

# Seeking Refuge?

## A handbook for asylum-seeking women



**2nd edition**

Rights of Women aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Rights of Women's areas of expertise includes all forms of violence against women (including domestic and sexual violence), family, immigration and asylum law and we frequently run conferences and training on these issues.

ISBN 13: 978-0-9510879-9-2

Rights of Women  
52-54 Featherstone Street  
London  
EC1Y 8RT

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Disclaimer: This guide provides a basic overview of the laws, policies and procedures for the asylum process in the UK. This guide is for information purposes only and is not legal advice. If you are affected by any of the issues raised by this book you should seek legal advice as soon as you can. The information contained in this book is correct to April 2012. The law may have changed since then. Rights of Women cannot accept responsibility for any reliance placed on the legal information presented in this guide.

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# Seeking Refuge?

## A handbook for asylum-seeking women

### Foreword

Rights of Women has been providing specialist legal advice for women for over 35 years. We understand how important it is for women to know and understand the law, and their legal rights, so that they can protect themselves and their families from violence and persecution. We have written this book for asylum-seeking women because we recognise that they are particularly vulnerable. They often find it hard to find reliable and accessible legal information on asylum law and on how their claim will be dealt with in the UK.

Since 2009, when *Seeking Refuge?* was first published, immigration and asylum law has become even more complex, with new restrictions on rights and procedures imposed by the Government at the same time as new legal rights emerge from the UK Supreme Court and the Courts of the European Union. The Government's decision to withdraw immigration law from the scope of legal aid create real threats to the availability of specialist legal advice and representation for women seeking asylum, as well as removing legal aid altogether from many women with complex immigration cases which do not fit within the legal definition of an asylum claim.

Our aim is that this book will provide a clear practical starting-point for asylum-seeking women and organisations providing support to them, at a time when legal advice and representation are becoming increasingly hard to find. We hope that it will help women, and those who support them, understand the law and procedures involved in seeking protection in the UK and help them to live lives free from violence.

**Emma Scott, Director, Rights of Women**

**Rights of Women dedicates this book to women all over the world who struggle to secure freedom, equality, justice, and a future safe from violence.**



## Acknowledgements

Rights of Women would like to thank Sheona York, Legal Officer at Rights of Women, for updating this book. We would also like to thank Ruth Heatley, asylum and immigration solicitor at Greater Manchester Immigration Aid Unit, and Gerry Hickey, Legal Adviser at the Asylum Support Appeals Project, for their invaluable contributions. This book would not be as practical and informative as it is without their time and expertise.

Rights of Women would like to thank all the staff who supported the writing of this book, particularly Hannah Camplin and Ruth Tweedale for their support and comments and Emma Scott for making it all happen. Rights of Women would also like to thank our volunteers Hope Robinson and Natasha Bested, who gave their valuable time and energy. Finally, we would like to thank Comic Relief, for funding and supporting this book, and our work with asylum-seeking women and survivors of sexual violence.

Rights of Women would like to thank Adele, Antoinette, Berhan, Denise, Dominique, Elahe, Esther, Fatima, Hannah, Helen, Idrisha, Madeleine, Marchu, Nigisti, Shahiro and Sunia from Women for Refugee Women for taking time to discuss the book and for sharing their own experiences, to ensure that **Seeking Refuge** meets the needs of asylum-seeking women and those supporting them. These are some of their comments about their experiences of the asylum process and the handbook. This legal handbook has been written with their comments in mind.

**“The most important thing is to keep calm. To try to keep calm. We are scared and confused, and forget things, and it is frustrating trying to tell our stories. The interpreters always change things. We are asked to get evidence, but what evidence can we get? We can’t bring documents with us. It is important to keep calm, to think before answering questions, and tell the truth.”**

**“We think this book will help women.”**

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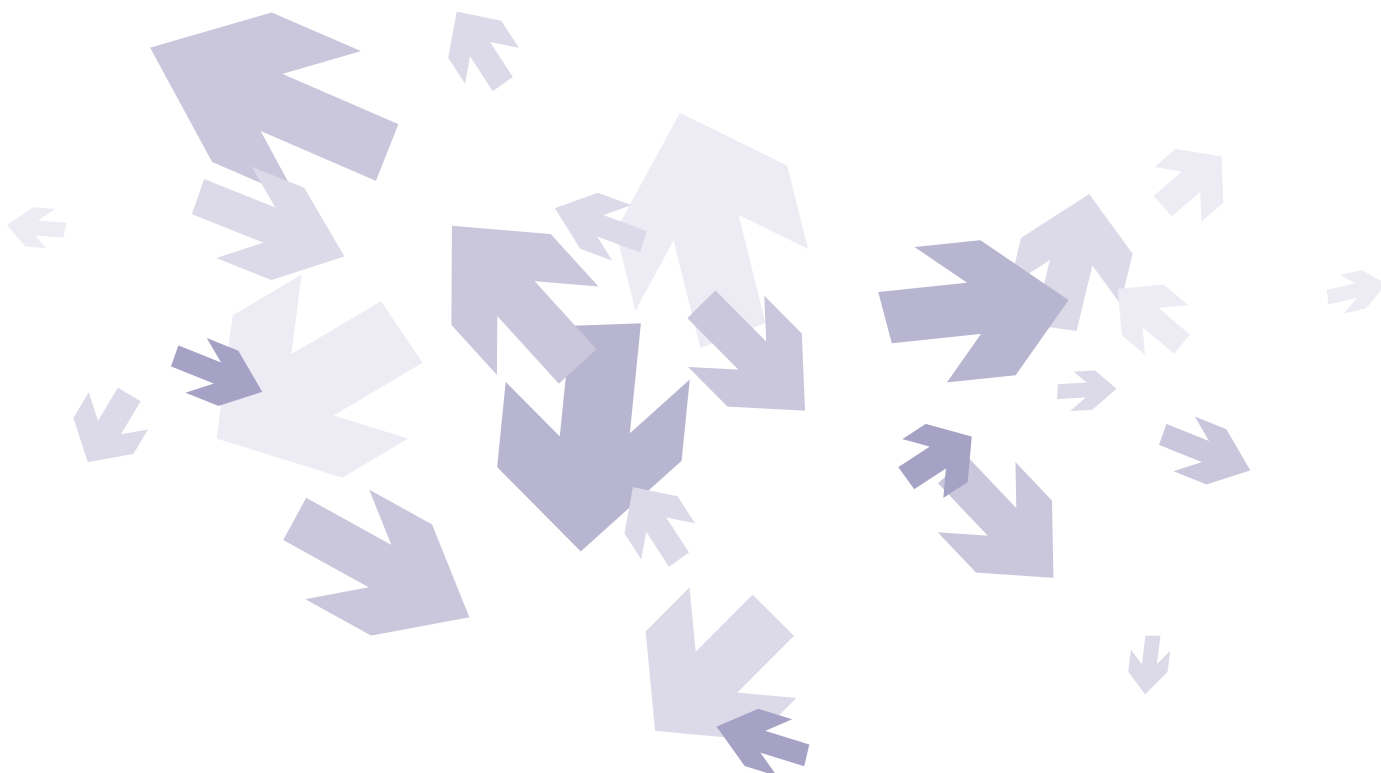
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# How this book works and who it is for



We have written this book for asylum-seeking and refugee women and the organisations that support them in the UK. We wrote it because women who contacted us for legal advice and support did not understand how the asylum process worked and what their rights were.

***Seeking Refuge?*** explains the law on international protection, how asylum claims are dealt with in the UK, and what support is available during the process. We hope that if you are an asylum-seeking woman and you read this book, you will understand how and why decisions on your case are made and feel more confident when you discuss your case. If you work with asylum-seeking women, we hope that this book will give you the information you need to support them. The book is divided into 12 chapters. You do not need to read the whole book to find the information you need on a specific issue, but the book will *signpost you* to the chapter where important legal concepts are explained.

- Chapter 1 explains the **law** that determines who is entitled to international protection in the UK. It explains the key provisions of the Refugee Convention and the European Convention on Human Rights.
- Chapters 2, 3, 4 and 5 explain **how you make an asylum claim**, how it is dealt with and the main problems asylum-seekers face in getting their claim accepted.
- Chapter 6 explains the current position on **older cases** following the closure of the Case Resolution Directorate (which dealt with 'Legacy' cases).
- Chapter 7 explains **your rights if your claim is successful**, describing what leave to remain you may be granted, and highlighting problems to avoid if you wish to keep your leave to remain.
- Chapters 8 and 9 explain how to understand a **negative decision** (refusal) and **how to appeal**, and the main legal problems in presenting your case at your appeal.
- Chapter 10 explains what will happen if you are finally refused and face removal from the UK.
- Chapter 11 explains what a **fresh claim** is and how it can be made.
- Chapter 12 explains the **financial support** that asylum-seekers and failed asylum-seekers are entitled to, as well as access to education, health care and social care.
- **At the end of the book** there is information about legal advice and support organisations, and their **contact details**.



# Important information



## Legal advice

This book cannot give you legal advice on your own situation. It can only guide you through the process, and highlight the most important problems you may face. If you are an asylum-seeker, or if you are thinking of claiming asylum, you are **strongly advised to get legal advice** as soon as you can from a legal representative. If you are supporting someone who is claiming asylum in the UK, you can assist them by making sure that they are getting legal advice and helping them understand the advice they have been given.

## Who gives legal advice on asylum?

In this book we use the term **legal representative** to refer to any person who provides legal advice on the law and your rights. Your legal representative may be a **solicitor, barrister or immigration adviser**. A **solicitor** is a qualified lawyer who is responsible for dealing with the preparation of cases. Solicitors are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk). A **barrister** is a qualified lawyer who is instructed by a solicitor or adviser to represent their clients in courts and tribunals. Barristers are regulated by the Bar Standards Board [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk). An **immigration adviser** is a person who is not a lawyer but who is trained to give immigration and asylum law advice and registered with the Office of the Immigration Services Commissioner (OISC) [www.oisc.gov.uk](http://www.oisc.gov.uk). **It is a criminal offence** for anyone who is not either a solicitor or registered with OISC to give immigration advice. For a solicitor or adviser to give immigration and asylum advice on legal aid, they must also be **accredited** by the Law Society.

## Can I get free legal advice and representation?

Depending on your financial circumstances and the merits of your case, you may be entitled to **legal aid**. Legal aid enables people who cannot afford to pay for legal representation, and whose cases have **sufficient merit** (are at least 50% likely to succeed) to get legal advice and representation free of charge. For more

information on legal aid and to find a solicitor, follow this link <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do> or contact 0845 345 4 345. If you are not entitled to legal aid you may have to pay for legal advice or, if you cannot afford this, represent yourself.

## Immigration and asylum law in the UK

### What are the laws which control immigration in the UK?

The UK has many separate laws covering immigration, including claims for international protection (asylum). UK law on asylum and human rights must comply with the relevant international and European Conventions and laws. The Immigration Rules set out how the UK operates these international conventions and laws. The Rules also set requirements and procedures for migration for work and study and for many family-based applications. All the laws and the **Immigration Rules** are on the UKBA website [www.ukba.homeoffice.gov.uk/](http://www.ukba.homeoffice.gov.uk/) under **policy and law**, and will be explained in more detail in each chapter.

### Who carries out immigration control in the UK?

**The UK Border Agency (UKBA)** is the part of the British government which deals with asylum and immigration applications. At the airports, ports and international stations, immigration officers carry out immigration control including exercising powers of detention, questioning and searching people. Inside the UK, these functions can be carried out by immigration officers and police officers. Asylum and immigration applications are considered by UKBA staff. Appeals are considered and decided by Immigration Judges (in the Immigration and Asylum Chamber of the Tribunal system) and by Judges in the higher courts.

# 1 Am I entitled to international protection in the UK?

## 1.1 Introduction

To stay legally in the UK, people who are not British citizens, or citizens of a Member State of the European Union<sup>1</sup>, must fit into **the Immigration Rules**<sup>2</sup>. These Rules set out the evidence someone needs, how much money they must have, and any other requirements, to fit into each category of **leave to remain** (permission to stay legally in the UK).

**A claim for international protection in the UK is covered by the Immigration Rules**<sup>3</sup>

Many people are forced to leave their country and seek safety in another country. A request to that new country for permission to stay there is treated in international law as a **claim for international protection**. In the UK making a claim for international protection is often called **an asylum claim** and the person making the claim is often called **an asylum-seeker**. The UK's procedure for dealing with a claim for international protection is covered by the Immigration Rules, but the law is set out in international laws and Conventions that the UK has signed. There are three different sources of international law which a person can use to claim international protection and be allowed to remain in the UK. People recognised as refugees are given leave to remain as **refugees**. People granted protection under other international conventions and laws are given **Humanitarian Protection**. This chapter will explain the law that determines who is entitled to each type of international protection.

**Claims 'outside the Immigration Rules' – these are *not* considered as protection claims**

This chapter will also discuss other types of emergency or compassionate circumstances which lead people to want to remain in the UK even if their circumstances do not fit into any of the Immigration Rules. An application made in these types of circumstances (such as where people have serious medical problems but who cannot afford private medical treatment, or where a person

wants to stay with her family but cannot support her family without claiming benefits) is called **an application outside the Immigration Rules**. This chapter will show how UK immigration law deals with these issues. People whose claims outside the Immigration Rules are accepted are given **Discretionary Leave to Remain**.

**The law discussed here is complicated. This book is written to give you information about the law but it cannot give specific legal advice about your own case. If you have applied for international protection in the UK, or are thinking about doing this, you are strongly advised to seek legal advice from a solicitor or an accredited immigration adviser. You can also contact Rights of Women's legal advice line** (*see the inside front cover for advice line contact details*).

## 1.2 What laws decide who is entitled to international protection in the UK?

There are three sources of law that determine who is entitled to protection in the UK:

the **UN Convention Relating to the Status of Refugees 1951** (the 'Refugee Convention' or simply 'the Convention');

the **European Convention on Human Rights 1950** (ECHR); and

European Union Directives, the **Council Directive 2004/83/EC of 29 April 2004** (the 'Qualification Directive').

**To find out how claims are processed and decided** see *Chapters 2, 3, 4 and 5*.

**To find out what type of leave to remain in the UK is given for each basis of protection** see *Chapter 7*.

**For information on what to do if you are refused** see *Chapter 8*, and see *Chapter 9* for information on how to appeal.

<sup>1</sup> Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, the Irish Republic, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK. [Citizens of Iceland, Norway, Liechtenstein and Switzerland have the same rights].

<sup>2</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

<sup>3</sup> Part 11 of the Immigration Rules.

**For information about appealing a negative decision** see Chapter 9.

## 1.3 The Refugee Convention

To decide whether to accept a person's claim for international protection, the UK starts by following the law set out in the **1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol**, usually called the Refugee Convention. The Refugee Convention sets out rules to protect people who flee persecution in their country, which all the countries who have signed it have accepted.

Article 1A of the Refugee Convention states that a **refugee** is someone who has a **well-founded fear of being persecuted** for one of the following **Convention reasons**:

- race
  - religion
  - nationality
  - political opinion
  - membership of a **particular social group**
- and**
- is outside her home country;
- and**
- is **unable**, or, **owing to such fear, is unwilling** to avail herself of (ask for) the protection of that country.

Refugee and asylum law often uses the word **state** to refer to a person's country.

- A **country** is the geographical area that a person lives in. England and Wales are countries within the United Kingdom. France is a country.
- A **State** is a country which exists separately in international law. The United Kingdom is a State. France is a State. The word 'State' also refers to the official institutions responsible for controlling a country (or group of countries as in the United Kingdom), such as local and national government, the police and the army.

**To decide your application for international protection, your case will be looked at to see whether you meet each part of the definition of a refugee.**

## What is persecution?

Persecution is a form of **serious harm**, an abuse of a fundamental human right, such as the right to life and the right to be free from torture.

Persecution may involve:

- Physical, sexual or mental violence or abuse, or persistent (frequent, constant, regular) threats of any of these. Rape and torture are examples of acts of persecution.
- Laws or legal procedures which are discriminatory, or applied in a discriminatory way. An example of this would be a law leading to serious harm which applied only to women, such as punishment for adultery.
- Prosecution or punishment which is more than is necessary, or is discriminatory, such as putting someone in prison for doing something that is not criminal or harmful to others.
- Denial of a legal remedy in a discriminatory way. For example, if a State has laws against domestic violence and to punish family members who are violent, but which does not apply them, leaving women without protection.

Persecution can be carried out by different people.

- A **State actor** is someone who is linked to the State in your own country, such as a police or army officer, a Government official or a prison guard. Persecution by State actors includes general Government decisions, policies or processes such as persecutory laws, unacceptable prison conditions, Government-backed religious persecution, as well as systemic failure to implement laws which would protect you or others suffering this kind of harm.
- A **non-State actor** is someone who is not linked to the State in any way, for example, someone in your family, someone from your community, or someone from a criminal gang or political group.

States must provide a **sufficiency of protection** for their people. This means, for example, properly investigating criminal offences and operating an effective legal system. If you fear serious harm from a member of your family, you should be able to go to the police for assistance. The police should be able to investigate your concerns and take action against the person you fear. You should be able to seek protection from the courts. If you fear serious harm, even if only from one individual, but you are unable to get protection from the police or the courts, your State may be

**failing to provide a sufficiency of protection** for you.

Refugee law does not expect States to protect everyone from all forms of harm. The State's failure must be **systemic. This means that it must happen often, and must be reasonably likely to happen in the future.** For example, if rape was a criminal offence but evidence showed that nobody was ever prosecuted for it.

## What is a well-founded fear of persecution?

In order for your claim to be successful under the Refugee Convention you have to show that you have a **well-founded fear** of being persecuted.

**A well-founded fear of persecution** means:

- you fear that you, personally, will be harmed; and
- any reasonable person reading the published information available about your country would agree that your fear is reasonable. To find out where you can get published information about your country, see *Chapter 3*.

This means that you need to:

- explain what future harm you fear, and say why you fear it; and
- show evidence that your fear is reasonable.
  - this can be *evidence written by other people*. For example, an international human rights organisation such as Amnesty International may have written a report about your country stating that people like you are persecuted;
  - or it can be *evidence from your own past experience*. If you have already been persecuted, that is evidence that may show that your fear of future persecution is well-founded.

## Would you be safe anywhere else in your country?

This legal issue is called **Internal Relocation** or **Internal Flight Alternative** (IFA). IFA is more likely to be an issue in your case if you fear persecution from **non-State actors who live in a specific area**, such as family members or criminal gangs who know where you come from. It may be that you would be safe from people like this if you moved to another part of your country. Internal relocation may also be relevant if you are from

a particular tribe or clan, or a particular religion, where people from that clan or religion suffer persecution in one part of your country but may be relatively safe in another part.

When deciding whether you could move somewhere else in your country to avoid persecution, rather than being given international protection in the UK, the **legal test** is whether:

- there is another part of the country where you could go that would be safe from your persecutors; and, if there is,
- whether it would be unreasonable to expect you to go and stay there. The legal test used is whether or not it would be **unduly harsh**<sup>4</sup> to expect you to go and live there.

Therefore, if you fear persecution from **non-State actors** you first have to provide evidence that they would be able to find you in another part of your country. This is hard, especially if you are from a large country, like Nigeria or Congo, or if your persecutor is one individual. It is not always accepted that a woman could not survive by herself in a strange city.

### Can I escape my persecutors?

Ms PO<sup>5</sup> is from Nigeria. She was trafficked to the UK for sexual exploitation. She was refused asylum. The UKBA, and the Tribunal, said that she could return safely and live in another part of Nigeria. It was not believed that her trafficker could find her again, as he was just one person, and would not be able to find her in such a large country. She appealed to the Court of Appeal. They decided that the Tribunal had not looked properly at her evidence, which suggested that her trafficker was part of a gang, which would be determined to look for her, and have enough resources to succeed in finding her wherever she went.

<sup>4</sup> *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49

<sup>5</sup> *PO (Nigeria) v Secretary of State for the Home Department* [2011] EWCA Civ 132

### Would it be unduly harsh for me to go and live in a safe area?

In *AA (Uganda) [2008]*<sup>6</sup>, the Court of Appeal decided that it would be **unduly harsh** for AA, a woman who had experienced physical and sexual violence, to move to a different area in Uganda when she had no family or other support and may have to enter into prostitution to support herself.

However, in *KA and others [2010]*<sup>7</sup> the Upper Tribunal rejected the claim of KA, a woman from Pakistan who had fled domestic violence, saying that she could have moved to another large city in her country, where she would be safe from her husband, and able to get by, even as a single woman living alone.

### What is the basis of your fear of persecution: the Convention Reasons

The Refugee Convention does not protect people from general threats to their safety, such as threats that come from a war or a flood. Instead, you have to show that you fear **being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion**. Your fear of what might happen to you on return to your country must be **because of** one or more of the Convention Reasons:

**Race:** your **race** is your skin colour or your membership of a particular ethnic group or clan. A person may be persecuted because of their race by others of a different race to them. Women may be persecuted because of their role in having children. For example, women may be raped by members of another racial group to punish them.

**Religion:** your **religion** is the beliefs that you have about whether or not there is a god or gods. A person may be persecuted for their religious beliefs when their beliefs are different to those of their State, or where they have changed their religion, or where they have no religion at all. Women may be persecuted for not following the rules of a religion.

**Nationality:** your **nationality** is your membership of a particular State or group. This may be formal or informal. For example, a person born in Scotland to British parents will be British according to international law, but may consider herself to have Scottish nationality. Being persecuted on the basis of nationality could include being punished for encouraging people who share your language and culture to call for independence for your nationality.

**Political opinion:** your **political opinions** are your opinions, thoughts or beliefs on issues such as:

- Wanting to have free elections to choose your country's government.
- Not following customs or traditions, including refusing to wear certain clothes.
- Carrying out activities for a political organisation you support, such as hiding people, passing messages or giving food and shelter.
- Taking part in campaigns or activities demanding equal rights for women.

### Imputed political opinion (or religion)

You may be persecuted for an opinion that someone else thinks that you have, for example if you are the daughter or the wife of an important opposition political figure, or if someone in your family holds prohibited religious views. This is called **imputed** political (or religious) opinion. This is covered by the Refugee Convention.

### Membership of a particular social group

This is perhaps the most difficult of all the Convention Reasons to understand. It is usually difficult for someone without legal advice to describe their persecution in this way, and a claim for international protection relying on this Convention reason may well be unlikely to succeed without an appeal<sup>8</sup>. This Convention Reason, however, is perhaps the most important for women claiming asylum.

<sup>6</sup> *AA (Uganda) v Secretary of State for the Home Department* [2008] EWCA Civ 579

<sup>7</sup> *KA and others (domestic violence risk on return) Pakistan CG* [2010] UKUT 216 (IAC)

<sup>8</sup> This is because, at the time of writing, the UKBA staff dealing with asylum applications do not generally grant claims based on this category, unless there is already a legal case dealing with that particular applicant's country.

In a very important case called **Fornah**<sup>9</sup> the House of Lords confirmed the definition of particular social group:

- o a **particular social group** is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is **innate, unchangeable**, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.

An **innate** characteristic means something like your gender or sexual orientation (whether you are heterosexual or are a lesbian). An **unchangeable** characteristic may be your experience of persecution, like the fact of having been trafficked for sexual exploitation. People in a particular social group do not have to know each other, or work or live together (although they may do). A particular social group can be small, such as one family, or large, such as 'all women' in a particular country or area. Not every member of the group has to have been persecuted for a group to be found to exist.

Whether any particular group would be considered a particular social group needing international protection will depend on the political, social and legal conditions in your country. For example, it is not illegal or dangerous in Britain to be a lesbian. But in many countries this would be illegal, and in some countries being a lesbian may be punishable by death.

Mrs Islam<sup>10</sup> was from Pakistan. Her husband was violent to her, but she stayed with him for many years and they had 2 children. She was accused of being unfaithful to her husband. Her husband seriously assaulted her. She fled to the UK and claimed asylum. She was refused. Her appeal was dismissed and a further appeal was made. The House of Lords accepted that the authorities in Pakistan do not provide protection from domestic violence precisely because they discriminate against women. For this reason the House of Lords chose 'all women in Pakistan' to be the particular social group to which Mrs Islam belonged, and allowed her appeal.

Some other examples of particular social groups recognised by the UK Courts:

- 'All women' in Afghanistan<sup>11</sup>.
- Women in Kenya (particularly Kikuyu women under 65)<sup>12</sup>.
- 'Women in Sierra Leone' and/or 'women in Sierra Leone who are at risk of female genital mutilation'<sup>13</sup>.
- 'Women who have been trafficked from Moldova for the purposes of sexual exploitation and who have been forced into prostitution'<sup>14</sup>.
- 'Lesbians and women perceived to be lesbians in Jamaica'<sup>15</sup>.

## 1.4 Women and the Refugee Convention

Women may be persecuted for many reasons but sometimes they are persecuted for their **gender**.

**Gender** is not only about whether you are a woman or a man, but includes all of the differences there are between women and men, including physical, social or cultural differences. Gender includes the way that women are treated because they are women, the way that they are supposed to dress or behave and the rights that they have or do not have.

<sup>9</sup> *Fornah v Secretary of State for the Home Department* [2006] UKHL 46

<sup>10</sup> *Islam v. Secretary of State for the Home Department Immigration Appeal Tribunal and Another, Ex Parte Shah, R v.* [1999] UKHL 20

<sup>11</sup> *NS (Social Group, Women, Forced marriage) Afghanistan CG* [2004] UKIAT 00328

<sup>12</sup> *VM (FGM, risks, Mungiki, Kikuyu/Gikuyu) Kenya CG* [2008] UKAIT 00049

<sup>13</sup> *Fornah v Secretary of State for the Home Department* [2006] UKHL 46

<sup>14</sup> *SB (PSG – Protection Regulations – Reg 6) Moldova CG* [2008] UKAIT 00002

<sup>15</sup> *SW (lesbians – HJ and HT applied) Jamaica CG* [2011] UKUT 251 (IAC)

The Refugee Convention Reasons do not talk about gender. This means that a woman who has experienced persecution because of her gender has to fit her claim for protection into **what is considered in law** to come within one or more of the Refugee Convention reasons explained above.

Women may experience violence for a number of reasons. Sometimes women may experience violence **just because** they are women. Here are some examples of different kinds of violence that particularly affect women:

- **Domestic violence and abuse:** this is violence that is carried out by a woman's family, including her parents, her husband or her children.
- **Sexual violence:** this may involve forcing or pressuring a woman to have sex with someone she does not want to, or harming her sexually. Sexual violence occurs whenever a woman does not agree to the sexual behaviour, whether or not she knows the person responsible for it.
- **Punishment for relationships outside marriage.** For example, being punished for having sex with someone you are not married to.
- **Punishment for being a lesbian or bisexual.** A lesbian is a woman who wants to be in a relationship with another woman (rather than a man) while a bisexual woman is a woman who can be in a relationship with either a man or a woman (rather than only with men or only with women).
- **Being forced into a marriage** that you do not agree with or have not chosen.
- **Not being allowed to end your marriage** by divorce. Or having your children taken away from you if you get divorced.
- Violence against you because others think that something that you have done or not done has affected your family's honour (this is often called **honour-based violence**).
- **Violence related to your dowry.** For example, where others think that what is offered as a dowry is not enough, or where a woman is harmed because she wants to take back her dowry when her marriage has ended.
- **Forcing a woman to have an abortion** when she does not want to, or **preventing her from taking steps to avoid pregnancy** if she does not want to have more children.

- **Forcing a woman into prostitution**, to have sex with men when she does not want to. A woman could be forced into prostitution in her own country or she could be taken to another country. Where a woman is taken to another country or moved about within her own country so that she can be forced into prostitution, it is called **trafficking**.
- **Female genital mutilation (FGM)**, where a woman's genitalia are altered or interfered with for a reason that is not a medical reason.

**If you have experienced any of these forms of violence, or if you fear that any of these things will happen to you if you go back to your country, you should seek legal advice, to make sure that your asylum claim will be set out as clearly as possible under the appropriate Convention reasons.**

A person who is accepted as needing international protection under the Refugee Convention will be given **Refugee Leave** for 5 years. See Chapter 7 for information about leave to remain in the UK as a refugee.

## 1.5 The European Convention on Human Rights

The UK also has to follow the **European Convention for the Protection of Human Rights and Fundamental Freedoms 1950**, referred to as the European Convention on Human Rights or ECHR. The ECHR is part of UK law through the **Human Rights Act 1998**. This means that, as well as considering whether you are entitled to protection under the Refugee Convention, the UK authorities also have to consider whether returning you to your country would be in breach of the UK's obligations under the ECHR.

The ECHR gives everyone in the UK, whether they are British or not, a number of important rights. The most important Article for women seeking asylum is **Article 3 Prohibition of torture, inhuman or degrading treatment or punishment**. The right not to be subject to any of these is an absolute right. This means it cannot be breached in any circumstances. No one who is within the UK can be tortured or treated in a way that is inhuman or degrading. It also means that **the UK cannot send or return someone from the UK**, to a country or situation where there is

a **real risk** that they may be tortured or suffer inhuman or degrading treatment<sup>16</sup>.

**For Article 3 ECHR the fear of torture or inhuman or degrading treatment does not have to be for reason of any of the specific Refugee Convention reasons.** This means that a fear of gender-based violence does not have to be described on the basis of a particular social group. If you have shown that there are **substantial reasons** for believing that:

- if you were returned to your home country, you would face a **real risk** of suffering **serious harm**; and,
- your country is **either unwilling or unable to protect you** from this harm,

then you may be entitled to **Humanitarian Protection** on the basis of Article 3 ECHR.

