



# Two years of litigation

Representation of clients before the Asylum and Immigration Chamber



June 2022  
THE REFUGEE AND  
MIGRANT CENTRE

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*(Names for case studies throughout this report have been changed for confidentiality)*

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The Refugee and Migrant Centre (RMC) is an award winning charity founded in 1999. It has offices in Wolverhampton, Walsall and Birmingham and works with clients from across the Black Country and Birmingham.



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Special thanks are offered to **Shari Brown** for her invaluable feedback and to **Craig Hands** for his essential contribution to the final edit.

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We are grateful to our Senior Management Team for their support and their encouragement to pursue these cases.

# Background

The Refugee and Migrant Centre (RMC) is accredited under the Office of the Immigration Services Commissioner (OISC) to provide immigration advice and representation to asylum seekers, refugees, EU migrants, undocumented people and those with uncertain immigration status.

Since April 2020, RMC has been authorised at Level 3 of OISC, which has allowed us to represent clients before the First-tier and Upper Tribunal (Immigration and Asylum Chamber).

RMC currently has a team of thirty-seven OISC-regulated caseworkers with four of them working on appeals and representing cases in court. Due to the nature of the organisation's funding, there are limited resources for this type of work. None of our caseworkers are working on immigration cases full-time, which results in them having a small caseload of appeal cases to ensure high quality of the advice and representation provided.

Committed to assisting refugees and migrants through crisis and disadvantage, our work primarily focuses on applications that fall outside the scope of legal aid funding. Without our help, applicants would need to either submit applications with no legal representation or seek paid legal representation.

After the introduction of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 most immigration matters were removed from the scope of legal aid.

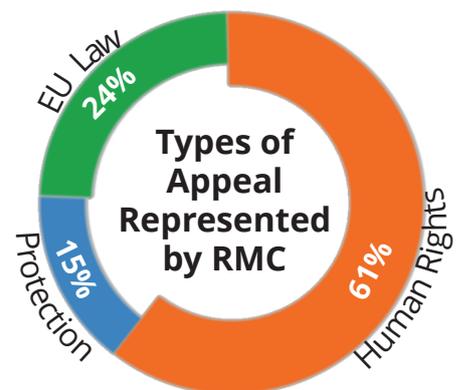
Currently, the following issues remain in-scope:

- Protection claims;
- Trafficking cases (where a positive 'reasonable grounds' or 'conclusive grounds' decision has been made by the Home Office);
- Applications for Indefinite Leave to Remain for Victims of Domestic Violence;
- Immigration Detention cases;
- Immigration and nationality applications for Separated Children.

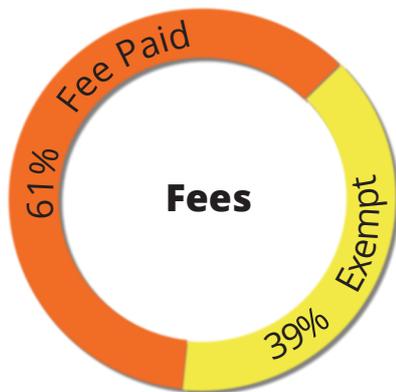
Importantly, applications that concern issues around respect of the right to family and private life under Article 8 of the European Convention on Human Rights (ECHR) are not covered by legal aid despite the fact that in many cases applicants are not in a position to represent themselves but also are not able to afford to pay for legal fees. These applications constitute the majority of our work.

We are also offering representation on applications relating to protection claims where accessing legal aid in practice is very difficult, such as further submissions following a refused asylum claim.

Finally, over the last three years, we have assisted thousands of European Economic Area (EEA) nationals in securing their right to remain in the UK by applying to the European Union (EU) Settlement Scheme, which includes representation at the appeal stage following refusals of their applications.



The detrimental effect of the absence of legal aid for these applications is exacerbated at the appeal stage where professional legal advice and representation is often essential for a successful outcome and usually comes with a fee, unaffordable to many. Applicants and sponsors that cannot afford these fees end up either not appealing against harsh and often unlawful decisions or attending the court unrepresented and unable to navigate a complex legal procedure.



