

Submission to the Joint Oireachtas Committee on Justice & Equality on the International Protection (Family Reunification) (Amendment) Bill 2017 – Pre Legislative Scrutiny

6th February 2019

Introduction

Nasc, the Migrant and Refugee Rights Centre is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (the Irish word for link) works to link migrants with their rights through protecting human rights, promoting integration and campaigning for change. Through our free legal service, Nasc provides information, advice and support to over 1,000 people annually. Our policy and campaigning work is directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland.

Nasc has almost two decades of experience supporting beneficiaries of international protection (refugees and those with subsidiary protection) with applying for family reunification, and we are grateful for the invitation to present to the Joint Oireachtas Committee on Justice and Equality on that experience. In 2017, we provided 347 consultations in relation to family reunification (both refugee and non-refugee), and 43 of our clients who were beneficiaries of international protection had successful applications to bring family members to Ireland. Our contribution to the Committee's detailed scrutiny of the International Protection (Family Reunification)(Amendment) Bill, 2017 is directly informed by the issues that present in our legal clinics and through our direct work with people seeking to be reunited with family members.

In 2015, Nasc made extensive submissions on the International Protection Bill as it progressed through the stages of the Oireachtas. In those submissions, which were taken up by several TDs and Senators in the Oireachtas debates on the Bill, we highlighted our concerns about the family reunification provisions, in particular the restrictions on dependent family members outside the nuclear family; the 12-month time restriction on applying for family reunification and for family members arriving in the State; and the difficulties faced by unaccompanied minors who do not receive a status before 18.

Since the commencement of the International Protection Act, 2015 at the end of 2016, Nasc has seen first hand the impact the restrictions to family reunification have made to people granted international protection in Ireland. In particular, the time limits and the removal of dependent family members has caused great hardship for the refugee families we work with. Beneficiaries of international protection are not able to fully settle into their lives here, knowing that their family members remain in conflict zones, or at risk of persecution. We have seen families split up because only some family members are eligible; we have seen individuals descend into deep depression because they are forced to leave family members in the midst of horrific conditions.

We adamantly believe that the modest but critical amendments to the International Protection Act, 2015 introduced in the International Protection (Family Reunification) (Amendment) Bill 2017 would go a

significant way to improving the lives of refugees living in Ireland, and in fulfilling our obligations to support people seeking safety in Europe.

The Context

We are all well aware that we are living in the midst of an unprecedented global humanitarian crisis the likes of which we have not seen since the end of the World War II. As of 2018, 68.5 million people were displaced by war and violent conflict. This number has been increasing exponentially since 2015 and there is little evidence to suggest this number will decrease in the near future.

In Ireland by contrast, the numbers of people seeking international protection are in the thousands, and although this number has been increasing since 2015, it still remains below what we would have seen in previous years (e.g. 2000; 2004-2005; 2008-2009). Ireland had 3,324 applications in 2018; 2,926 applications in 2017; 2,244 in 2016; 3,276 in 2015; and 1,448 in 2014. This is an average of 2,600 per year for the last 5 years. Reliable and accurate statistics on numbers of people granted international protection (including both refugee status and those eligible for subsidiary protection) are not publicly available, but we do know from statistics provided in previous years by the Office of the Refugee Applications Commissioner (ORAC) under the 1996 Refugee Act that in 2014, 132 people were granted refugee status; 152 in 2015 and 443 in 2016 (these numbers do not include beneficiaries of subsidiary protection) We also know within that timeframe between 2014-2016, under the family reunification provisions in the 1996 Refugee Act, between 200-400 family members were granted family reunification (229 in 2014; 328 in 2015; 406 in 2016), with an average of 2.8 family members per sponsor.

These are not overwhelming or unmanageable numbers, particularly given the numbers of people globally displaced and in need of protection. While the Irish Government has done a significant amount in the past few years to support people fleeing conflict and persecution, in particular in establishing the Irish Refugee Protection Programme, in introducing a Humanitarian Admission Programme and most recently in establishing a Refugee Community Sponsorship Programme; it is contradictory and counter to those very welcome initiatives that such severe restrictions on family reunification were introduced in the same period. Family reunification is widely recognised as playing an essential role in helping refugees rebuild their lives and can be an important way for Ireland to meet our legal obligations under international and EU law and fulfil our moral obligations to support those in need of protection.