**Serious harm** includes:

- the death penalty, execution or unlawful killing; and
- torture, inhuman or degrading punishment. Rape is considered to be a form of torture. Inhuman and degrading punishment is punishment that is harmful or humiliating, such as an assault. If the assault or beating is particularly severe it may be considered to be torture. So if you fear violence from your husband, or other family members, and you fear that your country's laws and police would not protect you, you may have a claim under Article 3 ECHR.

Many of the legal tests applied to asylum cases under the Refugee Convention also apply to cases considered under Article 3 ECHR. For example, your fear of serious harm must be **supported by evidence**. The legal concepts of **internal relocation (internal flight alternative)** and whether the State is able to offer **sufficient protection** also apply to applications under Article 3 ECHR.

A person who is accepted as needing international protection under Article 3 ECHR will be given **Humanitarian Protection** for 5 years. See *Chapter 7* for more information about leave to remain in the UK.

## 1.6 European Union law

As well as having to follow the Refugee Convention and the ECHR, the UK must also follow European Union (EU) law. The EU is a group of countries<sup>17</sup> in Europe which share certain laws. The UK is a member of the EU.

There are a number of EU laws, which are called **Directives**, which require the UK to maintain certain standards when deciding who is entitled to international protection, and in providing accommodation, support and other social rights to asylum-seekers<sup>18</sup>.

The most important EU law providing a basis for a claim for protection in the UK is the **Qualification Directive**. The Qualification Directive sets out the minimum standards that should be followed by EU Member States in applying the Refugee Convention. The Qualification Directive also sets out criteria for giving protection to people who are at risk of serious harm but whose cases are not covered by the Refugee Convention, including protection under Article 3 of the European Convention on Human Rights (*see above*).

**The Qualification Directive Articles 2(e) and 15(c) also give protection** to civilians who have fled armed conflict (such as civil war) but who would **not** be protected by either the Refugee Convention or Article 3 of the European Convention on Human Rights.

- **Article 2(e)** states that you should be given protection if you can show that if you were returned to your country, you would face a **real risk** of suffering **serious harm**. The protection given under Article 2(e) is **Humanitarian Protection**.

<sup>16</sup> The European Convention on Human Rights (ECHR) has other important Articles, such as **Article 2 Right to Life and Article 4 ECHR Prohibition of slavery and forced labour**, which forbids forcing anyone into a situation of slavery, or forcing them to work when the person concerned has not agreed to this. These articles also provide absolute rights. Article 4 can offer protection to women who are forced into prostitution or forced domestic labour. However these Articles are not often used separately from the Refugee Convention or Article 3 ECHR.

<sup>17</sup> See footnote 1 for a list of EU member states

<sup>18</sup> These include: Dublin II (Sept 03), Reception Directive (Feb 05), Qualification Directive (Oct 06) Procedures Directive (Dec 07). These are being updated by the European Union. At the time of publication the UK has declined to sign the new Directives, but remains bound by the original versions.



- **Article 15** states that serious harm includes (a) the death penalty or execution, (b) torture, inhuman or degrading treatment, or **(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict**. A civilian is someone who is not a soldier. Armed conflicts may be wars between countries or wars between different groups of people in the same country (a civil war). Indiscriminate violence is violence that cannot be predicted or is random or arbitrary.

At the time of writing, people from Somalia<sup>19</sup>, Afghanistan<sup>20</sup> and Iraq<sup>21</sup> may consider that they have claims for humanitarian protection under Article 15 (c) of the Qualification Directive. But these claims are difficult to make and need **very detailed evidence about the conditions in the country, probably from an independent expert. You are strongly advised to get legal advice before making a claim under this Directive.**

A person who is accepted as needing international protection under Article 15(c) Qualification Directive will be given **Humanitarian Protection** for 5 years. See [Chapter 7 for more information about leave to remain in the UK.](#)

## 1.7 Other claims based on Article 3 ECHR

The claims described below are **not** considered in UK law to be claims for international protection, but claims to be dealt with exceptionally, **outside the Immigration Rules**.

### Your right to be free from inhuman and degrading treatment

People needing significant medical treatment, and people who fear harsh physical conditions in their country, may present a claim that returning them to their country would amount to inhuman and degrading treatment, in breach of Article 3 ECHR. These kinds of claims are difficult to succeed with, although a person **refused** under Article 3 ECHR

may be given **Discretionary Leave to Remain: see below.**

### Remaining in the UK for medical reasons

Following the House of Lords case of **N v SSHD**<sup>22</sup>, which was upheld by the European Court of Human Rights (ECtHR) in **N v UK**<sup>23</sup>, obtaining permission to remain in the UK for medical reasons will only be possible in **very exceptional cases**. This could include when a person is close to death and where removal “would hasten his death and expose him to a real risk of dying under most distressing circumstances and thus to inhuman treatment”<sup>24</sup>. When deciding your case, the decision-maker must consider the seriousness and stage of your illness, the availability of medical care in your country, and whether you would be supported by your family.

The case of **N v SSHD** showed that it would **not be enough** to argue that you need to stay in the UK because the medicine you need to keep you well would be too expensive for you in your own country. To succeed, you would need medical and expert evidence to show that the treatment you need **is not available** in your home country. For example, a man suffering from a very rare brain condition being treated by only one hospital in the whole of Africa, not in his own country, was allowed to stay in the UK.

### Remaining in the UK because of poor conditions in your country

If you are applying to remain in the UK because there are severe conditions in your country, then the situation must be **particularly serious**, for example if no water, food or shelter was available in all or most of your country. The fact that you have nothing at home, and no family to turn to, is not a legal reason for giving you permission to remain in the UK. You have to show that, if you were returned to your country, you would not be able to feed yourself or find water.

Even where a country is suffering a major famine, and may have been described as facing a ‘humanitarian catastrophe’, you would have to show why you personally would not be able to escape this catastrophe. Recent legal cases

<sup>19</sup> *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia* CG [2011] UKUT 445 (IAC)

<sup>20</sup> *HK & Ors (minors, indiscriminate violence, forced recruitment by Taliban, contact with family members) Afghanistan* CG [2010] UKUT 378 (IAC)

<sup>21</sup> *HM (Iraq) & Anor v Secretary of State for the Home Department* [2011] EWCA Civ 1536

<sup>22</sup> *N v Secretary of State for the Home Department* [2005] UKHL 31

<sup>23</sup> *N. v. United Kingdom (Application no. 26565/05)*

<sup>24</sup> *D v UK ECtHR 1997-III no 37*

concerning Somalia<sup>25</sup> show how these issues are approached by the courts. Often the courts decide that although some parts of Somalia are dangerous, it would be possible to go to another, safe part of Somalia where there is food and water.

## 1.8 Remaining in the UK with your family, or because you have lived in the UK a long time

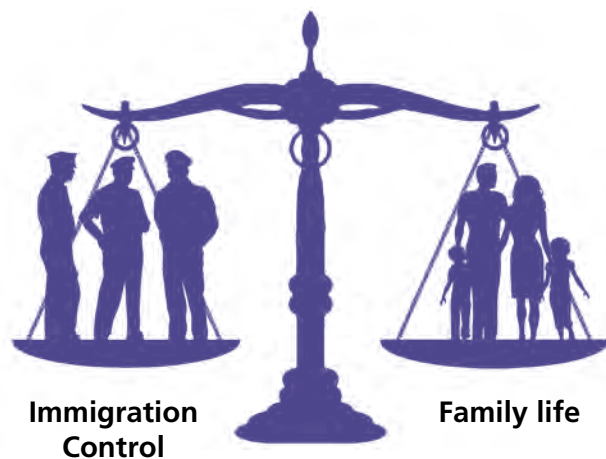
Many people from abroad, including many people who originally claimed asylum but were refused, have lived in the UK for a long time without permission, but feel that this country is their home, and cannot return to their country of origin because it would separate them from their family, their work and their community, maybe permanently. **There is no application under the Immigration Rules<sup>26</sup>** for people in these circumstances, but the UK must consider **their rights under Article 8 ECHR**. This Article says that everyone has the **right to respect for his or her private and family life, home and correspondence (sending or receiving letters)**.

But these rights are **not absolute**. The right to private and family life is one of the rights that can be **interfered with** by public authorities, such as the UK Border Agency (UKBA) (see page 9). Interfering with your rights means preventing you from enjoying them, for example by forcing you to leave the UK. These legal issues were decided in the courts in the important cases of **Razgar<sup>27</sup>** and **Huang<sup>28</sup>**.

- For this interference to be lawful, it has to be **for a legitimate reason**. Maintaining immigration control – controlling who can enter or stay in the UK – is considered in law to be a legitimate reason for interfering with the private and family life of people who are subject to immigration control.
- Any interference has to be **proportionate**. This means that the UKBA must **compare your right to family life with the UK Government's right to impose immigration control**. So they will look at the strength of your family life, and look at all the legal reasons why you should not be allowed to stay in the

UK, and deciding whether those reasons are serious enough to make it lawful for you to be separated from your family, or not.

Mrs Chikwamba<sup>29</sup> came to the UK from Zimbabwe and claimed asylum. She was refused, but the UK did not remove people to Zimbabwe for some time. She married a man who had leave to remain. The couple had a child. Then the UKBA decided that it was safe to return people to Zimbabwe and decided to remove Mrs Chikwamba. She appealed, but the courts said she should return to Zimbabwe and make a formal application under the Immigration Rules for entry clearance (a visa) to return. The court decided that this was **disproportionate**, because that would separate her from her husband and child for several months, and force her to live in very difficult conditions in Zimbabwe, just to meet a bureaucratic requirement.



### What is private and family life?

Article 8 protects your right to a **private life** and your **right to a life with your family**.

Your **private** life includes things like your work or studies, your life with your friends and neighbours, any involvement with your local community or charity activities. It also includes any long-term NHS medical treatment. If you have been living in the UK for a significant amount of time you will in law have established a private life under Article 8 ECHR.

<sup>25</sup> *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia* CG [2011] UKUT 445 (IAC)

<sup>26</sup> Unless you have lived in the UK continuously for over 14 years with no enforcement decision – see Immigration Rules part 7 paras 276A-276D on Long Residence, see *Chapter 6 section 6.2*.

<sup>27</sup> *Razgar, R (on the Application of) v. Secretary of State for the Home Department* [2004] UKHL 27

<sup>28</sup> *Huang v Secretary of State for the Home Department* [2007] UKHL 11

<sup>29</sup> *Chikwamba v Secretary of State for the Home Department* [2008] UKHL 40

Your **family life** consists of your relationships with members of your family. Your relationships with your husband, civil partner (your same-sex partner with whom you have entered into the legal relationship of civil partnership) and any children under 18 are **always** considered to be family life under Article 8. Your life with other family members is **not** always considered to amount to family life under Article 8.

- Where the child is a young adult (aged 18 years old or over) who has not yet founded a family of their own, their relationship with their parents and other close family members is also family life<sup>30</sup>.
- Where the relationship is between adult brothers and sisters, or between adult children and their parents, their relationship will be considered to be family life **only where there is a dependence on each other that is more than the normal emotional ties between adult family members**<sup>31</sup>. This could happen where an adult child cares for her parent, brother or sister because they have a physical or mental health problem. So, a woman who cares for her adult brother who has a mental health problem would be considered to have family life with him because her brother is dependent on her.

### Will your family or private life be interfered with by making you return home to your country?

To show **interference in your family life**, you have to show that it would be impossible for your family life to continue if you were removed from the UK, including why it would be unreasonable to expect your family to go with you. The decision-maker must consider how **your** private and family life would be affected by your return to your country, **and** how **your family** would be affected by your departure<sup>32</sup>. If your husband or partner or child under 18 is British<sup>33</sup>, or is from a different country to your own, or if you are separated from your husband and you both have contact with your child, it may well be accepted that removing you from the UK would lead to **interference** with your family life. But if you are living with another illegal migrant from your own country, (and you have no well-founded fear of returning home and therefore cannot stay as refugees) then in law

there would **not** be interference in your family life, as you would be expected to return together to your home country.

Examples of **interference in your private life** include being deprived of free medical treatment for a serious health condition, after a long period of NHS care, being forced to leave the UK before you finish a university degree after having had most of your secondary education in the UK or being forced to leave the UK after many years of being employed and paying taxes, even if without formal permission to work.

### If you have children, the UKBA must make their best interests a **primary consideration**<sup>34</sup>

The UK is a signatory to (has accepted) the United Nations Convention on the Rights of the Child, and from 2008 accepted that this Convention covered immigration control. The UKBA's duties under this Convention are set out in the Borders, Citizenship and Immigration Act 2009, section 55. If you have children, and especially if the children are British or have leave to remain in the UK, the UKBA must *first* decide whether it is in the best interests of the child to remain in the UK, and if the answer is yes, it would be unlikely for it to be in the children's best interests for you to be removed from the UK. This is a developing area of immigration law, and you are **strongly advised** to get legal advice to help you present your claim.

### Discretionary Leave

#### Discretionary Leave to Remain is **leave to remain outside the Immigration Rules**.

It may be granted at the same time as a *refusal* of asylum (Refugee Leave or Humanitarian Protection), **or** it may be granted to a person who has been living illegally in the UK for some time. This could be *either* in response to an application outside the Immigration Rules *or* as a result of an appeal or High Court application against a decision to remove from the UK.

Discretionary Leave to Remain may be granted if the person can show that:

- return to the home country would be a **disproportionate breach** of that person's right to private and/or family life under Article 8 ECHR; and/or

<sup>30</sup> *Maslov v. Austria* n° 1638/03 – 23/06/2008

<sup>31</sup> *Beoku-Betts v SSHD* [2008] UKHL 39v

<sup>32</sup> *Beoku-Betts v SSHD* [2008] UKHL 39

<sup>33</sup> *AB (Jamaica) v Secretary of State for the Home Department* [2007] EWCA Civ 1302

<sup>34</sup> *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4

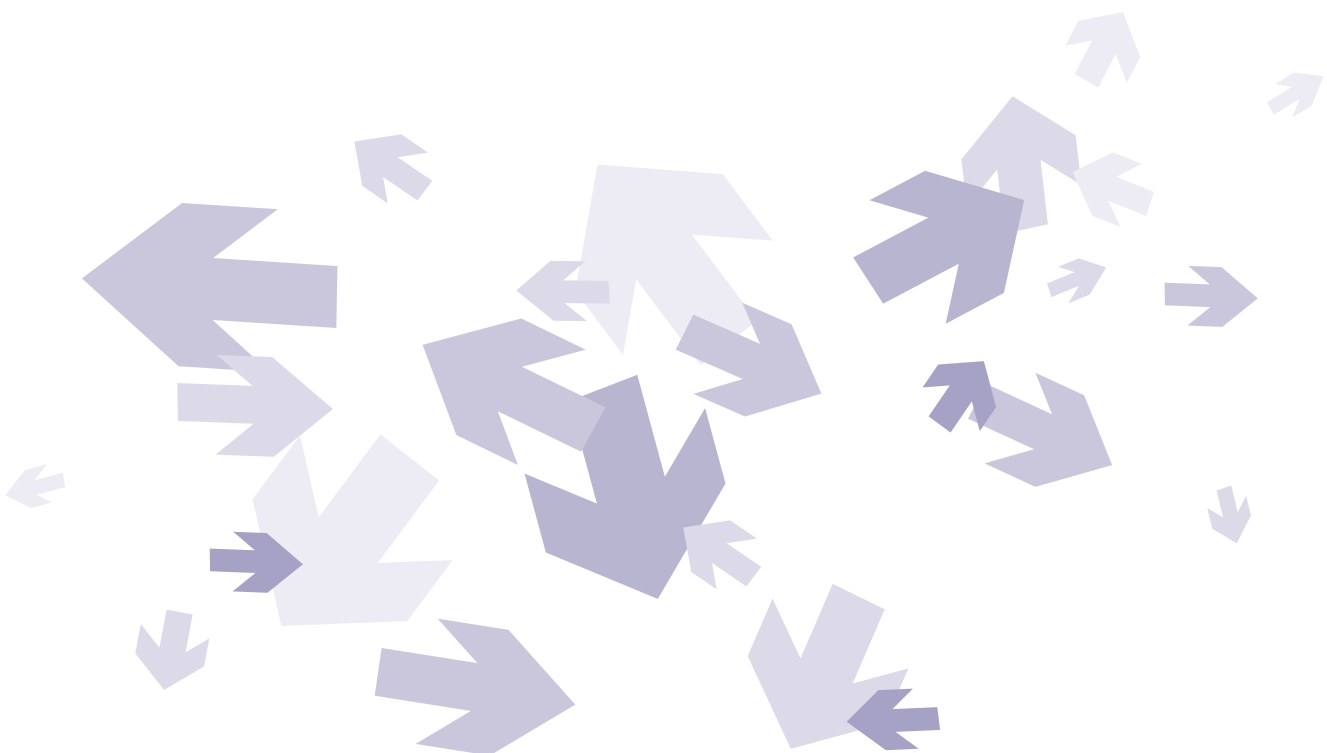
- return would be a breach of the right to be free from inhuman and degrading treatment (the second part of Article 3 ECHR).

**If you are granted Discretionary Leave at the same time as a *refusal of asylum or Humanitarian Protection* you are strongly advised to get legal advice as soon as possible, as it may be important to appeal against that refusal – see Chapter 8 on refusals and Chapter 9 for information on how to appeal.**

## 1.9 Things to remember

- You have a **right** in international law to **seek international protection in the UK** if your **own State is unwilling or unable to protect you from persecution or serious harm.**
- To make a claim for international protection you will have to explain:
  - Who you fear the harm from, and why.
  - What the harm is and why you fear that you, personally, are at risk.
  - If you fear harm from a non-State actor, whether your State is willing or able to protect you from the harm, and if not, why not.
- Whether there is another part of your country that you could go to that would be safe and if not, why not.
- If you have other reasons for staying in the UK which are not covered by the Immigration Rules, you will need to show that removing you would be a **disproportionate breach** of your right to family and private life under Article 8 ECHR. You will need to explain:
  - Who your family life is with, and why they could not go with you to live in your own country.
  - What important ties you have to the UK (such as work, community involvement, long-term medical treatment).
  - What would happen to your family life or private life if you were forced to return to your country.
- If you have children in the UK, the UKBA must make their best interests a *primary consideration*.

*See page 95 for information about legal advice and support organisations.*



# 2 How will the British government deal with your claim for asylum?

## 2.1 Introduction

Chapter 1 sets out the types of claim that can be made by a person who **fears** returning to their country, and the different international laws and conventions under which a claim for international protection can be made. **In UK immigration law and procedure, all these claims count as a claim for asylum** (even if the claim is made on the basis of fear of return under Article 3 ECHR or Article 15c Qualification Directive). A person making any of these claims is called **an asylum-seeker**. If you also have other reasons for staying in the UK **as well as** your fear of returning to your country of origin, such as family life under Article 8 ECHR, these should be included in your claim, and the UKBA will deal with the whole claim at the same time.

*A claim under Article 3 ECHR based solely on medical issues, or any claim to remain in the UK only on the basis of family and private life under Article 8 ECHR, is **not** an asylum claim, but a **claim outside the Immigration Rules** (see Chapter 1 sections 1.7 and 1.8). People making those claims are **not** 'asylum-seekers' and are not entitled to financial support or accommodation ('asylum support'). See Chapter 12 on financial and other support through the asylum process.*

### Which government authority is responsible for dealing with your asylum claim?

All applications for asylum are considered by the **UK Border Agency (UKBA)**<sup>35</sup> which is part of the Home Office, a government department (see also page 9).

**Claiming asylum is a process controlled by laws and rules. Your future legal rights may be affected by small mistakes made at the beginning. So follow this advice carefully:**

- Read every official letter and notice carefully. Make sure you understand it.
- Pay attention to all dates and time limits and obey them.
- Always tell the truth. If you have to change a part of your story, give detailed reasons why. **Never** take advice from a friend not to tell the truth, or to hide part of your story.
- Keep a copy of anything you send or give to the authorities.
- Anything you post, send it *recorded delivery* and keep the Post Office receipt.
- Keep all your papers neatly in a folder or strong bag. Do not throw away or lose any official papers.

<sup>35</sup> People with very old cases may have letters and documents headed "BIA" or "IND". This is because the UKBA used to be called the Border and Immigration Agency (BIA). Before that it was called the Immigration and Nationality Directorate (IND).

## 2.2 Overview of the process

The timetable set out below may vary according to how complicated your case is. There may also be unpredictable delays depending on which regional office of the UKBA deals with your case.

### The asylum process

1. Arrive in the UK, claim asylum to an immigration officer at UK port, airport or international railway station, **or** claim at the Asylum Screening Unit in Croydon 'as soon as reasonably practicable' after you have arrived in the UK

2. Day 1: 'screening'

3. Day 3: 'first reporting event'

4. Day 8-12: asylum interview

5. Day 30: initial decision given to you

6. Day 30-100: appeal against a negative decision, to the First-Tier Tribunal Immigration and Asylum Chamber

## 2.3 Applying for asylum: on arrival or in-country

You can apply for asylum in two ways:

- **On arrival.** This means **telling the immigration officer, straight away, that you want to claim asylum** as you pass through immigration control in the UK, **at the airport, port or international station.** The immigration officers will arrange a **screening appointment** for you.
- **In-country** (inside the UK) at the **Asylum Screening Unit at Lunar House, the UKBA office in Croydon.** You may be applying *in-country* because:
  - You were brought through immigration control by someone who told you not to speak to the immigration officers, or who held onto your passport until you had left the airport.
  - You entered the UK hidden inside a lorry or a train, and did not come through immigration control at all.
  - You were already in the UK on a visa, such as a student or work visa, but something has happened, either in your personal life or in your country, which means it is no longer safe for you to return home.

**If you are already in prison, or if you are placed in immigration detention, you can claim asylum by telling the prison officer or UKBA officer that you want to make a claim.**

If you passed through immigration control without claiming asylum, you **are expected by law to apply as soon as reasonably practicable.** The UKBA and the courts interpret this to be **within 72 hours** (3 days) of your arrival in the UK. If you have delayed claiming asylum, it is important that you explain the reasons for this, otherwise your asylum claim may not be believed, and you may be refused financial support while your claim is being decided.

**At the time of writing it can be difficult to claim asylum at the Asylum Screening Unit.** If you arrive without an appointment you may be turned away and asked to make an appointment for another day by telephone. However, at the time of publication, it can also be difficult to contact the Unit by telephone<sup>36</sup>.

The law says you must claim asylum *as soon as reasonably practicable*. Therefore **you are strongly advised** to make a note and keep evidence of how many times you (or any organisation assisting you) tried to telephone for an appointment, how long you had to wait on the telephone, how long you had to wait to be seen, and, if you were turned away without being screened, how many separate journeys you made to the Screening Unit office.

<sup>36</sup> A formal complaint has been made to the European Commission that the difficulties of starting an asylum claim at the Asylum Screening Unit in Croydon are so great that the UK is **in breach of its obligations under the EU Procedures Directive.**

The information on the UKBA website<sup>37</sup> tells you how to claim asylum. **At the Asylum Screening Unit, the Opening Hours for walk-in visitors (no appointments)** is Monday to Friday 08:00-13:00. However, the UKBA prefer that you telephone on **020 8196 4524, Mon-Fri 09:00 – 16:45** to make an appointment. If you have come to the UK with other members of your family, such as your children, and you want your family to be part of your asylum claim, **you must make appointments for each family member**, and take them with you when you apply for asylum. **You can use this call to ask for a female interviewer and a female interpreter for your screening interview.** The UKBA's website says:

**“We might need to speak to you for up to 30 minutes, and we suggest that you are somewhere quiet when you phone.**

**We will ask for your name and your contact phone number, and whether you will need an interpreter to answer some questions. We will then phone you back, give you an appointment, and ask you some simple questions about you and your family. We will pay for the call. You will not be asked why you are claiming asylum.”**

**Some applicants are asked questions about their claim in this telephone call.**

**Your answers to these questions, even before your formal asylum application is recorded, will form part of your asylum claim. If you are considering applying for asylum you are strongly advised to get legal advice before contacting the Asylum Screening Unit, and then to apply at the Asylum Screening Unit as soon as you can.**

**The address of the Asylum Screening Unit** is Lunar House, 40 Wellesley Road, Croydon CR9 2BY. You can get to Croydon by train from London Victoria station or by coach. Even if you do not live in London, **you have to pay for the journey yourself, for you and all your family who wish to claim asylum.** Travelling to London by train can be expensive, but there are coaches

which are much cheaper. You may find help from religious or refugee community organisations in your area.

## How do I get legal advice?

You can get advice about making a claim for asylum from a **solicitor** or an **immigration adviser**. See **Important Information** on page 9, and look at page 95 for details of how to find legal advice.

**It is a criminal offence for someone who is not a solicitor, or who is not a registered adviser, to give immigration advice. This is to protect asylum-seekers and immigrants from giving money to untrained and unqualified people who present themselves as immigration and asylum experts. So be careful to look for a legal representative who will help you under legal aid (see next heading).**

## Do I have to pay for legal advice?

If you have just arrived in the UK, and this is your first asylum claim, you are likely to be entitled to **free legal advice and representation** (usually known as **legal aid**). Most asylum-seekers are eligible for legal aid. **Even if you have ‘no recourse to public funds’ you are likely to be entitled to legal aid.** Not all legal representatives do legal aid work. You can find a legal aid solicitor or adviser on [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk) Solicitors and legal advisers working under legal aid are paid for by the Government, and legal aid only pays where there is a reasonable chance of winning the case.

**If you are not entitled to legal aid** (either because you have too much money, or because your legal representative advises you that your case is not strong enough for legal aid), you may have to pay for legal advice or, if you cannot afford this, represent yourself. However, **never** pay money to someone for advice without checking that they are registered with the Office of the Immigration Services Commissioner (OISC)<sup>38</sup>. **Never** take legal advice from a friend or relative, or from other asylum-seekers. Your future legal rights may well be affected if you act upon advice which is wrong.

<sup>37</sup> <http://www.ukba.homeoffice.gov.uk/aboutus/contact/asylumscreeningunit/>

<sup>38</sup> [oisc.homeoffice.gov.uk/](http://oisc.homeoffice.gov.uk/)

## 2.4 Your appointment at the Asylum Screening Unit

You and your family may have to wait a long time to be seen for your appointment. You should take food and water, and toys for your children. You will be interviewed by someone who is sitting behind a glass screen, and you may find it difficult to hear them. They may not be very helpful to you. There may be people sitting behind you who can hear what you are saying, and other people talking loudly, and loudspeaker announcements.

**If you have difficult information to give, and you wish to be interviewed in a private room, you should ask for this.** Even if this is not provided, a note should be made of your request.

At your appointment you will be **recorded as having made a claim for asylum**. Then you will be **screened**. First they will check your identity by having your fingerprints and photographs taken.

**At this stage you can ask again for a female interviewer, and a female interpreter, if you wish.** You will be asked for some information about why you have claimed asylum. You will be asked in detail about where you have come from, which countries you have travelled through, how you travelled on each part of your journey to the UK (plane, car, lorry, train, walking, riding a horse or other animal) and what travel documents you used to cross any international borders.

**Your answers to these questions are important.** The answers you give in your screening interview will be compared to answers you give later in your asylum interview, and any different answers may lead to a decision that you are not telling the truth, and should not be given international protection in the UK. UKBA staff may not believe what asylum-seekers say about their claim. This is especially true where applicants cannot remember the exact dates when things happened, or give different dates or different explanations for a particular event (see Chapter 3 for information on how to prepare your asylum claim and avoid the risk of being disbelieved). You should therefore try to remember the details of your journey, and of the events which made you decide to flee your country, and answer all the questions truthfully and carefully. **You are strongly advised to get legal advice before contacting the Screening Unit.**

The UKBA use the screening process to find out **whether you have claimed asylum before**, either in the UK or in some other European country. If you have already claimed asylum before and been refused, the UKBA are likely to quickly refuse your claim. If you have been fingerprinted

in any other European country, the UKBA are likely to immediately refuse your claim, and send you back to that other European country (see Chapter 9 section 9.4).

The UKBA also uses the screening process to see whether you applied **as soon as reasonably practicable**. This will affect whether you get financial support and accommodation (see Chapter 12 for information about financial support).

At the end of the screening process, you should be given a copy of your **screening interview** notes. You should check these and tell the UKBA if there are any mistakes. You will be given some basic information about the asylum process. You can also ask for a female case owner (UKBA officer who will be dealing with your asylum claim and doing your asylum interview) and a female interpreter, if you would prefer to be interviewed by women. If you make this request, the UKBA will try to ensure that you are interviewed by a woman whenever possible.

When your name and identity is confirmed, you will be given an **Application Registration Card (ARC card)** to show that you have applied for asylum. This is a plastic card which has your photograph and a reference number on it. It confirms your identity and your status in the UK. If you apply for asylum support, (see Chapter 12 section 12.3), you will need this card to receive your cash payments. **If you have a husband or partner, or teenage children, dependant on your asylum claim, they will receive their own cards. You must make sure they take care of these cards and do not lose them.**

### Could I be detained?

**All asylum-seekers are liable to detention**, which means that the law allows the UKBA to detain you while your case is being decided. This will be considered at the screening interview. **You are unlikely to be detained unless:**

- Your fingerprints are damaged and cannot be taken straight away.
- The UKBA thinks that you have claimed asylum elsewhere in Europe and you could be returned back to that European country.
- You are claiming after having been in the UK for a very long time, either illegally or legally.
- You claim asylum after being stopped by the police for being an illegal immigrant or after being arrested for a criminal offence.
- The UKBA thinks your case can be decided quickly.