The vulnerability of our clients is also apparent in the fact that a significant percentage of our clients are exempt from paying the appeal fee of £140 as it is accepted that they could not pay for it. This is either because they submitted a successful fee waiver request as part of their application for leave to remain as it was established they could not afford the application fees, because they are in receipt of asylum support provided by the Home Office which includes accommodation and financial subsistence due to destitution, or because they applied for a remission of the fees

providing evidence of their financial situation which was accepted.

RMC is now able to offer high quality advice and representation to our clients in order to challenge refusals, which has, in the majority of cases, resulted in overturning or withdrawal of these decisions.

In the last two years, we have assisted 60 clients with their appeals which range from refused family reunion and entry clearance applications to refused human rights applications, further submissions and refused applications under the EU Settlement Scheme.

We have completed 32 appeals before the First-tier Tribunal and have been successful in 21 of them which has resulted in the appellants being granted leave to enter or remain.

Out of the 60 clients we have represented, 9 terminated their cases before they reached the appeal stage and decided to submit fresh applications, on which we are representing them as well. There have also been 3 cases which we decided to refer to other solicitors as they required specialist knowledge and expertise. There are currently 17 appeals pending.



We have also had 10 appeals dismissed. After a dismissal of an appeal, the Appellant is given the right to request permission to appeal before the Upper Tribunal if an error of law is identified. We have so far received permission to appeal for 4 of them and we are waiting for the cases to be listed for a hearing.

# Areas of work

## Human Rights

The majority of our immigration work at RMC involves human rights claims, and mainly applications that concern the right to a family and private life under Article 8 of the European Convention on Human Rights (ECHR). It concerns partners and children of settled people, parents of British children, families of refugees, to name a few.

While the majority of human rights applications that RMC submits are successful, we occasionally receive refusals, either because of the complex issues raised or due to errors in the decision letters.

Since April 2020, we have lodged 36 appeals on human rights grounds and have received a decision on 22 of those, while 3 were referred to other representatives before the hearing date.

We have successfully secured leave to enter or remain for 16 of the clients we represented before the First-tier Tribunal.

Migrants and refugees often arrive alone in the UK seeking protection or greater immigration security and wanting to build a better life for themselves and their family. They leave family behind in their home countries, in the hope that once they settle in the UK, they will be able to have them join them in the UK.

## Fatima & Khaled's Story

Fatima, an Afghan national, had been living in the UK for 9 years when she came to our office to ask for help in extending her leave to remain in the UK. She and her two-year-old son, Mohamed, were destitute and at risk of homelessness, while Khaled had been diagnosed with a rare condition that requires constant medical care. Fatima's leave was based on her father being a British Citizen. Fatima was living with her family and they were supporting her financially, until she announced that she was pregnant though not married to the father of the child. This is considered to bring shame on the family by her traditional father, who disowned her and asked her to leave the house and was refusing to acknowledge her or her child.

With no option to extend her leave sponsored by her father any longer, we advised that any application she made would have to show exceptional circumstances and could be refused due to the complexity of the issues. RMC submitted applications for leave for Fatima and Khaled which were refused. We continued to support Fatima and her son through the appeal stage, where we argued that Fatima would be unable to return to Afghanistan because as a single mother with a child out of wedlock she would face discrimination and mistreatment, while her son would be unable to access medical treatment essential for his condition which could shorten his life expectancy and quality of life.

The Home Office reviewed the case based on our arguments and evidence and withdrew the refusal without the case even reaching the Court.

Fatima and Khaled were granted leave to remain with access to public funds. We have since then helped Fatima claim benefits and have helped her apply for social housing to enable her to support herself and her son independently and avoid destitution.

Reuniting with one's family is one of the most important steps towards integration in the destination country. Having as our mission to remove barriers to integration of migrants and refugees, RMC assists our clients in applying for their family to enter the UK.

Given the barriers to obtaining official documents from certain countries and the vulnerability and destitution that some of our clients face, providing evidence in these applications can prove difficult, which results in applications being refused by the Home Office.