The International Protection Act, 2015: Gaps and Barriers to Family Reunification

Dependent Family Members

The Refugee Act, 1996 included the possibility of applying for dependent family members (Refugee Act, 1996, Article 18(4)). The International Protection Act, 2015 does not provide any means for a beneficiary of international protection to apply for family reunification with dependent family members outside of the nuclear family (spouse and minor children).

It is overwhelmingly clear in Nasc's experience that refugee families rarely fit into nuclear family arrangements, and the precariousness of life in the midst of conflict means that our understanding of what constitutes family cannot be overly rigid or proscribed. The United Nations High Commissioner for Refugees (UNHCR) has stated that refugee families "rarely fit neatly into preconceived notions of a nuclear family (husband, wife and minor children....A broad definition of family unit – what may be termed an extended family – is necessary to accommodate the peculiarities in any given refugee situation" (UNHCR, *Protecting the Family*, 2001).

In Ireland, we understand this concept of extended family – and the idea of having to leave behind elderly parents, grandchildren, an orphaned niece or nephew or ward, or our child who has just turned 18, goes against everything we value and cherish in our understanding of the family as the most important and most protected unit in Irish society. We cannot even comprehend the pain and trauma this must cause.

In our work, we have come across any number of refugees who are now forced to make 'Sophie's Choice' type decisions when applying for family reunification – one woman who had to decide whether to apply for her husband because he was the sole carer for her elderly and unwell mother who would not be eligible; one man who applied for his minor daughter but was not eligible to apply for that daughter's child – his grandchild – born as a result of rape. What becomes clear from working day in and day out with beneficiaries of international protection is that there are no 'norms' to how human lives operate in the context of conflict, persecution and displacement.

In statements made by both Minister Flanagan and Minister Stanton in relation to this Bill, they have commented that we have not yet had sufficient time to see how the International Protection Act, 2015 will function. In our experience, we see every day the impact the restrictions to family reunification in the Act have on refugee families – we do not need any more time to witness the level of suffering these restrictions have caused.

Minister Stanton expressed concerns in his statement to the Dáil in December 2018 that the proposed Bill seeks to restore a broader definition of dependent family member while removing the element of ministerial discretion that was contained in the 1996 Refugee Act. The Minister stated that discretion was a powerful tool for ensuring flexibility in the Government's response to humanitarian crises. While we do not believe that there is anything in this Amendment Bill that undermines the Minister's capacity to act in a discretionary and flexible way, we respectfully submit that if this is the Minister's – and the Government's – principal concern in relation to the Bill, that they propose an amendment returning Ministerial discretion. We would have no issue with that insertion if it allowed for the possibility for a broader category of dependent family members to be eligible for family reunification.

The Minister also expressed concerns that restoring the broader definition of dependent family members under the Refugee Act would result in an "open-ended family reunification for extended family members" (International Protection (Family Reunification) (Amendment) Bill 2017 [Seanad]: Second Stage [Private Members] Dáil Éireann, 6 December 2018). Since we know (roughly) how many people are granted international protection in Ireland every year, and we know how many people have applied for family reunification in previous years under the Refugee Act, and in addition, sponsors would still have to show

dependency in their applications, we cannot agree with the Minister that allowing for a broader definition of dependent family members will result in “unquantifiable numbers of potential applicants”.

12 Month Restriction

The 12 month time limit on applying for family reunification severely impacts families who may have become separated in fleeing conflicts or who may have been imprisoned. Nasc has represented a number of people who have only successfully found family members years after they were granted status. Since the commencement of the International Protection Act, 2015 at the end of 2016, we have seen the impact of the time restrictions on beneficiaries of international protection who come through our legal service. These include cases where a family member is missing and cannot be traced. If the 12 month time limit expires and a family member has not been found, they are no longer eligible for family reunification – this is a stark reality for many of our clients.

The 12 month time limit has also, in our experience, led to poorer quality applications for family reunification being submitted. Obtaining identity documents for family members in countries that may have bureaucratic infrastructure that is corrupt or paralysed by political discord or conflict can be an expensive and lengthy process. One such example is in the Anglophone part of Cameroon where there has been a general strike since 2017. Increasingly we are submitting poorer quality applications for family reunification with less documentation just to ensure that the refugee does not lose their family reunification rights. Unfortunately, this can and has led to refusals of family reunification applications, and also represents a significant increase in cost to the State in processing these applications.