- **Where a woman who is a victim of trafficking has been discovered** (for example, working as a prostitute or in some other forced labour) in the course of a criminal investigation, and she has not yet had a chance to tell either the police or the immigration officers that she has been trafficked.

**If you come into any of these categories, you are strongly advised to get legal advice before making a claim for asylum** (see Chapter 5 for information about detention and fast-tracked cases).

## What happens if I am not detained?

**If you have not been detained**, you will be given **Temporary Admission**. Temporary Admission is **not** a grant of leave to enter the UK. It is an alternative to detention, but does not give you any other rights (such as the right to work or claim welfare benefits). Temporary Admission comes with certain **conditions**, such as weekly or monthly **reporting** to an immigration office.

**If you had a type of leave to remain in the UK when you claimed asylum**, for example, if you had permission to be in the UK as a student or worker, or you were here on a spouse visa, then this leave will **not** continue. **Your leave will be 'curtailed' (stopped)** and you will become **liable to detention** and either detained or placed on temporary admission just as if you had newly arrived in the UK, and will remain on temporary admission until a decision on your case is made. **All the rights associated with your previous leave to remain will stop.** This means that you will no longer be permitted to work. If you are working, you must stop, or you will be committing a criminal offence.

## What happens after screening? The first reporting event

After screening, you will be given the date and place you must first report to the UK Border Agency. You must attend this appointment. This will usually be after you have been **dispersed** (taken out of London to your asylum accommodation in some other part of the UK) – see Chapter 12 for information about accommodation and support. Your asylum case will be dealt with by a regional office of the UKBA. At the first reporting event, you may be given a **case owner**. Your case may be dealt with by several different people, but **you may ask for a female case owner and a female interpreter if you wish.**

At the first reporting event, your UKBA case owner will explain the asylum process to you. You can ask questions about the process **including asking for a female case-owner, or explaining that you need time to get medical or other evidence about your claim.**

If you do not yet have a legal representative, you should try to find one. If you do, that legal representative will inform the UKBA, and the UKBA will communicate with that representative. If you do not have a legal representative, you **must** inform the UKBA if you change your address, otherwise you may miss important decisions in your case.

## The asylum interview

The asylum interview is a **very important** part of the process in deciding your application for asylum. For detailed information about the interview and preparing for it to increase your chances of a successful claim (see Chapter 3 for information on how to prepare your asylum claim and avoid being disbelieved, and Chapter 4 for information about the asylum interview).

## Decision

When making the decision your UKBA case owner must:

- look at **everything you have told them about your case**, in every interview and any statement you have provided;
- look at **all the evidence you or your legal representative has provided**;
- look at the **law** that determines who is entitled to remain in the UK; and,
- decide whether, **according to the law**, and using the correct **standard of proof**, you are entitled to some form of international protection in the UK.

## 2.5 Things to remember

- If you did not claim asylum *on arrival* at the airport, port or international railway station, it is **very important** to claim asylum *in-country* **as soon as reasonably practicable** after your arrival in the UK. **If you have delayed more than 72 hours (3 days)** before claiming asylum, (even if this is just because you could not get an appointment at the Asylum Screening Unit in time) **you must give detailed reasons for this**. If you have already been in the UK for some time, you must explain *what has changed in your country, or what specific information you have just received* which justifies a claim now rather than when you first arrived in the UK.
- When you telephone to make a screening appointment, and again at your screening interview, you will be asked questions about your identity, nationality, family and background, your journey to the UK, and why you cannot return home. It is important to answer these questions carefully, consistently and truthfully. This is because your answers will be used to decide whether or not you should be given protection in the UK.

- You are **liable to detention** but you are **unlikely to be detained** unless you have been fingerprinted elsewhere in Europe, you have already been in the UK a long time before claiming asylum and/or you have been arrested by the police in the course of a criminal investigation. If you fit into any of these categories, you should get legal advice as soon as possible.

If you are not detained, you will be given **temporary admission** and be required to report regularly to an immigration office. You must comply with (obey) these requirements or you risk being detained.

If your case concerns sexual violence or other issues especially affecting you as a woman, you may ask for a private room, a woman interviewer and a woman interpreter at your screening interview, and a woman case owner to deal with your claim.

*See page 95 for information about legal advice and support organisations.*



# Seeking Refuge?

## A handbook for asylum-seeking women

### 3.1 Introduction

Preparing your asylum application properly is a very important part of increasing your chances of succeeding with an asylum claim. You should think about your claim very carefully, and consider what evidence can be provided to support what you are saying.

### 3.2 The importance of 'credibility' (whether you can be believed)

The UKBA may not believe what asylum-seekers say about their cases<sup>39</sup>. This is especially true where applicants cannot remember the exact dates when things happened, or give different dates or different explanations for a particular event. Immigration Judges dealing with appeals from people who have been refused asylum can also take this view.

*(From UKBA decision letters refusing asylum)*

*"...from your own admission you travelled across various European countries but failed to claim asylum in any of them. Your explanation that you did not claim asylum in Italy "because I was not asked for any further information and thought I would have a chance to explain later" has not been accepted as reasonable... and **your credibility has been damaged...**"*

*"...you have produced no evidence of your father's involvement with [a specific political party] or that he was taken away and killed... you have not been given the benefit of the doubt regarding your unsubstantiated claims....**your credibility has not been established...**"*

These phrases mean that the UKBA did not believe what the asylum-seeker was saying.

### 3.3 What you can do to prepare your case

#### **Make a very detailed written statement.**

Many people applying for asylum say too little. It is helpful to think of your statement like telling your life story, and that this may be your only chance of telling it properly. A detailed witness statement will take many pages of typing and take several days to think about and write down. Remember that things in your country may be very different to how they are in the UK. Things that may seem obvious to you may not be understood by a UKBA official who has lived in the UK all their life.

**Your legal representative should ask you everything about your asylum claim, and prepare a statement for you.** If you prepare a statement by yourself to give to the UKBA, make sure you keep a copy of it.

***This may well be too little information:***  
***"...one night they came and took me away, and after a few days one of the guards spoke to my uncle and I escaped and came to the UK"***

***It is better to give details:*** ***"it was several months ago, in the summer, maybe a Tuesday near the end of July – I remember it was after my mother's birthday. At about 2 o'clock in the morning there was a loud banging on the door and a lot of shouting and some gunshots. My little boy was woken up and started crying. I went to the door and there were several men. They were wearing a uniform I didn't recognise. I couldn't see the colour because it was dark. There were at least 3 or 4 men. They pointed guns at me. I don't know what type of gun- I don't know anything about guns, and it was dark. We only have oil lamps in the house and there were no street lamps. Two of them grabbed my hair and clothes and dragged me out of the house and put a cloth over my head and put me into a truck – I know it wasn't a***

<sup>39</sup> This problem (often called "the culture of disbelief") has for many years been recognised and referred to in published reports by lawyers and organisations helping asylum-seekers. It means that many people with strong claims for asylum get refused, and have to go to an appeal to win their case. The UKBA does state it will improve "the quality of decision-making" in asylum-claims, but credibility is still a problem.

car because it had a metal floor and a loud engine and was very bumpy. ...They took me away somewhere and when they took the blanket off I was in a large room with about 20 other women. Nobody knew exactly where we were....”

*and then describe day by day what you ate, how often you were given water to drink, whether you were given any clean clothes, when you went to the bathroom, did you suffer any beating or torture. Then describe in detail how your escape was arranged.*

- **If you were raped, sexually assaulted and/or physically assaulted (for example, beaten), explaining this may be difficult, and you may not want to remember these things. But it is important to give details,** especially of torture and abuse, to assist your claim. For example, you could include:

- how many people did this to you;
- what uniforms they were wearing;
- whether they were police, army or secret police, and their rank if known;
- how they tortured you;
- how often this was e.g. what time of day or night;
- who was in the room; and
- how you managed to survive.

Many women don't give this kind of information because it makes them feel embarrassed or distressed. **But, if this is the basis of your claim, you will have to give this information, and the sooner you do, the easier it is for the UKBA to accept your case.** If you don't mention something at the beginning, it may then be said that you made it up later to assist your claim. It may be helpful to remember:

- The UKBA case owner (and your interpreter) has to keep this information confidential.
- There are organisations which specialise in advising and supporting people who have suffered torture, and who may provide a specialist report. If you have a legal representative helping you under legal aid, they should contact one of these organisations for you. *See page 95 for information about support organisations.*

- **If you escaped from prison in your country, and if anyone helped you escape,** tell the UKBA exactly how you escaped, and if anyone helped, exactly why they did this. The UKBA do not often believe that people escape from prison, because in Britain almost nobody ever escapes from prison. For example, you could explain what type of buildings there were, how they were guarded, what kind of countryside around the prison, how exactly you got away, etc.
- **If you crossed the border illegally to get out of your country,** you should tell the UKBA exactly how you did this, and if anyone else helped, why they did this.

*“I walked every night from my village to near the border. This took about a week. After a few days I met some other people, a whole family, who told me they were trying to cross the border, and they said that if I helped carry their small child they would share their food and water with me. One night we crossed the border. This was not so hard because it is very mountainous and the authorities cannot patrol every single path. But it is very dangerous because if they see you they shoot you”*

- **‘Discrepancies’:** the UKBA often refuse asylum applications because of **discrepancies**. A discrepancy is a small difference in a story which you have been asked to tell on different occasions, such as telling the screening officer that you escaped from prison on a Monday evening, and later on telling the UKBA case-owner that you escaped on a Tuesday morning. **To avoid discrepancies** it is best to think about your application very carefully before contacting the UKBA.

## Section 8 Asylum and Immigration (Treatment of Claimants) Act 2004<sup>40</sup>

This law says that the UKBA **shall** (must) decide that a person's credibility is damaged if they do any of the following without explanation or reasonable excuse:

- Hiding information or giving misleading information.
- Obstructing a decision (for example by failing to report to the immigration office as required).
- Not producing a passport or travel ticket, or producing a false passport.

<sup>40</sup> <http://www.legislation.gov.uk/ukpga/2004/19/section/8>

- Failing or refusing to answer a question.
- Not making an asylum claim until after they are already in trouble with the police or the UKBA.

The UKBA often uses this law to refuse an application, but Immigration Judges do not always follow the UKBA, and do not often decide that an applicant is not credible *just because* they arrived on a false passport, or missed some reporting appointments.

### 3.4 What evidence can you provide to support your claim?

- **Original documents** (such as arrest warrants, political party membership cards, etc). You should, however, make sure you know exactly where the documents came from (who sent them to you, how did those people get hold of such a document) and what they mean. If you do not yet have a legal adviser, you must photocopy any documents, and the envelopes they arrived in, before you give them to the UKBA. You or your legal adviser will need to get a **formal translation**, and may have to show the document to an expert, to prove whether it is a real document or not. It is important **never** to provide documents unless you are sure that they are genuine. Fake documents will do more damage to your claim than not having any documents at all.

Ms A had been refused asylum and lost her appeal. Her uncle sent her some documents from her country. They looked real. She said they showed the police were looking for her. She sent them to the UKBA. Then she found a legal aid solicitor, who paid for translations. It was then noticed that the documents were dated with a date that was in the future, and were obviously fake. Unfortunately, they had already been sent to the UKBA.

Ms B showed a newspaper sent from her country. It looked like a real newspaper. There was an article with her picture, saying that the government were looking for her. But that article was in a different print. Someone had carefully lifted off the print of the real article and printed something different in its place. Fortunately this was noticed before anyone sent it to the UKBA.

Any documents that are not in English must be translated by a qualified translator, who **certifies** that they have made an accurate translation. If you have legal aid, your legal representative will arrange this. If you don't have a legal representative, then you will have to contact and pay a translation company yourself. It is easy to find one in your area on the internet. If a document is not translated, or you only have an unofficial translation, **neither the UKBA nor the Tribunal will pay any attention to it.**

- **Public reports about human rights abuses in your own country:** the United States publishes *US State Department Human Rights Reports* on every country each year. International human rights organisations such as Amnesty International, Human Rights Watch, and also the UNHCR, write regular reports on the countries with the worst human rights abuses. **The UKBA itself publishes Country of Origin** reports for the main countries from which people claim asylum. The purpose of this kind of evidence is to show that, in your country, what you are afraid of happens often. Remember that the Refugee Convention requires your fear to be **well-founded**. If you cannot find any written evidence at all, in any of these reports or any other published report, to support your asylum claim, it may be difficult to persuade the UKBA that you should be given refugee status. *All these reports can be found on the internet – see page 95 for details.*

*"You say that you were raped in prison. This is regrettable of course, and the UK does not condone that kind of abuse. But it was probably the act of a rogue policeman disobeying his own orders...."*

The UKBA could not so easily make a decision like this if you can provide evidence from a public report that women in prison in your country are often raped and abused by their guards.

- The UKBA also publishes **Operational Guidance Notes (OGNs)** in which the UKBA sets out the main reasons for claiming asylum from a particular country, and gives the UKBA view of those claims. These OGNs are often strongly criticised by country experts and lawyers, but show how the UKBA may deal with a claim like yours.

- **Witness evidence:** these are written statements made by other people who can **corroborate** (back up) your own evidence, maybe because they saw what happened to you, or they were in the same organisation as you or in the same prison, or maybe the same kind of thing happened to them.

### 3.5 Who else can give evidence to support your claim?

- **Your witnesses**
  - You should **check any statement made by a witness** (even if that statement was prepared by your legal representative) so that **you** know what your witness has said, and that it really does support your case. **If your witness has said something different to you**, talk to her about this and make sure that you understand why, and tell the UKBA. For example, if your witness got the date wrong that you escaped from prison you should discuss this and explain any mistakes or confusion. She would need to give additional evidence, for example: *“I’m not sure now if it was this day or another day, because I saw 2 of my friends escape from that prison”*.
  - You should **urge your witnesses to be ready to attend any future appeal hearing**, even if it means taking time off work or getting someone to look after their children. The Judge will not give much weight (importance) to their evidence if they do not attend.
- **A country expert**
  - An expert is someone professional who knows about your country but who is accepted to be neutral (not belonging to any political party in your country), and whose report will obey the *rules of the court*. The expert has to promise to tell the truth, and not hide anything just because it might weaken your case.
  - Experts charge money for preparing expert reports. If your legal representative agrees that an expert report is necessary in your case, this can be paid for from legal aid.

- **Your doctor or psychiatrist or other medical professional**
  - If you have a serious medical or mental health problem, **especially if this has been caused or made worse by the persecution, torture or inhuman treatment you have suffered in your country**, you should get a medical or psychiatric report.
  - Usually the doctors charge money for these reports. Legal aid can pay for this.

### 3.6 Things to remember

- **Your future legal rights and your future in the UK may be affected by small mistakes made at the beginning. So take care and prepare well.**
- Make a very detailed statement about your claim. Be very careful to remember **everything** in your life that is relevant to your claim.
- Be clear and truthful about the dates and times of all important events.
- If you can find **witnesses** (people in the UK who can back up your claim), ask them immediately if they will make statements for you, and **ask them to come to your appeal** if you are refused.
- Before sending any **witness statements** to the UKBA, make sure they don’t say anything different to what you have said yourself. If they do, this must be explained.
- If you have any **medical or mental health problems**, your legal representative should get reports from your doctors to give to the UKBA.
- If you have any **original documents** make sure you know where they came from, what they say and why they are important.

See page 95 for information about legal advice and support organisations, and for website addresses of country information.

# 4 Your Asylum Interview



## 4.1 Introduction

Your asylum interview is **extremely important**. The UKBA will use the interview to:

- ask you facts and details about your journey to the UK;
- ask facts and details about why you fear returning to your country; and
- decide if you are telling the truth.

You may have already given some information to the UKBA at your **screening interview** (see Chapter 2 to find out how the British government will deal with your claim for asylum). Your legal representative may have prepared a **detailed statement** for you (see Chapter 3 Preparing your asylum application). If so, you may have to **repeat** this information at your asylum interview.

The UKBA may not ask you about everything. So **you** must use the asylum interview to make sure **you** give **enough information** to convince the UKBA that you need the protection of the British Government because you face a **real risk of persecution or serious harm** if you return to your country.

**What is enough information?** Look again in Chapter 1 to see what the law says is needed to win a claim under the three types of international protection – the Refugee Convention, Article 3 of the European Convention on Human Rights and Article 15c of the European Qualification Directive.

### The burden of proof

It is **you, the asylum-seeker's, responsibility** to tell your story and give enough information so that your claim can be believed. The law calls this the **burden of proof**. If you don't tell the UKBA something important, they don't have to go and look it up themselves, even if it would be easier for the UKBA to find the information than for you, the asylum-seeker, to do it. If the UKBA officer deciding your case knows some useful information which would support your case, she does not have to use it when making her decision, unless you or your legal representative tell her about it.

### The standard of proof

In deciding your case, the UKBA must do two things. They must assess your account of past events and decide whether or not it is true. Then they must decide whether or not you are in danger in the future, applying the standard of proof of a **reasonable degree of likelihood** or a **real risk of serious harm**. At every stage of considering your case they must apply **anxious scrutiny**. This means they must look at your claim sensitively. They must understand how difficult it is for asylum-seekers to get evidence of what has happened to them. Therefore they should not reject your case *just because* some of it is confusing, or *just because* you don't have any independent evidence. If there is no evidence other than your own statement, they should give you the benefit of the doubt unless they are convinced that what you are saying did not happen.

Even if the UKBA believe you have been persecuted in the past, you still need to show it will happen again. You are **strongly advised** to get legal advice **before your interview** (see page 95 for how to find a legal representative). Your representative should talk to you about your case and prepare a **statement** (see Chapter 3). Your representative may have sent your statement to the UKBA before the interview, or may give it to you to hand to the interviewing officer at the start of the interview. Your representative should advise you about the interview and answer your questions **before** you go.

## 4.2 The interview: important practical details

Your UKBA case owner will write telling you the date, time and place of your asylum interview. They will send the letter to your legal representative, or to your address if you have no legal representative. If you are receiving asylum support that letter should also contain a train ticket or travel card to pay for your journey to the interview office. **If the letter mentions a train ticket but does not enclose it, contact your UKBA case owner straight away.** The

UKBA will only pay for travel for the person being interviewed.

- You **must** attend your asylum interview. **If you do not attend, your whole claim can be refused straight away for 'non-compliance'**. Non-compliance means failure to cooperate with an important part of the asylum process.
- If you are ill and your doctor **writes a formal medical letter** saying that you are **not fit** to be interviewed, the UKBA may postpone (put back) your interview. **It is very difficult to get an interview postponed.** If you are seriously ill, and you have detailed medical evidence, the UKBA may decide to make a decision without interviewing you.
- If you or any of your family becomes **seriously ill**, or something else serious happens on the day of your interview that stops you from attending, you must telephone your legal representative and the UKBA straight away, and provide evidence **within 5 working days**. Having a college exam or a doctor's appointment, or getting up late and missing the train, are not likely to be thought of as serious reasons for missing an asylum interview.
- **Child care** – the UKBA has now started providing child care for the children of asylum-seekers who are attending an interview. If you have children, you should check with your UKBA case owner dealing with your case if they are providing child care at that particular interview office, and ask them if you need to bring anything for the children (such as food or toys).
- **Your interview may take several hours** – if you cannot arrange for your children to be cared for you will have to take them with you. You may wish to take some food and water because the interview office may not have any facilities apart from toilets.
- You should think about **who comes with you to your interview**. You may have to answer questions about things that you do not want your children or anyone else, such as your husband, to know about. For example, you may not want your family to know that you were raped, as you may not have told them about this, or any other harm you have suffered. However, information like this is very important for your case, so you need to tell the interviewing officer about it during your interview. Therefore, you may not want your husband or another member of your family to go to the interview office with you, or to sit in the interview itself, but you may want a friend or someone from a specialist support organisation to go with you instead. If you do, check with your UKBA case owner whether they will be allowed in: every office has different procedures.
- Legal representatives are allowed to attend interviews to take notes. They are not allowed to answer questions for you, but they can try to make sure that the interview is fair. But **your legal representative is unlikely to attend**, as legal aid does not normally pay for legal representatives to attend asylum interviews. You should **ask for your interview to be tape-recorded** – see [Chapter 3](#).
- **If English is not your first language**, the UK Border Agency will provide an interpreter for you. **You can ask for a female UKBA interpreter**, and the UKBA will provide one if there is a woman available who speaks your language. The interpreter is there to interpret for you, and should interpret everything you say, fully and accurately. You may understand enough English to know that the interpreter has made a mistake or has summarised your story (made it shorter and left out some details). If you don't think the interpreter has fully translated what you said, you should tell the interviewing officer straight away, and ask her to write a note on the interview record. **If there is any problem with the interpreter, you must say so during the interview.** You will be asked at the beginning of the interview whether you understand the interpreter. If you say "yes", then it will be unlikely to be accepted later that any misunderstandings or discrepancies were the result of bad interpreting. Do not be held back from complaining about the interpreter by feeling intimidated or that it would be impolite – remember that **this is your case and you only get one chance**.
- The interpreter is not there to assist you or provide you with advice. If you need advice, you should contact your legal representative.
- The interviewing officer will write down every question she/he asks you, and every answer you give. At the end of the interview she will give you a copy of these notes, called the **Asylum Interview Record (AIR)**.
- **You can ask for the interview to be tape-recorded** so that there is an accurate record of what was said. It is important that you have an accurate record of your interview in case there is a disagreement about what you (or



the interpreter) did, or did not, say. If possible, you should do this at least 24 hours before the interview. The UK Border Agency has a **legal obligation to tape-record asylum interviews when requested**, so you can ask for your interview to be recorded on the day, if necessary. **When you get to the interview the UKBA may ask you to change your mind**, and/or tell you that it will delay your interview. However, if you have no legal representative, or if your legal representative has asked in writing for the interview to be tape-recorded, you are **strongly advised to insist on it**.

*"The UKBA interpreter was from the south of my country, and I am from the north. I said two or three times that I didn't understand her, but she said it would be all right, and carried on. Because I can't understand any English at all, I didn't know if she told the interviewing officer what I said. After the interview was over, I took the tapes back to my representative and we listened to them, with an interpreter that I can understand. It was clear that the UKBA interpreter did not properly translate what I said. My representative sent a written complaint, and gave the information I had tried to give in the interview".*

## 4.3 Important legal issues in your asylum interview

**Remember, it is up to you** to convince the UKBA about your asylum claim. The **burden of proof** is on you, the asylum-seeker. So make sure you know the facts of your own story **in detail**. The UKBA may not ask you enough questions, or the right questions, to make sure your whole account is given to them. They may well ask questions you find confusing, or ask the same question twice to see if you give a different answer.

If you or your legal representative have not already prepared a written statement (see Chapter 3) you are **strongly advised** to prepare a written statement before your interview, just to make sure you are clear about what happened to you. **This may be the most important thing you do, and may take you a few days of thinking and writing to remember your own story in enough detail, without any mistakes in it.**

You should carefully check your **screening interview** so that you remember everything you have already told the UKBA. Your legal representative should advise you about this. If you want to give new or different information, you must say why.

**"At my screening interview I did not say that my children are already here in the UK. That's because I did not find out they were here until after that interview..."**

**Q**: "What countries did you travel through on the way to the UK?"

**A**: "I can't remember all the countries, but I remember being in France, because we waited for a lorry to take us to the UK"

**Q**: "but in your screening interview you said you couldn't remember any of the countries you travelled through"

**A**: "I know, but that was because I was frightened of being sent back to France straight away and my friends told me not to give that information..."

It's **your asylum claim**. Before the interview, make sure that **you** understand how your claim fits the Refugee Convention or Article 3 ECHR (see Chapter 1). It is a good idea to make sure that, at some point in the interview, you say **4 important things**:

- "I came to the UK because I am **frightened to return to my country**"
- "I am frightened **because** (whatever Convention Reason (see Chapter 2) or reason why you fear serious harm)
- "Before I left, *this* happened to me (the serious harm that made you flee your country), and **I had to get away because if I didn't the serious harm would happen again**
- "There isn't anywhere in my country where I would be safe"

## Confusing questions

**Example 1:** The interviewer may ask you a question which is **difficult to answer** properly:

**Q:** *“when the police came to your house at night, was that when they took your daughter away...?”*

This is actually four or five questions in one. You may want to say that it wasn't the police who came, it was the army. And they didn't come to the house, but to your uncle's farm. But it was at night, and they did take your daughter.

**Many asylum-seekers answer a question like that by just saying “No”.** Then the UKBA says 'when we asked you if your daughter was taken away, you said “no”.....' and this counts as a **discrepancy**. The UKBA may well then say that you have **poor credibility**, which means that they don't believe your story.

If a complicated question like this is asked of you, give yourself the chance to answer each part of the question properly:

**A:** *“It didn't happen like that. Let me tell you in my own words...”*

Or

**A:** *“I don't understand the question. Please ask it in a more simple way”*

**Example 2:** a question may be asked where the answer would **be long and difficult** to get all the details right:

**Q:** *“when you were in prison last year were you tortured or ill-treated at all?”*

**Some asylum-seekers say something like** “One night the guards came and tortured me....” Then the UKBA say later on 'You said the guards came on only one night...' and they call this a **discrepancy** and say you have **poor credibility**.

If they ask a question like this, give yourself a chance to answer fully:

**A:** *“The guards came and tortured me on many occasions. It would take a long time to tell you the details of every single time. Some of it I can't remember clearly. Can I tell you about one or two examples of what they did?”*

## Always answer the question

**If the UKBA ask a simple question, make sure you answer it.** Try to listen to each question and concentrate on what you are being asked.

**Q:** *“When were you detained?”*

Many asylum seekers will say “They came during the night – a lot of police with guns rushed into the house and grabbed me, and took me to the local prison....” You may have said all this already in your written statement. The UKBA don't need you to repeat that detail, but they may need you to clarify when this happened. **Make sure you answer the question “when?”.**

**A:** *“I was detained twice. Once was two years ago, after my husband was put in prison. That time I was detained for 2 weeks. The second time was in March – the second week in March 2011...”*

**Things the UKBA may find it difficult to believe – if this kind of thing happened to you, be careful to give full details.**

*(see Chapter 3).*

You may have escaped from a prison in your country, or travelled a very long distance by walking. You may have managed to escape even when you were very ill, or you were experiencing the effects of torture or ill-treatment. You may have hidden money or identity papers in a small corner of your house which the police did not search. These are things which do not happen very often in the UK, and people working at the UKBA may find it difficult to believe these things. So it is helpful if you give **details**, for example:

- *Prisons in my country are not like prisons in Europe – there were some lorry containers in the desert which we slept in, and the guards sometimes left the doors open because it was too hot.... [in Eritrea there are prisons like this].*
- *I managed to get away even though my leg was broken. I was in great pain. Sometimes I fainted. I had to drag my leg and I could only go a few metres at a time... [an elderly Somali man with a broken leg took 7 children from Mogadishu over the border into Kenya – it took him several weeks].*
- *In my country we often travel long distances by walking, getting food from people we meet in small villages on the way, because there is no public transport like there is in Britain [this is common all over Africa].*

*The police did not find my money because they are not like the police in Britain. I had hidden it carefully in a hole in the wall, covered with mud... we don't use banks in our country because they are corrupt [a wealthy woman from Democratic Republic of Congo kept a lot of her money hidden like this].*

### **Difficult or upsetting details** (see Chapter 3)

Sometimes women find it hard to talk about certain things, for example if they have been raped or have experienced sexual violence. And sometimes UKBA interviewers don't give applicants much time to explain what happened to them. Even if it is difficult for you to talk about these things, and even if the UKBA interviewer seems to want to change the subject, it is **very important that you give this information in the interview**. If you are tired or upset during your interview you can ask for a break. If you want to say more about a particular issue **you should tell the interviewing officer about it, even if they don't ask a question about it**. The interviewing officer may not know about your case or what your country is like.

At the end of the interview, the interviewing officer will ask you a question, such as: "Is there anything else that you want to say?" **Before answering**, stop and think whether you have said everything that you want to. You can say "**Just give me a minute to think**". If the interviewing officer does not give you more time, say that you have more to say, but that you are not being given enough time. She should write this down.

## **The UKBA Gender Guidelines and your Asylum Interview**

The Gender Guidelines<sup>41</sup> state that:

- UKBA case owners and interviewers **should be aware** that women find it difficult to talk about sexual violence, abuse and torture.
- UKBA case-owners should **take into account** information about women's political and legal rights in your country when making a decision on your claim.

The Gender Guidelines also set out the right to have a female case-owner and interpreter at your interview. You (or your legal representative) should ask for a female case-owner and interpreter before the day of your interview if you can, but the UK Border Agency says that requests

made on the day of interview will be met where possible.

If you feel that the UK Border Agency did not follow the Gender Guidelines in your asylum interview, you should discuss it with your legal representative. They may **make representations** (write a letter) on your behalf to the UK Border Agency or, if necessary, make a **formal complaint** about the way you were treated.