With some entry clearance applications costing approximately £3,500 in fees, securing additional funds for representation at the appeal stage is impossible for some clients.

In the last two years, we have represented 17 appeals on refusals of out-of-country applications. We have been successful in 9 of these and 1 terminated representation before the hearing date, 3 were dismissed but permission to appeal has been requested and 4 are currently pending.

## Yonas & Yordanos' story

Yonas, an Eritrean national and recognised refugee in the UK, approached our office in 2020 requesting help in applying for his minor niece Yordanos to join him in the UK.

Yordanos had been living with Yonas and his family in Eritrea after both her parents died in 2007. When Yonas' left Eritrea, all the family fled to Ethiopia.

After receiving refugee status in the UK, Yonas applied for his wife, children and niece to join him in the UK. While his wife's and children's applications were successful, Yordanos' application was refused. She was left alone in Ethiopia in the care of a family friend, separated from the people she had considered family for the previous 12 years. At the time, she was 17 years old.

RMC represented Yordanos in her appeal, which was successful in July 2021. After several months, Yordanos was issued with a visa to enable her to travel to the UK, but Ethiopian authorities require all people leaving to have a travel document, which she could not obtain as the office issuing these documents was closed due to the pandemic. Yordanos' visa expired and she was unable to travel. RMC liaised with the Home Office to re-issue the visa. Yordanos finally arrived in the UK in May 2022, and she is now reunited with her family.

## EU Law

After the UK's exit from the European Union, a Withdrawal Agreement was signed between the EU and the UK protecting the rights of EEA nationals in the UK and of British Citizens in EU countries. This Agreement was transposed to domestic law through Appendix EU of the Immigration Rules and the introduction of the EU Settlement Scheme allowed EEA nationals living in the UK before December 2020 to apply and be granted leave to remain.

The layout of Appendix EU and its definitions is one of the most complex legal constructions, which has been pointed out by several practitioners, including the Immigration Law Practitioners Association (ILPA) who in their [Briefing on Appendix EU](#) mentioned 'some of the definitions are unnecessarily complex and the degree of cross-referencing required is likely to make the Appendix difficult to use even for experienced practitioners'.

This has resulted in the emergence of various areas of litigation. At RMC we have submitted 14 appeals under EUSS with 4 of them still pending and 4 having been withdrawn by the clients who decided to submit fresh applications. We have completed 5 appeals at the First-tier Tribunal. 3 of them have been successful and we have requested permission to appeal the dismissals of the other 2.

As part of our work to help EEA nationals and their family members to secure their right to remain in the UK, we have been involved in the litigation of complex cases, with the most notable so far being cases concerning Zambrano carers and cases on 'durable partners' of EEA nationals.

### ***Durable partners***

Historically, unmarried partners of EU nationals, who under EU law are called 'durable partners', were able to apply and be issued with a Biometric Residence Card to prove their status as family members of EU nationals if they could prove that they were in a 'durable relationship'.

Durable partners were included in the protection afforded by the Withdrawal Agreement but the definition that was included in Appendix EU required them to have been issued with a Biometric Residence Card under EU law, which was repealed in the UK after December 2020.

This, in practice, means that any unmarried partner in the UK without this document -unobtainable after December 2020- cannot apply under

### Oluwakemi's story

Oluwakemi is a Nigerian national who arrived in the UK in 2019 as a visitor. Soon after her arrival, she met Samuel, an Italian national, and started a relationship. They began living together soon after and in May 2021 they had their first child, their son John.

Oluwakemi applied for pre-settled status under the EU Settlement Scheme as a 'durable partner' of an EU citizen.

Her application was refused because she did not have the 'relevant document' required by law and which is now impossible to obtain. The alternative being to leave the country for more than 6 months and apply for a family permit.

We represented Oluwakemi at her appeal and argued that asking her to leave the country would result in the family's separation for at least a year which would be unreasonable and disproportionate given the circumstances.

