(3) LAR, Bulgaria.

²⁹ Aida Asylum Information Database, *Country Report: Germany*, 2016 Update, p.65.

³⁰ Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers (published in the Belgian State Monitor of 9 November 2015).

³¹ Aida Asylum Information Database, *Country Report: Spain*, 2016 Update, p.46.

³² Aida Asylum Information Database, *Country Report: Netherlands*, 2016 Update, p.58.

³³ Article 35, Law on Protection, as amended in November 2015.

³⁴ Op.cit. (Gower), p.3.

As well as free healthcare, asylum seekers receive an HC2 certificate which entitles them to free prescriptions, free dental treatment and free eye tests amongst other essentials.³⁵ This certificate is valid for six months, after which time they must complete an HC1 form to apply for a new certificate.³⁶ The HC1 form is sixteen pages long and only available in English³⁷, making it difficult for many asylum seekers to complete. Thus, allowing asylum seekers to work after six months would also coincide with this current obstacle to affording essential healthcare provision.

Desirability

People seeking asylum are excluded from claiming mainstream welfare benefits.³⁸ If it appears to the Secretary of State that an asylum seeker³⁹ is destitute or likely to become destitute within fourteen days then that asylum seeker, and their dependents⁴⁰, are eligible for support under Section 95 of the Immigration and Asylum Act 1999.⁴¹ Whilst waiting for a decision on the Section 95 application, asylum seekers might be eligible for temporary support under Section 98 of the 1999 Act.⁴²

A person is destitute “if they do not have adequate accommodation or enough money to meet living expenses for themselves and any dependants now or within the next fourteen days.”⁴³ If eligible the asylum seeker can receive subsistence only or subsistence and accommodation.⁴⁴ The level of cash support provided is at a fixed rate of £36.95 per week per person.⁴⁵ It is not increased each year.⁴⁶

³⁵ UK Visas & Immigration (UKVI), *Asylum Support: Policy Bulletins Instructions*, ch.4, q.13.

³⁶ Ibid.

³⁷ Refugee Council Briefing, *Health services for asylum seekers and refugees*, Aug 2003, p.3.

³⁸ Asylum Support Appeals Project (ASAP), *Section 95 Support*, April 2016 Factsheet, p.1.

³⁹ Defined as a person over eighteen years old who has made an asylum claim or a claim under Article 3 of the European Convention on Human Rights.

⁴⁰ Defined as a husband/wife/civil partner, an unmarried couple (if living together for more than two of the last three years), a child under eighteen or a member of the household who is in need of care and attention due to disability.

⁴¹ Ibid.

⁴² Op.cit. (UKVI), ch.1, q.1.

⁴³ Op.cit. (ASAP), p.2.

⁴⁴ Ibid.

⁴⁵ <https://www.gov.uk/asylum-support/what-youll-get>

⁴⁶ Op.cit. (ASAP), p.2.

Under Section 95, pregnant mothers and those with a child aged one to three receive £3 extra per week and those with a baby under one receive £5 extra per week.⁴⁷ Mothers can apply for a one-off £300 maternity payment.⁴⁸ Asylum seekers can also be allocated accommodation.⁴⁹

As stated in Bright Blue's manifesto on immigration "being an asylum applicant is strongly associated with impoverishment, partly because they are banned from working."⁵⁰ This is hardly surprising given that the level of support provided to asylum seekers is 51%⁵¹ of the £73.10 currently given to single people, aged twenty-five or over, on income support.⁵²⁵³ In addition, the Home Affairs Committee was damning about the state of accommodation available:

It is clear that in too many cases providers are placing people in accommodation that is substandard, poorly maintained and, at times, unsafe. Some of this accommodation is a disgrace and it is shameful that some very vulnerable people have been placed in such conditions.⁵⁴

Not all asylum seekers qualify for Section 95 support. Under Section 57 of the Nationality and Immigration Act 2002, the Home Office can refuse to entertain an application for Section 95 support where the Secretary of State is "not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries."⁵⁵⁵⁶ The Asylum Support Appeals Project (ASAP) provides examples of when this power has been used.⁵⁷ In one case the Home Office requested letters

⁴⁷ <https://www.gov.uk/asylum-support/what-youll-get>

⁴⁸ <https://www.gov.uk/asylum-support/what-youll-get>

⁴⁹ <https://www.gov.uk/asylum-support/what-youll-get>

⁵⁰ Shorthouse and Kirkby, Bright Blue, *A balanced centre-right agenda on immigration*, p.21.

