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The British Red Cross Torn Apart campaign seeks to realise the potential of family reunion for more refugees, starting with adult children who only recently turned 18. This document explores how changes to family reunion could help more people at this time of crisis.

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#### Preface

Muhammed and Amal are from Daraa in Syria. Muhammed arrived in the UK in March 2014 and was granted refugee status in December 2014.

He immediately began the process of applying for family reunion – the process through which those granted refugee status and humanitarian protection in the UK can bring close family members to join them.

UK rules allow refugee parents, who have successfully claimed asylum here, to be reunited with their children. But not if their children are aged 18 or over.

Muhammed left Syria to protect his family. Yet because of restrictive family reunion rules, the former lawyer, his wife and their younger children are separated from the older children because their son and daughter are over 18.

"We are a very close family; our bonds are very special," Muhammed told us. "My little kids ask me every day: 'Baba, what happened with Kusai and Athar? When will they join us? When will we see them and talk to them?' I truly have no idea and don't know what to tell them."

Tragically, Muhammed's story is not unique. We know of many families divided because some of their children have just turned 18. We know of brothers and sisters with no other family divided by continents because refugee family reunion doesn't help them.

We see families struggling with a complex process and, since refugee family reunion was taken out of legal aid scope in April 2013<sup>1</sup>, denied legal assistance.

We see families undertaking dangerous journeys to embassies across the world because their sponsor – the person safe in the UK – cannot apply on their behalf.

Refugee family reunion is a safe and legal way for refugee families to be reunited. It has the potential to prevent dangerous journeys across seas into Europe and onwards to the UK, instead offering visas that allow people to travel to the UK safely and legally.

Most importantly, it is a tool to keep loved ones together, a precious right to see your mum, dad, son or daughter once again. Yet it could work so much better than it does now. More refugee families could rebuild their lives together, more young people alone in dangerous situations could be protected, and fewer people would have to face the difficult decision of boarding a leaky boat they have paid large amounts of money to risk everything for.

The British Red Cross Torn Apart campaign seeks to realise the potential of family reunion for more refugees, starting with adult children who only recently turned 18. This document explores how changes to family reunion could help more people at this time of crisis.

<sup>1.</sup> Refugee family reunion was taken out of legal aid scope in April 2013 in England and Wales. It remains in scope in Scotland.



## Introduction – what is refugee family reunion and why is it important?

#### Background summary

It is generally agreed, internationally, that families are a fundamental group unit 'entitled to protection by society and the state' (UNHCR, 2016). The Final Conference of Plenipotentiaries at the 1951 Convention describes 'the unity of the family, the natural and fundamental group unit of society, [as] an essential right of the refugee'.

Under the UK's family reunion policy, a spouse, partner or child under 18 can apply to join someone granted refugee status or humanitarian protection in the UK, providing they formed part of a family unit before the sponsor fled their country of origin.

Family unity also features in EU law under the 'Dublin III Regulation' – currently subject to reforms by the European Commission. Under Dublin, asylum seekers whose family members have already received international protection or are seeking asylum in another signatory state can be transferred to join those family members and have their asylum claim determined by that signatory state.<sup>2</sup>

If the transfer is to join someone with international protection, families do not have to have formed prior to leaving the country of origin. If the transfer is to join someone seeking protection, the family has to have been formed prior to leaving (Refugee Council, 2015).

Family members are defined as spouse (or unmarried partner where domestic legislation affords them equal treatment) and unmarried minors.<sup>3</sup> Unaccompanied minors with family

members, relatives or siblings (including parents or legal guardians, aunts, uncles and grandparents) legally present in another signatory state can be transferred to that state, subject to the transfer being in the child's best interests.

Analysis of the UK rules (adapted from 'Not So Straightforward', British Red Cross, Beswick, 2015)

Rules regarding refugee family reunion are elaborated in paragraphs 352A to 352Fl of part 11 of the immigration rules. Eligible applicants for family reunion, to be sponsored by a person granted refugee or humanitarian protection status within the UK, include married or civil partners, same-sex partners and children (aged 17 years and younger at the time of application). In cases of compelling and compassionate circumstances, otherwise ineligible applicants may be permitted to apply at the discretion of the Home Office.