Our appeal was successful, however, the Home Office has applied for permission to appeal against this decision. We will be there to represent Oluwakemi if permission is granted.

the EU Settlement Scheme. The only alternative under the law is to return to the country of their nationality for more than 6 months and then apply to re-enter the UK with a family permit, the document available to family members joining EU nationals from abroad. This has led to many decisions being challenged on various points of law.

### **Zambrano carers**

Under EU law, a 'Zambrano carer' is a non-EEA national, parent or carer of a dependent British citizen, where the British citizen would be unable to reside in the UK if the carer had to leave. Until the introduction of Appendix EU, Zambrano carers, parents of British Citizens, were able to have their right to reside recognised under EU law by applying for a Biometric Residence Card at the cost of £65 compared to thousands of pounds in fees to apply for leave as parents of British children under domestic law. The only downside was that this did not lead to settlement which resulted in many of these parents applying under domestic law anyway in the end.

With the introduction of the EU Settlement Scheme, Zambrano carers were given a route to settlement, but with the caveat that anyone that has leave to remain under any other part of the law (including as a parent) would not be eligible to apply.

The lawfulness of this part of the law was challenged at the High Court and Court of Appeal on the [Akinsanya](#) case. In a complex decision, handed down on 25/01/2022 the Court of Appeal found that the Secretary of State needs to reconsider the law relating to Zambrano carers.

The Secretary of State has just published updated guidance in relation to the points raised by the Court of Appeal and has decided that the definition of Zambrano carers should remain the same.

RMC has supported several Zambrano carers in anticipation of the changes and we will continue working alongside them to understand the impact of the changes and any other possible legal challenges available to

## Aala's story

Aala is an Iraqi national who fled her country and came to the UK in 2015 to avoid forced marriage arranged by her family, who threatened to kill her if she objected. She claimed asylum and it was refused.

Aala spent years in the UK, during which she started attending a Christian church and finally decided to convert to Christianity. After years of trying to regularise her status in the UK, in 2019, Aala submitted new evidence to the Home Office on her religion and the persecution she would face due to her conversion and potential honour killings by her family.

Aala's fresh claim was refused but she was given the right to appeal.

RMC represented Aala in her appeal which was successful. The judge accepted that she should be recognised as a refugee because she is a potential victim of an 'honour' crime and practising her religion would put her at risk.

Aala is now waiting for her biometric residence permit to be able, for the first time after seven years in the UK, to live in the UK legally.

## Protection (asylum)

Initial asylum claims fall under the legal aid scope and as such we have taken a conscious decision to not specialise in this area as applicants can find legal representation for free.

We do, however, occasionally, represent refused asylum seekers who wish to submit further evidence to the Home Office and have their initial (refused) claim re-opened and re-examined.

While this work is in-scope for legal aid, in practice, representatives funded under legal aid are rarely able to take on these cases, which results in cases being unrepresented.

Refused asylum seekers who approach us are often facing destitution and homelessness as they cannot access financial support and accommodation because they are not eligible for public funds nor asylum support. We consider this line of work essential as these are often complex legal cases that require representation, which cannot be obtained due to the scarcity of legal aid and the dire financial situation of applicants.

Further submissions can be refused altogether with no right of appeal or can be found to constitute a fresh claim that, if refused, carries the right of appeal.

In these two years, we have assisted 10 refused asylum seekers with their appeals, however, only 5 of them have reached the court as the other 5 were withdrawn by the applicants who have now submitted another claim. Out of the 5 we have represented, we have been successful in 2 and another 1 is still pending. 2 have been dismissed and permission to appeal has been requested for both and has already been granted for 1 of them.

## Conclusion

May 2022, marks the completion of two years of RMC's work on advocacy and representation before the First-tier and Upper Tribunal.

Despite our limited capacity and resources and with no dedicated funding for this work, we have secured status for 20 of our clients and have managed to be involved in appeals concerning important legal issues.

With currently 17 appeals pending before the First-tier Tribunal and 4 given permission for appeal at the Upper Tribunal, our aim is to increase our impact and support some of the most vulnerable individuals in this area of our work.



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