## **Supporting evidence**

If you have **original documents** which you or your representative have not already sent to the UKBA, you can hand them in at the interview. You can also hand copies of **any other written evidence** that may be useful in your case, such as a medical report, or a published report about human rights abuses in your country. *Look back at Chapter 3 section 4.3* for important rules on original documents.

## **4.4 At the end of the interview**

The interviewer will finish the interview by saying "Do you have anything else to say in support of your claim? **Stop and think for a moment**. If you have not said **the 4 important things** mentioned above, you should say them now.

The interviewer will ask you whether you are feeling well and if you are satisfied with your interview. Many asylum seekers will not mention any problems they have. **It is important to realise that this is your chance to raise any problems that you have had, and it is much better to raise them at the interview than later**. If there are any more details you could give, say so. If you think the interviewer has misunderstood something you have said, say so. If she has not given you time to explain something, say so. If you didn't understand the interpreter, say so. The interviewing officer must write all this down. You may be asked to sign the end of the interview. Sometimes this is to say that you agree that the interview is an accurate record. Usually you are just signing to say that you have been given a copy of the interview notes.

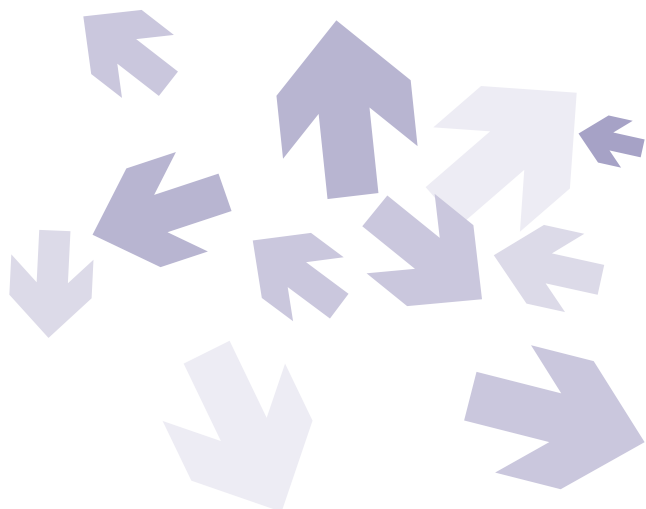
<sup>41</sup> [www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/](http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/)

## 4.5 After the interview

After the interview is finished, your interviewer should go and make a photocopy of the **asylum interview record** and should hand you the copy. You should also be given a copy of the tapes of the interview, if your interview was tape-recorded. You should keep both of these safe, and take them to your legal representative as soon as possible (the same day or the next day if possible). Your representative should read the whole interview carefully and discuss every question and answer with you. If she/he thinks there are any problems (such as **discrepancies** (see *Chapter 3 section 3.2*) or if you have not given enough detail about an important event) she/he should write a letter to the UKBA straight away **making representations** (arguments to support your case) about these problems.

If you **do not have a legal representative** you are strongly advised to read through your interview carefully yourself, and compare the answers to your screening interview and your statement, and if you see any **discrepancies** or other problems, write a letter yourself to the UKBA explaining what you think is wrong. If you do this, you **must write within 5 days of your interview**. Send your letter by *recorded delivery* and keep a copy of it.

*"In my screening interview I said that I was not harmed while I was in prison, but in my asylum interview I said that I was raped 3 times and beaten every day. I did not tell this at the screening interview because my husband and children were there and I did not want him to know this, or for my children to hear these things, and I was also too upset to speak about it..."*



## 4.6 Things to remember

- By law you **must** attend your interview, or provide written evidence (such as a doctor's letter) to say why you could not attend.
- Your asylum interview is **very important** as it is your chance to tell your case-owner why you had to leave your country and why you cannot return there.
- In law the **burden of proof rests on you**. This means that it is **up to you** to say what happened and give enough details and evidence to show that you have a claim for international protection. Therefore **you** (or your legal adviser) should tell your case-owner all the information that is relevant to your application, and provide any evidence that you have which could support your claim. You must make sure you say **why** you are frightened to return to your country, **what type of persecution or serious harm you fear**, and **what you fear may happen to you** if you are sent back.
- **Listen carefully to each question and think before you reply**. If the question is confusing, say "I want to tell you what happened my own words". If the question asks for a lot of upsetting information, say "I have a lot to tell you about that..." If they ask a simple question, make sure you answer it clearly. If you do not know the answer, say so. **Be truthful and consistent**.
- There is a legal obligation on the UK Border Agency to tape-record asylum interviews if requested. **You should ask for your interview to be recorded**.
- Under the **Gender Guidelines**, you can ask for a female case-owner. You can also ask for a female interpreter. You (or your legal representative) should request a female interpreter or case-owner in writing before your interview. Requests made on the day of the interview should be accommodated whenever possible.

See page 95 for information about legal advice and support organisations.

# 5 What happens if you are detained?

## 5.1 Introduction

**All asylum-seekers are liable to detention.**

This means that the law allows the UKBA to detain you while your case is being decided. This will be considered at the screening interview. In *Chapter 2* we saw that an asylum-seeker is **unlikely** to be detained **unless**:

- Your fingerprints are damaged and cannot be taken straight away.
- The UKBA thinks that you have claimed asylum elsewhere in Europe and you could be returned back to that European country.
- You have been in the UK for a very long time, either illegally or legally.
- You have claimed asylum only after being arrested or picked up by the police.
- You have claimed asylum just before your visa runs out.
- The UKBA thinks your case can be decided quickly.
- **Where a woman who is a victim of trafficking has been discovered** (for example, working as a prostitute or in some other forced labour) in the course of a criminal investigation, and she has not yet explained to either the police or the immigration officers that she has been trafficked.

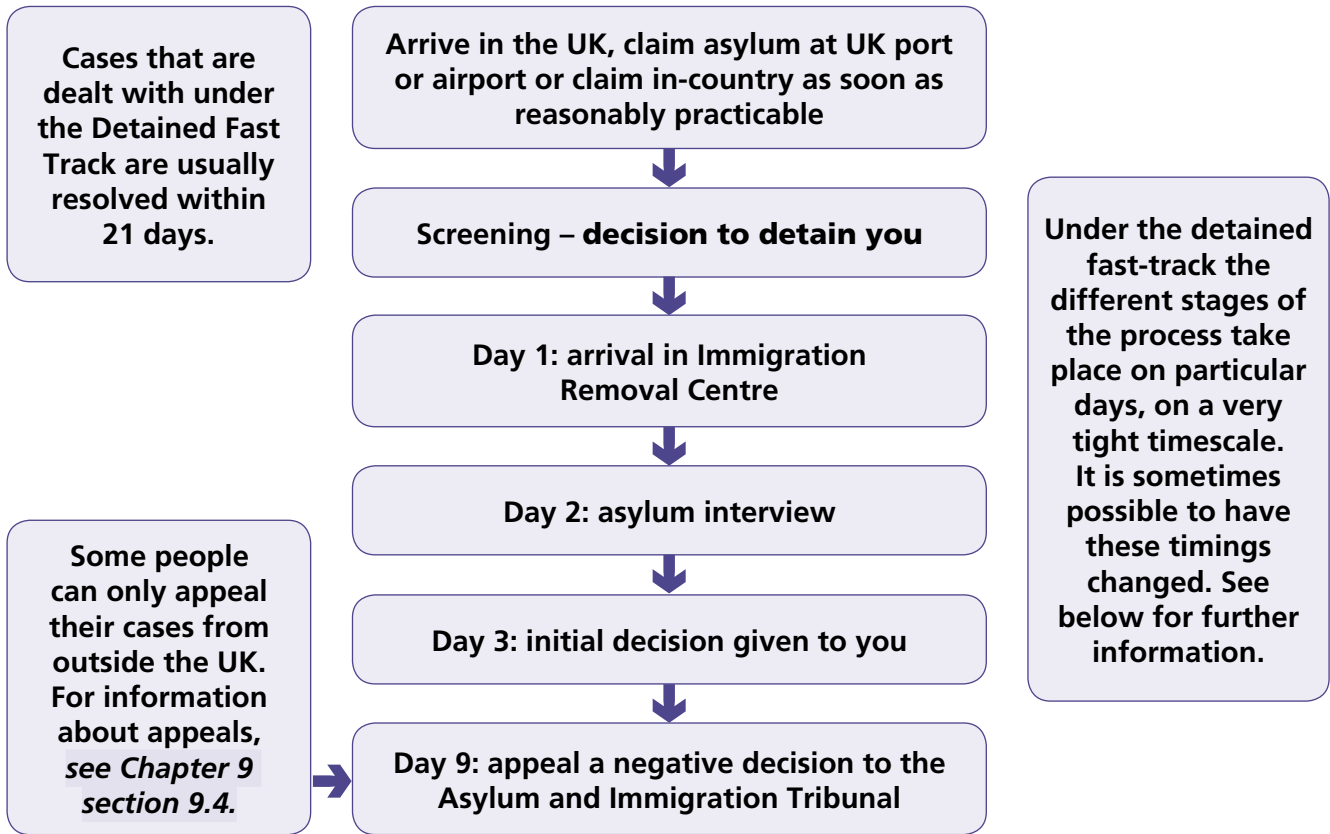
If you come into any of these categories, you are **strongly advised** to get legal advice before making a claim for asylum. This chapter gives advice about what will happen if the UKBA do decide to detain you.

## 5.2 The Detained Fast Track

Asylum-seekers who are detained are usually dealt with under a process known as the **Detained Fast Track (DFT)**. This means that your case will be dealt with **very quickly**. **But your asylum claim must satisfy the same laws and Conventions, and** (unless you are arrested by police or immigration officers) **the procedure for making your claim for asylum is the same as for people who are not detained:**

- **The law** on claims for international protection under the Refugee Convention, Article 3 European Convention on Human Rights (ECHR) and Article 15c European Qualification Directive **is the same whether you are detained or not.** *Look back at Chapter 1 to see what you need in law to fit into any of these Conventions or laws.*
- **The procedures for how to claim asylum (on arrival or in-country)** *are set out in Chapter 2.*
- **Our legal information** on how to prepare your case and how to prepare for your asylum interview **is the same, whether you are detained or not.** *Look back at Chapter 3 for advice on preparing your case, and Chapter 4 for advice on your asylum interview.*

## 5.3 Overview of the process – Detained Fast Track



On the day you arrive in detention, or the next day, you should be given time to see a legal adviser. It is important to give her/him as much information about yourself and your case as you can. This information will help them present your case. If the detention centre staff do not give you any information about getting a legal representative, you should **immediately** ask to see a legal representative. The **Detention Duty Rota** (see box) is a special emergency legal aid advice service.

**Detention Duty Rota scheme:** Every immigration detention centre holds legal advice sessions, in which any detained person can see a legal adviser about their case. This is part of a national scheme of free legal advice and representation for immigration detainees. *If you have a problem with the duty legal adviser (for example, if they tell you your case is not very strong, or they can't help you, and you think they have not listened properly to your story) you should contact BID (Bail for Immigration Detainees) urgently and they may be able to help you go to another legal adviser. See page 95 for details.*

You should tell your legal representative about **any torture or harm you have suffered, and if you have any health issues**, as this information may enable them to have your case removed from the Detained Fast Track, and get you removed from detention.

If you have any **evidence** about your asylum claim which you have not brought with you, you should **immediately** try to contact a friend or someone who could bring the documents to you, or take them to your legal representative, as soon as possible.

**If you have any health problems, you should ask to see a doctor.** The Detention Centre Rules give you the right to see a doctor within 48 hours of arrival in the detention centre – see below.

If you have a **partner, children or any family in the UK**, you should tell the legal adviser and the UKBA. This information may help your case, and it will damage your case if you do not mention this straight away.

## 5.4 Can I get my case out of the Detained Fast Track?

During the screening process (see Chapter 2) the UKBA looks at every case to see if it can be placed in the Detained Fast Track. It is UKBA policy to put cases in the Detained Fast Track where they think a **quick decision** may be made. The UKBA's position is that most asylum claims can be decided quickly unless there is evidence indicating otherwise.

A UKBA policy<sup>42</sup> lists people who are 'unlikely to be suitable' for the Detained Fast Track. Here are some of the categories:

- Women who are 24 or more weeks pregnant.
- Those who have **independent evidence** (from a doctor, for example) of **torture**. Torture is serious physical or mental harm. Torture includes beating someone, or harming them physically in other ways. Rape and other types of serious sexual violence are considered to be torture.
- Those for whom there has been a 'Reasonable Grounds' decision taken and maintained by a 'Competent Authority' stating that the applicant is a potential victim of **trafficking**<sup>43</sup>, or where there has been a 'conclusive decision' taken by a Competent Authority stating that the applicant is a victim of trafficking. This rule, exactly as written here, is difficult to fit into. If you believe that you were trafficked into the UK, for prostitution or domestic labour, you are **strongly advised** to get legal advice straight away, so that your case can quickly be referred into the official procedure for dealing with trafficking cases.

If you experienced torture, ill-treatment or abuse or if you have health problems, you are **strongly advised** to tell your UKBA case owner and your legal representative as soon as possible. Your legal representative can then take steps to try to have you released from detention.

This UKBA policy also accepts that a quick decision is not likely if:

- you or the UKBA need to make **further enquiries**, or obtain **evidence**, such as a medical report or an expert report about your country, **and** this is likely to take longer than

the time allowed under the Detained Fast Track procedure.

- where you have documents which need translation **and** this will take longer than the time allowed under the Detained Fast Track procedure.

A recent case<sup>44</sup> dealt with how a woman placed in the Detained Fast Track did not have enough time to get medical evidence, even though she had injuries from torture, or to collect any evidence about the persecution of lesbians in her country. Her asylum claim was refused and her appeal finally dismissed. New legal representatives applied to the High Court, which decided that she should not have been kept in the Fast Track. The case note includes a form for applying to have your case taken out of the Fast Track.

The UKBA has a policy setting out the circumstances in which **the Fast Track timetable can be changed**<sup>45</sup>. This policy says that if the timetable is too short for your case to be considered **fairly**, more time can be given. According to the policy:

*your case should be taken out of the Fast Track where:*

- **complicated issues** emerge, for example where you need an expert report on your country and you need time to find an expert to prepare it.

*the Fast Track timetable should be changed where:*

- The healthcare staff at the IRC accept that you are not fit for interview.
- Your legal representative does not arrive, or is late for your interview.
- There is no interpreter.
- More time is needed for your legal representative to put forward relevant information after your interview. The decision should then be delayed if it would be unfair not to do so. But the policy says "in most circumstances it will **not be appropriate to delay the decision**".

<sup>42</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddntaintakeselection?view=Binary>

<sup>43</sup> See the Rights of Women legal guide *Trafficking, sexual exploitation and the law*, at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>44</sup> [http://www.ilpa.org.uk/data/resources/13980/11\\_12\\_14-R-BT-v-1-SSHD-2-Upper-Tribunal-C4-1983-2011.pdf](http://www.ilpa.org.uk/data/resources/13980/11_12_14-R-BT-v-1-SSHD-2-Upper-Tribunal-C4-1983-2011.pdf)

<sup>45</sup> The Detained Fast Track processes – timetable flexibility: [http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/Detained\\_fast\\_track\\_flexi.pdf?view=Binary](http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/Detained_fast_track_flexi.pdf?view=Binary)

## The asylum interview

The asylum interview is a **very important** part of the process in deciding your application for asylum. You are **strongly advised** to read our detailed information about preparing for your asylum interview and the evidence you need to provide to the case-owner to avoid them making a negative decision, *see Chapter 3 on preparing your asylum application and Chapter 4 on the asylum interview.*

Detained applicants are **not** entitled to have the interview tape-recorded. This is because legal aid will pay for the legal representative of a detained applicant to attend the interview.

## Decision

After the interview, the case-owner will examine all the information and evidence you and your legal representative have put forward and decide whether or not you should be given international protection in the UK. *See Chapter 7 for information about what to do if you have been granted leave to remain. If your application is refused see Chapter 8 on refusals and Chapter 9 on how to appeal.*

## 5.5 Can I get out of detention?<sup>46</sup>

Even if your case is taken out of the Fast Track, **you may still be kept in detention.**

The UK has **strict legal controls** on detaining anyone who is not being prosecuted for a crime, or serving a prison sentence for a crime. There are **three main reasons** why a person who is not a criminal may be detained for immigration reasons:

- While the person is **subject to examination** by an immigration officer to decide whether or not to grant leave to enter. This just means that their case is being considered.
- Where a person has been served with **notice of intention to deport**, or where a deportation order has been signed, and where a convicted criminal at the end of their prison sentence has been recommended for deportation by a criminal court, they can be detained pending (until) their actual removal.
- Where someone has been refused leave to enter and has not yet left the UK (for example a refused asylum-seeker who has no further rights of appeal), they can be detained

pending (until) removal directions have been made and arrangements made to remove the person.

### Detention must still be justified in each individual case.

A person who is lawfully detained under one of the above reasons might become unlawfully detained if their detention is continued for a long time without being justified. The main **justifications** for detention are as follows:

- At the beginning of the detention, to establish a person's identity or basis of claim.
- Where there is reason to believe that the person will fail to comply with (obey) any conditions attached to the grant of temporary admission or release (*see Chapter 2*). The UKBA may detain a person if they think that the person would **abscond** (run away and hide) and carry on living illegally in the UK.
- 'To effect removal'. If the UKBA are actively organising a person's removal, they can keep that person in detention for a short time to make sure the person is actually put on the plane.

However, many people whose detention cannot be legally justified are kept in detention for long periods. There are two things you can do:

### Apply for release on bail

This is a separate legal problem from your asylum claim, and **this book does not advise about applying for bail.** You can make your own bail application without a legal representative, but you are **strongly advised** to ask your legal representative to help you, as you stand a much better chance of getting bail if you are legally represented. You can get help and advice from **BID (Bail for Immigration Detainees).**

### Apply to the High Court for a judicial review of the decision to detain you

If you have been kept in detention for a long time, and have been refused bail more than once, you *may* be being detained unlawfully. You are **strongly advised** to get legal advice.

<sup>46</sup> This section is a very brief summary of the law on bail, lawful and unlawful detention. These are specialised areas of law which are beyond the scope of this book.



## 5.6 Your rights while you are in detention

Women in detention have certain rights, including the right to a medical examination and the right to legal advice. You should be given a **medical examination** in the first **48 hours** of your detention. You should tell the doctor about any sexual abuse, physical harm or ill-treatment, and if you think you might be pregnant. This will support your asylum claim, and may help your legal adviser get you out of detention. **If you need medical attention and you do not receive it, make a formal complaint to the Governor of the centre as well as informing your legal adviser.**

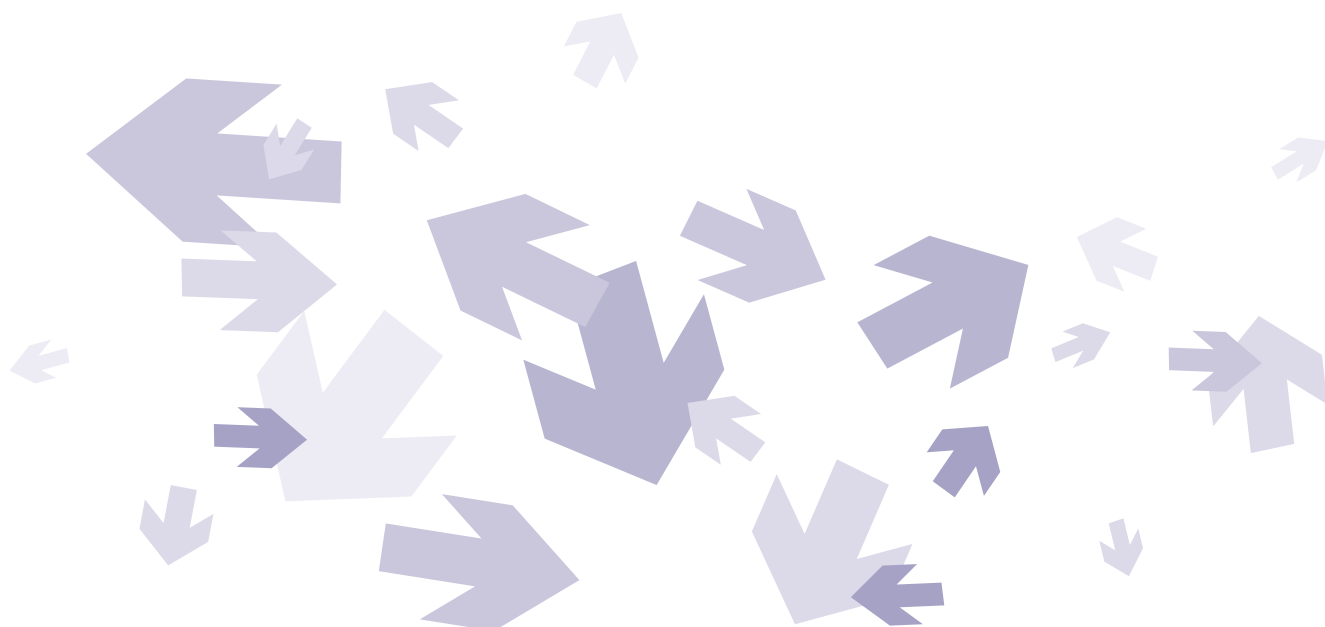
## 5.7 Things to remember

**The law on asylum is exactly the same whether or not your case is in the Detained Fast Track.** For important advice see *Chapter 1 for the law on international protection, Chapter 3 on preparing your asylum application, and Chapter 4 on the asylum interview.*

- Any asylum claim could be placed in the Detained Fast Track. But UKBA policy states that **certain people should not be detained**, such as torture survivors. And if your case is complicated, or needs evidence which cannot be provided quickly, your case should not be in the Detained Fast Track. If you think this applies to you, tell your legal representative and your UKBA case-owner. The decision to place your case in the Detained Fast Track can be challenged by your legal representative.

- Decisions in the fast-track are made on a fixed timescale. However, case-owners can give you more time in certain circumstances. There is a policy that sets out when more time may be needed to prepare a case. If you think that you need more time, for example before an interview, tell your legal representative and your case-owner.
- You can ask for a female case-owner and interpreter to interview you.
- If you are taken into immigration detention you have certain rights, including the right to a medical examination and legal advice.
- **There are strict legal rules controlling detention** of anyone not suspected or convicted of a criminal offence. If you are kept in detention even though your case is not in the Detained Fast Track, you can apply for bail, and you may be able to apply to the High Court for a decision that your detention is unlawful. Your legal representative can advise you about both these legal remedies.

*See page 95 for information about legal advice and support organisations.*



# 6 Older Cases – the ‘Legacy’ and the Controlled Archive

## 6.1 Introduction

All applications for asylum are considered by the **UK Border Agency (UKBA)**<sup>47</sup>. Asylum applications often used to be dealt with slowly. By 2006 the number of asylum-seekers waiting for a decision was estimated at 450,000. The Government introduced a new process for dealing with new asylum applications (the **New Asylum Model or NAM**), which had a target of 6 months in which to deal with an asylum case. From 5 March 2007, all new claims for asylum were dealt with through NAM, and the NAM procedure is still more or less followed today

A separate department, the Case Resolution Directorate, was set up, to **conclude** the old cases (this meant working on the cases until either leave to remain was granted or the person was removed from the UK). These old cases, and the department dealing with them, became known as the **Legacy** and had a target finishing date of July 2011. At that point the Government announced that the Legacy process had been completed, with only a few cases still outstanding, and as a result the Case Resolution Directorate has been closed down.

### If you claimed asylum before 5 March 2007

Those old cases still outstanding are now being dealt with by a new UKBA department, the **Case Assurance and Audit Unit (CAAU)**. This unit “will consider cases in line with the Immigration Rules that are in place when a final decision is made”. There is no guidance about how long this might take and no rules about prioritising certain types of cases.

If you claimed asylum before 5 March 2007 and you still have not had any decision on your case, or you do not know what has happened to your case, you are **strongly advised** to get legal advice. You may have evidence for a **fresh claim for asylum** see [Chapter 11 section 11.8](#) or you may have other reasons for wishing to stay in the UK which would support an application under

**Article 8 ECHR** (right to family and private life) see [Chapter 1 section 1.8](#). Or the UKBA may have refused your claim a long time ago, but just not made any attempt to remove you. You *may* be able to apply under the Long Residence rule (see [section 6.2 below](#)).

If you do not have evidence for a fresh claim, nor any strong family or community connections, nor any significant employment record, the UKBA are likely to try to remove you if they can find you. You are **strongly advised** to get legal advice.

### If you applied for asylum after March 2007 (NAM cases) and you still have not had a decision

The UKBA has not been able to keep to the 6-month target for dealing with all asylum claims under the NAM process, and there is a growing backlog of cases from this period also. Some of these cases may never have had a decision. But most of them are cases where the asylum claim has been refused, but the UKBA has taken no action to remove the person from the UK. There are some countries that the UKBA finds it difficult to send people back to. This may be because:

- The country is still dangerous, and there are no commercial flights. This doesn’t mean that UKBA has accepted that nobody should be sent back there. The UKBA often deals with this problem by arranging a special charter flight to that country to transport failed asylum-seekers.
- The UKBA cannot arrange a valid passport or travel document for you. See [Chapter 11 section 11.8 for information about this situation](#).

You may have evidence for a **fresh claim for asylum** see [Chapter 11](#), or you may have other reasons for wishing to stay in the UK which would support an application under **Article 8 ECHR** (right to family and private life) see [Chapter 11 section 1.8](#), or the UKBA may have refused your claim a long time ago, but not made any attempt

<sup>47</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

to remove you. You are **strongly advised** to seek legal advice.

**There is no 'legacy' policy applying to any of these cases.** They will now be considered under Immigration Rules para 353B<sup>48</sup>. This sets out the factors which will be considered **either** when looking at any fresh claim or further submissions, **or** in cases with no outstanding further submissions whose appeal rights have been exhausted and which come up for review.

The factors are:

- Character, conduct, associations, including any criminal convictions.
- Compliance with previous immigration conditions including reporting requirements.
- The length of time spent in the UK **for reasons beyond the migrant's control** after the human rights or asylum claim has been submitted or refused.

It is **very important** to realise that this Rule makes it clear that the UKBA's policy is to remove anyone who has no legal right to remain in the UK, *unless there are exceptional circumstances which would mean that removal is no longer appropriate*. But the UKBA, and the asylum tribunal, must **always** consider whether removal of any person from the UK would be a **disproportionate breach of Article 8 ECHR** (see *Chapter 1 section 1.8*).

## 6.2 Long residence

**Long residence does not automatically lead to a decision to grant leave to remain**, especially where the UKBA can say that any delay dealing with a case, or delay before removal, has been caused by the applicant because they have, for example, not informed the UKBA of changes of address, failed to report regularly to the Immigration Service and/or failed or refused to apply for a national passport or take other steps to return home. (see *Chapter 11 section 11.8*).

**Anyone who has been in the UK for a long time after having made a claim for asylum should seek legal advice before making any approach to the UKBA.**

## The long residence rule<sup>49</sup>

The Immigration Rules permit an application for indefinite leave to remain on the grounds of long residence, where a person has 14 years' continuous residence in the UK (whether lawful or unlawful). The Immigration Rules paras 276A-D set out the requirements of this Rule. It is **very important** to realise that:

- You cannot count any time spent in the UK after any 'enforcement decision'. This means that if you have **ever** had a letter saying "you have been refused leave, and should now leave the UK..." *no time* after that date will count towards your 14 years' residence. **This will apply to most asylum seekers who have been refused in the past.**
- You cannot apply under this rule if you have any *unspent* criminal convictions<sup>50</sup>.

This is a difficult application to make. You will need detailed evidence that you have been in the UK for the whole 14 years (such as written proof of all your addresses and evidence that you were actually living there). You must pass an English language and citizenship test<sup>51</sup>, and pay a fee, currently £991.

## Other UKBA policies on old cases

Chapter 53 of the UKBA's Enforcement Instructions and Guidance (EIG)<sup>52</sup> says that leave to remain may be granted:

**"...where there has been significant delay by UKBA, not attributable to the migrant, in deciding a valid application for leave to remain on asylum or human rights grounds or where there are reasons beyond the individual's control why they could not leave the UK after their application was refused".**

<sup>48</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part12/>

<sup>49</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part7/>

<sup>50</sup> See the Rehabilitation of Offenders Act 1974 at <http://www.legislation.gov.uk/ukpga/1974/53>. Please note at the time of this publication there is a Bill going through Parliament which seeks to reduce the rehabilitation time limits, but the UKBA may be made exempt, and therefore able to take even spent convictions into account.

<sup>51</sup> Currently this can be done by taking the **Life in the UK Test** or a course on **ESOL with citizenship**.

<sup>52</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter53?view=Binary>

The UKBA will consider the prospect of enforcing removal of that person, and, where there are no problems of bad character or criminality, may grant leave if the person has been in the UK for more than 6 years, or 3 years if there is a child who has spent more than 3 years in the UK while under 18. The leave granted would be Discretionary Leave: [see Chapter 7](#).

## 6.3 The best interests of the child

The UKBA is now bound by the UN Convention on the Rights of the Child<sup>53</sup>. This requires the UKBA to treat the **best interests of a child as a primary consideration**. [See Chapter 1 section 1.8](#). This is a **relatively new legal duty**, which has only recently been considered by the courts, and is already making a big difference to anyone who has a child here in the UK, especially if that child is British or an EEA national ([see Chapter 1](#)). The law is still developing on this issue. In the most important case decided so far, called **ZH Tanzania**<sup>54</sup>, the Supreme Court considered a woman from Tanzania who “had an appalling immigration record” (she had made 3 asylum applications, 2 of them under false names, all refused, and still did not leave the UK) and who the UKBA wanted to remove from the UK. She had met a man who was a British citizen and they had two children, both British. The couple had split up, and she had continued to look after the children, who still saw their father. The Court decided that the best interests of those children was clearly to stay in the UK, and to continue to live with their mother, and so decided that it would be unlawful to remove Ms ZH.

