

# The distinction between asylum seekers and refugees

Legal: MW 70



Revised version August 2017

**This paper was originally published in January 2006. In view of the considerable interest which is shown by the frequency of its consultation, it has now been revised and brought up to date. Material relating to migrant flows in 2016 on page 2 has been added by Dr Benedict Greening, Migration Watch researcher.**

There is much confusion in the media and in public debate generally about asylum seekers, refugees and economic migrants. We feel that a useful purpose will be served if we publish a brief paper defining these terms and explaining the extent to which these categories overlap. This paper is written from the point of view of the laws and immigration practices of the United Kingdom but its contents are of general application in other countries in Europe, North America and elsewhere which are parties to the 1951 Convention referred to in the next paragraph.

“Asylum seeker” means a person who has claimed asylum under the 1951 United Nations Convention on the Status of Refugees (hereinafter referred to as “the Convention”) on the ground that if he is returned to his country of origin he has a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group. He remains an asylum seeker for so long as his application or an appeal against refusal of his application is pending. This definition is a paraphrase of the statutory definitions of “asylum seeker” and “claim for asylum” in section 94(1) of the Immigration and Asylum Act 1999.

“Refugee” as the word is used in the Convention means an asylum seeker whose application or subsequent appeal against initial refusal has been successful. In its broader context it may also mean a person fleeing e.g. civil war or natural disaster and not necessarily fearing persecution as defined by the Convention. Such persons may be entitled to humanitarian protection under paragraph 339C of the Immigration Rules. “Humanitarian protection” is defined and explained in the Legal Briefing Paper MW174 ([Glossary of the Main Legal Words and Expressions used in the Context of Asylum and Immigration](#)).

“Economic migrant” means a person who has left his or her own country and seeks by lawful or unlawful means to make a living for himself or herself (and their family in many cases) in another country. As will be explained later, many asylum seekers are in fact economic migrants who hope to secure entry into the United Kingdom by claiming asylum.

So far so good and at least as far as asylum seekers are concerned, there ought to be no confusion. To describe a person as an asylum seeker is in principle a neutral statement, not making any assumption as to whether his claim is justified or not. Unfortunately “asylum seeker” and “refugee” are frequently conflated, giving rise to much confusion. As an example of this we refer to a booklet published by the Church of England in 2005 entitled “A place of refuge – a positive approach to asylum seekers and refugees in the UK”. It was a serious and obviously well-intentioned study, running to 63 pages with a foreword by the Bishop of Southwark. Its preparation resulted from a discussion of the subject by the General Synod in February 2004. Clearly a document to which the Church attached much importance. The booklet gets off to a good start with definitions of “refugee” and “asylum seeker” similar to those above. However, it soon becomes apparent in the text that the authors are not capable of maintaining a proper distinction between these terms. At several points in the text the two expressions are conflated and contrasted with “migrants” economic or otherwise. Thus on page 11:

“Whilst the migrant stands to lose a better quality of life if her or his request for hospitality is rejected, *the asylum seeker stands to lose his or her life.*” [Emphasis supplied]

The italicised words in this quotation might be true of an asylum seeker who has a genuine case and who is in due course accepted as a genuine refugee. It is, however, manifestly incorrect to say that all asylum seekers fear loss of life. Most are found not to have a genuine case and their applications/appeals are dismissed. Even in the case of genuine refugees it is not true to say that they all fear loss of life if they are returned to their countries of origin. Many fear loss of liberty or some other non-lethal form of persecution. This is explicitly recognised in the Convention itself, which in Article 33.1 defines the principal obligation of Contracting States as follows:

“No Contracting State shall expel or return (‘refouler’) a refugee in any manner to the frontiers of territories where his life *or freedom* [emphasis supplied] would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

On page 13 of the booklet appears the following passage :

*“[D]ifferent criteria must apply to those fleeing persecution and oppression from those applied to other migrants. Asylum seekers are extremely marginalized and vulnerable people. They have ceased to be under the protection of the governments of their own countries, and are unable to return home through fear of persecution. [Emphasis supplied.]”*