All applications made under part 11 share the following requirements: a family life must exist prior to the flight of the refugee and applicants must not be excluded from 'protection by virtue of paragraph 334(iii) or (iv) of these Rules or article 1F of the [UN] Convention and Protocol relating to the Status of Refugees' should they apply for refugee status in their own right (19).

Unlike other parts of the immigration rules, under part 11 the sponsor does not have to satisfy financial requirements to apply for refugee family reunion.

<sup>3.</sup> Article 2, EU Dublin Regulation (EC 604/2013) eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604

#### Spouses and partners

The relationship between the sponsor in the UK and the partner abroad must begin prior to the sponsor's flight from their country of 'former habitual residence', and sponsor and partner must demonstrate an intention to live permanently together. Both sponsor and partner must also demonstrate that the relationship is 'subsisting'. Unmarried or same-sex partner applications are eligible only where sponsors achieved refugee status on or after 9 October 2006 and where the relationship is not consanguineous, i.e. with a blood relative.

#### Children

Child applicants must be under 18 with a parent who currently holds status within the UK. Children must not be 'leading an independent life', and must be unmarried or without a civil partner. Finally, they must not have 'formed an independent family unit'. Other conditions include that the child 'was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum'.

There are no qualifications on stepchildren or adopted children within part 11. However, SET10 guidance, used by entry clearance officers for cases brought forward under part 11, outlines parameters for adopted and de facto adopted children. Furthermore, the Home Office's Statement of Intent: Family Migration holds that refugees and persons with humanitarian protection 'will be able, in exceptional circumstances, to sponsor a child relative, e.g. the child of a dead or displaced brother or sister, and without having to meet the income threshold' (Home Office 2012, 33).

Part eight and appendix FM of the immigration rules address family members outside of part 11 and provide instructions on both indefinite leave to enter and indefinite leave to remain. While part 11 addresses children making applications for refugee family reunion, paragraphs 309A to 315 of part eight clarify definitions and requirements regarding adoption and de facto adoption. It is here, in particular paragraph 309A, wherein 'de facto adoption' is defined in such a way that prohibits refugees from claiming a parental relationship with their de facto adopted child. Appendix FM (sections EC-DR to D-ILRDR) of the immigration rules focuses on adult dependants seeking entry through a sponsoring refugee. This includes, for example, parents, grandparents and adult siblings, as well as children aged 18 years or older. Unlike part eight, there is no ambiguity as to whether these applicants fall under part 11, save for discretionary cases characterised by compelling and compassionate circumstances. As such, applications under appendix FM are conditional on financial requirements being satisfied. This includes being able to maintain and accommodate such dependants without recourse to public funds.

## How the British Red Cross helps refugee families

The British Red Cross helped 41 refugees obtain visas for 100 family members in 2015.

Our travel assistance programme helped 383 refugees reunite with **1,187** family members in the same year.

#### Refugee family reunion in the UK

The latest data from the Home Office shows a 40 per cent increase, since 2013, in the number of family reunion cases.

The refusal rate increased by **40** per cent compared to a year ago, while the number of grants has seen a modest increase. The use of discretion to grant family reunion outside of the immigration rules has been decreasing during the refugee crisis. **(Table 1)** 

The Government is currently revising their guidance to caseworkers to provide further direction on the types of cases that should benefit from a visa outside the immigration rules. The Red Cross

understands that this could include dependent adult sons or daughters who are not leading independent lives and who would be left in a dangerous situation with no other family support.

However, while the Government indicated an increase in grants outside of the rules in 2015, the Minister for Immigration has said that over the last three years just '65 visas have been granted outside the rules due to exceptional circumstances' – less than the number granted in 2011 alone.4 (Table 2)

Data on the use of the Dublin III Regulation, including the number of 'take charge' requests from different member states, are not routinely released by the Home Office. Parliamentary questions requesting this information have not received answers.

Table 1: Entry clearance visas (cases resolved of which: grants, refusals, w	vithdrawn/lapsed):
Family Other (2)	

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Year	Cases resolved	of which:					
		Granted	Refused	Withdran or lapsed			
2013	6,108	4,211	1,797	100			
2014	6,658	4,596	1,931	131			
2015	8,544	4,949	3,466	129			
Source: Immigration Statistics Oct - Dec 2015, Visas volume 1 table vi. 01, g							

Table 2							
Year	2011	2012	1013	2014	Total		
Number of applications	77	30	18	12	137		
granted outside the rules							

<sup>4.</sup> Baroness Hamwee, Written Question HL3957, House of Lords, November 2015.