If you have a child here in the UK you are **strongly advised** to seek legal advice.

## 6.4 Things to remember

- The Legacy programme is complete and the Case Resolution Directorate no longer exists. There is **no amnesty** for people who have been in the UK a very long time.
- All remaining files of people who applied for asylum **before 5 March 2007** are being dealt with by the UKBA’s Case Assurance and Audit Unit (CAAU) or are in a **controlled archive** waiting until the applicant contacts the UKBA, or the UKBA finds the applicant. Their cases will be dealt with ‘in line with the Immigration Rules’.
- **There is no special programme** for people who applied for asylum after March 2007 (NAM cases) but whose cases have not been concluded.
- A new para 353B of the Immigration Rules states how all unresolved cases will be decided, and more detail is given in UKBA policy. But **family and private life under Article 8 ECHR** must always be considered, and if you have a child here in the UK the UKBA must treat **the best interests of the child** as a **primary consideration** in deciding whether to remove you, with or without your child.
- If you have been in the UK for a long time after claiming asylum, and you are not reporting to the immigration service, and do not know what is happening in your case, **you are strongly advised to seek legal advice before contacting the UKBA**.

[See page 95 for information about legal advice and support organisations.](#)

<sup>54</sup> *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4

# 7 Successful applications: an explanation of leave to remain in the UK

## 7.1 Introduction

If you have been successful in your application for protection in the UK, you will be given **leave to remain** in the UK. **Leave to remain** in the UK is permission from the UKBA to live in the UK. This chapter tells you what happens when you are granted leave to remain, and sets out the rights that go with each type of leave. It tells you whether you will be able to apply for indefinite leave to remain (often called 'settlement' or 'permanent residence').

### Refugee Leave

**Refugee Leave** (formerly Refugee Status) is given for **five years** to those who are recognised as refugees under the Refugee Convention<sup>55</sup>. If you have Refugee Leave, you have the right to work and study, and apply for housing, welfare benefits and any social services such as special care for disabled children or adults. Anyone with you in the UK who was dependent on your claim, such as your husband or children, will also usually be given Refugee Leave. Family who are not in the UK, such as your children or your husband, can apply for **family reunion** to come and join you – see *below*.

Towards the end of your five year period of Refugee Leave (but not more than 28 days before it expires) you can apply for **Indefinite Leave to Remain** (ILR).

### Humanitarian Protection

**Humanitarian Protection** (HP) is given for **five years** to those who do not qualify for international protection under the Refugee Convention, but have shown that there are substantial reasons for believing that, if they were returned to their country, they would face a real risk of suffering **serious harm**, as set out in Article 3 of the European Convention on Human Rights (ECHR), or Article 15c of the European Qualification Directive<sup>56</sup>.

If you have been granted Humanitarian Protection, you have the right to work and study, and apply for housing, welfare benefits and any social services such as special care for disabled children or adults. Any dependents on your claim, such as your husband or children, will also usually be given Humanitarian Protection. If you were given Humanitarian Protection **on or after 30th August 2005**, members of your family may apply for **family reunion** to come and join you – see *below*.

Towards the end of the five year period of leave (but not more than 28 days before it expires), you can apply for **Indefinite Leave to Remain** (ILR).

### Discretionary Leave to Remain<sup>57</sup>

**Discretionary Leave** (DL) may be given in different types of cases, including where you have successfully argued that you have a right to remain in the UK because your removal would breach your right to private and family life.

If you have Discretionary Leave, you have the right to work and study, and apply for housing, welfare benefits and any social services such as special care for disabled children or adults. Any dependents on your claim, such as your husband or children, will also usually be given Discretionary Leave **in line** – this means for the same amount of time and with the same conditions as you.

Different types of cases will be given different time periods of Discretionary Leave. If you have been granted Discretionary Leave on the basis of serious mental or physical health problems under Article 3 ECHR, or on the basis of your family and private life under Article 8 ECHR, you are likely to be granted leave to remain for **3 years**. You must then apply for further leave to remain, and cannot apply for indefinite leave to remain until you have had **6 years'** Discretionary Leave.

However, if you would have been granted Refugee Leave or Humanitarian Protection but have been **excluded**<sup>58</sup>, for example if you have committed serious criminal offences, you would

<sup>55</sup> <http://www.ukba.homeoffice.gov.uk/asylum/outcomes/successfulapplications/leavetoremain/>

<sup>56</sup> <http://www.ukba.homeoffice.gov.uk/asylum/outcomes/successfulapplications/leavetoremain/>

<sup>57</sup> <http://www.ukba.homeoffice.gov.uk/asylum/outcomes/successfulapplications/leavetoremain/>

<sup>58</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/article-1f/restricted-leave.pdf?view=Binary>

be granted leave for only **6 months**, and would have to renew that repeatedly for **at least 10 years** before being considered for Indefinite Leave to Remain.

If you have Discretionary Leave, **you cannot bring your family to the UK to join you.**

**Discretionary Leave is sometimes granted when an asylum or Humanitarian Protection claim is refused.** Depending on the facts of your case, it may be **important for you to appeal against that refusal, even though you now have leave to remain**, because the reasons for the refusal of asylum may be used to refuse you again in the future. **There are short time limits in which to appeal. You are strongly advised to take immediate legal advice about whether to appeal.** See *Chapter 8 on refusals and Chapter 9 on how to appeal.* You would not lose your Discretionary Leave if advised to appeal.

## 7.2 Now that you have leave to remain

If your application is successful, you may either receive the decision in a package sent by the UKBA by *recorded delivery*, or it may be handed to you when you report to the Immigration Service. Everyone who is granted Refugee Leave and Humanitarian Protection<sup>59</sup> has to apply for a **biometric residence permit** (a plastic card) which will contain your details electronically. The UKBA letter granting you leave to remain will explain how to do this.

### Accommodation and support

If you are receiving asylum support (sometimes still known as 'NASS support') this will **terminate** (stop) 28 days after the date of a decision on your case. So you *may* be asked to move out of your asylum support accommodation. If your accommodation belongs to the local authority (council), you may not be required to move. You may need to find new accommodation. If you do not immediately find a job, you will need to apply for benefits (Job-Seekers Allowance or Income Support if you are too sick to work, or if you are

caring for small children). You should do this immediately to avoid a period with no financial support. **You will need to show your Biometric Residence Permit to apply for any benefits or housing, or to apply for a job.**

You may be able to get help and advice from your asylum accommodation provider, or a local refugee One Stop Service, or your local authority (council) housing department. *See page 95 for list of One Stop Services.*

### Criminal convictions and automatic deportation

It is important to remember that all applications for Indefinite Leave to Remain require the applicant **not to have any unspent criminal convictions**<sup>60</sup>, so be careful to stay out of any trouble or difficulties with the police. If you have teenage children who are also granted leave to remain, make sure they understand the importance of this.

*Automatic deportation: if a person who is not a British citizen is found guilty of a crime and sentenced to at least 12 months in prison, the UKBA must by law make a decision to deport<sup>61</sup>, even if the person has been granted Refugee Leave or Humanitarian Protection. There is a right of appeal, but these cases are very difficult to win.<sup>62</sup>*

### Future changes in immigration law: prepare in advance

The Government often makes changes to the Immigration Rules so you should start thinking about making an application and get legal advice if you can **about 6 months before your leave to remain expires**. You may need to pay a large fee, about £1000 per person. You may need to pass an English exam. You may need to present evidence of your addresses, your college courses, your jobs, your benefits claims. So always keep all official letters, including bank statements, bills and wage slips.

<sup>59</sup> At the time of writing it is not clear when people granted Discretionary Leave will start getting biometric residence permits, but eventually anyone with leave to remain will get one.

<sup>60</sup> Rehabilitation of Offenders Act 1974: see further details in footnote to section 6.2.

<sup>61</sup> UK Borders Act 2007 section 32.

<sup>62</sup> *Masih (deportation – public interest – basic principles) Pakistan* [2012] UKUT 00046(IAC)

## Can my family come to the UK? The law on family reunion

**If you have been granted Refugee Leave or Humanitarian Protection**, the Immigration Rules allow members of your family to apply for entry clearance (a visa) to join you in the UK. There are two sets of requirements. For close family members (spouse/partner and children under 18) who were living with you before you fled your country (**pre-existing close family members**), the Rules make it easy for them to join you in the UK. For **post-flight family members** and all other relatives, there are more strict requirements, which may make it very difficult for these relatives to join you. The UKBA Guidance on family reunion can be found in the UKBA Entry Clearance Guidance and the relevant documents are SET10, SET18 and SET19<sup>63</sup>.

- **Pre-existing close family members<sup>64</sup>. Your spouse/partner, and your children under 18**, if they were living with you before you fled your country:
  - do **not** need to pay a visa fee;
  - you, the **sponsor**, do **not** need to show that you can maintain and accommodate them without recourse to public funds (this means that even if you are claiming benefits, and do not have enough room in your accommodation for those family members, they will still be granted a family reunion visa);
  - when these family members arrive in the UK they will be granted the same leave to remain as you. This means that they can work, study, and claim benefits.
- **Post-flight family members<sup>65</sup> and other family members who were living with you before you fled<sup>66</sup>** (such as elderly parents, brothers and sisters, children over 18) can apply to join you. For example, if, after you were granted Refugee Status or Humanitarian Protection and you travelled to a 3<sup>rd</sup> country to marry, your new husband could apply for a visa to join you. But his application, and any application from any other of these family members, **must meet all the normal requirements for entry of family members for settlement<sup>67</sup>**. The main requirements are:
  - they must pay the visa fee;
  - they must show that they are financially dependent on you;
  - they must show that there is nobody else in their own country (or in any other country) who could support them;
  - you must show that you can **maintain and accommodate these family members without recourse to public funds**. This means that you must have enough room in your house for them, and that you can support them financially, without claiming any extra benefits or applying to the Council for accommodation;
  - when they arrive in the UK they will be granted the same leave to remain as you, **but** with a special note stating 'other dependant relative'. This means that they can work or study, but not claim any benefits.

### Can I apply for a travel document?

For information about applying for travel documents, including information about the correct form and fee, visit the UKBA website<sup>68</sup>.

**If you have been granted Refugee Leave** you are **entitled** to make an application to the UK Border Agency for a **United Nations Convention Travel Document**. You **must not** use your own passport. *See section 7.5 below.*

**If you have been granted Humanitarian Protection**, you are not entitled to a UN Convention Travel Document, but you can make an application to the UK Border Agency for a Home Office **Certificate of Travel**. To qualify for a Certificate of Travel:

- you must show you have been "formally and unreasonably refused" a passport by your country's Embassy – this means a letter on formal Embassy notepaper, refusing you a passport without giving a good reason; or
- you must explain why you fear visiting your country's Embassy, (or provide information which shows that the UKBA has already accepted your fear of returning to your country. If you have been granted Humanitarian Protection, your UKBA letter may state this); or

<sup>63</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/set/>

<sup>64</sup> Immigration Rules part 11, paras 352A-F.

<sup>65</sup> Immigration Rules part 8 paras 319L-319T

<sup>66</sup> Immigration Rules part 8 paras 319V-319Y

<sup>67</sup> (Except only that sponsors with Refugee Leave or Humanitarian Protection do not need to have indefinite leave to remain – these were new Rules which had to be brought in when Refugee Leave was changed from indefinite leave to 5 year' leave to remain)

<sup>68</sup> <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/travel-abroad/traveldocuments/applying/>

- if you are from a country which does not have an Embassy in the UK (such as Somalia), that is sufficient evidence that you cannot get a national passport.

The Certificate of Travel may be used to visit any country except your own country. The Certificate of Travel is **expensive** (currently the fee is £238) **and** many countries<sup>69</sup>, including several countries in Europe, **do not accept certificates of travel**.

**If you have been granted Discretionary Leave**, the law says that you must **keep your own national passport valid**. If you do not have a passport you are expected to apply to your own Embassy for a new or replacement passport. However, if your own country has “formally and unreasonably” refused you a passport, **and** you need to travel, you *may* be able to apply to the UK Border Agency for a **Certificate of Travel**.

If you are **stateless** and the UKBA has **formally accepted** in writing that you are stateless under the terms of the **1954 United Nations Convention Relating to the Status of Stateless Persons**, then, whatever leave to remain you have been granted, you are entitled to apply for a Stateless Person Travel Document. The fee for this is currently the same as a UN Convention Travel Document.

### **If I leave the UK, will I be allowed back in?**

If you have valid leave to remain (Refugee Leave, Humanitarian Protection or Discretionary Leave), and you travel out of the UK and return **while your leave is still valid**, in law you are still **subject to examination** when you arrive back at UK immigration control. But you are unlikely to face any difficulties. The immigration officer may ask you “what is your purpose in coming to the UK?” and it is advisable to state that **you live here and you are returning home. Do not** allow your UK leave to remain to expire while you are out of the UK. If you do you will not only have great difficulty getting back into the UK, but may find that your travel document expires also.

If you are planning to leave the UK for a long period, for example to care for a sick relative abroad, or to work abroad, you are **strongly advised** to get legal advice before leaving the UK (see *Section 7.5 below*).

## **7.3 Children born after a grant of leave to remain**<sup>70</sup>

**In law** the immigration status of a child born after the mother has been granted leave to remain **depends on the status of the father**.

- If the father is a British citizen or has Indefinite Leave to Remain (ILR), the child becomes British automatically at birth. The parents do not have to be married, but the father must be named on the birth certificate, and proof of the identity and status of the father must be provided to make an application for a British passport for the child.
- If the father is not a British citizen, nor has ILR, or if the identity of the father is not known, **the child requires leave to remain**. Under the Immigration Rules paras 304-309, a child born to a woman after she is granted leave to remain may be given leave **in line** (leave for the same time and same conditions as hers).

### **How to apply for leave in line**

There is no specified form on which to apply for leave in line for a child and **the UKBA has no clear procedure** for dealing with these applications. In urgent cases where evidence of leave to remain is needed for the baby (for example, if a refugee wishes to travel and needs to apply for a UN Convention Travel Document for the baby, or if the mother and baby need to apply for housing as a homeless family) it can be difficult to get a quick response from the UKBA.

To apply for leave in line for your child you should write a short letter **either** to the address of the UKBA case owner who dealt with your own application (the address will be on the letter granting you leave to remain), or to the **UKBA (leave in line), Lunar House, Wellesley Rd, Croydon CR9 2BY**. You should give your own name, nationality, date of birth, Home Office reference number and provide a **photocopy** of your own grant of leave to remain, and **an original long birth certificate for the child**. Send the letter by recorded delivery and keep a copy of it with the receipt. Evidence of this application may be necessary for a benefits or housing claim. If no response, or in an emergency, you can complain to your Member of Parliament<sup>71</sup>.

<sup>69</sup> The countries which **do not accept** Certificates of Travel are listed on this UKBA page: <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/travel-abroad/traveldocuments/certificateoftravel/>

<sup>70</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/children/>

<sup>71</sup> <http://findyourmp.parliament.uk/>



## 7.4 Applying for Indefinite Leave to Remain

**Indefinite Leave to Remain** (ILR), sometimes referred to as 'settlement' or 'permanent residence', is the right to live in the UK for an unlimited amount of time. If you are granted Indefinite Leave, you have the right to work and study, and apply for housing, welfare benefits and any services from social services such as special care for disabled children or adults.

People with Refugee Leave and Humanitarian Protection may apply for Indefinite Leave towards the end of their 5 years' leave to remain. People with Discretionary Leave must complete at least 6 years on Discretionary Leave before being eligible for Indefinite Leave.

The Immigration Rules for applying for Indefinite Leave are set out separately for each category of migrant. The rules, requirements and procedures for workers, students, etc are very different from those for the types of leave described in this Handbook.

### Settlement (Protection Route)

If you were granted leave to remain as a **refugee**, or granted **Humanitarian Protection on or after 30 August 2005**, you will need to apply for Indefinite Leave to remain on the **application form SET (Protection Route)** (SET(P)). You must send your completed application form to the UKBA before your leave expires, but not more than 28 days before. For example, if your current leave expires on 30 August 2012, your application should reach the UKBA between 2 August and 30 August 2012.

It is **very important to apply in time**, which means **before** your current leave to remain expires. This will ensure that your case is considered easily, and your permission to stay in the UK continues. If you apply **in time**, then **normally** the UKBA will not carry out an in-depth review of your case (*see below*). You **do not** have to show that you would still be in danger in your own country. You **do not** have to send any documents, or evidence, about fear of persecution.

- You must be in the UK when you apply.
- You should include all your dependants on the form.

- **There is no fee** for this application.
- You **do not** have to pass any English language or citizenship test.

*All applications for Indefinite Leave require no unspent criminal convictions, see below. Remember to make sure that your family understand that this applies to them as well.*

### Can my case be reviewed?<sup>72</sup>

The UKBA will not normally review the cases of people with Refugee Leave or Humanitarian Protection. But they **will review** your case (during your period of leave, or at the end) if:

- you apply for leave after your current leave expires, or fail to apply at all;
- you no longer qualify for refugee status, having returned to live in the country you came from, or having applied for a national passport, or having visited your Embassy;
- the UKBA finds that you deceived them in order to be recognised as a refugee;
- the UKBA finds that you had committed a serious crime before applying for asylum;
- the UKBA believes you are a danger to UK national security or you have been convicted of a particularly serious crime since being granted asylum;
- there is a significant and non-temporary change in the conditions in the country you came from, so that you no longer qualify for refugee status<sup>73</sup>.

### Settlement (and applications for further leave to remain) for people with Discretionary Leave to Remain<sup>74</sup>

What form you use, and whether you must pay a fee and meet English language and citizenship requirements, depends on how you came to be granted discretionary leave to remain:

- People with **Discretionary Leave to Remain following a refusal of asylum**, must use the application form HPDL to apply for further leave and to apply for Indefinite Leave. No fee or language test is required.

<sup>72</sup> <http://www.ukba.homeoffice.gov.uk/asylum/outcomes/successfulapplications/activerewiew/>

<sup>73</sup> At the time of writing, it is understood that the UKBA has not used this argument.

<sup>74</sup> [http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/article8echr?view=Binary\\_page\\_5](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/article8echr?view=Binary_page_5)

- People granted **Discretionary Leave to Remain** following an application 'outside the Immigration Rules' on the **basis of family or private life under article 8 ECHR**, must apply for further leave on form FLR(O)<sup>75</sup> and an application for Indefinite Leave, after at least 6 years' Discretionary Leave, must be on form SET(O). These applications, and all applications for Indefinite Leave *apart from Refugees, Humanitarian Protection and Discretionary Leave following a refusal of asylum*, including an application under the Long Residence rule, **require payment of a fee**, currently £561 for further leave and £991 for Indefinite Leave, and the person must show that they have **enough knowledge of English and 'life in the UK'**.
- It is now clear that people granted **Discretionary Leave to Remain** following an application 'outside the Immigration Rules' on the basis of fear of **article 3 harm, such as serious medical issues**, may apply for further leave on form HPDL with no obligation to pay a fee. The UKBA's lawyers accepted that 'Article 3 applicants are considered in line with asylum applicants for the purposes of the fee exemption'<sup>76</sup>.

Unlike Refugee Leave or Humanitarian Protection, **if you have Discretionary Leave, your case will be subject to a full review when you apply to extend your leave or apply for Indefinite Leave to Remain.** This means that the UKBA will look at **all** your circumstances and the circumstances in your country to see whether you should still be allowed to remain here. You should make sure that you give **full details** of all your family and medical circumstances, your life in the UK since you were granted leave, and all the reasons why you think you should be allowed to stay. *Look back at Chapter 1 section 1.8 on right to family and private life.* You are strongly advised to get legal advice **a few months** before making your application, so you can find out about any legal changes which may affect your case, to collect any evidence, save up your fee and prepare your application fully.

*All applications for Indefinite Leave require no unspent criminal convictions, see below, and any convictions, arrests or charges will make it very difficult to get an extension of Discretionary Leave. Remember to make sure that your family understand that this applies to them as well.*

## 7.5 Can I lose my Indefinite Leave to Remain, or my status as a refugee?

### If you stay out of the UK for more than 2 years

The Immigration Rules paragraph 18 **Returning Residents** says that a person returning to the UK from abroad will be allowed back into the UK with Indefinite Leave, so long as she/he:

- had Indefinite Leave to enter or remain in the United Kingdom when she/he last left; and
- has not been away from the United Kingdom for more than 2 years; and
- did not receive assistance from public funds towards the cost of leaving the United Kingdom; and
- now seeks admission for the purpose of settlement.

This Rule may catch someone who goes abroad to look after a family member who is sick, and who comes back for a brief visit before returning abroad again for a long time. She may think she is safe, if each period of absence was less than 2 years. But the immigration officer may say that her entry for the brief visit was 'not for the purposes of settlement', and count the whole absence as one period of absence longer than 2 years. If you have Indefinite Leave, and you decide to go abroad for a long time, **seek legal advice before leaving.**

<sup>75</sup> For guidance on FLR(O) see [http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/flr/flro\\_guidenew0420091.pdf](http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/flr/flro_guidenew0420091.pdf)

<sup>76</sup> This was made clear in the High Court case CO/11676/2011, settled by consent (agreement) in April 2012 with permission to publish the UKBA's letter.

## Ceasing to need international protection<sup>77</sup>

If a person with Refugee Leave or Humanitarian Protection shows that they no longer need international protection, status may be withdrawn. This can happen if:

- You obtain a passport from your own country.
- You go back to your country for any reason.
- You accept another nationality, or are given back a nationality which had been taken from you. For example, many people of Eritrean origin born in Ethiopia had their right to Ethiopian nationality taken away. If such a person were given an Ethiopian passport, they would no longer need refugee status in the UK.

This is a complicated area of law. If you have Refugee Leave or Humanitarian Protection, and you wish or need to visit your country for any reason, you are **strongly advised** to seek legal advice **before** doing so.

## Criminal convictions<sup>78</sup>

The UKBA has powers to **revoke** (take away) refugee status and **deport** a person with Indefinite Leave to Remain who has been convicted of a criminal offence. A deportation order is a formal order banning the person from ever returning to the UK.

**So it is important that anyone with Indefinite Leave to Remain stays out of trouble. It is particularly important that anyone with teenage children takes time to explain this to them.**

**Example:** Aziza fled from Mogadishu, Somalia, with her children, and the whole family were granted refugee status and indefinite leave to remain. All the children were doing well at school and university except Yusuf, who at 14 years old got involved with a gang. He was picked up and arrested and sentenced to 3 years in a Young Offenders Institution. He was then subject to automatic deportation and the UKBA also proposed to revoke his refugee status. The legal arguments against that were successful, and he kept his Indefinite Leave to Remain. But he and his family spent over a year terrified that he would be deported back to Mogadishu, and he is unlikely to be granted British citizenship.

## 7.6 While your application is being decided

So long as your application (for an extension of leave, or for Indefinite Leave) was made **before the end of your existing leave**, you keep the leave you have while your application is being decided, and during any appeal against refusal. Your existing leave, and the rights that go with it, continue until your case is finally decided, however long that takes. This means that you will still be able to work, apply for housing, claim welfare benefits or get help from social services while your application or appeal is being decided. This period of leave is often called **section 3C leave**, as the law covering this leave is section 3C Immigration Act 1971. You may need to refer to this law if your employer, or a benefits or housing office, wishes to see proof that you are still allowed to work or claim benefits. A benefits office, or a local authority, or an employer, can contact the UKBA themselves to confirm that you have an outstanding **in-time** application and are covered by **section 3C leave**.

If you apply for leave **after the expiry of your original period of leave** (for example, if you applied for Indefinite Leave to Remain after your Humanitarian Protection expired), you are an **overstayer**. Overstayers are not in the country lawfully and are committing a criminal offence. Being an overstayer may affect any future application that you make for Indefinite Leave to Remain and citizenship, as well as your right to appeal a negative decision on your case. Overstayers cannot work or apply for welfare benefits or housing. They have very limited access to the NHS, and are not entitled to care services from social services except to avoid a breach of their ECHR rights. If you are an overstayer you are **strongly advised** to seek legal advice.

## 7.7 British citizenship

The rules about applying for British citizenship are beyond the scope of this book. However it is **very important** to note that anyone wishing to apply for citizenship will need to show that they can **speak and understand English**, and that they **do not have any criminal convictions**.

<sup>77</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/revocationofindefiniteleave.pdf?view=Binary>

<sup>78</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/revocationofindefiniteleave.pdf?view=Binary>

Once you are a British citizen all family members wishing to join you will have to pay a visa fee and satisfy all the normal requirements of maintenance and accommodation without recourse to public funds. So, before applying for citizenship, think carefully if you wish any close 'pre-flight' family members to join you (see above section 7.2).

## 7.8 Tracing family members

If you have lost contact with family members who you think are still in your country, you may want to make contact with them. The **British Red Cross** runs an International Tracing and Message Service to help families who have been separated because of a conflict or natural disaster. For further information about the International Tracing and Message Service visit [www.redcross.org.uk](http://www.redcross.org.uk).

## 7.9 Things to remember

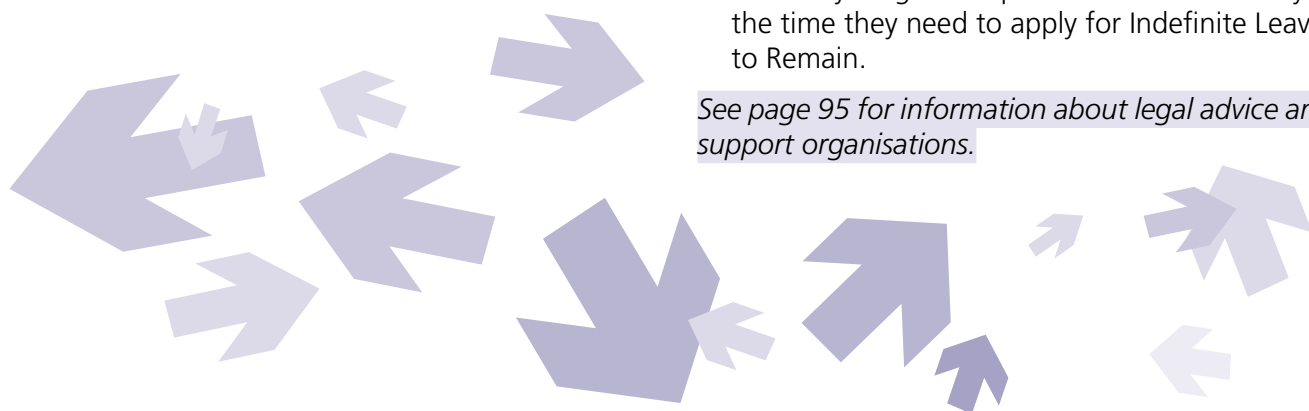
- If you made a claim for international protection which was accepted, you will be granted either Refugee Leave or Humanitarian Protection.
- If your claim for international protection has been refused but you also made a claim under Article 8 ECHR which has been accepted, or if you applied for leave 'outside the Immigration Rules', for example on the basis of Article 8 ECHR right to family life, and are successful, you will be granted a period of Discretionary Leave to Remain.
- If you have been granted Discretionary Leave but your claim for international protection has been refused, you are **strongly advised** to seek legal advice straight away, as it may be important for you to appeal against that refusal. You would **not** lose your Discretionary Leave if you appeal.

- Each type of leave carries different rights. All these types of leave allow you to work, study, claim benefits, use the NHS and social services. But each has different rules about family reunion, and there are different rules about travel documents.
- If you are given Refugee Leave or Humanitarian Protection, you can apply for Indefinite Leave to Remain after five years. If you are given Discretionary Leave, you have to first make a further application for Discretionary Leave, and then apply for Indefinite Leave to Remain after a total of six years<sup>79</sup>. **Currently**, for those with Refugee Leave or Humanitarian Protection there are **no application fees**, and you do **not** have to pass any English or citizenship tests.
- An application for Indefinite Leave by a person with Refugee Leave or Humanitarian Protection, if made in time, is easy to make. But an application for further leave or Indefinite Leave from a person with Discretionary Leave is subject to **a full review. Fees and language tests may be required**, and a detailed application should be made.

### Very important:

- Make sure that you **do not** let your leave to remain expire (run out). Make sure you make your application for Indefinite Leave or further leave **before the end of your current leave. Otherwise you will become an overstayer.** This is a criminal offence and you will lose your right to work or claim benefits, your case will be reviewed more carefully and your Refugee Leave or Humanitarian Protection may be revoked (taken away).
- **Any criminal convictions or trouble with the police** may prevent you getting further leave or Indefinite Leave, and may lead to removal or deportation.
- Make sure your family understand all these issues, especially if you have teenage children, who may be grown up and have left home by the time they need to apply for Indefinite Leave to Remain.

See page 95 for information about legal advice and support organisations.



<sup>79</sup> Unless you have been excluded from protection, in which case the minimum before applying for Indefinite Leave to Remain is 10 years.