The two italicised passages are obviously based on the assumption that all asylum seekers are genuine and that there is no difference between “asylum seeker” and “refugee”. Furthermore, the first sentence draws an invalid distinction between asylum seekers and migrants. Frans Timmermans, vice-president of the European Commission, said in January 2016 that more than half of migrants, who at the time were arriving in Europe by sea at a rate of more than 2,300 per day, were motivated by “economic reasons” and not fleeing war or persecution. This view of the importance of economic factors was echoed by a recent United Nations High Commissioner for Refugees [report](#) with respect to migrants who have been travelling from other parts of the world to Libya in the hope of crossing the Mediterranean into Europe. It also needs to be borne in mind that most asylum applications and appeals in the UK are unsuccessful. The average rate of grant of asylum, humanitarian protection or discretionary leave in the last ten years (using [Home Office cohort analysis data](#)), including grants following appeal, was 40%. The main reason for the failure of a large number of applications is that the evidence given by the applicants/appellants is not credible, at either the application or appeal stage or both. On this subject you are invited to read briefing paper MW89 ([The Immigration Appeals System Revised - 2010 Version](#)) on this website on the working of the appeals system and in particular paragraph 17, which gives examples of the kind of contradictory or otherwise unbelievable stories which lead Home Office officials and immigration judges to dismiss applications and appeals because they conclude that the applicant/appellant is not telling the truth. Another common reason for dismissal is that even if the appellant is believed his evidence does not establish that he has a well-founded fear of persecution in his country of origin for one or other of the reasons set out in the Convention.

Asylum applications and appeals which are unsuccessful have been dismissed because of the failure of the applicants/appellants to persuade Home Office officials and immigration judges of the strength of their cases, even though the standard of proof required of a “reasonable degree of likelihood” is much more lenient than the normal civil burden of “balance of probabilities” and the applicant/appellant is often given the benefit of the doubt. The Archbishop of York, Dr John Sentamu, recently claimed publicly that many asylum applications were being unjustly dismissed, but he has not so far as we are aware supplied any evidence in support of this assertion. So what is the position of the unsuccessful asylum seeker? In the majority of cases he is an economic migrant who has tried to take advantage of the asylum system in the absence of any other available means of obtaining lawful entry into the United Kingdom. This conclusion is reinforced when one considers that most asylum seekers are young men, a disproportionate majority in relation to the make up of the populations of their countries of origin. Furthermore, many of them, particularly from China and the Indian sub-continent, have paid huge sums

of money to people traffickers to bring them to the UK.

There are of course other categories of economic migrants, including many people entering the UK lawfully with work permits or coming from other Member States of the European Union to take up employment here. There are also large numbers of illegal immigrants who are smuggled into the country as well as visitors, students and others who enter on short term visas and overstay. The position of unsuccessful asylum seekers is similar to that of the latter category. They are granted temporary admission while their applications/appeals are pending, but once they have exhausted their rights and are still unsuccessful they no longer have any lawful right to remain in the United Kingdom. They do not monopolise the category of economic migrant, but that remains nevertheless a reasonable designation for many of them.

The confusion of nomenclature is not helped by statements made by the then United Nations High Commissioner for Refugees, Antonio Guterres in the course of an interview, as reported on the Telegraph Online website on 30<sup>th</sup> December 2005. According to the report:

“Mr Guterres believed too many people confused refugees and asylum seekers on the one hand and would-be economic migrants on the other.”

If this report is correct, Mr Guterres is falling into the common error of conflating asylum seekers and refugees on the one hand and failing to appreciate that there is an overlap between asylum seekers, particularly unsuccessful ones, and economic migrants on the other.

Further statements attributed to Mr Guterres make it necessary to deal with the alternative meaning of “refugee”, i.e. a person fleeing civil war, natural disaster or other calamity. He makes the fair point that the largest numbers of refugees are close to the countries where their problems originated. As an example, many thousands of Tamils fled to India to escape the brutal civil war being waged between the Tamil Tigers and the government of Sri Lanka. In some cases they may have been escaping persecution as defined by the Convention but it is reasonable to assume in the majority of cases that they left Sri Lanka because of fears for their own personal safety or that of their families. Many were caught up in cross fire or had their properties or livelihoods destroyed by the fighting. The distinction is recognised by paragraph 164 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, a publication for which Mr Guterres has responsibility and which is relied on by officials and immigration judges dealing with asylum cases:

“Persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol.....They do, however, have the protection provided for in other international instruments, e.g. the Geneva Conventions of 1949...etc”

The United Kingdom government has long recognised that many people from countries in a state of turmoil for one reason or another, although they may not have a valid claim for asylum under the 1951 Convention, should not be compelled to return to their countries of origin because of general anarchy or lack of security there. Account is taken of this by allowing such people to remain for a limited period on grounds of humanitarian protection even though their claims have failed. In recent years persons from Liberia, Sri Lanka, Zimbabwe and Iraq have been granted limited leave to remain on this basis.

Harry Mitchell QC  
Honorary Legal Adviser  
Migration Watch  
1 August 2017