⁵¹ $(36.95/73.10)*100$.

⁵² Those under 25 receive £57.90 each week.

⁵³ <https://www.gov.uk/income-support/what-youll-get>

⁵⁴ House of Commons, Home Affairs Committee, Report on *Asylum accommodation 2016-17*, HC637, p.49.

⁵⁵ Section 57 Nationality and Immigration Act 2002, read with Regulation 3(4)(b) of the Asylum Support Regulations 2000.

⁵⁶ ASAP, *Briefing note on when it is possible to appeal a decision under Section 57 of the Nationality and Immigration Act 2002*, p.1.

⁵⁷ *Ibid.* p.5.

from all of the individuals who had supported an applicant since her arrival in the UK; the applicant responded with one letter of support and explained that she had been unable to contact the other individuals. She was issued with a Section 57 decision concluding that “it is not believed that you have complied or been truthful with our information request.”⁵⁸

There is no statutory right of appeal against a Section 57 decision.⁵⁹ As ASAP outlines, there are circumstances in which a judge can be persuaded that the Section 57 decision actually amounts, in substance, to a decision that the applicant does not qualify for support under Section 95 thus giving rise to a right of appeal⁶⁰; however, this argument is by no means universally applicable, with judges taking divergent approaches.⁶¹

In addition, there is no guarantee that the decision regarding Section 95 support is correct. ASAP reported that 60% of Home Office decisions on destitution were overturned in 2015.⁶² They argue that “the Home Office have persistently failed to properly consider evidence submitted which proves a person is destitute, and do not always understand or apply the correct legal test for determining whether a person is destitute.”⁶³ It is only due to the free legal representation provided by organisations such as ASAP that these decisions are appealed. It seems likely that there are cases where the person whose application for support has been declined simply leaves the matter, not realising the likelihood of success on appeal.

Thus, for those who receive Section 95 support, the living allowance is a pittance and much of the accommodation a “disgrace”⁶⁴. For those who do not receive such support, whether it be due to their perceived uncooperative behaviour or poor Home Office decision making, there is neither

⁵⁸ Ibid. p.5.

⁵⁹ Ibid. p.2.

⁶⁰ Under Section 103(1) of the Immigration and Asylum Act 1999.

⁶¹ Ibid. p.2-3.

⁶² ASAP, *A decade of disbelieving destitution*, Oct 2015, p.1.

⁶³ Ibid.

⁶⁴ Op.cit. (HC637).

Government support available nor the right to work. An alternative to the status quo would be to allow asylum seekers to work after a six month waiting period. After this initial period asylum seekers could then work for a higher standard of living than Section 95 provides. This would also protect those who are deemed ineligible for Section 95 support. The assumption behind the status quo is that a proportion of asylum seekers are not in need of asylum and so do not deserve the right to work. Instead the assumption should be that asylum seekers are in need of asylum unless proven otherwise. If the UKVI cannot keep to their decision-making target then asylum seekers should not be punished for that delay; they should receive the same working rights as if they had received a successful decision.

Practicality

The Home Office states that one of the policy objectives of restricting permission to work for asylum seekers is to “ensure a clear distinction between economic migration and asylum that discourages those who do not need protection from claiming asylum to benefit from economic opportunities they would not otherwise be eligible for.”⁶⁵ This is the key argument for the status quo: that the twelve month wait acts as a deterrent to economic migrants from making bogus applications for asylum. Baroness Lister of Butersett, in a House of Lords debate, challenges this argument:

The [Minister’s] response reflected an obsessive fear that providing this basic right [to work] could lead to a flood of economic migrants posing as asylum seekers. Why would anyone want to do that? If you want to come into this country illegally, it is not the best idea to go and make yourself known to the authorities.⁶⁶

⁶⁵ Op.cit. (Home Office), p.4.