# 8 If your application is refused

## 8.1 Introduction

A UKBA **decision to refuse asylum** may be sent to you by post, or handed to you by an immigration officer. The package should contain a form for appealing to the First Tier Tribunal (Immigration and Asylum Chamber). If you receive it by post, make sure that you do not throw away the envelope. You may need to prove when it was posted, and the actual day you received it. Write the date you received it next to the postmark.

### Refused asylum but granted Discretionary Leave to Remain

Some people are refused asylum, but still granted Discretionary Leave to Remain.

If you have been granted Discretionary Leave, the UKBA envelope will contain information about your legal rights, and about how to receive your Biometric Residence Permit.

*Go to Chapter 7 for information about what to do now that you have leave to remain.*

You are strongly advised to seek legal advice straight away about whether you should appeal against your refusal of asylum **even though you have been granted leave to remain**. There are several reasons why you might want to appeal:

- You may have a very strong claim for asylum and the UKBA's decision may be clearly wrong.
- The rights you receive as a person with Refugee Leave or Humanitarian Protection, and the conditions of your leave to remain, are better than those for someone with Discretionary Leave, including important rights:
  - to family reunion with your close family, without their having to pay visa fees and without your having to show you can support them without claiming housing or benefits; and
  - to apply for Indefinite Leave to Remain after 5 years, instead of waiting at least 6 years with Discretionary Leave.
- If the UKBA has refused your asylum claim because they did not believe what you said, and you do not challenge that decision, it is **very important** to realise that it may affect any

future application you make for further leave to remain. The UKBA may say that you accepted their decision that what you said was not true. An appeal shows that you wish to challenge the UKBA's decision, and even if your appeal is dismissed the Tribunal Judge may make **findings of fact** (decisions about specific parts of your story) which may be important when you eventually have to apply for further leave to remain.

**If you are advised to appeal, or if you wish to appeal**, follow the next section.

### Refused asylum and not granted any leave at all

You have a right of appeal and you are **strongly advised to appeal** unless you know that your claim is very weak or you receive legal advice that you cannot succeed with an appeal. **You must appeal within 10 working days** from the date you received the letter, **deemed** (presumed) to be 2 days after it was sent. *If you wish to appeal, see Chapter 9.* **But first you should look at why the UKBA has refused your claim.**

## 8.2 The decision letter (Reasons for Refusal Letter, or RFRL)

As soon as you receive a decision to refuse your asylum claim you, or your legal representative with you, should **go through every paragraph of the decision letter, and write down your own comments about what the letter says**. Sometimes the refusal letter paragraphs are numbered. If not, it is useful to number them, and use the same numbers to make your comments. The decision letter will start by stating the law on asylum and confirming the date on which you applied for asylum. The first important section contains a **summary of your claim**. The letter will list all the facts (parts of your story) and say how you told them each fact, whether in your Screening Interview (SCI), Asylum Interview Record (AIR) or a statement (WS, for witness statement):

**"You claim you are from [your country of origin]..." (SCI Q2)**

**“You claim you were imprisoned for praying in an illegal church...” (AIR Q63)**

**“You claim that you escaped by paying money to a guard...” WS para 17)**

You should **check and note anything which is not correct**. Make sure that you look back at your screening interview, Asylum Interview Record and any statements you have given to the UKBA. You should also make a note of **any part of your claim that is not mentioned**.

You are **strongly advised** to make a new statement, setting out each of your comments on the Reasons for Refusal Letter, to use in your appeal. If you have a legal representative she should help you do this. If you do not have a legal representative, it is very important that you write your comments on everything that is wrong in the UKBA decision letter, and send it to the Tribunal, so that, when you appeal, the Immigration Judge will see all your comments even if you cannot remember them at the appeal hearing.

*For information about appeal procedure, see Chapter 9.*

### **Negative credibility (not believing your claim)**

**One of the main reasons the UKBA gives for refusing people is poor or negative credibility.** It is important to take time to write down what is wrong with each part of what the UKBA has said about your claim. Here are some examples of reasons for refusal:

**“You claim that you were imprisoned because you were discovered attending a meeting of an illegal political group. But you have not been able to name the meeting place”**

**“The US State Department Report on Religious Persecution for your country does not include that church as one of the forbidden churches”**

**“It is not believed that women your age would be imprisoned....”**

**“...if you had a genuine asylum claim you would have left at the earliest opportunity”**

If the decision letter refuses your claim because the UKBA states that they do not believe all or some of the facts in your case (called ‘negative credibility’) it is important that you try to get further evidence, and witnesses, to support the details of your claim. You may find evidence to support your case from public reports on your country from organisations such as Amnesty International, Human Rights Watch or UNHCR. *See Chapter 3 and page 97 for information about human rights reports on your country.*

You are **strongly advised** to get legal advice to help you with your appeal.

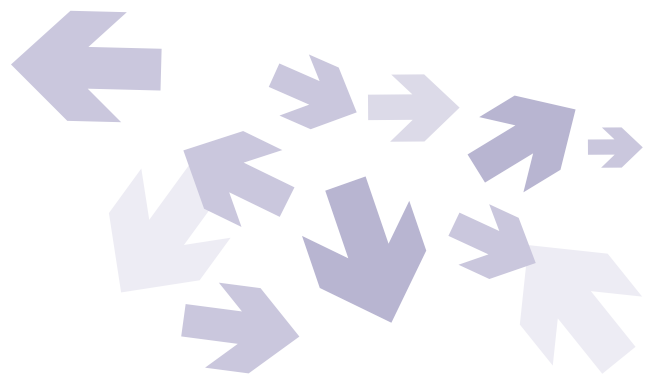
### **Lack of risk on return**

**If the UKBA believe the facts of your claim, but do not believe you would be at risk on returning home** the letter may say something like this:

**“The USSD Report on Religious Persecution lists your church as one of the forbidden churches. But your government has recently passed a decree allowing all forbidden churches to register. So it is not believed that the authorities would be interested in you”**

**“We accept that you may not be able to return safely to X [the town you used to live in]. But we do not believe there would be any risk if you go to live in Y [a different town]”**

If the decision letter refuses your claim because the UKBA does not think you will be at risk, then you need **more detailed** evidence about what is going on in your country. Your legal representative may decide to get an expert report. *See Chapter 3.*



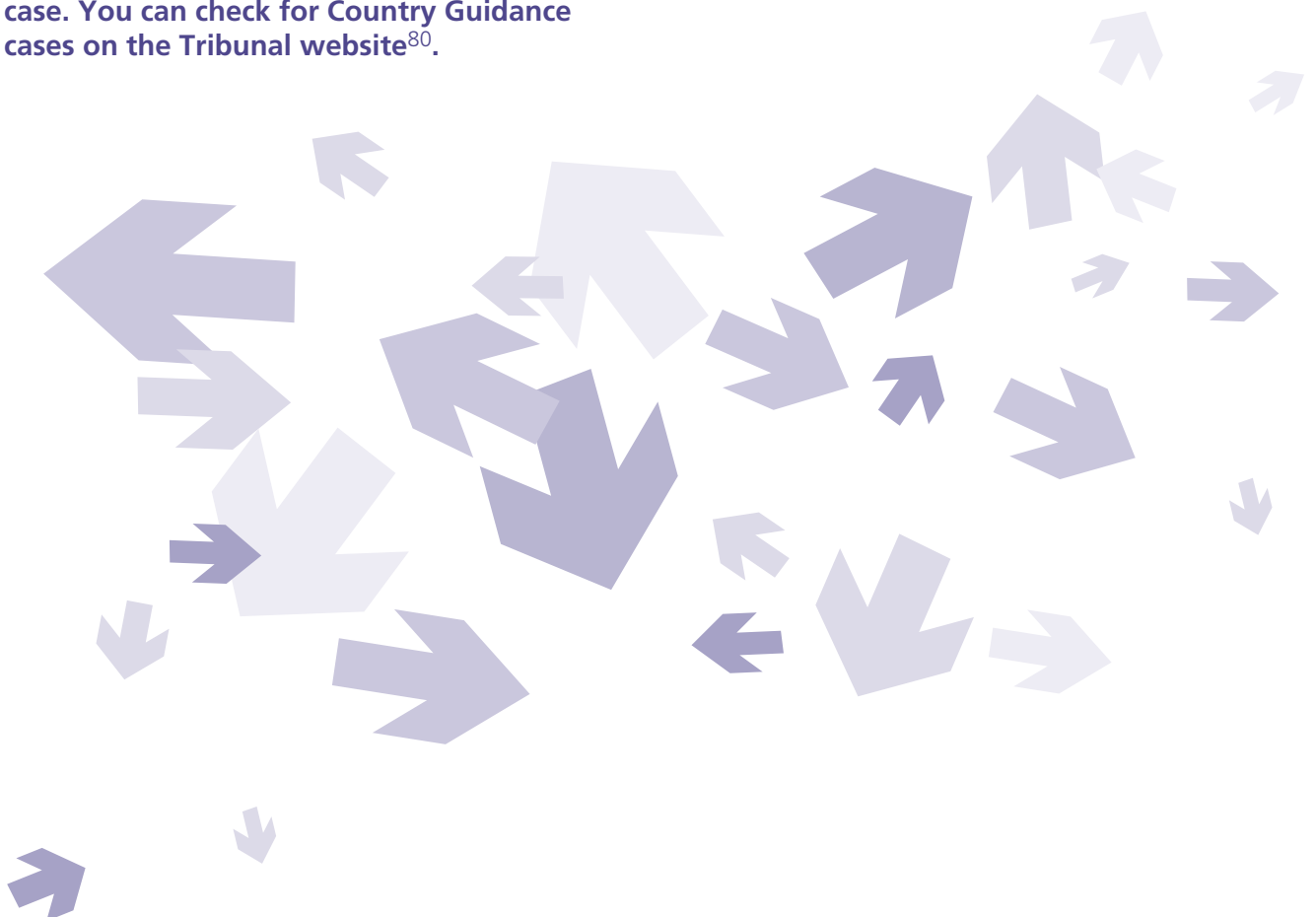
## Country Guidance cases

These are asylum appeals chosen by the Tribunal to give legal guidance for a particular country. Both the UKBA and the asylum-seekers' legal representatives are allowed to consult the most well-known independent experts, who come to the Tribunal to give evidence in person. The Determinations in these cases are assumed to be based on the best possible evidence about that country at that time. Until there are significant changes in that country, a **country guidance decision sets out the law for other asylum-seekers from that country**. So, before deciding to get an expert report on your country, your legal representative will look to see if there is a Country Guidance case on your country, and will look to see what it says about people with claims like yours. Country Guidance cases have the letters 'CG' in the reference. The case of *LZ (homosexuals) Zimbabwe CG [2011] UKUT 00487 (IAC)* is a Country Guidance case about Zimbabwe decided on 8 January 2012. Someone who feared return to Zimbabwe on the basis of their sexual orientation would be advised to read that case. You can check for Country Guidance cases on the Tribunal website<sup>80</sup>.

## 8.3 Things to remember

- If the Reasons for Refusal Letter states you have been refused asylum and Humanitarian Protection, check to see if you have been granted Discretionary Leave to Remain. If you have, go to *Chapter 7* for information about what to do now you have leave to remain, **but also get advice about whether you should appeal against the refusal**. You will not lose your discretionary leave if you appeal.
- **Make sure that you read through the Reasons for Refusal Letter very carefully** and make detailed notes to see exactly what further evidence you will need to prove your case.
- If you wish to appeal, you must appeal **within 10 working days** of receiving the decision letter, and on the correct appeal form. See *Chapter 9 on appeal procedures*.

See page 95 for information about legal advice and support organisations.



<sup>80</sup> <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/upper/decisions.htm>, choose UTIAC Reported Determinations Database, then All Country Guideline Determinations.

# 9 Appealing against refusal of asylum

## 9.1 Introduction

There are **three sources of law** that determine who is entitled to international protection in the UK:

- the Refugee Convention
- the European Convention on Human Rights
- European Union Law.

**Look back at Chapter 1 to see how your claim fits into these laws.**

When making a decision on your claim for international protection in the UK, the UKBA must consider:

- All the information and evidence that you have given them. This will include what you have said in your Screening Interview, your Asylum Interview, your statement, and any other evidence that you have provided, (such as statements from other witnesses, public reports about your country, a medical report or an expert report).
- How your information fits into the Conventions and laws on international protection.
- How your information fits into decisions made in important legal cases about your country (Country Guidance cases).

**Look back at Chapter 3 to see how to make sure that the information you have provided fits into the law.**

**Look back at the end of Chapter 8 for information about Country Guidance cases.**

**Look back at page 23 for information about legal representatives and legal aid.**

Most asylum-seekers are permitted to remain in the UK until their appeal is finally decided. **But it is important to remember that if you do not appeal, you are no longer lawfully in the UK, and the UKBA can remove you.** Some asylum-seekers **cannot appeal from inside the UK.**

This section will first explain what to do if you can appeal from inside the UK, and you are not detained. Then it will explain the different

procedures which apply if you are detained, and finally what to do if you are told that you cannot appeal until after you have left the UK.

## 9.2 How do I appeal if I am not detained?

The envelope from the UKBA containing the Reasons for Refusal Letter (RFRL) should also include:

- A **formal Notice of Decision**. This states which law or rule the UKBA are using to refuse you. This is because, in law, 'a refusal of asylum' does not give a right of appeal. The right of appeal is against the *refusal of leave to remain* in the UK.
- **Information** about how you can appeal against the decision.
- An **appeal form (IAFT-1)**<sup>81</sup>.

If you already have a legal representative the decision will be sent to them as well as to you. If you do not have a legal representative, you are **strongly advised** to get legal advice on what it means and how to appeal **as soon as** you receive the decision. The Tribunal will not, unless it is an exceptional case, accept an appeal submitted late, or adjourn (put back) the hearing, just because you have not found legal representation in time.

If you cannot get legal representation, for example if you are not entitled to legal aid, you can submit (send in) your own appeal and represent yourself.

### Do I have to pay a fee to appeal?

There is now a **fee** for appealing against a refusal of any 'immigration decision' including a decision to refuse Refugee Leave or Humanitarian Protection. You do not have to pay this fee if:

- you are in receipt of asylum support ('NASS' support); and/or
- you have a legal representative who is representing you under legal aid.

<sup>81</sup> <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/first-tier/appeals.htm>



## If you do not come into these categories, you must pay the fee.

- The current fee is £140 for an **oral hearing** (where you and your witnesses go to the Tribunal and your case is presented to an Immigration Judge) and £80 to have your appeal dealt with **on the papers** (where nobody goes to the Tribunal, and the Judge privately reads the written information provided by you and the UKBA).
- If you have no money, but you are not receiving asylum support or legal aid, you can apply for **remission of the fee** (this means permission not to pay the fee).<sup>82</sup> You do this by sending a letter with the appeal form, explaining your financial circumstances and why nobody can pay the fee for you.
- The fee can only be paid by **credit or debit card**. If you do not have either type of card, you will have to find someone else to make the payment for you.
- **If you cannot get the money or make an arrangement to pay in time to submit your appeal**, you can submit your appeal without paying the fee, and the Tribunal will write to you and ask for the money later.
- If you submit your appeal and pay the fee, and **then find a legal representative who grants you legal aid**, you can apply for a rebate (repayment) of the fee. Your legal representative should advise you about this.

## How do I submit (send in) my appeal?

You can either complete the appeal form IAFT-1 online and post the supporting documents separately, or you can fill in a paper copy of the form and post it with the supporting documents. Currently the address is: **First-Tier Tribunal (Immigration and Asylum Chamber), PO Box 6987, Leicester LE1 6ZX**. You can fax your appeal. Currently the number is **0116 249 4232**.

## What must I send with the appeal form?

- the **Notice of Decision** (if you do not include this, your appeal may be decided without an oral hearing even if you have asked for one); and
- a **photocopy** of the **Reasons for Refusal Letter** (which you should have received with the Notice of Decision); and

- **copies** of any other documents in support of your appeal (do not send any original documents, for example passports, marriage certificates, birth certificates, political membership cards, arrest warrants); and
- **certified translations** of all foreign documents (see *Chapter 3 section 3.4*).

Make sure that you **do not delay** submitting your appeal to wait for a document or its translation.

**If you post your appeal**, it is **very important** to keep a photocopy of everything you send to the Tribunal. Send your appeal *by recorded delivery or special delivery* and keep the receipt.

## What is the time limit for submitting my appeal?

For people who are not detained, the appeal form must **reach** the Tribunal **within 10 working days of service of the decision on you**. In law this means that you count 2 days from the date the decision was posted to you, and 10 days from then, counting Monday-Fridays only.

*Example:* If the UKBA posted the decision on Monday 12 March 2012, the law allows the Tribunal to assume you received it 2 days later, on Wednesday 14 March. Ten working days from that date is Wednesday 28 March. **If you did not receive the decision 2 days after the date it was posted**, you can make a legal argument that your 10 working days should be counted from the day you actually received it. You would have to send a copy of the envelope the decision arrived in, and your note of the date you received it. If your legal representative received it at the proper time, you cannot make this legal argument.

## What should I say on the form?

You must fill in **all your personal details** clearly on the form. Make sure you give an address where you can be sure to receive letters from the Tribunal as soon as they arrive.

You have to choose whether you want an **oral hearing** or for your appeal to be dealt with on the papers. You are **strongly advised** to choose an oral hearing, to tell your own story to the Immigration Judge so that the Judge can see how you answer questions. It is important to convince the Judge that you are telling the truth, because

<sup>82</sup> The First tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 art 7.

she will make **findings of fact** (important decisions) which will be useful for you even if your appeal is turned down.

**The section headed 'Asylum decision'** asks you to give your reasons for appealing. *Look back at Chapter 1 to help you work out how your claim fits into those boxes.* You do not need to repeat your whole claim in detail, just a summary.

**Example 1:** The Reasons for Refusal Letter might say *"Your account of torture is accepted, but there is a new government in your country and we do not believe you will be at risk on return."* On the appeal form this is dealt with in box 1, headed:

1. If you disagree with the Home Office's interpretation of the **situation in your country**, please explain why in this box, and give reasons to support your point of view.

You may have explained in your Asylum Interview that the new government has not changed anything, and that you are still at risk. You may have provided evidence from Amnesty International or UNHCR, or a newspaper article saying *"New government still torturing political opponents"*. So, on the appeal form in box 1, you could say

*"The UKBA are wrong about the situation in my country. They have ignored (not taken any notice of) public reports about my country. It is not safe. I have provided evidence and explained this in my Asylum Interview"*.

**Example 2:** If the Reasons for Refusal Letter says *"You say you were arrested for praying in an illegal church. But you could not remember the address of the church. Your claim is lacking in credibility"*, this means that the UKBA did not believe you. On the appeal form this is dealt with in a box headed:

3. If the Home Office has stated that your claim is **not credible**, and you disagree, please explain why in this box.

You may have explained in your Asylum Interview that it was dangerous to know the address of the church, and you had been taken there in the dark, and told not to remember the way because it was dangerous to know this. So on the appeal form, in Box 3, you could say

*"The UKBA were wrong to disbelieve me. I gave a good reason for not knowing the address of the illegal church"*.

**It is very important to also look at the section headed Statement of Additional Grounds.** If you have any other reasons for wishing to stay in the UK, which might be covered by Article 8 ECHR right to family and private life, you must mention them in this box. For example, you may have met someone from another country and started a relationship with them, or you may be pregnant (see Chapter 1 section 1.8 for more about Article 8 ECHR).

There is detailed information about how to appeal, including guidance on completing the appeal form, how to pay the fee and where to send the form, on the Ministry of Justice website at <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/first-tier/appeals.htm>



## 9.3 If you are detained and your case is in the Detained Fast Track

The law on international protection is the same, but there are **important practical differences**:

- You will be **handed** your decision by a detention officer, and asked to sign for it.
- You then have **2 working days** in which to appeal.
- If you already have a legal representative, you should contact them **straight away**, the same day if possible. If you do not yet have a legal representative, you should arrange to see one of the detention duty advisers **as soon as possible** (see *Chapter 5*). If you already have a legal representative dealing with your case, you will be able to keep that representative. It is important to give your legal representative **full details** about yourself and your case.
- **If you have a partner, or family, in the UK it is very important to immediately tell your legal representative and the UKBA.** This information may well help them prepare your case.
- A detained person does **not** have to pay a fee to appeal.

The appeal form is **IAFT-1 - Fast**, which should be provided to you with the Reasons for Refusal Letter and Notice of Decision. If you do not have a legal representative you may have to fill in the form yourself. **It is important to realise that this form does not provide separate questions for different types of asylum claim.** *But look back at section 9.2 above to see how to set out your appeal.* You can add extra pages to the form if you need to.

The rules setting out the procedure for appeals in the detained fast-track are the **Asylum and Immigration Tribunal (Fast-track Procedure) Rules 2005** you can read them here (this is an updated version as at 15/2/2010): [http://www.tribunals.gov.uk/tribunals/Documents/Rules/Consolidated\\_AI\\_FastTrackRule2005.pdf](http://www.tribunals.gov.uk/tribunals/Documents/Rules/Consolidated_AI_FastTrackRule2005.pdf).

Every step in a detained fast track case is very quick. Your legal representative (or you, if you don't have one) can apply to the First Tier Tribunal to ask them:

- to **adjourn** (put back) **your appeal** (Fast Track Procedure Rules 13(b)(c), 28);
- to **transfer your appeal** (take it out) from the Fast Track (Fast Track Procedure Rules 30).

### A Fast Track appeal can be adjourned if:

- There is not enough time to hear the appeal.
- If either you or the UKBA has not been **properly served** (given) the information about when and where your appeal will take place.
- The Tribunal is satisfied by evidence given to them that:
  - the appeal cannot be **justly determined** (decided fairly) on that date; and
  - there is a specific date, not more than 10 days after the original hearing, when it can be justly determined.

### A case can be transferred out of the Fast Track if:

- all the parties agree to it (this means you, your representative and the UKBA); and/or
- the Tribunal is satisfied that there are **exceptional circumstances** preventing the appeal from being justly determined in the Detained Fast Track. This can be if it is too complicated, if further evidence such as a medical report is needed, or further research or an expert report is required and cannot be obtained in time; and/or
- the UKBA has failed to follow a Tribunal rule or direction **and** the Tribunal is satisfied that your case would suffer by that failure if the appeal were to go ahead.

If your case is taken out of the Detained Fast Track, you **may** be released from detention.

**If you are not released, see Chapter 5 for information about your legal rights in detention.**

## 9.4 Appeals from outside the country: non-suspensive appeals (NSA)

There are 3 types of asylum claim where a refusal **cannot be appealed until the person has left the UK**. Normally, an appeal from outside the UK is of little practical use, but there may be special features of your case which lead your legal representative to advise you to submit an appeal after you have been removed. These appeals are called **non-suspensive appeals** because appealing does not suspend (stop) removal from the UK. A non-suspensive appeal process may apply where:

- An asylum claim is **certified as clearly unfounded** (very weak).
- An asylum claim is made by someone from a country that the UKBA has placed in the list of countries in which the UKBA believes that, generally, there is not likely to be any risk of harm on return. The **Nationality, Immigration and Asylum Act 2002** section 94 gives a list of specific countries where every asylum claim is subject to this process<sup>83</sup> (this list changes from time to time). If you come from one of the listed countries and your asylum application is refused, your claim must be certified by law, unless the UKBA accepts that it is definitely not clearly unfounded.
- An asylum claim is made from someone who has already made an asylum claim in another European country<sup>84</sup>.

A claim is **clearly unfounded** if the UK Border Agency thinks it is so weak that it is almost certain to fail. The House of Lords explained it in this way: *"If any reasonable doubt exists as to whether the claim may succeed, then it is not clearly unfounded"*<sup>85</sup>.

If your asylum claim has been certified as clearly unfounded, your legal representative may be able to challenge the decision through **judicial review**. Judicial review is an application to the High Court to ask a Judge to review (look again at) decisions taken by the UKBA to see if they follow the correct law and policy. In considering whether or not your claim is clearly unfounded,

the High Court will look carefully at your application and any new supporting evidence.

**Example 1:** A woman from Moldova paid money to someone to help her come to the UK. She thought she would be able to study, but in fact was forced into prostitution. She claimed asylum on the basis that she feared abuse from her traffickers if returned to Moldova. Moldova is a country listed in **Nationality Immigration and Asylum Act s.94**. Her claim was certified as clearly unfounded, which meant that she could only appeal from outside the UK – once she was back in Moldova. The next step for her would be that she would be detained and removed from the UK. To stop this she would have to apply to the High Court for a judicial review. The High Court Judge should decide that the UKBA's decision was unlawful as it had not followed a Country Guidance case (see *Chapter 8*) which stated that women trafficked from Moldova are a **particular social group** (see *Chapter 2*) and do face a real risk of harm on return<sup>86</sup>. Then the decision to remove her would be **quashed** (thrown out by the Judge) and she would be given a right of appeal from inside the UK.

**Example 2:**<sup>87</sup> An Eritrean woman came to the UK with her children and claimed asylum. However, it was discovered that she had already been granted refugee status in Italy, and therefore could be safely returned (under the **Asylum and Immigration (Treatment of Claimants) Act 2004** schedule 3). Her asylum claim was certified as clearly unfounded. She applied to the High Court for judicial review, on the basis that the UKBA, in certifying her case, unlawfully had not considered the **best interests of her children**. The High Court decided that that was a reasonable legal issue to raise, (but in the view of the High Court the best interests of her children would not be damaged if she were returned to Italy).

<sup>83</sup> Currently this list includes asylum claims for both men and women from: Albania, Bolivia, Bosnia-Herzegovina, Bulgaria, Brazil, Ecuador, India, Jamaica, Macedonia, Moldova, Mongolia, Mauritius, Montenegro, Peru, South Africa, Romania, Sri Lanka, Serbia, Ukraine. There are countries from which only male claims are subject to this procedure.

<sup>84</sup> Asylum and Immigration (Treatment of Claimants) Act 2004 Schedule 3 Removal of Asylum Seeker to Safe Country

<sup>85</sup> *ZT (Kosovo) v Secretary of State for the Home Department* [2009] UKHL 6

<sup>86</sup> *SB (PSG-Protection Regulations Reg 6) Moldova CG* [2008] UKLIAT 00002

<sup>87</sup> *Asefa, R (on the application of) v Secretary of State for the Home Department* [2012] EWHC 56

**If you have to appeal against your decision from outside the UK** (because your claim is to be decided under the non-suspensive appeals process), you have to submit your notice of appeal to the First-Tier Tribunal (Immigration and Asylum Chamber) within **28 calendar days** of leaving the UK. The appeal form is **IAFT-3**. This form and guidance will be sent to you with your decision letter. They can also be downloaded from <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/first-tier/appeals.htm>.

If your legal representative advises you to make an out-of country appeal, it is very important to keep in touch with them when you return to your country.

## 9.5 Appealing to the First-Tier Tribunal (Immigration and Asylum Chamber) (FTTIAC)

An appeal against the UKBA decision ('the initial decision') is heard by **Immigration Judges** in the Immigration and Asylum Chamber of the First-Tier Tribunal. Usually there is one Immigration Judge. Immigration Judges are **independent** of the UKBA.

In all Tribunal documents, and in the Tribunal hearing, you will be referred to as the **appellant** (the person who is appealing), while the UKBA (sometimes referred to as 'the Secretary of State for the Home Department' or 'Secretary of State' or SSHD) is the **respondent**. You are both **parties** (people who are taking part), to the proceedings, which are controlled by the Immigration Judge. The **hearing** is the presentation of your case, and the UKBA's arguments against you, in front of an Immigration Judge, to decide whether or not you are entitled to international protection in the UK.

The Immigration Judge does not usually give their decision at the end of the hearing. The Immigration Judge will read all the documents and think about what you and your witnesses said, and will write a **determination** which you will receive after 2 or 3 weeks. The Immigration Judge will decide whether your appeal against the decision is successful or not. A successful appeal is **allowed**, and if you lose your appeal it is **dismissed**.

The rules setting out the procedure for appeals are the **Asylum and Immigration Tribunal (Procedure) Rules 2005** (updated as at 29/11/2010)<sup>88</sup>. The purpose of the Procedure Rules is to ensure that appeals are dealt with as **"fairly, quickly and efficiently as possible"** (Rule 4).

## What are the chances of success in my appeal?

Many people whose applications are refused by the UKBA win their appeals and are given leave to remain in the UK. For example, in 2010, nearly 75% of asylum applications were refused, 17% were given Refugee Leave and 8% were granted Humanitarian Protection or Discretionary Leave. Of those who appealed, 27% were successful<sup>89</sup>. Looking separately at applications from women, an even bigger proportion of appeals were successful – 32%.

**You are more likely to be successful if you have legal representation.** Your legal representative should advise you on the strengths and weaknesses of your case. *See page 23 and page 95 for information about getting legal advice.*

## 9.6 Preparing for the appeal itself

### The following sections apply to you whether or not you are detained.

If you do not already have a legal representative, you are **strongly advised** to get one before your appeal if possible. If you instruct a legal representative at this stage he or she will tell the Tribunal that they are representing you. The Tribunal will then send any letters about your appeal both to you and your legal representative. **If you change your address**, you **must** tell both your legal representative and the Tribunal, to make sure that any letters and Notices of Hearing are sent to the right address. If you do not do this you might miss your appeal hearing, or not receive the Judge's Determination.