In our experience many refugees wait until they have established a life in Ireland, including attaining employment and housing in advance of submitting an application for family reunification to ensure that they are fully prepared for their family’s arrival, paving the way for their smooth transition into life in Ireland. The current 12 month limit no longer allows for this resulting in refugees submitting applications whilst they are still resident in Direct Provision and placing family members at a distinct disadvantage upon arrival.

The Amendment Bill removes the 12 month time limit, which we believe would be critical in recognising the irregularity of refugee lives and support recognised refugees in Ireland in ensuring they can bring their family members to safety, even if it takes longer than 12 months to find them. This would result in more positive integration outcomes for family members, leading to greater social cohesion.

Unaccompanied Minors Seeking Protection

The reality for unaccompanied minors seeking protection in Ireland is a lengthy determination procedure, which can result in a minor ‘aging out’ (turning 18) while their application is still being assessed. In addition, it is Nasc’s experience that some unaccompanied minors arriving in the State are not being encouraged to put in an application for asylum until after they ‘age out’. While it may be that waiting protects unaccompanied minors from the difficulties and stresses of the asylum procedure, it also means that aged out minors who get a status after they turn 18 no longer have any rights to family reunification with their parents or any other siblings. This may be the primary reason a family allowed their child to leave them to

seek protection in the first place. From having worked with aged out minors, we know this is a heavy burden for a young person to have to bear – starting out a new life for themselves in Ireland while their parents and siblings are left behind.

While we are aware that there have been a few cases where Ministerial discretion has applied to family reunification applications submitted by aged out minors, specifically in cases where the length of the procedure created the conditions for the right to be removed, this functions effectively as a ‘hidden remedy’ as the capacity for discretion is not named in the International Protection Act, 2015 so people making applications without the benefit of legal aid or support will not be aware that there may be a possibility for their application to be successful.

Right to Appeal

The International Protection Act, 2015 provides no right of appeal on a negative family reunification decision. In the event a person wishes to challenge a decision, the only legal remedy open to him or her is judicial review proceedings. It was noted in the Dáil debate on this Amendment Bill that the number of proceedings on family reunification decisions has increased since the commencement of the Act at the end of 2016. The Amendment Bill critically inserts an appeals mechanism, which allows people to have an opportunity to challenge a negative decision without having to rely on the Courts, resulting in a reduction in costs to the exchequer.

The EU Family Reunification Directive

One of the key points raised by the Government in their reasons for not supporting the Amendment Bill has been that the International Protection Act 2015 brings Ireland more closely in line with the provisions in the EU Family Reunification Directive (Council Directive 2003/86/EC). It is important to note that while the International Protection Act, 2015 does bring Ireland into more alignment with some EU Member States, the Directive does not prevent States from taking more favourable positions.

There are a few critical points that need to be addressed in relation to this claim – the first is that the Irish Government has chosen to opt out of this Directive since its introduction in 2003, and the commencement of the International Protection Act, 2015 has brought no moves from Government to opt in. The second is that the International Protection Act, 2015 only brings us somewhat into line with the Directive, as the Government appears to have ‘cherry-picked’ the most restrictive provisions in the Directive while leaving the more open provisions. For example, the Directive offers wide scope to member states to allow for broader family reunification provisions than the nuclear family. There is nothing in the Directive to suggest that Member States are restricted to nuclear family only (see Article 4(2)). Finally, the Directive is quite clear that there is no barrier to Member States providing for more than is laid out in the Directive; the Directive is the bare minimum to be expected across all Member States.

It is also important to note that the Directive applies to both refugee and non-refugee forms of family reunification, and states in Paragraph 8 that: “Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal

family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification” (Council Directive 2003/86/EC, Para. 8).

Importantly, national and international human rights bodies have spoken out against restrictive family reunification provisions. The Irish Human Rights and Equality Commission have stated that the removal of refugees’ right to apply for family reunification for extended family members and the introduction of a statutory time limit for applications are retrogressive measures (IHREC, *The right to family reunification for beneficiaries of international protection*, 2018). The European Legal Network on Asylum has also called the family reunification provisions “restrictive provisions in a ‘race to the bottom’ of standards aiming to reduce access to family reunification for beneficiaries of international protection as a method of managing migration”.