⁶⁶ Baroness Lister of Burtsett, HL Deb 3 April 2014 c1111.

In any case, if an application for asylum does not have merit it seems likely that it will be rejected well before the six month proposed restriction. It seems highly unlikely that an economic migrant will apply for asylum – and so make themselves known to the authorities – in the hope that their application is delayed beyond six months, thereby allowing them to work for the limited period of time until their application is inevitably refused.

Baroness Lister continues:

What evidence is ... [the Minister's response] based on? There is none – as, in fact, the Minister conceded in his letter to the noble Lord, Lord Roberts. The evidence we have points in the opposite direction when one considers that there is no relationship between other European countries allowing the right to work – admittedly often with conditions around it – and that right acting as a pull factor for asylum seekers. Indeed, I went to the Home Office's own study, which could find no evidence from which to reach the conclusion upon which current policy is based that providing the right to work after six months would act as an invitation to economic migrants to come here as asylum seekers.⁶⁷

Indeed studies have concluded that the generosity of a country's asylum system has little impact on which country they apply to for asylum. A Home Office Research Study published in 2002 concluded that:

There was very little evidence that the sample respondents had a detailed knowledge of: UK immigration or asylum procedures; entitlements to benefits in the UK; or the availability of work in the UK. There was even less evidence that the respondents had

⁶⁷ Ibid.

a comparative knowledge of how these phenomena varied between different European countries.⁶⁸

The study also found that asylum seekers have little control over where they apply to for asylum⁶⁹:

It is important to note that agents were critical determinants of the destination eventually reached by asylum seekers...if individual asylum seekers wanted to leave their home country they had to give over control of migration decision-making to these paid facilitators.⁷⁰

This was confirmed by a 2011 review of the nineteen main OECD recipient countries for asylum applications carried out by the Centre for Economic Policy Research which concluded that the tightening of welfare provision did not have any deterrent effect.⁷¹⁷²

In 2015, the Immigration Minister, James Brokenshire argued that reducing the waiting period to 6 months would encourage individuals to apply for asylum and then delay the process so that they were able to work after six months.⁷³⁷⁴ However, the possibility does not apply to this essay's proposal since permission to work is not proposed to be given to those who deliberately delay the process.

It can be concluded that the key harm of reducing the waiting period to six months – its 'pull-effect' to false asylum applicants – is minimal. Instead, such a reduction would have practical benefits. A

⁶⁸ Robinson, *Understanding the decision-making of asylum seekers*, University of Wales, July 2002, p.viii.

⁶⁹ Liberty, *Liberty's response to the Home Office consultation 'Reforming support for failed asylum seekers and other illegal migrants'*, September 2015, p.12.

⁷⁰ Op.cit. (Robinson), p.19.

⁷¹ Op.cit. (Liberty), p.13.

⁷² Hatton (University of Essex, Australian National University and CEPR), *Seeking Asylum Trends and Policies in the OECD*, July 2011, sections 8.2 and 9.3.

⁷³ Refugee Council, *Refugee Council briefing on Right to Work for Asylum Seekers – Consideration of Lords Amendments, Immigration Bill, House of Commons*, April 2015, p.2.

⁷⁴ Immigration Bill, 10 November, c460-463.

higher proportion of asylum seekers would be working, thus reducing the amount spent on Section 95 support and increasing the amount received through taxes.

