



The Importance of Expert Evidence in Albanian Asylum Claims

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Introduction

The purpose of this paper is to highlight the critical need to obtain expert evidence at an initial stage when representing Albanian asylum applicants (i.e. frontloading the claim).

It will also cover useful tips to assist in applying for authorisation to commission expert reports from the Legal Aid Agency.

1. Home Office Statistics

1.1. Top 3 asylum applicant producing countries¹

Asylum applications lodged in the UK, by nationality:

Nationality	2017	2018	2019
Iran	2,570	3,320	4,853
Albania	1,430	2,005	3,453
Iraq	2,379	2,700	2,971

1.2. Information for initial decisions for UASC from Albania over 2019²:

There were 375 total applications from Albanian UASC's

¹ <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/list-of-tables>

² Ibid

Decision	Numbers
Grant of asylum	21
Grant of Humanitarian Protection	0
Grant of Discretionary Leave	2
Grant of UASC leave	61
Other	2
Refusals	155
Certified Refusals	95
Withdrawn	39

1.3. UASC referrals to the National Referral Mechanism (NRM) – Q3, 2019³

Table 6 – Number of individuals referred to the NRM that were potentially exploited as minors, by nationality and exploitation type (Q3, 2019)⁴

Country of nationality	Domestic servitude	Labour exploitation	Sexual exploitation	Unknown exploitation	Grand total
United Kingdom	3	489	108	7	607
Vietnam	9	83	11	37	140
Eritrea	4	27	11	14	56
Albania	1	34	9	3	47

1.4. UASC Referrals to the National Referral Mechanism (NRM) – Q3, 2020⁵

Table 6 - Number of individuals referred to the NRM that were potentially exploited as children, by nationality and exploitation type (Q3 2020)⁶

Country of Nationality	Total number of referrals based on all exploitation types
United Kingdom	712
Vietnam	60
Sudan	35
Romania	31
Albania	30
Eritrea	26

³ Available: https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-quarter-3-2019-july-to-september?utm_source=0f087206-5f3f-43a3-9ae1-2b0eff413230&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily

⁴ This is a snapshot of the top four country of nationality referrals to the National Referral Mechanism (NRM)

⁵ Available: https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2020-july-to-september?utm_source=c11f64a8-7de7-4ace-bcd5-da75bedf82ad&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily

⁶ Albania remains within the top six of child asylum producing countries

1.5. Average number of days taken to make a conclusive grounds decision⁷

Table 30 - Average number of days taken to make conclusive grounds decisions, for decisions made each quarter, 2020

Quarter	Median	Mean
Q1	302	455
Q2	322	432
Q3	344	448

1.6. Numbers of certified refusals given to UASC's⁸

Number of certified refusals given to unaccompanied asylum seeking children							
2016		2017		2018		2019	
Total all countries	Total Albania	Total all countries	Total Albania	Total all countries	Total Albania	Total all countries	Total Albania
32	25	31	23	70	65	100	95

2. Frontloading

- 2.1. Frontloading refers to the provision of increased legal services to asylum applicants during the early stages of the process.
- 2.2. Where a lawyer is instructed before the asylum application is made or a substantive interview takes place, good practice is to take time to build the strongest case you can before submitting it, rather than putting in the application and at a subsequent stage submitting supporting evidence, for example at the appeal level.
- 2.3. Just as frontloading is important when the case starts with a refusal – it is equally important in Albanian cases at the initial application stage. Therefore, if a case is frontloaded at the initial application stage, and it is then refused by the Home Office there is greater chance of securing an in-country appeal right for your client; and/or better merits to proceed with a Judicial Review of the decision to certify the claim as clearly unfounded.

