



Case Resolution Directorate Paragraph 395c Training

August 09



DOMESTICS

- **Emergency procedures**
- **No smoking policy**
- **Mobiles switched to silent**
- **Toilets**
- **Coffee break**

Aims & Objectives of the Workshop

To ensure Caseworkers and Caseowners:

- understand how CRD plans to conclude cases;
- understand the context of paragraph 395C;
- understand why paragraph 395C is considered;
- can take a holistic ‘end to end’ approach to casework;
- understand the factors that are relevant to a consideration under paragraph 395C;
- can consider whether removal is appropriate and make a reasoned decision based on paragraph 395C.

Background to Paragraph 395C

- Case conclusion
- End to end casework

Question

- **What are the reasons why someone should remain in the UK?**

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- **What are the reasons why we would not want someone to remain in the UK?**

Paragraph 395C – Administrative Removal Cases

Paragraph 395C of the Immigration Rules states that:

“Before a decision to remove under section 10 is given, regard will be had to all the relevant factors known to the Secretary of State, including:

- i. age;
- ii. length of residence in the United Kingdom;
- iii. strength of connections with the United Kingdom;
- iv. personal history, including character, conduct and employment record;
- v. domestic circumstances;
- vi. previous criminal record and the nature of any offence of which the person has been convicted;
- vii. compassionate circumstances;
- viii. any representations received on the person’s behalf.

In the case of family members, the factors listed in paragraphs 365-368 must also be taken into account.”

(Of particular relevance in family cases is paragraph 367(ii), which states that in the case of a child of school age, the effect of removal on his education is to be taken into account).

Paragraph 395C Factors - AGE

Applicants under 18 years of age

- Non-removal of unaccompanied children under 18

Dependants under 18

- Where delay has contributed to a period of residence of 4-6 years (or 3 years in certain circumstances)

Paragraph 395C Factors – LENGTH OF RESIDENCE IN THE UK

Long Residence under the Immigration Rules

- 10 years continuous lawful residence
- 14 years continuous residence

Paragraph 395C Factors – LENGTH OF RESIDENCE IN THE UK (Cont.)

Caseowners should place weight on significant delay in cases where:

- Initial applications or ‘in-time’ applications for further leave have been outstanding for 3-5 years
- Delay has contributed to a period of residence of 4-6 years for ‘family’ cases (or 3 years following an individual assessment of the prospect of enforcing removal and where other factors apply)
- Delay has contributed to residence of 6-8 years for all other cases (4-6 years *may* be considered significant following an individual assessment of the prospect of enforcing removal and where other factors apply, but a more usual scenario would be 6-8 years)

Paragraph 395C Factors – LENGTH OF RESIDENCE IN THE UK (Cont.)

‘Individual prospect of enforcing removal’ involves assessing:

- **Restrictions on removals to the applicant’s country of origin**
- **Significant barriers to redocumentation**
- **Specific removal issues relating to restrictions on whether females or families with children under the age of 18 are currently being removed to the country of origin.**

Paragraph 395C Factors – LENGTH OF RESIDENCE IN THE UK (Cont.)

**Residence accrued due to non-compliance will weigh
against the individual**

Paragraph 395C Factors - STRENGTH OF CONNECTIONS WITH THE UK

Marriage/relationship with British citizen or person settled in the UK likely to be significant

Family in country of origin will be weighed against connections in UK

Property, business and charitable activities in the UK can be supporting factors

Paragraph 395C Factors - PERSONAL HISTORY

Leave should not be granted following consideration of paragraph 395C if:

- The individual qualifies for deportation;**
- The individual has been convicted of a particularly serious crime involving violence, a sexual offence, offences against children or a serious drug offence;**
- The individual qualifies for exclusion;**
- It is considered undesirable to permit the individual to remain in the UK in light of their character, conduct or associations, or the fact that they represent a threat to national security.**

Paragraph 395C Factors - PERSONAL HISTORY (CONT.)

Evasion of enforcement action will weigh against the individual:

- Absconding
- Non-compliance
- Failure to report
- Failure to co-operate

Paragraph 395C Factors - DOMESTIC CIRCUMSTANCES

Dependent children:

- **Adapted to life/Formative years in the UK**
- **Detrimental effect on education**

Other UK relationships:

- **Physical, financial or emotional dependence**

Paragraph 395C Factors - CRIMINAL RECORD

Criminal convictions below the deportation threshold:

- Can be considered using paragraph 395C
- Only unspent convictions considered
- Discredits applicant's character and conduct
- Evidence that demonstrates a person is no longer a danger to society should be taken into account

Criminal convictions above the deportation threshold:

- Refer to Caseowner – Criminal Casework process

Serious non-political crimes before coming to the UK:

- Refer to Caseowner – Exclusion process

Paragraph 395C Factors - COMPASSIONATE CIRCUMSTANCES

Medical conditions

Psychiatric treatment or counselling

- Severity of the condition
- Reliance on individuals settled in UK
- Limited treatment or support available in the country of origin
- Duration of treatment
- Supporting medical evidence required

Paragraph 395C Factors - REPRESENTATIONS

All representations should be carefully considered and given due weight

Paragraph 395C Factors - OTHER RELEVANT FACTORS

Delay

- Significant factor in CRD cases
- Delay often enables people to adapt to life in the UK and establish strong connections
- Delay may make a procedural requirement to apply for entry clearance inequitable

Administrative error

- Commonly causes delay
- Particularly relevant where the error causes unfairness

Group Case Study

Mr G arrived in the UK in December 2002 with his wife. He claimed asylum on the basis that he feared to return to his country of origin, Eritrea. He was refused asylum in May 2007.

There is no known reason for the delay in deciding his case other than that the file was in a backlog queue. Removal action has not been taken as removals to Eritrea are currently limited.

Mr G's wife gave birth to a child in the UK in June 2004, and the child is now attending primary school.

There are a number of medical reports from Mr G's GP and psychiatrist confirming that he is receiving counselling for PTSD, which is expected to continue for the foreseeable future. According to the Country Report for Eritrea, some treatment is available for mental disorders, however it is limited.

Mr and Mrs G have no criminal convictions, and have complied with reporting restrictions.

Case Studies

Case Studies

Who is there to help?

- **Caseworkers:**
 - your colleagues
 - your own Caseowner
- **Caseowners**
 - Technical Specialist
 - Senior Caseworkers

Any questions?

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