Usefulness

Another stated intention of the status quo is to “protect the resident labour market for British citizens and those lawfully resident here...”⁷⁵ Clearly, reducing the waiting period would introduce more people into the British labour market; that is the aim of the policy. However, the numbers involved are small. In the year ending December 2016 net migration to the UK was 248,000.⁷⁶ During the same period there were 30,603 applications made for asylum⁷⁷ – 12%⁷⁸ of total net migration. Compared to a UK population of 65.6 million⁷⁹, the percentage of people making an application for asylum in 2016 was 0.05%⁸⁰. The number of people who wait for over six months for a decision on their asylum application is even smaller. In the first quarter of 2015, 84.6% of claims submitted then received a decision within six months⁸¹; given the stated target of six months, it seems likely that this percentage is similar now. The number of people who would be introduced into the labour market under this proposal is small then. In any case, the policy would only affect asylum seekers for the period of time between six months of waiting and a final decision. After a final decision has been reached they would either become a refugee and have full working rights or be required to leave the country.

The reason why asylum seekers who have waited for longer than six months should be treated as if they were refugees and given full working rights – rather than being restricted to jobs on the shortage occupation list – is because a large proportion of them will eventually be so. In 2016, 34% of applicants

⁷⁵ Op.cit. (Home Office), p.4.

⁷⁶ House of Commons Library, Briefing Paper no.SN06077, *Migration Statistics*, p.10.

⁷⁷ Home Office, *Immigration Statistics, October to December 2016*, Section 2.

<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/asylum#key-facts>

⁷⁸ $(30,603/248,000)*100$.

⁷⁹ Office for National Statistics, *Overview of the UK population: July 2017*, p.2.

⁸⁰ $(30,603/65,600,000)*100$.

⁸¹ Op.cit. (Gower). p.4.

were granted asylum, or another protected status, as an initial decision.⁸² 41% of appeals against initial rejections were successful.⁸³ For these people who will eventually be granted asylum it is important that they are given every opportunity to integrate, as Baroness Lister outlines:

I have not yet heard a convincing response to the argument that, far from protecting British workers, the policy pushes asylum seekers into the shadow economy, where they will be at the mercy of exploitative employers...Nor have I had any real response to the argument that the policy seriously disadvantages those who go on to be granted refugee status, because employers do not want to employ people who have no work experience in this country and no references from employers in this country. That was cited as one of the barriers by respondents in the Freedom from Torture study, who said that some of their problems began when they gained refugee status because they had not been adequately prepared, they did not have experience of employment in this country, and they had enormous difficulties making the transition from asylum seeking to full refugee status. We are making it harder for them. The Home Office's own research has shown how the loss of skills and confidence, and difficulties getting qualifications, can mean unemployment or underemployment when refugee status is final granted.⁸⁴

The inadequacy of the status quo pushes asylum seekers into the shadow economy; when asylum seekers are then caught working, Section 95 support can be removed and they are pushed even further into the shadow economy. This country wants people granted asylum to

⁸² Home Office, *Immigration Statistics, October to December 2016*, Section 2.
<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/asylum#key-facts>

⁸³ Home Office, *Immigration Statistics, October to December 2016*, Section 12.
<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/asylum#key-facts>

⁸⁴ Baroness Lister of Burtersett, HL Deb 3 April 2014 c1111-2.

be useful and active members of society. It wants them to work; rather than rely on benefits, crime or an illegal job. This is why the right to work should be granted to asylum seekers who have been waiting for longer than six months. It is also why that right to work should not be restricted to jobs on the shortage occupation list. These people should be treated as if they are refugees until proven otherwise, thus preparing them for the full access to the labour market that many of them will eventually have.

Conclusion

The proposed reform is desirable in that it will lift many asylum seekers out of poverty and reduce the harms caused by mistakes in the current system. It is practical in that it will reduce the amount spent on Section 95 support and increase the amount received through taxes. It is useful in that it will prepare asylum seekers for life as a refugee in this country and help them to integrate. In the words of a Zimbabwean asylum seeker: "I hate being idle".⁸⁵ This country should hate them being idle too.

(2,999 words)

⁸⁵ Doyle, *"I hate being idle": Wasted skills and enforced dependence among Zimbabwean asylum seekers in the UK*, Refugee Council and Zimbabwe Association, p.4.