⁷ Available: https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2020-july-to-september?utm_source=c11f64a8-7de7-4ace-bcd5-da75bedf82ad&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily

⁸ Home Office (May 2020) Immigration statistics, year ending March 2020. Table ASY_D02 <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2020>

- 2.4. The critical need for frontloading in an Albanian asylum claim has been detailed extensively previously and is available on the MiCLU website under the Breaking the Chains Albanian Asylum Claim Toolkit.⁹
- 2.5. It is arguable that better quality decision-making at the initial stages of the asylum process would result in a greater number of positive decisions earlier in the process and in negative decisions that are better reasoned and more sustainable. Clients seeking asylum would be better informed and supported and less likely to feel that they were on their own, navigating a complex and alien legal process. From the point of view of the asylum system/ the tribunal/ the LAA, frontloading of legal services could result in a reduction of costly and protracted proceedings at later stages in the determination of applications.
- 2.6. When considering the data above, 66.67% of all Albanian UASC's who received a decision on their asylum claim in 2019 were refused asylum; and out of these refusals 61.29% of claims were certified as clearly unfounded, thereby highlighting the critical need for frontloading at the initial stage in an Albanian asylum claim¹⁰.

3. Legal Aid Agency: Funding

3.1. Pre-decision Evidence

- 3.1.1. Some pre-decision evidence is funded by the LAA on the basis of a recognition of that particular organisation's expertise:

LAA Escape Cases Electronic Handbook

14.7: Pre decision reports

As an exception, we will consider funding requests for pre-decision reports from the Helen Bamber Foundation and Freedom from Torture, on the basis of a Home Office Asylum Policy Instruction. However, this concession does not extend to individual employees of the Helen Bamber Foundation and Freedom from Torture if they are not producing a report on behalf of their respective organisation.

CW3 Disbursement Checklist

⁹ Please see briefing note prepared jointly by Garden Court Chambers and MiCLU to raise awareness in the sector of a sudden spike in the numbers of asylum claims by Albanian nationals which have been certified as 'clearly unfounded' under s.94 of the Nationality, Immigration and Asylum Act 2002, and to encourage a practical response that protects clients who are at risk of refoulement to Albania: <https://miclu.org/assets/uploads/2019/06/A-practical-response-to-the-certification-of-Albanian-cases.pdf>

¹⁰ Below is a link to a paper written by David Neale, Legal Researcher, Garden Court Chambers on assessing the merits in Albanian asylum claims which was discussed at the first online seminar of this seminar series held in October 2020. Whilst focussing primarily on asylum claims based on blood feuds, it also deals with asylum claims based on domestic violence and human trafficking. The paper argues that these claims, in general, have strong merits: lawyers should be pursuing appeals and fresh claims in these cases and, where they are certified, should be pursuing challenges by judicial review: <https://miclu.org/resources/albanian-asylum-claims-toolkit>

Point 10 - Helen Bamber Foundation / Freedom From Torture reports

Where funding is sought for a report from either organisation it is not necessary to obtain alternative quotations. However, confirmation from the organisation that they have agreed to produce a report, the type of the report and the cost of the report must be provided.

3.1.2. In addition, there is also recognition that experts reports may be required prior to the submission of a fresh claim:

LAA Escape Cases Electronic Handbook

We may also consider funding requests for reports to assist fresh claims whilst the case is at Legal Help. When considering applications to authorise requests to obtain pre decision reports LAA Caseworkers should make their decision in line with paragraph 4.24 (a – d) of the Standard Civil Contract Specification 2018¹¹.

3.1.3. However, it can be argued that the expert evidence you are seeking is key in an initial asylum claim, and should be funded by the LAA, even where it does not neatly fit into the above criteria:

Paragraph 4.24 – 2018 Standard Civil Contract Specification (General Provisions)

Disbursements

4.24 You may incur disbursements where: (a) it is in the best interests of the Client to do so; (b) it is reasonable for you to incur the disbursement for the purpose of providing Controlled Work to the Client; (c) the amount of the disbursement is reasonable and where applicable complies with Paragraph 6.60 of this Specification; and/or (d) incurring the disbursement is not prohibited by this Section 4 or the applicable part of this Specification¹².

3.1.4. Therefore, reasonableness is the guiding principle and justification is required in any application made to the LAA.

3.2. Funding tensions

¹¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805983/Escape_Cases_Electronic_Handbook.v1.10.pdf

¹²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744438/HPCDS_Contract_-_2018_Standard_Civil_Contract_Specification_General_provisions_.pdf

- 3.2.1. Dr Jo Wilding's Report, "Droughts and Desserts: A Report on the Immigration Legal Aid Market¹³," recognises the difficulties of working in a way whereby cases are frontloaded and the financial strains caused by the standard fee scheme:

Funding

The standard fee is inadequate for high-quality work, across all branches of the legal profession. High-quality practitioners and organisations lose money on their standard fee cases and depend on cross-subsidy or external subsidy for survival.