After you have **submitted** (sent in) your appeal (and paid the correct fee if you are not receiving asylum support or legal aid), the Tribunal will give it to the UKBA as soon as they can. Once the UKBA has received your appeal, they must send

<sup>88</sup> [http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/general/consolidated\\_AIT\\_ProcedureRules2005\\_291110.pdf](http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/general/consolidated_AIT_ProcedureRules2005_291110.pdf)

<sup>89</sup> UKBA statistics presented to the National Asylum Stakeholder Forum Equality Subcommittee January 2012.

you and the Tribunal a **bundle of documents** that are **relevant** to the appeal (Rule 13 of the Procedure Rules). This should include:

- the Reasons for Refusal Letter, the Notice of Refusal, and any other letters giving reasons for refusing your case; and
- any **unpublished** documents that they refer to in their refusal (this means any witness statements from yourself or any people supporting you, photocopies of your own documents such as identity cards, arrest warrants etc, any letters from any religious organisation or political party you belong to); and
- your Asylum Interview Record (AIR) (they usually also send your screening interview notes).

The Tribunal may tell the UKBA to do this by a particular day, otherwise they must do it as soon as possible and **no later than 2pm on the working day before the date of any hearing**. If you have a legal representative, that bundle of documents will be sent to them. If not, it will be sent to you. It is important that you keep this bundle of documents safe.

You or your legal representative should check that the UKBA has included all the items in the list that you gave them, to make sure they have not forgotten anything. However, the UKBA does **not** have to include copies of published reports about your country, such as Amnesty International reports, in the bundle.

If the UKBA has left out something you sent them, or there are other documents you want to rely on (such as a **published** country report, or any new evidence or witness statement you wish the Judge to look at), **you** should post or fax a **copy** of it to the Tribunal yourself **before** the date of the appeal hearing. It is **important** to remember to write your name, Home Office reference number and appeal reference number on anything you send to the Tribunal. You will find these reference numbers on your **Notice of Hearing** (see below).

Your legal representative will also arrange to send to the Tribunal and the UKBA **any other documents not already provided to the UKBA**, such as any witness statements or expert reports. Your legal representative may also do other things to prepare your case, including:

- Instructing **experts** to prepare a report and possibly give evidence for you.

- **Researching** the situation in your country.
- Looking at other determinations made by the Tribunal, especially **Country Guidance cases**, that are relevant to you and your country.
- Instructing a **barrister** (a type of lawyer who specialises in representing in Court and Tribunal hearings) to represent you at the hearing itself.

Your legal representative may put all your documents together in a **bundle of documents of the Appellant**, with the pages numbered as in a book, with a list of documents at the front. This **paginated bundle** helps the Immigration Judge find important documents during the appeal hearing (see *Giving Evidence, below*).

If you have asked for your appeal to be heard at an oral hearing, the Tribunal will send a **Notice of Hearing**. If you have no representative, you will receive this yourself. This will tell you the Tribunal address where your case will be heard, and the dates of any hearings. There may be 2 dates. If so, the first will be for a Case Management Review Hearing (CMRH) and the second will be the full hearing. **Make sure that you keep a careful note of these dates, and do not lose this paper.**

If you are receiving asylum support, you are entitled to travel expenses to attend your appeal hearings<sup>90</sup>. As soon as you receive the dates of your hearings, you should contact the UKBA office which sent you your Reasons for Refusal Letter, or get advice from your accommodation provider or One Stop Service about how to apply for a travel ticket.

### Case Management Review Hearing (CMRH)

Not every appeal has a Case Management Review Hearing, but if you have no representative the Tribunal may fix one. This short hearing is usually about 2 weeks before the main hearing and is for the Immigration Judge to make sure that you (or your representative) and the UKBA have all the documents you should have, and can find out how many **witnesses** will be speaking at the hearing, and if you or any of your witnesses need an **interpreter**, and what language or dialect. You do not need to attend the CMRH if your legal representative is attending, although you can go if you would like to. **If you have no legal representative, you must go to the Case Management Review Hearing, or the Judge may decide your whole appeal without**

<sup>90</sup> Immigration and Asylum Act 1999 s96(c), UKBA Policy bulletin 28 paragraph 2.2.

**waiting for the full hearing.** This hearing may only take around 30 minutes, and the Immigration Judge is unlikely to ask you difficult questions about your case.

## Your witnesses

If you have **witnesses** who you want to give evidence for you, you will need their **full names, dates of birth, nationality, immigration status and Home Office reference numbers**, to give to the Tribunal and UKBA. You can do this by providing a photocopy of their passport and visa/status document. Make sure you give your witnesses a **copy of the Notice of Hearing**, which gives the Tribunal address and the hearing date. Make sure that you tell any witnesses who come to the Tribunal for you to **bring original ID with them**.

A witness will not get into any trouble with the UKBA as a result of giving evidence for you. However, the Judge will give **less importance** to evidence from an asylum-seeker who has been refused and not believed, or from someone who is an illegal immigrant, than from someone who has been accepted as a refugee or who is a British citizen.

The Tribunal won't usually allow a witness to give evidence at an oral hearing unless a written statement has been sent in beforehand. If you have no legal representative, and you take a witness to an appeal with no written statement, the Immigration Judge **may** allow that witness to speak. The Home Office Presenting Officer (HOPO), the UKBA representative, may well object, saying that they have not had time to check the ID and immigration status of that witness. Therefore the witness **must** bring her/his Home Office reference number, or passport and status document, so that this can be shown to the Judge, and the UKBA can check this quickly, otherwise your hearing may be adjourned (put back to another day).

## 9.7 At the full hearing of your appeal

**If you do not attend your appeal hearing it may go ahead without you.** If you are **seriously ill**, you must contact your legal representative and the Tribunal as soon as possible. The telephone number is on the Notice of Hearing. If you are too ill to go, you must go to a doctor and get a medical note. The Tribunal will insist on written evidence that you were too ill to

attend, before they agree to fix your appeal for another day.

Your appeal hearing will take place at a Tribunal or Court Centre with many hearing rooms. You should arrive at **least 30 minutes early, and make sure your witnesses arrive 30 minutes early** to give yourselves time to go through security and reception, find the room where your appeal will be heard, and meet each other and your legal representative. **You may be there all day.** Usually the Tribunal arranges several appeals at the same time in the same hearing room, and outside each room there will be a Tribunal officer called an **usher** who will have a list of appellants whose cases will be heard in that room. The usher will check your name on the list, and will check if you, your legal representative and any witnesses have all arrived. The Immigration Judge for your hearing room will first of all hear any cases of people who are in detention, and then start hearing other cases. If you have children, or if you or any of your witnesses are sick or disabled, your case may be heard earlier in the list.

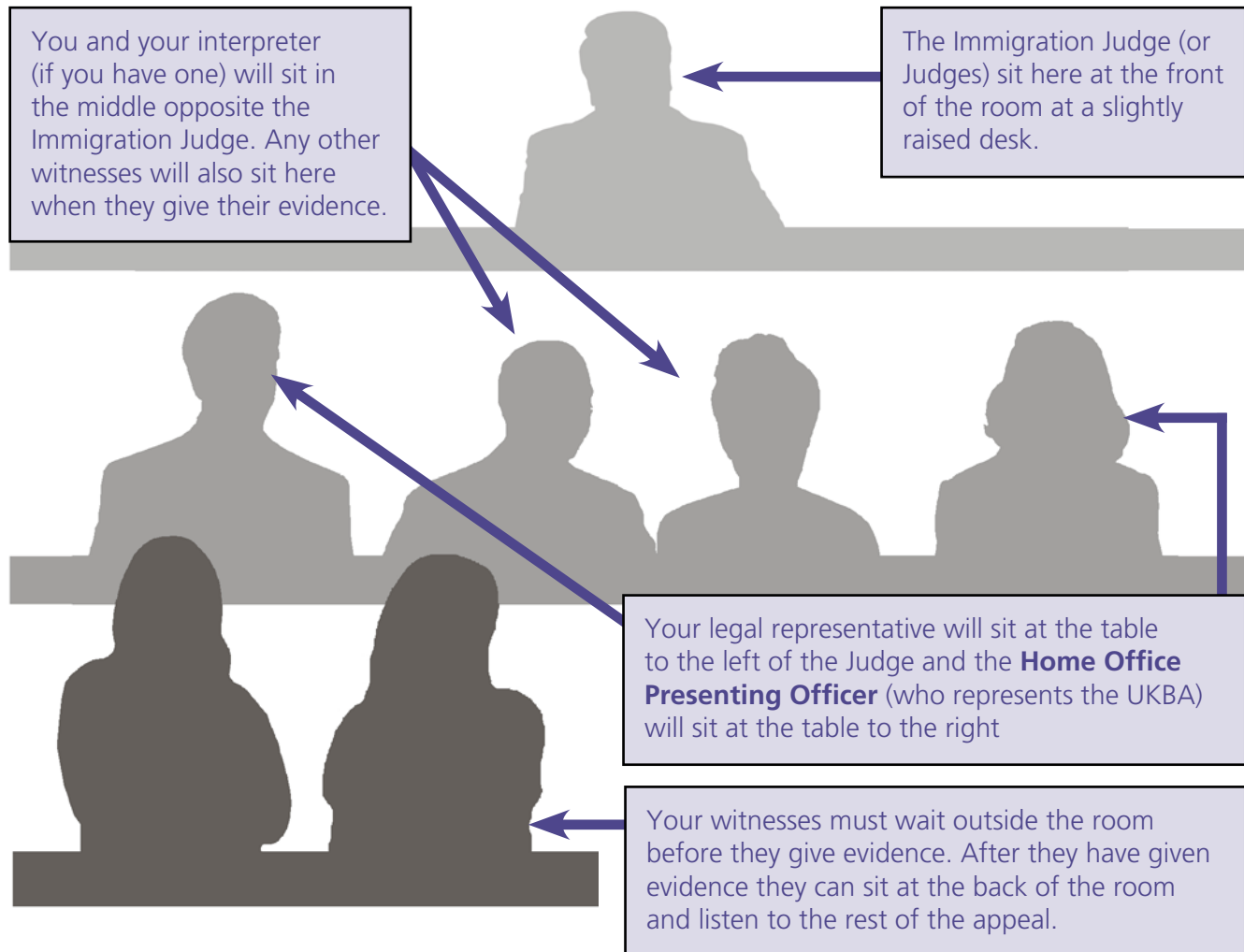
## What to expect

For many people, attending an appeal hearing can be a difficult and anxious experience. Your legal representative, if you have one, will be able to tell you how to prepare for the hearing. You should ask advice about anything that you are not sure about, or do not understand, before or during the hearing, from your legal representative. If you do not have a legal representative you can contact Rights of Women's Immigration and Asylum legal advice line (*for details see the inside front cover*) before your appeal. *For information about legal advice and support organisations see page 95.*

In the UK, Court and Tribunal hearings are **public**. This means that anyone can come in and listen to your case. Usually these will be people waiting for their own case to be heard, or other people's legal representatives. **If you have to reveal details of rape or sexual abuse**, and you would find it upsetting and difficult to do this in public, you may ask the Immigration Judge to hear your evidence in private, under rule 54(3)(b) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

## The room where your appeal will be heard

This picture shows where people usually sit in the room where your appeal will be decided:



### Burden of proof – remember that it is your responsibility to prove your case

Look back at Chapter 4 section 4.1 for information about the **burden of proof and standard of proof**. It is your responsibility as the asylum-seeker to prove that what you are saying is true, and to give enough evidence to show that you fit into the Conventions and laws providing international protection. This does not mean you have to prove that it is certain that you would be harmed if you were returned to your country. You have to show that there is a **real risk** that if you were returned to your country you would be **persecuted** or face **serious harm**. Look back at Chapter 1 to see the legal meaning of **real risk, persecution and serious harm**.

### Preparation before giving evidence

You, and any other witnesses who are going to attend the hearing and give evidence for you, must be **prepared and ready** for answering questions before the Immigration Judge. The

process of answering questions at your appeal is called **giving evidence**.

You or your legal representative should have already prepared a written **statement** for you. Your statement is your account of what happened to you, and why you need protection in the UK. Your statement is your own evidence in your case. You may have made a second statement, commenting on the Reasons for Refusal Letter. If you have any witnesses who have agreed to speak for you, they should also make written statements. The statements of your witnesses are their evidence in your case. All these statements should be either in the Home Office **bundle of documents**, or in an **Appellant's bundle of documents** already given to the Tribunal. Or you may have sent them separately to the Tribunal yourself. You should **re-read** your statement and the statements of your witnesses, as well as your Asylum Interview Record and any other important documents.



When you give evidence to the Tribunal you will be asked questions about your evidence. If you have a legal representative they should make sure that you know what the legal problems are in your case. This will enable you to understand why you may be asked certain questions, either by the Immigration Judge or the Home Office Presenting Officer, and should enable you to give firm answers in line with what you say happened.

**Example:** Ms Mehretab claimed asylum at Heathrow airport. Her Reasons for Refusal Letter said that she had **no credibility** (the UKBA did not believe her), because of **discrepancies** (differences in her story) between what she said at the airport, and what she said in her Asylum Interview. At the airport she said she was Ethiopian, but in her asylum interview she said she was Eritrean. In a witness statement she explained that she did not tell the truth at the airport, because the agent who brought her to the UK had told her to lie. She had to be **prepared and ready** for the Home Office Presenting Officer to accuse her in the Tribunal of telling lies now to cover up the 'fact' that she is Ethiopian and has no risk of harm on returning there. This made her angry, and she started to cry, but she was able to insist that she was telling the truth, and that she is Eritrean.

## 9.8 Representing yourself at your appeal

You may find it useful to read this section whether or not you have legal representation.

If you are unable to get legal representation for your appeal, you can represent yourself. You can get free legal advice from Rights of Women's Immigration and Asylum legal advice line [see inside front cover for details](#).

If you are representing yourself it is **very important** to make sure the Tribunal and the UKBA know your current address, so that you receive all the documents and information about your case. **If you are representing yourself you must go to any Case Management Review Hearing, and you must attend your appeal.**

If you are representing yourself, the Tribunal cannot ask you to do anything to prepare the case unless they are sure that you are able to do what they ask (Asylum and Immigration Tribunal (Procedure) Rules paragraph 45(5)). This means that the Home Office will be responsible for

preparing the papers for the appeal. However, if you have any **new evidence, or any new witness statements**, or if you wish to make any **written comments** on the Reasons for Refusal Letter, or if you want to **provide published evidence** such as an Amnesty International report about your country, you **must send these yourself**, (1) to the Tribunal and (2) to the Home Office Presenting Officer's Unit. The address of the Home Office Presenting Officer's Unit is on the Notice of Hearing, or you can hand copies of documents to the Judge and the Home Office Presenting Officer at the Case Management Review Hearing.

- Make sure that you tell the Tribunal and the Home Office Presenting Officer about any witnesses that you are bringing to your appeal, and about any other evidence that you will be relying on. You can do this at the Case Management Review Hearing.
- Make sure that **your witnesses** know the date, time and place of the hearing, and tell them to **arrive early**. The best way of doing this is to give them a copy of the Notice of Hearing, and tell them to bring it to the Tribunal centre. Your witnesses **must** bring evidence of ID and immigration status or their evidence may be rejected.
- Bring any **original documents**, unless you have already given them to the UKBA.

## Duties of the Tribunal where someone is representing herself

When an asylum-seeker is representing herself, the Immigration Judge has a duty to ensure the appeal is heard in a fair way. This means making sure that you understand what is happening, and that you have the time that you need to explain why you should remain in the UK. The Immigration Judge will do this by asking questions. **However, the legal process of deciding the appeal is the same, whether or not a person is represented.** The Immigration Judge will not stop the Home Office Presenting Officer from asking difficult questions, or from suggesting that you are not telling the truth. The Judge will not provide information about your country, because, even if you are representing yourself, the **burden of proof still rests on you** to prove your case.

## 9.9 What happens at the appeal hearing?

The usual way a Tribunal hearing takes place is:

- 1. You, the Appellant, give evidence first.** If you have provided a statement the Immigration Judge (or your representative) will ask if you “adopt” your statement. This is a legal way of asking if your statement is true, and if it sets out what you want to say. You should say “yes”. The Judge will ask you to explain why you need international protection in the UK. You do not have to repeat anything that you have written in your statement, because the Judge has a copy, and should have read it before the hearing. **If you have not written a statement you will have to tell your whole story to the Tribunal. You may well find this difficult** unless you take time before the appeal to look through your screening interview and your asylum interview and see how your claim fits into the law (*see Chapter 1*). The Judge will **not** tell you what to say, or help you explain anything, but she/he may ask a few questions. **If you have brought any original documents or any new evidence,** you can ask the Immigration Judge if you can show them to him/her and to the Home Office Presenting Officer. It is important to remember that they won’t look at anything that has not been properly translated into English.
- 2. The Home Office Presenting Officer** will then ask you questions. This is called **being cross-examined**. You may be asked questions based on your statement, or on your asylum interview. You may be asked questions about your country and how you got to the UK. This may well be the **hardest part of the day**. The Home Office Presenting Officer will question you about any **discrepancies** (*see Chapter 3*). They may suggest that you are not telling the truth. They may suggest that what happened to you could not have happened. They may suggest that you really came to the UK to find work and that you really do not fear going home. You may well find this difficult but it is important that you stay calm and answer the questions clearly and truthfully. **Make sure that you do answer the questions, however difficult.** *Look back at Chapter 5 on the asylum interview for help on how to answer difficult questions.* If you do not understand the question, or you do not know the answer, you should say so. If you are not sure about something, for example, the date on which something happened, it is important not to guess. If you get upset, or you feel ill, you can ask the Immigration Judge to give you a short break, but you will be expected to come back into the hearing and carry on until the Home Office Presenting Officer has finished asking you questions. The Immigration Judge may also ask you questions, but usually these are only to check certain points.
- 3. If you have a legal representative, they can re-examine you.** This means asking you a few short questions to make anything clear which your answers to the Home Office Presenting Officer may have confused. They cannot ask you anything new, and you cannot interrupt or try to answer a question over again.
- 4. You/your legal representatives can then call your own witnesses, one at a time. They will have been told to wait outside.** You say the witness’s name, and the usher should go out and ask him or her to come in and give their evidence, one by one. If their written statement has already been sent to the Tribunal and the Home Office Presenting Officer, you ask each witness if that statement is true. If they have not sent in a statement, they will have to give their evidence about your case from their own memory. Again, they may well find this difficult if they have not taken time before the appeal to think about what they want to say. You should not interrupt, even if your witness makes a mistake.
- 5. The Home Office Presenting Officer** will **cross-examine** each of your witnesses, and the Immigration Judge may ask questions also. They should also be careful to stay calm and answer questions carefully and truthfully. **You should not interrupt, even if you think your witness has made a mistake.** This is because it is their evidence.
- 6. The last stage is called ‘submissions’.**
  - a. First, the Home Office Presenting Officer** will go through your case and explain why they think you should not be given international protection in the UK. They may say “I stand by the Refusal Letter” or they may mention some of the answers you have given to their questions. The Officer will ask the Judge to **dismiss** your appeal. **You must not interrupt, even if what is said makes you angry.**
  - b. Then it is your turn.** If you have a legal representative, they will summarise your case, make legal arguments and explain briefly to the Judge why you should be granted international protection. **If you**

**have no legal representative, you, the Appellant, have the last word.** It is best not to say anything about what the Home Office Presenting Officer has said, but to say **I am telling the truth**, and state clearly and briefly the **4 important things** in **your claim for international protection**:

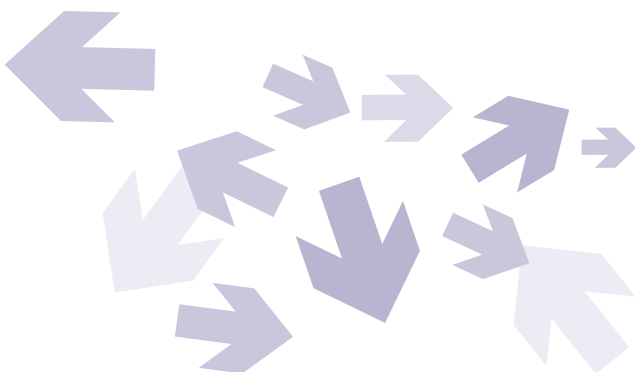
- “I came to the UK because I am **frightened to return to my country**”.
- “I am frightened **because...**” (whatever Convention Reason or reason why you fear serious harm).
- “Before I left, this happened to me (the persecution that made you flee your country), and **I had to get away, or that persecution would continue. I feared for my life.**”
- “There isn’t anywhere in my country where I would be safe”.

and

If you are also seeking to remain in the UK on the basis of your **Article 8 right to family life**, you should briefly say

- who your family life is with;
- whether they are British, or have leave to remain in the UK;
- why they cannot return to your country with you.

The Immigration Judge will then probably say “I will reserve my Determination”. This means they will not tell you the answer straight away, but will go away and think about your case and prepare a written Determination. That is the end of your appeal hearing.



## 9.10 The decision: after the appeal

The Immigration Judge’s Determination is sent by the Tribunal to the UKBA, who then should send it to you (and your legal representative) straight away.

If the Judge **allows** your appeal, you may be given protection in the UK. Depending on your case, you may be given **Refugee Leave, Humanitarian Protection or Discretionary Leave. It may take a few weeks for the UKBA to send your documents granting leave to remain.** See *Chapter 7 for information about your rights once you have leave to remain.*

However, if the Judge allows your appeal, the UKBA may try to appeal against that decision, to the Upper Tribunal. If they do this, the Tribunal will write and inform you. You do not have to do anything unless you get a further letter telling you that the UKBA has been given permission to appeal. If this happens, you are **strongly advised** to get further legal advice. Your case is not yet finished. There will be a new hearing, and the Tribunal could change its mind about your case.

**If the Judge has dismissed your appeal, you should seek advice straight away.** It is very difficult to appeal further, and the time limits are very short. If you have a legal representative, they should have received the Determination also, and you should get an appointment with them straight away. If you do not have a representative, you should try to get legal advice now.

## 9.11 Appeals against a decision made by the First Tier Tribunal (Immigration and Asylum Chamber)

You will only get permission to appeal against the Determination of the Immigration Judge if that Judge made an **error of law** (a mistake about the law and how it should be applied in your case) **and there is a real prospect that, if the error of law had not been made, your appeal would be decided differently.** This is **difficult.** If this is accepted, there may be a further hearing about your case, before different Judges in the Upper Tribunal, or it may be **remitted** (sent back) to another hearing, like the first one, in front of a different Immigration Judge in the First Tier Tribunal.

**Example:** The Judge listened to Ms Mehretab (from the last Example) and decided that he did not believe her, and made a **finding of fact** that she was from Ethiopia. But, at the appeal hearing Ms Mehretab **and** her 2 teenage children had given evidence. Her children had both said that they were born in Keren, in Eritrea, and had lived there all their lives, had been to school there, and they only spoke Tigrigna (and not Amharic, the language of Ethiopia). They also described walking for several days to cross the border into Sudan. The Judge did not make any **findings of fact** about the children's evidence. Ms Mehretab's representative applied for permission to appeal to the Upper Tribunal. The **error of law was that the Judge, for no good reason, had given no weight** (had not paid any attention) **to the evidence of important witnesses in Ms Mehretab's appeal, and it was clear that, if the Judge had listened to the children's evidence, it would have made a difference to her appeal.** She was given permission to appeal, and eventually her appeal was allowed and she and her children got refugee status.

If the Upper Tribunal refuses your appeal, you can apply for permission to appeal to the Court of Appeal. This is **very difficult. The Court of Appeal will only hear a case** if there is **an error of law and** your appeal raises **an important point of principle or practice, or** there is a **compelling reason** why the Court of Appeal should look at it.

A recent Court of Appeal case<sup>91</sup>, concerning 3 separate asylum-seekers, discussed this legal test. The Court confirms that the reason for these restrictions is to ensure that the Judges in the Court of Appeal do not spend their time looking again at cases which have been dismissed by one or even two sets of Tribunal Judges. They confirmed that the various Conventions and laws on international protection do not require a State to provide more than one chance to appeal a negative decision. They emphasised that it would be unusual, and unlikely, that an asylum-seeker whose case has failed twice in the Tribunal would have faced *legal* mistakes so serious that the case should be heard again in the Court of Appeal. That view has been confirmed in another Court of Appeal case<sup>92</sup>.

It is **very important** to know that you will **not get permission to appeal**, even to the Upper Tribunal, if the Immigration Judge has dismissed your appeal because he does not believe your case. If the Judge makes **negative findings of fact** (decisions that he does not believe the details of your claim) **this does not count as an error of law**, even if you think you gave enough evidence for the Judge to have decided in your favour, unless his reasons for making those findings **are legally wrong, or irrational** (so unreasonable that no reasonable person could have made those findings).

### Appeal rights exhausted

If your appeal was dismissed by the Immigration Judge and you have been refused permission to appeal to the Upper Tribunal (and certainly if you have been refused permission to appeal to the Court of Appeal), you have **exhausted** (finished) your rights to appeal and you become **liable to removal** from the UK. *For information about removal, see Chapter 10.*

## 9.12 Things to remember

- If your asylum claim has been refused by the UKBA, *look at Chapter 1* to check how your claim fits into the law, before filling in the appeal form.
- You are **strongly advised** to get legal advice to help with your appeal. If you do not have a legal representative, **make sure you submit** (send in) **your appeal in time**.
- **Before** your appeal hearing, take time to read carefully your screening interview, asylum interview and any statements you have sent to the UKBA, and the Reasons for Refusal Letter, so that you are clear what you have said to the UKBA and why they have refused you. Be **prepared and ready** for difficult questions (*see Chapter 4 on the asylum interview for information about this*). Be **prepared and ready** for the Home Office Presenting Officer to suggest that you are not telling the truth.
- You **must** attend any Case Management Review Hearing (unless you have a legal representative who will go to this hearing for you) and **you must attend your appeal hearing**. You are **strongly advised** to beg your witnesses to attend the hearing and speak for you. The Immigration Judge will not pay

<sup>91</sup> *PR (Sri Lanka) & Ors v Secretary of State for the Home Department* [2011] EWCA Civ 988

<sup>92</sup> *JD Congo & Ors v SSHD* [2012] EWCA Civ 327 para 32

much attention to their statements unless they attend the hearing.

- If your appeal is **dismissed**, you are **strongly advised** to seek legal advice straight away. It may be possible to appeal to the Upper Tribunal, unless the Immigration Judge did not believe you and did not make any errors of law.

**If you are advised that there are no errors of law in the Determination, or if you are refused permission to appeal to the Upper Tribunal, you have exhausted (finished) your rights to appeal and become liable to removal from the UK. Only in very exceptional cases would you be advised to apply for judicial review. See Chapter 10 section 10.3 for brief information.**

*See page 95 for information about legal advice and support organisations.*



# 10 Final refusal and removal



## 10.1 Introduction

If you were refused asylum and did not appeal, or if you have been refused further permission to appeal, you have **exhausted** (finished) your rights to appeal. If you have exhausted your rights to appeal, you are **liable to be removed** (although you may in certain limited circumstances be able to take further legal action, see below). This means that the law allows the UKBA to send you back to your country against your will. You can return to your country voluntarily. If you do not, **you may be detained until you are removed**. This section will explain the options that are available to people who have had their claim for international protection to stay in the UK finally refused and their appeal rights are exhausted.

You are **strongly advised to seek independent legal advice** before making decisions about returning to your country. **You may be able to take further legal action – but there may be good reasons for making a voluntary return.**

### Are you or your children dependent on your husband's claim?

Many women (and their children) are dependent on their partner/husband's claim. When that is refused, and his appeal rights finally exhausted, they become removable along with him. However a woman, or a child, may be able to make **her own application for protection**. For example, a Somali woman with small girl children would have a strong claim not to be removed to Somalia, to protect her children from female genital mutilation (FGM). Or an Eritrean teenager may be able to claim asylum separately from her parents on the basis of fear of forced military service. **If these issues had not been mentioned before, the woman or child would have to make a new asylum claim at the Asylum Screening Unit, as before.** See Chapter 1 for how a claim would fit into the law on international protection and Chapter 2 for information on how to apply for asylum.

### Can I make a fresh claim for asylum?

A **fresh claim** is a second (or further) claim for international protection in the UK made by someone who has previously made a claim which has been finally refused. In order to make a fresh claim, you must have **new and relevant information** about why you should not be returned to your country, **information that you could not have provided before**, that creates a **real chance**, even if a previous Judge did not believe you, that a new Immigration Judge might allow your appeal. *Go to Chapter 11 for information on fresh claims and further information.*

### Can I make a new claim based on family life?

If you have started a new relationship or developed some other family reasons for staying in the UK since you arrived, and you have not yet informed the UKBA, you are **strongly advised** to seek legal advice as soon as possible. Just as with a fresh claim for international protection, you would have to give **exceptionally good reasons** for not having mentioned this before. *Go to Chapter 11 for information on fresh claims and further information.*

## 10.2 Voluntary Return and Assisted Voluntary Return

Voluntary return is when a person **chooses** to return to their country, rather than being forcibly removed by the UK Border Agency. If you were not found credible in your appeal (if the Immigration Judge did not believe you), if you do not have any new evidence and **if you have been represented throughout your case, and already had legal advice that there is nothing more you can do**, you are **strongly advised** to consider making a voluntary or assisted voluntary return. The advantages include:

- avoiding long periods in **immigration detention**; and
- the ability to be **supported** while you are making arrangements to return; and

- reducing the period of time in which you would be **excluded** from returning to the UK (see below).