## The refugee crisis and safe routes to protection

With nearly 60 million people forcibly displaced around the world (UNHCR), the need for safe and legal routes to protection is greater than at any point since the Second World War.

The 'crisis' is the cause of at least 15 conflicts erupting or reigniting over the last five years: eight in Africa (Côte d'Ivoire, Central African Republic, Libya, Mali, north-eastern Nigeria, Democratic Republic of Congo, South Sudan and in Burundi in 2016); three in the Middle East (Syria, Iraq and Yemen); one in Europe (Ukraine) and three in Asia (Kyrgyzstan, and in several areas of Myanmar and Pakistan). Many people are also fleeing persecution.

Since the onset of the refugee crisis a number of organisations have called for increased family reunion channels as one solution for those who have been forced to flee.

UNHCR, UNICEF and international NGOs, including the Red Cross and Red Crescent Movement (of which the British Red Cross is a member), have highlighted the potential for increased family unity to provide opportunities for protection for more people, in a swift and efficient way.

In addition to resettlement and other legal avenues (such as humanitarian visas), enhanced family reunion could and should play a large role in the world's response to the refugee crisis.

Despite the increased need for safe and legal avenues to protection, the 170,000 resettlement places pledged to the UNHCR by governments around the world remain the only significant policy change undertaken by European governments and other countries, notably Canada and the United States. Only a few governments from across the

world have devised alternative legal avenues, while family reunification has either remained stable or, in some instances, been restricted.

The Red Cross shares the view of UNHCR and others that enhanced family reunification could significantly improve the policy response of European and western governments to the crisis.

At a meeting in London at the beginning of 2016, Red Cross and Red Crescent National Societies from across Europe agreed a shared call on governments to create more safe and legal avenues to protection, with a focus on family reunion.

While the tragic events of 2015 brought the refugee crisis into a sharper focus across Europe, the historically high numbers of forcibly displaced people were not created by one conflict, nor by events in any one year.

For some time refugees have been struggling to find protection and sanctuary. For some time families have been displaced and then divided by bureaucracy and inflexible reunification programmes.

As governments across the world continue to develop responses to these problems, now is the time to expand reunification and build on a fundamental building block of society: the family.

## Obstacles to protection

#### Not safe

Refugees' families often have to cross borders to lodge a family reunion application at their nearest British embassy, sometimes putting their lives in peril.

Over half of applicants left behind and examined by a British Red Cross study in 2014 were at risk of violence, torture or harassment while applying for family reunion.

#### Not for everyone

Adult refugees have a legal right, under UK and international law, to be reunited with their children and partner, if they are still overseas. But children over 18 cannot join their parents in the UK, and refugee children are not allowed to sponsor their parents to join them in the UK.

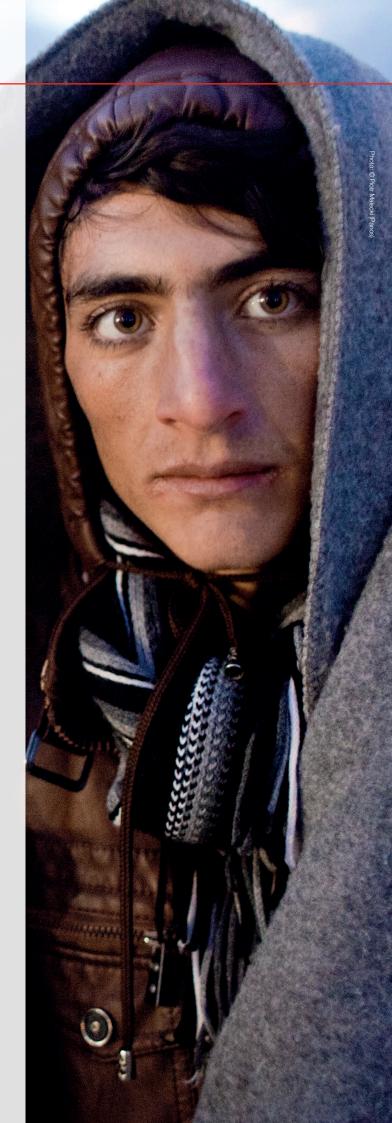
#### Not simple

Ninety-five per cent of people we asked who used our family reunion service thought it would be very difficult to apply for family reunion without legal support.