Not-for-profits rely on grant-funding (including for non-casework projects) and firms, chambers and barristers rely on privately-paying clients and / or higher-paid areas of law. Barristers' chambers rely heavily on the goodwill of a small number of high earners who (for the most part) no longer do legal aid work.

- 3.2.2. So how can we make the frontloading of claims financially viable across the immigration sector?

3.3. Stage Claims on Disbursements

- 3.3.1. The LAA make provision for claiming costs of disbursements prior to the case concluding and submitted for billing, and where normally you could only claim after six months under the 2018 Standard Civil Contract, since 10 August 2020 providers have been able to submit claims after three months as a result of the Covid-19 pandemic:

What are the new rules?¹⁴

The amendments to these specifications will allow law firms and providers of legal aid services to stage bill for disbursements every 3 months for controlled matters in the immigration and mental health categories.

Providers will be able to stage bill on matters that were opened before the contract amendment came into force.

Previously, it was possible to stage bill for disbursements in these categories every 6 months.

3.4. Escape Fee Cases

¹³ Droughts and Desserts, A Report on the Immigration Legal Aid Market, Dr Jo Wilding (12th June 2019), Page 2 - Available: <http://www.iowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>

¹⁴ <https://www.gov.uk/government/news/civil-news-disbursements-billing-revised>

3.4.1. With frontloading, profit costs are naturally going to rise. However it does not mean that your time will automatically be written off. On cases escaping the fee and going three times over, claims can be made to the LAA:

2018 Standard Civil Contract Specification (General Provisions)¹⁵

4.13 Subject to Category Specific Rules, where the amount of any Claim as calculated on the basis of Hourly Rates exceeds the Escape Fee Case threshold for the relevant Category specified in the Remuneration Regulations **you may apply to us for the Claim to be treated as an Escape Fee Case, on a form specified by us.**

4.14 For the purposes of calculating whether the value of a Claim exceeds the Escape Fee Case threshold for the relevant Category, you must not disregard any Contract Work which you have properly conducted on a Matter, or do any such work on a pro-bono or similar basis, following a determination that a Client qualifies for Controlled Work, where the reason for doing so is to escape the fee which would otherwise be payable.

4.15 Escape Fee Cases will be **remunerated on the basis of Hourly Rates.**

4.18 If we refuse a request to pay a Claim as an Escape Fee Case you may **appeal against that decision to an Independent Costs Assessor.** The procedures in Section 6 shall apply to any such appeal.

4.20 Claims for Escape Fee Cases must be **submitted within three months** of the Matter being reported.

Immigration and Asylum hourly rate cases						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation, Attendance & Advocacy	£57.35	£57.35	£51.62	£52.55	£52.55	£47.30
Travel & Waiting	£30.30	£30.30	£27.27	£29.45	£29.45	£26.51
Routine Letters and phone call	£4.40	£4.40	£3.96	£4.10	£4.10	£3.69

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744438/HPCDS_Contract_-_2018_Standard_Civil_Contract_Specification_General_provisions_.pdf

4. Practical Tips for Lawyers

- Counsel's opinion;
- Detailed representations;
- Witness statement on behalf of your client;
- Other supporting evidence – key workers / therapists / counsellors etc;
- Refer to the joint paper on frontloading of claims¹⁶.

5. What if the LAA don't authorise funding for expert reports at the initial stage?

The Breaking the Chains Project has been instructed on cases which were not frontloaded but have been successful in having the certification lifted by making legal arguments based on the country guidance cases and background information on Albania which is in the public domain:

- 1) Obtain Counsel's opinion on the certification;
- 2) Use legal arguments within the seminar paper written by David Neale, Legal Researcher, Garden Court Chambers; and
- 3) Take instructions on the factual and documentary points from your client.

Further Information

For more information or to access the Albanian Asylum Claims Toolkit, please refer to:

- <https://miclu.org/resources/albanian-asylum-claims-toolkit>
- Email: gurpinderk@islingtonlaw.org.uk

¹⁶ <https://miclu.org/resources/albanian-asylum-claims-toolkit>