Alternate Pathways

In his statement to the Dáil in December 2018, Minister David Stanton mentioned two other avenues for family reunification for beneficiaries of international protection. In Nasc’s experience, neither of these – the Irish Refugee Protection Programme Humanitarian Admission Programme (IHAP) or non-refugee family reunification under the Non-EEA Family Reunification Guidelines – are suited to the refugee context.

Humanitarian Admission (IHAP)

The IHAP, while a welcome scheme in its own right and one Nasc presented on to this Committee back in 2016, should not be seen as a replacement for family reunification. IHAP is only open to sponsors from 10 countries. Anyone not from the 10 eligible countries (Afghanistan, Burundi, Central African Republic, Democratic Republic of Congo, Eritrea, Myanmar, Somalia, South Sudan, Sudan, Syria) cannot apply to sponsor their families under the IHAP. It is also interesting to note that between 2014 and 2017, Ireland did not receive a single application for protection from Central African Republic or South Sudan.

From working with IHAP sponsors in submitting applications, we have found that the documentary requirements are very onerous and inflexible. According to the Minister for Justice and Equality in response to a recent Parliamentary Question (<https://www.oireachtas.ie/en/debates/question/2019-01-15/448/#pg-answers-448>), there has been a very high rate of refusal of IHAP applications in the first round, with many applications not being considered in the first place or being refused because refugees or their families were unable to get certified copies of documents. Of the 908 applications received, 694 applications in respect of 1,672 beneficiaries from eligible countries were deemed incomplete. Of the 214 applications that were deemed complete in respect of 511 beneficiaries, only 82 in respect of 141 beneficiaries were granted. Our legal clinics have worked with 80 people who would potentially be eligible to apply, and we expect to support about 40 sponsors in making applications under the second round, which closes at the end of this week. The relatively high attrition rate can be traced to the onerous and unrealistic documentary requirements and the stringent accommodation requirements.

Despite Minister Stanton’s assertion that IHAP allows the Government to “respond in a flexible manner to those with the highest humanitarian needs”, it is clear from the numbers of people making applications

under this programme that the current family reunification provisions – both under the International Protection Act, 2015 and under the INIS non-EEA policy – are not sufficient to their purported aim. It is worth noting that the Department of Justice have stated that this current round will be the final call for applications. This will leave those recently granted refugee status and who may still be living in direct provision centres without any means of applying for family reunification with extended dependent family members.

Perhaps the biggest barrier we see in relation to beneficiaries of international protection in family reunification, and indeed with respect to humanitarian admission, is access to housing. Minister Stanton rightly named the national housing crisis in his statement to the Dáil in December 2018 as an important issue in respect of family reunification. IHAP sponsors have been required to show evidence of housing in their application for humanitarian admission for family members. We have also seen in our experience instances where refugee family reunification was significantly delayed if the sponsor did not have adequate access to housing – for example if the refugee was still living in direct provision or in an Emergency Reception and Orientation Centre (irrespective of the fact that the person would have been required to put in an application for their family members within 12 months regardless of whether they had managed to secure housing or not).

Humanitarian Admission was never designed to replace the important and critical rights to family reunification for refugees which should be embedded in legislation – and this must, by definition, include dependent family members outside the rigid concept of a nuclear family. It is always understood as an additional or complementary pathway that supports additionality in times of crisis. The previous humanitarian admission programme (SHAP) introduced for Syrians under Minister Alan Shatter in 2014 operated in complementarity to the 1996 Refugee Act. With respect, the Government cannot restrict family reunification rights under the new Act, and then subsequently introduce Humanitarian Admission and state that this is enough in the context of unprecedented numbers of people requiring protection globally.