The Government should fund complex family reunion cases and make the application form easier to understand and complete.

#### Not affordable

Many refugees cannot afford to exercise this right because they cannot afford legal help. Since April 2013, legal aid funding has not been available for family reunion in England and Wales.



## Not safe – security and protection risks

Our research\* found that, of the 91 cases we examined in 2014, 10 per cent of family reunion applicants in third countries did not have legal status and were exposed to security and protection risks.

Fifty-one per cent of applicants were exposed to security risks.

Ninety-six per cent of applicants exposed to security risks were women and children.

Experience and threats of arrest and imprisonment were identified for Eritrean families in Ethiopia and Sudan who were there without legal status. However, these threats were also identified in cases of interpersonal conflict between sponsors, their families and the authorities in Middle Eastern and Asian countries. For many applicants in third countries without legal status, arrest and imprisonment were threats to their security. These threats were also identified in cases where applicants had to cross borders to make applications. In particular, Syrian applicants travelling to Lebanon cited arrest and imprisonment as a major concern. Indeed, one child applicant was imprisoned on his return to Syria following the submission of his application.

The drivers of violence were varied. In Pakistan, for example, Ahmadis were persecuted by other Muslims because of their religion and experienced various forms of targeted violence. Similarly, Somalis and Eritreans in Ethiopia, Kenya and Sudan experienced physical attacks due to their ethnicity and origin. Threats of violence were also observed where families of political activists were treated as proxies for their sponsoring family members based in the UK.

In order to apply for family reunion, the families of UK refugees need to physically lodge a visa application at the nearest British embassy. For families living in countries where there is no British embassy, this often means undertaking perilous journeys across borders and residing in third countries in difficult living conditions while their application is being processed. This can take, at best, eight to 12 weeks; at worst, and especially if they have to go to appeal, several months or even years.

Faced by these dangers and unable to exercise their rights to family reunion through existing formal processes, family members are more likely to embark on dangerous and illegal routes to reach the UK.

In an EU context, the inaccessibility of the Dublin III Regulation leaves vulnerable people in dangerous situations. Europol has said that at least 10,000 unaccompanied child refugees have disappeared after arriving in Europe, with warnings of criminal networks targeting vulnerable refugees.

<sup>\*</sup> Not So Straightforward', British Red Cross, Beswick, 2015)



## Not for everyone – a restrictive criteria

#### Young people who are over 18

Refugee family reunion rules allow parents who have successfully claimed asylum in the UK to reunite with their family members. But not if their children are 18 or over.

Many young people aged 18 years old and over are living with their parents when they are forced to flee their country. These young people are in their late teens or early twenties and do not have families of their own.

Current policy is keeping families apart. Unable to reunite through formal processes, young people are more likely to undertake dangerous journeys that can end in tragedy.

Allowing young people to reunite with their family members would provide the safe and legal routes the Government is so committed to.

#### Child refugees

There are provisions in place to allow unaccompanied children in the EU with relatives in other member states to reunite with extended family members as well as their parents (under Dublin III). However, unaccompanied children outside the EU can only reunite with their parents and not other close relatives in the UK.

As UNICEF have pointed out, 'these laws fail to recognise that after years of conflict, many of these children have been orphaned – but they may have grandparents, aunts and uncles, or adult brothers and sisters in the UK who can care for them'.

In addition, refugee children within the UK are unable to sponsor their parents living abroad to join them under refugee family reunion.

#### Families with young children in Europe

In Northern France the British Red Cross have identified a number of families with young children looking to reunite with family in the UK. However, while these young children are by definition vulnerable in these camps, these families do not have the right to family reunification under the Dublin Regulation unless spouses are separated from each other.

# Not simple – complex cases require legal advice

Ninety-five per cent of the people we asked who use our family reunion service thought it would be very difficult to apply for family reunion without legal support.

Yet, refugee family reunion was taken out of legal aid scope in April 2013 in England and Wales because it was considered a straightforward immigration matter that does not warrant the need for specialist legal support.

Our evidence demonstrates that many refugee family reunion cases are complex and often require the flexibility, expertise and experience of legal advisers to deal with them.

## For example, our report, *Not so straightforward*, found:

Thirty-three per cent of 91 refugee family reunion cases relied on witness statements and statutory declarations produced by legal advisers. A quarter featured an interview or documentation discrepancy.

