



The Loss of Family Reunification Rights in the International Protection Act, 2015

In 2015, Nasc broadly welcomed the introduction of the International Protection Act, which provided for the fundamental overhaul of Ireland's protection system. While the introduction of the Single Procedure is welcome, Nasc has grave concerns that the Act will fundamentally restrict the rights of refugees and persons eligible for subsidiary protection to apply for their family members to join them in Ireland (Family Reunification). While the introduction of the Single Procedure is welcome, the Act will fundamentally restrict the rights of refugees and persons eligible for subsidiary protection to apply for their family members to join them in Ireland (Family Reunification). The need for an inclusive Family Reunification scheme has never been more crucial as we are living through one of the greatest humanitarian crises since WWII.

The rationale for Family Reunification for refugees

Refugees have a privileged access to Family Reunification in recognition of the particular challenges faced by refugees and their families – refugees cannot return to their country of origin and are unable to visit their family. Oftentimes, their family may also face persecution either because of their connection to the refugee or because the conditions in their country are so dangerous. Nasc can attest that the refugees we meet daily in our legal clinics are often unable to really begin their lives in Ireland until they know that their families are safe and with them in Ireland. One refugee describing this said, "how can I eat, how can I sleep when my daughter has no food and cannot sleep because she dreams she will be taken by Daesh."

Family Reunification under the Refugee Act, 1996

Family Reunification for refugees is presently governed by section 18 of the Refugee Act, 1996. The 1996 Act gives adult refugees the right to family reunification with their spouse and minor children. Minor refugees have the right to family reunification with their parents.

In addition to these defined *rights*, the 1996 Act explicitly gives the Minister for Justice *discretion* to grant family reunification in respect of the children of the refugee who are over 18 years of age, and the refugee's grandparent, parent, brother, sister, grandchild, ward or guardian if the family member can be established to be "dependent on the refugee or ... suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully".¹

While limited, the discretion in the 1996 Act gives some flexibility to allow for the realities of refugee family life. Refugee families rarely fit neatly into preconceived ideas of a nuclear family (i.e. husband, wife and children under 18). According to UNHCR, "A broad definition of a family unit – what may be termed an extended family – is necessary to accommodate the peculiarities in any given refugee situation."²

¹ Refugee Act, 1996, s. 18.

² UN High Commissioner for Refugees (UNHCR), Protecting the Family: Challenges in Implementing Policy in the Resettlement Context, June 2001, available at: <http://www.refworld.org/docid/4ae9aca12.html>



Family Reunification under the International Protection Act, 2015

When the 2015 Act is commenced, the right to family reunification will be governed by section 56. This section significantly curtails the right of refugees to apply for family members and completely removes the discretion of the Minister for Justice to grant family reunification to particularly vulnerable extended family members and will lead to the break-up of family units.

Our concerns are:

1. The right to family reunification will be limited to nuclear family members (spouses and children for adult refugees and parents for minor refugees). In practice this means:
 - a. A minor refugee seeking to reunite with his/her parents will not be able to apply for other siblings who may also be minors, potentially forcing the parents to choose to leave their other children behind if they wish to avail of their family reunification rights.
 - b. An adult refugee whose family comprises of children both over and under 18 will not be able to apply for their young adult children forcing families to decide whether to split up the family unit or remain in danger in their countries.
 - c. Other very vulnerable family members including grandchildren, grandparents and parents will be completely excluded.
2. The right to apply for spouses will only extend to a marriage/civil partnership existing at the time the refugee sought asylum in Ireland. In practice this means:
 - a. Children of refugees will be separated from one parent if their parents are not married. In our experience it is common for couples to cohabit in 'religious marriages' or 'common-law type marriages' without these unions having civil legal status in their country of origin. Once the refugee is granted status, they can choose to have a legally recognised ceremony and then apply for family reunification for the whole family. This will no longer be possible.
 - b. Same-sex marriages or civil partnerships are illegal in many of the top refugee-producing countries. In fact, in the majority of such countries, same-sex sexual activity is illegal. It would be unrealistic to expect, in these circumstances, couples to have married or obtained a civil partnership prior to the sponsor fleeing their country of origin. This will mean that LGBT refugees will in reality be unable to realise their rights to family unity.

Access through immigration channels is not a viable solution

Families left behind by this Act will not be eligible for visas through other immigration channels. The Irish visa system is not set up to be part of the protection process and does not provide for family reunification as a matter of law. Additionally:

1. As a matter of practicality, it is common that refugee family members will not have travel documents and would be unable to make a visa application. Those living in refugee camps may only have access



to travel documents once a successful application has been made. This represents a barrier to even being able to apply for a visa.

2. Income thresholds and documentary requirements are normally far out of reach of refugees. By way of example, the income threshold to apply for one elderly parent is €60,000 after tax
3. The criteria for reunification with elderly parents is extremely onerous as the policy clearly states that “[t]he default position for such migration, given the financial risk to the State is a refusal”³.
4. Finally, we are aware that the Irish Embassies and consulates working in Abu Dhabi, Damascus, Lebanon and Abuja for example are already overwhelmed and cannot deal with the volume of applications they are receiving at the moment. Extremely straightforward EU Treaty Rights applications are already taking in excess of 12 months to be processed from these embassies. Visa cases involving the type of complexity typical in a family reunification application may take 24+ months to reach a decision. Family Reunification applications on the other hand are extremely complex. They require examination of the asylum application, verification of documents, research on the relevant customs and traditions existing in the refugee’s country of origin. Visa offices simply do not have the capacity to this work.

Experience from Nasc’s Clinics

Nasc has worked with hundreds of refugees and their families over the last 16 years. We know from that experience that the new family reunification provisions will devastate families. In particular, the removal of Ministerial discretion will result in some particularly difficult situations. Families that we have worked with and are now happy and safe in Ireland would never have the same opportunity under the new Act. We can see the individuals who would be impacted by these changes – the stepchild, the orphaned grandchildren, the seriously ill parent, the teenagers who have grown up and become adults while their father waited for 7 years to be recognised as a refugee. All of these people will be left behind by the 2015 Act.

Additionally, Nasc works with settled migrants and naturalised Irish Citizens whose families are trapped on war zones such as Syria or in surrounding territories. For these families and refugee families our current visa entry system is failing them and for many, they feel that Ireland is failing them. This is why Nasc is calling upon Minister to introduce a Humanitarian Visa Programme to will facilitate family reunification for vulnerable extended family members who are victims of war and conflict. A scheme of this nature will go some way to ameliorating the harshness of the new provisions under the Act.

³ Policy Document on Non EEA Family Reunification INIS December 2013 at para 18.3