Non-Refugee Family Reunification

The Minister noted in his statement to the Dáil in December 2018 that the Minister for Justice and Equality “proactively applies” discretionary permission under the INIS non-EEA policy document on family reunification. Unfortunately, that has not been Nasc’s experience of supporting families to apply for visas for their loved ones, particularly elderly parents. In the Department of Justice’s Policy Document on Family Reunification for Non-EEA nationals, it is stated that the “default position” for applications for visas for elderly parents is “a refusal”. The Policy Document requires persons who wish to apply for a visa for elderly parents to have income (after taxes and deductions) for three successive years in excess of €60,000 to apply for one parent and €75,000 to apply for two parents. Realistically this allows for only the wealthiest in our society to even make an application. Even then with substantial earnings, applications may still be refused. It is simply unrealistic to expect that a person newly granted international protection status will be in a position to earn anywhere near these income thresholds.

Additionally, INIS non- EEA policy fails to take account of the particular situation of refugees. Nasc has worked with several clients who have applied under the guidelines seeking humanitarian considerations and

been refused. Nasc have numerous examples of this from 2013 to 2015 at the height of the conflict in Syria when multiple applications we supported clients with were refused for elderly parents. In one case the sponsor was a medical professional and a naturalised Irish citizen providing medical care in rural Ireland. The parents were Syrian nationals with one parent suffering from a degenerative brain disease. Some of the cases we dealt with appeared to 'copy paste' decisions with no real consideration given to the exceptional circumstances. Since the commencement of the International Protection Act, 2015 Nasc has not seen a single instance where the Visa Office exercised positive discretion to grant a visa application for a dependent, extended family member of a refugee.

It has previously been raised by the Minister that the enactment of this Bill would reduce the Minister's own discretion to introduce schemes such as the International Humanitarian Admission Programme and respond to a particular crisis or humanitarian emergency. None of the proposed changes made in the Amendment Bill would undermine the discretionary capacity of the Minister either under the International Protection Act (where discretion is not named), nor under the non-EEA policy, which would not be in any way impacted by the success of this Bill.

Some recent Nasc cases:

- A refugee who came to Ireland with her young child. Her child's father is missing and the refugee has been unable to trace him within the 12 months following their grant of refugee status. The child lost the right to family reunification with his father.
- A woman who spent over 5 years in the asylum process was finally granted subsidiary protection. While she was waiting for a decision to be made on her application, her eldest child turned 18 and she could not include her in the family reunification application.
- A refugee who successfully applied for family reunification with his wife and children however while he was in Ireland, his daughter (a child herself) was raped and had a baby. He has no ability to apply for family reunification with his grandchild.
- A refugee who left her family behind when she came to Ireland. She has now been granted refugee status but her family unit includes her husband, minor children and her mother who is ill and completely reliant on her husband for her care and well as an orphaned nephew who has lived with the family since his mother died in childbirth and has been raised as her son. She cannot apply for family reunification with her mother or her nephew and must decide whether to split up a family unit.
- A refugee who left behind a partner and a child when he came to Ireland. He and his partner had a traditional marriage, but it is not recognised as a legal marriage in his country. He wants to formalise their marriage and have a legal marriage ceremony with his wife however this will not be eligible for family reunification under the IPA 2015. He must now decide whether to separate the child from her mother.

Conclusion

As has been stated by the Senators who introduced this Bill and repeated by the TDs who presented it to the Dáil, this is a modest proposal to ensure that some of the most vulnerable members of our society are able to live in safety with their families here in Ireland. The Bill quite simply reverts to the broader definition of family in the 1996 Refugee Act, it provides a more realistic timeframe for people to apply for family reunification, and it allows for the capacity to appeal negative decisions without having to rely on the Courts. It will not result in a “floodgate” since we never saw excessive numbers applying under the old Act. And it does not remove the Minister’s capacity for discretion to ensure flexibility in how the Government responds to humanitarian crisis.

Nasc recognises that the majority of the Irish population and the Government wants a planned and managed approach to providing protection and supporting those in most need of humanitarian support. It is our belief – grounded in our experience providing advocacy and support to refugees – that the current family reunification pathways do not provide sufficient flexibility that recognises the chaotic and irregular situation that can characterise the refugee experience.

We know from attitude surveys conducted in the last few years, as well as support we get from members of the Irish public, that the majority of Irish people are supportive of Ireland offering protection to people fleeing conflict and supportive of families being able to live together in safety. This is an opportunity for the Government to rectify some significant but discrete failings in the current provisions, which allow us to continue to provide safety and protection and the possibility for greater integration for refugees, as well as show solidarity with our European neighbours by honouring our international and European commitments.