- Documentation complexities arose frequently during the application process. Legal advisers play an essential role in identifying alternative evidence that can support an application, while caseworkers are pivotal in co-ordinating and obtaining such evidence.
- > Essential documentation may be unavailable for a variety of reasons, including the nature of flight and the environments from which sponsors and applicants originate. Legal advisers play a critical role in helping to explain this in cover letters to applications and in identifying alternative evidence.
- Some documentation, such as IDs or communications records via text messaging and email, require legal advisers to qualify what is sufficient and effective for an application.
- Applications involving adoption, de facto adoption, stepchildren and siblings are inherently complex. They require legal advice in determining the eligibility of the applications, support in documentation gathering, and reference to precedent and existing policy and guidance.

Under EU regulations, the Dublin III Regulation provides a mechanism for unaccompanied minors within the EU to reunite with relatives in the UK. However, this has often proved complex and inaccessible, despite family members – including unaccompanied minors – having a clear legal right to be reunited in other member states.

It has taken immense effort from law firms in the UK, and from organisations like Citizens UK, to secure 'take charge' requests for minors in Calais who have family in the UK.

## Not affordable – balancing debt and dependants

As previously mentioned, refugee family reunion was taken out of legal aid scope in 2013 in England and Wales. From the sample used in our research report, *Not so straightforward*, 10 per cent (nine) of family reunion sponsors were in low-wage employment and 77 per cent (70) received some kind of benefit. While the majority received Jobseeker's Allowance (JSA), the second highest benefit received was Employment Support Allowance.

As well as receiving limited income, 32 per cent of sponsors reported sending remittances to their families abroad for whom applications were being submitted. Remittances are a crucial, and often the only, means by which primary caretakers or heads of household can continue to support their families abroad. In the case of JSA, for example, this means dividing a limited income of around  $\mathfrak{L}70$  per week among, on average, 3.5 people. This includes paying for food and other essentials, housing and even schooling for children. It may also include phone services.

Crucially, refugee family reunion applications require that sponsors demonstrate a 'subsisting relationship' with their partners and that their children are not considered to live an 'independent life'. Financial support is one way of demonstrating this.

All of the people interviewed for *Not so straightforward* would have been eligible for legal aid. The costs are prohibitive and an obstacle to protection.

In addition, and as the UNHCR have noted, the UK Government does not finance travel assistance for people granted family reunion. Unlike people who are resettled, those who are granted family reunion visas must finance their own travel. If they cannot afford it, they have to find the money elsewhere. The British Red Cross provides travel assistance to as many families as we can, but the issuing of short-lived entry clearance for family reunion (30 days to enter the UK following granting of a visa) is putting additional financial strain on families. Some turn to loan sharks and amass significant debts.

## Case study

"After I got my papers, I sought work and I'm working now [...] Before I came to ask for assistance to reunite, I thought it was an easy thing. But it was not.

"I went back to my lawyer who helped me with refugee status and she said I didn't qualify for legal aid and more for refugee family reunion. My legal aid was for the application for [refugee] papers. She wanted £600 to help me with my family. I didn't have £600, I'm only working with agencies really. Sometimes I work, sometimes I don't. I didn't have £600.

"So I came back to the Red Cross and was introduced to my caseworker. I could never have made the application on my own. I'm not earning enough money to hire a lawyer. I wouldn't know where to start.

"I don't agree with this being straightforward. There's a legal piece to everything. Like applying for family reunion. It's a legal thing to get approval from government. They want to see an argument being put across.

"I've heard of people struggling until now in bringing their family over. It's difficult."

Adult male sponsor, Zimbabwe



### What needs to change

Families come in all shapes and sizes – so eligibility criteria should be more flexible

In addition to a more flexible response to complex cases – such as de-facto adoption – the overall eligibility criteria for family reunion in the UK immigration rules should be widened.

#### That should include:

- young people over-18 being able to reunite with parents they were living with at the time of flight<sup>5</sup>
- > child refugees in the UK being able to sponsor their parents and child refugees outside of Europe able to reunite with more family members
- > other people who were part of the family unit preflight, utilising evidence of what the UNHCR has called 'strong and continuous social, emotional or economic dependency between family members'.

The Dublin III Regulation should be used proactively by the UK and other member states to facilitate family reunion. In addition to speeding up routes to protection for eligible unaccompanied minors and separated spouses, the discretionary clauses of Dublin should be utilised to allow for families with young children in camps to reunite with other adult family members. This would speed-up the process of relocation within Europe, which is currently not functioning.

## This is a complex process where the sponsor is a refugee – legal support should be provided

Refugee family reunion was taken out of legal aid scope because it was considered a straightforward immigration matter that does not warrant the need for specialist legal support. However, our evidence demonstrates that many refugee family reunion cases are complex and often require the flexibility, expertise and experience of legal advisors to deal with them.

For example, our report, *Not so straightforward*, found that 33 per cent of 91 refugee family reunion cases relied on witness statements and statutory declarations produced by legal advisors and a quarter featured an interview or documentation discrepancy.

Many family members, primarily women and children, are living in precarious situations abroad and are exposed to security risks. These risks include abduction, arrest or imprisonment, domestic violence, forced recruitment and violence. In this regard, refugee family reunion is more closely aligned with asylum, which remains in scope, than immigration. Faced by these dangers and unable to exercise their rights to family reunion through existing formal processes, family members are more likely to embark on dangerous and illegal routes to reach the UK.

Not having the cash should not be a barrier to protection for refugee families

<sup>5.</sup> When referring to 'young people' we mean children up to the age of 25 who were living with their parents at the time they were forced to flee their home country. Both UK legislation and international definitions consider 'young people' to include those up to the age of 24-25. This is the definition used for former looked-after children in the Children Act 1989 and the Children and Young Persons Act 2008. Further, the UN also defines 'youth' as 15-24-year-olds.

We concur with UNHCR that the UK Government could support financial aid for refugee families granted reunification. As one of the few safe and legal routes into the UK, it would be appropriate for the UK Government to treat family reunion less as a migration issue and more as a protection issue.

Relatives are given just 30 days to enter the UK following granting of a visa. The short entry clearance periods currently issued for family reunion should be changed, with far longer periods of either entry or entry clearance in-line with the sponsor's leave in the UK. A longer period would allow more time to make the considerable financial and logistical arrangements needed to organise the movement of family members from one country to another

When families are reunited in the UK, systems must be in place to prevent destitution.

## Family members should not be placed in danger to submit their applications

Through our refugee family reunion services, the British Red Cross often sees people facing serious risks to their safety.

Family members left in countries with no British embassy have to travel across borders to lodge family reunion applications. This can present serious risks to the applicant.

For example, one 17 year-old Syrian boy was abducted and tortured for 4 days on his way to lodging his family reunion application in Turkey.

Once in a third country, families also face protection risks, especially if they lack status. In our research, Not so straightforward, applicants reported fear of arrest, imprisonment and repatriation. In some cases, in particular Eritreans and Somalis in Kenya, Ethiopia and Sudan, applicants feared persecution. Applicants potentially faced harsh fines and even imprisonment as a punishment.

All in all, 51% of all applicants, of whom 96% were women and children (whether they were in a third country or not) faced security risks while applying for family reunion.

Sponsors should be able to apply for family reunion on behalf of their family members. Alternatively, the UK government could introduce a process of remote 'pre-approval' for people applying to join a family sponsor in the UK – removing the need to travel to hand in papers. This could potentially be done through online or phone interviews and paper-based checks.

## Ask for more information, rather than rejecting a family

Applicants are not currently being given the opportunity to submit further evidence for their application if their supporting documentation is not sufficient. Instead they are systematically refused, forced into lengthy appeals processes in often very precarious living conditions (often in a third country if they come from Syria or Eritrea).

Sponsors and applicants (or their representatives) should be contacted by entry clearance officers if their supporting documentation is not sufficient to grant family reunion visas, so that they can be given the opportunity to provide more information before their case is definitively refused. This would save the Government money on appeals and prevent families being left in precarious and often vulnerable situations while the appeals procedure takes place.



## Summary of recommendations:

- 1 Widen criteria to reunite families with their children aged 18 years and over.
- 2 Proactively utilise Dublin Regulation to help separated children and spouses.
- 3 Provide legal support to refugee sponsors.
- 4 Ensure that lack of cash is not allowed to be a barrier to protection.
- 5 Offer safer ways to apply for family reunion.
- 6 Help families reunite by discussing problems rather than rejecting applications.



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