## How can I get help to return to my country?

There are two ways in which you can return to your country voluntarily:

**Voluntary Return:** you arrange and pay for your own return to your country. This would normally only be possible if you have a valid passport, or if the UKBA will agree to give you your passport so that you can renew it at your Embassy. If you can arrange your own journey and pay for your own ticket, tell the UKBA and they will arrange to meet you at the airport departure gate to hand you your passport.

**Assisted Voluntary Return:** this is when you choose to return to your country, but you are given financial or other support to enable you to do this. This can be done even if you have no valid passport<sup>93</sup>, as many countries accept return of their own nationals on an EU letter (EUL) or an emergency travel document (ETD), which the UKBA will arrange direct with your Embassy.

Find Information on the UKBA's programmes for helping migrants return home here: [www.ukba.homeoffice.gov.uk/aboutus/workingwithus/orkingwithasylum/ssistedvoluntaryreturn/](http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/orkingwithasylum/ssistedvoluntaryreturn/)

**Refugee Action runs a programme called Choices.** This is **independent** from the UKBA. The Choices programme provides advice to people who are thinking about returning home. They have female advisers who you can talk to in confidence. They will not tell anyone what you tell them, including your family, or the UKBA.

For information about Choices and their services for women see: [www.refugee-action.org.uk/ourwork/choices/default.aspx](http://www.refugee-action.org.uk/ourwork/choices/default.aspx)  
For general information about Choices, please telephone 0808 800 0007 or email: [choices@refugee-action.org.uk](mailto:choices@refugee-action.org.uk).

## If I leave the UK voluntarily, will I ever be able to return?

This will be **difficult**. Anyone who has already been refused entry or remained illegally in the UK, who then applies to enter the UK for a 'temporary purpose' such as work or study, will find it difficult to convince the Entry Clearance Officer that he or she truly intends to leave the UK at the end of their visa.

The Immigration Rules paragraph 320<sup>94</sup> require that a visa application must be refused for a specified period where the applicant has:

- overstayed, or been treated as an illegal entrant; and/or
- breached a condition of their stay in the UK; and/or
- used deception to seek entry into the UK or to seek leave to remain in the UK.

There are **different exclusion periods** depending on whether the applicant has made a voluntary return, and how long ago the immigration offence was committed. These exclusion periods **do not apply** if you are applying to return to the UK to be with your husband, partner or other family members, or if you were under 18 when you left **but anyone who has breached immigration laws faces a risk of future refusal**. If you believe you have a strong application to return, you are **strongly advised** to seek advice about voluntary return before you face detention and removal.

**Legal aid is still available for advice and representation in immigration cases. However,** the Government is planning to **stop** legal aid for immigration cases **from April 2013**. After that you will not get free legal help and this will make legal action to stop your forcible removal from the UK much more difficult because you will have to pay privately for a solicitor to assist you or represent yourself. **Legal aid will still be available for asylum, including fresh claims.**

<sup>93</sup> Unless you are disputing your nationality, or if your Embassy will not either provide you with a travel document or accept an EU letter (EUL) or an emergency travel document (ETD).

<sup>94</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part9/>

## 10.3 Removal from the UK: legal procedures

No one can be lawfully removed from the UK without first being given **removal directions**. The **decision to remove** is an **immigration decision**<sup>95</sup> which must be given to someone who the UKBA has decided to return forcibly to their country. Removal Directions set out the date and time of the planned removal, where the person will be removed to and how they will be removed, giving detail such as the flight number. **There is no appeal against this unless there is significant new evidence which has not already been considered.**<sup>96</sup> This area of law is complicated, and legal action may have to be taken very quickly to stop removal. **If you receive a decision to remove you, with removal directions, you should get legal advice as soon as possible.**

If the UKBA does not accept your new evidence and agree to suspend the removal, your legal representative **may** be able to challenge the removal directions by **judicial review**, also asking the High Court to grant an injunction (make a court order) forbidding the UKBA from removing you until your new claims are properly considered. This is legally complicated and requires the quick presentation of all new information to a legal representative experienced in dealing with immigration emergencies. If your new claim is based on family or relationship, your partner or family member must be ready to give full information straight away.

**There could be a delay of several years between refusal and removal<sup>97</sup>, but that does not mean the UKBA has forgotten about you or intends to let you stay.**

If you have already received legal advice all the way through your asylum claim, and you have been advised in detail that you have no further appeal, and if you have no new evidence, there will be **no grounds** to challenge your removal. An illegal immigrant or failed asylum-seeker facing removal is allowed to apply direct to the High Court without a lawyer for a judicial review of a decision to remove. **However** removal will not automatically be suspended where there has been less than three months since a previous judicial review or appeal, or where removal is to be by charter flight<sup>98</sup>. **And it is highly unlikely you will succeed** without significant new evidence, good reasons for not having presented this earlier in your case, and the support of an experienced lawyer.

<sup>95</sup> Nationality, Asylum and Immigration Act 2002 s82(2) (g) and (h).

<sup>96</sup> A person may appeal against the decision to remove **but this cannot be done until the person has left the UK**, except where the person has made an asylum or human rights claim in the UK which has not been certified as clearly unfounded: Nationality, Asylum and Immigration Act 2002 s92(4)(a) and s94(2).

<sup>97</sup> *Daley-Murdock, R (on the application of) v Secretary of State for the Home Department* [2011] EWCA Civ 161.

<sup>98</sup> UKBA Enforcement Instructions and Guidance, chapter 60, section 4.1.



## 10.4 Campaigning against removal

**If you have strong new evidence of Article 8 family or private life, but you are not eligible for legal aid**, you may need to plan and organise an **Anti-Deportation Campaign**. This would be a campaign to keep you with your family in the UK. This would mean lots of work speaking to, for example, neighbours, friends, community organisations, local political organisations, and your Member of Parliament (MP), encouraging them to write letters to the UKBA and to the Minister for Immigration and possibly holding demonstrations outside the Home Office or the Houses of Parliament. It may also mean trying to get your case discussed in the newspapers or on TV to publicise how a decision to remove you would be a breach of your human rights. A campaign might take many months, and you may be kept in immigration detention during this time.

For anyone who is not eligible for legal aid, and certainly when legal aid for immigration is abolished, and representing yourself or paying privately for a solicitor is not possible, this may be the only option. At the time of publication **the Government's current plan is to remove legal aid for immigration cases** in 2013 at the earliest. There will be no legal aid for advice or representation in court for any migrants except for cases involving asylum and humanitarian protection and some domestic violence applications.

You can get advice and ideas from the **National Coalition of Anti-Deportation Campaigns**, which is an organisation which speaks out against forced removal of individuals and families. For information about starting or supporting a campaign, visit [www.ncadc.org.uk](http://www.ncadc.org.uk)

## 10.5 I might be removed, what should I do? Preparing for being taken into immigration detention

If you have exhausted (finished) all your appeal rights, and you are liable to removal, you may be **taken into immigration detention at any time** so that the UKBA can make detailed arrangements to return you to your country. Immigration officers may come to your address and take you into detention or you might be taken into detention when you report. You will not be told in advance that a decision has been taken to detain you.

**However**, if you **have children**, the UKBA uses a completely different procedure to enforce removal. You will not be detained in a detention centre, but may be required to spend a short period in secure accommodation for families before you are removed. **The advice in this section applies to people without children.**

If you are liable to removal, **be prepared for being detained**. You may only be given your removal directions when you are in immigration detention. If you are detained you will need to be able to contact your legal representative quickly, so that, if there are good legal arguments, she can take legal action in time to prevent your removal.

You should make sure you always carry the following with you at all times:

- A **mobile telephone that is not able to take photos, or give access to the internet**. A phone with a camera or internet access will be taken away.
- Your **name and date of birth**, plus names and dates of birth of your family.
- Your **Home Office reference number** (and those of your family members).
- Any **tribunal appeal reference numbers** (and those of your family members).
- The telephone number of your **legal representative**, including his or her emergency number.
- The telephone number of your **Member of Parliament**<sup>99</sup>, if you have been in contact with them, including his or her emergency number.
- Your **doctor's** number, if you or your family have serious medical problems.

<sup>99</sup> Your Member of Parliament does not have any power to prevent your removal. But he or she may be able to help you find a legal representative, who may be able to apply to the High Court **if there are legal grounds for stopping your removal which have not already been presented to the Court**.

- The telephone numbers of any **friends, or others who are supporting you**.
- **A file or strong bag that contains all your legal documents.** Keep this by your front door so that, if Immigration Officers come to your house, you can take the file with you into detention. If you are homeless, or moving between different places, keep this file with you at all times.
- You are **strongly advised** to give **another copy** of your file to someone you trust, who is not detained. They can pass it to a legal representative or others who are assisting you, such as your MP. **It will be extremely difficult** for a legal representative to help you in an emergency without your file.

## 10.6 Can I be forced to leave the UK? Treatment on removal

Your removal will be **lawful** if the UKBA has served (given to you) a proper written removal decision and you have either not made any appeal or application to the High Court, or all your appeals and applications have been dismissed. On the day of your removal you will be taken from the detention centre in a secure van, with guards, to the airport and kept in a secure place (often kept inside the van) until it is time for you to be put on the plane. Usually, someone from the UKBA (your **escort**) will travel with you on your flight, and make sure you go through immigration when you arrive in your country. If your removal is lawful, then your escorts are entitled to use force, for example, by handcuffing you, to make you go up the aeroplane steps and remain quiet during the flight.

They are not allowed to use force that is either **unnecessary** or **unreasonable**. This will depend on your behaviour. This means that if you struggle or fight to try to stop them putting you on the plane, it will be lawful for the person removing you to use physical force, for example, by holding you.

If your removal is **unlawful** a lawyer may be able to get an injunction (court order) ordering the UKBA to bring you back to the UK.

## 10.7 Can I return to the UK after I have been removed?

**As soon as your appeal rights are exhausted**, you are **strongly advised** to get legal advice on the effect of being removed rather than returning voluntarily to your country. The Immigration Rules, paragraph 320<sup>100</sup> set out the circumstances under which a person who has been removed from the UK will be refused by law, if they apply to return (see 10.2 above).

If you are **removed**, you may be prevented from coming back to the UK **for up to 10 years**. This **does not** apply if you are applying to return to the UK to be with a husband, partner or other family members. But any other application will be more difficult for a person who has previously entered illegally, or overstayed, or “*where the applicant has previously contrived in a significant way to frustrate the intentions of these Rules*”<sup>101</sup>.

## 10.8 Things to remember

- If you have exhausted all your appeal rights, if you have no new evidence and if you have had legal advice that there is nothing further that can be done for you, you are **strongly advised** to consider returning voluntarily to your country. There is no ‘legacy’ programme, and governments want to remove as many unlawful migrants as possible.
- You can leave the UK **voluntarily** at any time. You can arrange and pay for this yourself (the UKBA will arrange for your passport to be taken to the airport on the day you leave), or you can be given financial and other help through an Assisted Voluntary Return Programme.
- If you are given **removal directions**, you should seek legal advice straight away as it may be possible to challenge your removal, for example by **judicial review** and/or making a **fresh claim**.
- If you have exhausted all your appeal rights, and you do not have any further evidence or any fresh claim, you are **liable to removal**. You are likely to be taken into **immigration detention**. You will not be told in advance that a decision has been taken to take you into immigration detention.

<sup>100</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part9/>

<sup>101</sup> Immigration Rules part 9 paragraph 320(11).

- On the day of your removal you will be taken under guard to the airport, and escorted during your flight. The people who escort you during your removal are allowed to use force to enable them to return you to your country, so long as the force is not **unnecessary or unreasonable**.
- Anyone wishing to enter the UK must apply for a visa. But someone who has previously been removed, and even people who make a voluntary return if they have overstayed for a long time, may be refused entry by law, for many years. If you have any family here, and you hope to return to the UK to be with them, you are **strongly advised** to get legal advice on returning to your country. For example, if your legal representative advises that your family life is not sufficient to prevent your removal, but you may be able to make a visa application in the future, she may advise you to make a voluntary return rather than waiting to be removed.

*See page 95 for information about legal advice and support organisations.*



# 11 Fresh claims



## 11.1 Introduction

A **fresh claim** (sometimes called ‘further submissions’) is a second or subsequent claim for international protection in the UK made by someone whose original claim has been finally refused and whose appeal rights are exhausted.

**The same international conventions and laws apply to fresh claims** (Go back to Chapter 1 for information about the law on international protection). In order to stop people making repeated claims using the same information, the Courts and the Immigration Rules set some **important legal tests for deciding what counts as a fresh claim**.

If the UKBA decides that a person’s further submissions **count as a fresh claim**, that person becomes **an asylum-seeker** again. This means that they cannot be removed until any new decision and any new appeal is finally exhausted. But if the UKBA decides that the person’s further submissions do not amount to a fresh claim, that person **remains liable to removal**.

**If you are still in the appeal process**, and you receive new information, it is very important that you tell your legal representative straight away and she/he will advise about how to include the information in your current appeal. If you are representing yourself, you should send the information to the Tribunal and to the Home Office Presenting Officer straight away (see Chapter 9 section 9.6).

## 11.2 What is a fresh claim?

To make a fresh claim you need **new information or evidence**, and the new information must be **strong enough, and reliable enough**, to make a difference to the outcome of your case. In law, the information has to be strong enough to have a good chance of persuading a new Immigration Judge to decide that you face a real risk of harm if returned to your country<sup>102</sup>. The Immigration Rules paragraph 353<sup>103</sup> states the formal requirements.

When making a fresh claim you cannot just repeat information in your previous asylum claim, especially if the Immigration Judge made **negative findings of fact** (they did not believe you). Your new information must challenge any negative findings of fact strongly enough to persuade a new Judge that those previous negative findings of fact made by the court were wrong.

**Example:** Ms X is from Nigeria. She was trafficked to the UK for sexual exploitation. She escaped the gang who trafficked her and claimed asylum. She was immediately put in the Detained Fast Track. She was refused asylum and her appeal was dismissed. None of her story was believed. She was helped to get medical and psychiatric help. A new legal adviser obtained a detailed psychiatric report, and took a detailed statement from Ms X (which took several days) on her trafficking and sexual abuse. She made a fresh claim. Following a judicial review in the High Court, the UKBA accepted that her new evidence counted as a fresh claim, and she was released from detention. Her case continues.

**Example:** Nadifa claimed asylum, stating that she was Somali. The UKBA refused her claim, stating that she was from Kenya. Her appeal was dismissed. The Judge made a **finding of fact** that she was from Kenya and could return there. New legal advisers made a fresh claim saying “*Our client is a Somali national....*” but did not provide any new evidence on her behalf. That fresh claim could not count as a fresh claim in law and she remained liable to removal.

<sup>102</sup> *WM (DRC) v Secretary of State for the Home Department* [2006] EWCA Civ 1495 para 1.

<sup>103</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part12/>

## 11.3 What is new information?

The new information can be about you and your safety if you should return to your country, new information about your country or a recent change in UK or European law that affects your case.

- New information that relates to **you and your safety**, if you have to return to your country. This might include:
  - information about a friend or family member who has been arrested or harmed; or
  - new documents such as an arrest warrant against you in your own country; or
  - new expert evidence, such as a report on your physical or mental health; or
  - a new threat to your safety, such as from a member of your family; or
  - a change in your circumstances since your claim was decided, for example, if you have left your husband, or you have had a child; or
  - political activities that you have carried out in the UK since your first asylum claim was refused (you would need evidence that your government would find out **and** would be likely to persecute you on return).

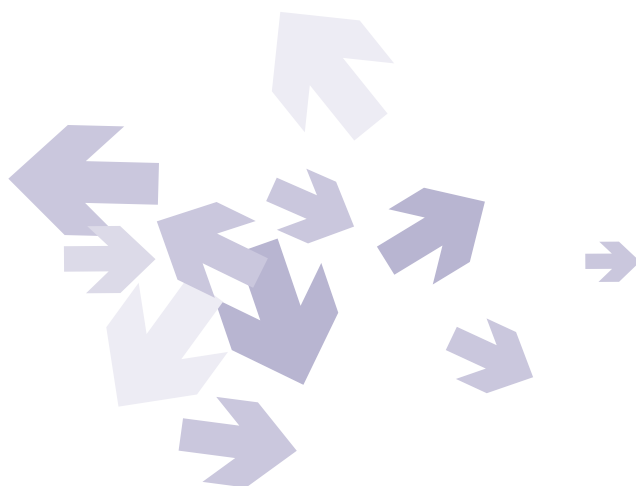
**In law, what matters is whether your new information could successfully challenge previous negative findings of fact in your case.**

If you were not believed in your first claim, you will need **details** about **how you received the new information**. You may need an expert report to show that the new information has a good chance of being genuine. For example, if you provide a newspaper article stating you or your family are under arrest, you would need evidence that this is a genuine newspaper, and that the edition mentioning your family was actually published. You may be able to check this yourself if the newspaper is published online and you have access to a computer. If you get an arrest warrant or other legal document from your country, the UKBA are not likely to accept that it is genuine without a good explanation of how you received it, and an expert report stating that it is likely to be a genuine document.

- New information about **your country**. This might include:
  - a change in your country's government; or
  - a change in the law; or
  - the start of a war or a conflict; or
  - a conflict worsening, or spreading into an area that used to be safe.

You may be able to get this type of information easily from UK newspapers or from human rights reports on the internet. **If you were not believed in your first claim, it will not be enough** to show that things have changed in your country. For example, if you claimed you were a member of a political group, and you were not believed, it will not be enough to show new evidence that that political group are being persecuted. You will also need new evidence about your membership of that group.

- A recent change in the **UK or European law** affecting your type of case. This can include:
  - a new Act of Parliament or EU Directive or a new piece of international law; or
  - a change to the Immigration Rules; or
  - a change in **case law**, for example, following a new decision from the European Court of Human Rights, the Supreme Court, Court of Appeal or a **new Country Guidance**<sup>104</sup> **decision on your country** in the Immigration and Asylum Chamber of the Upper Tribunal.



<sup>104</sup> See Chapter 8 section 8.2 for information about Country Guidance cases and where to find them

**A case in the Supreme Court which changes how the Courts look at a particular type of claim for international protection: HJ and HT v SSHD [2010] UKSC 31**

Two men claimed asylum on the basis that, as homosexual men, they would be persecuted if returned to their country. The Court of Appeal had decided that there was a risk of persecution of homosexual men in their countries, but the men could avoid being persecuted if they “*lived discreetly*”. The Supreme Court said that to expect them to avoid persecution by living discreetly “*would be to defeat the very right which the [Refugee] Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution*”. Their appeals were allowed.

That case was followed in **SW (lesbians – HJ and HT applied) Jamaica CG [2011] UKUT 00251 (IAC)**. This **Country Guidance** case said that “*Jamaica is a deeply homophobic society*” and lesbians face a risk of violence up to and including ‘corrective’ rape and murder, and any lesbians and women who would be perceived as lesbians faced a real risk of persecution on return.

After these important decisions, gay men and lesbians fearing persecution on return could potentially make fresh claims for asylum if the Immigration Judge in their appeals **accepted that they were a gay man or a lesbian**, but **dismissed** their appeal saying that they could live discreetly in their own country.

**But if there was a finding of fact in your case that you were *not* a lesbian** these new cases would **not** help you unless you had **new evidence** of your sexual orientation. (This could be witness evidence from friends or your partner).

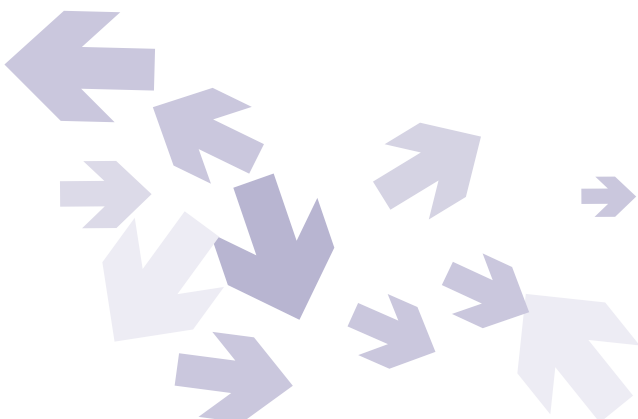
**A Country Guidance case on a particular country: AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC)**

This case gives the most recent **country guidance** for Somalia, based on very detailed country information and research. Whether a Somali person would be able to make a successful fresh claim would depend on what **findings of fact** had been made about her clan and what town she came from. For example, this case decides that women from the south of Somalia, who do not have family or clan support and who would have to travel alone from Mogadishu back to their home area, would be at real risk of sexual violence. But if she had **negative findings of fact** in her first appeal, she could not rely on this case on its own, but would need new evidence about her own family or her own clan.

## 11.4 Does the new information create a real chance of success?

As well as being new, the information **must also create a real chance of success**. The information must be important enough, and likely enough to be genuine, to make the decision-maker think that, despite the failure of your previous asylum claim, you **are now** at risk of persecution or some other form of serious harm. **If you were not believed in your first claim, this will be difficult**. You should look carefully at the Determination of your previous asylum appeal and write down all the **negative findings of fact** made by the Immigration Judge, and look at whether the new information has any chance of challenging them. If the information is new but does not create a real chance of success, then you will not have a fresh claim.

**Example 1:** The Judge did not believe you were raped in prison, because you did not mention this in your screening interview or your asylum interview. It is well-known that many women do not reveal these kinds of facts for a long time after claiming asylum. But a **specialist expert report** stating this may well make a significant difference to your fresh claim.



**Example 2:** The Judge did not believe that you were from a specific Somali minority clan. It will not be enough to provide witness statements from refugee community group leaders who are from your clan. You are likely to need a **specialist expert report** from a well-known independent expert in Somali clans and languages.

**Example 3:** The Judge accepted that you belonged to a forbidden political party. But the Judge decided that you were not a well-known figure in that political party, and the authorities in your country would probably not be looking for you on return. If you provide an arrest warrant, or other evidence that the authorities are looking for you, the UKBA may think you have just made this yourself. You will need to show the papers to **an independent expert** who will write a report for the Tribunal.

## 11.5 How to make a fresh claim

### First, prepare the claim itself

#### Step 1

Gather together all the important legal documents in your case. You will need:

- your screening interview;
- your asylum interview;
- any witness statements;
- any evidence or documents you have given the UKBA;
- the Reasons for Refusal Letter;
- the first Determination in your asylum appeal; and
- any other appeals or court decisions in your case.

If you find a new legal adviser, you **must give full and complete information about all your previous immigration applications**, and UKBA decisions, and especially all Determinations by the Immigration Tribunal. No properly accredited legal adviser or solicitor could advise you properly without seeing your complete immigration history. It would be dangerous for you to give new information to the UKBA without carefully explaining any differences with what you may have said before, and explaining carefully how you came to receive the new information.

If you do not have all of these documents (and even if you do), you or your legal representative can obtain a copy of your Home Office file, by writing to the **Home Office Data Protection Unit, Lunar House, Wellesley Rd, Croydon CR9 2BY**, with a cheque for £10 payable (at the time of publication) to *the Accounting Officer, Home Office*, giving your full name, date of birth, nationality and your signature. By law they must provide, within 40 days, a complete copy of your file, which will include not just all the above documents, but also all the notes written by UKBA and immigration officials about your case. You should be able to see when your case has been looked at, and what they did with it. When your file arrives you should keep the pages carefully in their envelope, in the order in which they are given to you. If you want to use any information from this file in your fresh claim, then carefully photocopy the page you want, and keep the original in its place in the envelope.

**If you have not had any contact with the UKBA for a long time, you are unlikely to know what they have been doing in your case, even if you think they have not been doing anything. Some people may be at risk of being detained as soon as the UKBA know where to find them. Therefore, if you have not been reporting to the Immigration Service for a long time, or if you have never reported, you are strongly advised to get legal advice before contacting the UKBA, even to obtain a copy of your file.**

#### Step 2

Look at the Determination in your first appeal and write down the Judge's **findings of fact** and look at the evidence you already provided for each fact. Then look at your new evidence and new information and think how that evidence would challenge the Judge's findings, and whether it is strong enough.

#### Step 3

If possible, get independent expert reports to back up your new evidence. If you have legal representation helping you under legal aid, the cost of getting an expert report can be paid out of legal aid. Without legal aid this will be **very expensive**.

#### Step 4

You need to write a letter (called **further submissions** or **representations**) beginning "I wish to make a fresh claim for asylum" and explaining what the new evidence is, how you obtained it, why it should be believed, and how

your claim now amounts to a fresh claim. If you have a legal representative, she will write this letter for you.

#### Two examples:

*"...In my appeal, the Judge did not believe I was raped in that prison. But I now have a witness statement from a woman who was in that prison at the same time as me, to whom the same thing happened, and who saw what happened to me. I could not provide this information before, because I have only just found out that this woman was in the UK. Her name is xxxx, her Home Office Reference Number is yyyy. She has been granted asylum. I believe my case amounts to a fresh claim under Immigration Rules paragraph 353".*

*"...In my appeal, the Judge believed that I am a lesbian. But he said that there would be no problems for me if I went back to Jamaica. But now the case of SW (Lesbians) Jamaica CG [2011] UKUT 251 says that lesbians are persecuted in Jamaica. I believe my case should be looked at again and counted as a fresh claim under Immigration Rules paragraph 353".*

It will be difficult to present a strong fresh claim without legal advice. Therefore, if you have new evidence or further information, or if you hear about a legal case which might affect your asylum claim, you should seek legal advice.

#### Step 5

You should make a bundle of the important papers and your letter and photocopy all of it. One copy is to hand to the UKBA and the other is for you to keep.

### Then submit your claim to the UKBA

**There are strict rules<sup>105</sup> for providing any new information to the UKBA.** If these rules are not followed, **the new information will not even be looked at.** You cannot simply post the information, or ask your legal adviser to post it.

- **If your first claim for asylum was made before 5 March 2007**

The UKBA files of any person who first claimed asylum before 5 March 2007 who is still in the UK without leave to remain will either be in the **controlled archive** or in the **Case Assurance and Audit Unit (CAAU)** (see Chapter 6).

If you are in this category, to make a fresh claim for asylum, or make *any* further submissions, or provide *any* further information, **you must make an appointment at the UKBA Further Submissions Unit in Liverpool, and take your further submissions with you. There is no help with paying your fare to Liverpool.**

The telephone number is **0151 213 2411**. The address of the Further Submissions Unit is **The Capital Building, 6 Union Street, Liverpool, L3 9AF**. When you have made your appointment the UKBA will write to you with information about how to find that office, and what documents you need to bring with you.

**You do not have to do this if you are seriously ill or disabled, or if you are in detention or you are a child under 18 and cannot travel to Liverpool on your own. In these cases, you can fax your fresh claim, new evidence or further submissions to 0151 213 2008 with written evidence of why you cannot travel, such as a doctor's letter.**

At your appointment the UKBA will check that they have your fingerprints, photographs and up-to-date address, and ask you for your **further submissions**. This is your letter setting out your fresh claim, plus the documents from your previous asylum claim. They should provide you with a receipt showing the date you have made your fresh claim. Keep this very safe, with your own copy of all your documents. At that appointment, the UKBA are **unlikely** to interview you, or tell you anything about how they will decide your case.

**You are unlikely to be detained**, but if you have a very weak fresh claim, if you have failed to report to the Immigration Service over a long period, and if you are from a country to which the UKBA can remove you easily, then you may be detained. You are **strongly advised** to seek legal advice before making a fresh claim.

- **If your first claim was made after 5 March 2007**

Any fresh claim for asylum, or any further submissions, or any further evidence, can be handed in when you report to the Immigration Service on your regular reporting day. If you normally report to a police station, you will need to telephone the UKBA office dealing with your case, and ask them to arrange for you to attend a Reporting Centre to hand in your fresh claim, because a police station cannot accept further

<sup>105</sup> <http://www.ukba.homeoffice.gov.uk/asylum/outcomes/unsuccessfulapplications/further-submissions/> There is a Further Submissions form, but you do not have to use it.



submissions. Remember to ask for a receipt showing the date of your fresh claim, and keep it safe with your other documents.

## What happens next?

Now that you have submitted (handed in) your fresh claim, and before any decision is made, you **may** be entitled to financial support (section 4 support<sup>106</sup>). The UKBA may provide forms for you to apply for this (see *Chapter 12 for more information on section 4 support*).

The UKBA will look at your fresh claim following the legal test in the Immigration Rules para 353. They do not have to do this within a particular time, but it may be quick.

They may:

- Grant you asylum or Humanitarian Protection, or Discretionary Leave. *Go to Chapter 7 for information about what to do once you have leave to remain.*
- Decide that your claim **does count as a fresh claim**, but tell you that they have not yet made a decision on it. In this case you are now 'an asylum-seeker' again, and entitled to financial support for asylum-seekers (section 95 asylum support) – see *Chapter 12 for more information about asylum support*. You then have to wait for their decision. If they refuse you, you will have a right of appeal – see *Chapter 8 on refusals and Chapter 9 on appeals for information about what to do next*.
- Decide that your claim **does count as a fresh claim, and refuse it in the same letter**. If this happens, you will have a right of appeal – see *Chapter 8 on refusals and Chapter 9 on appeals for information about what to do next*. You are now 'an asylum-seeker' and entitled to financial support for asylum-seekers (section 95 Asylum Support) – see *Chapter 12 for more information about asylum support*.
- Decide that your claim **does not** count as a fresh claim and refuse it.

## If the UKBA decides that my claim does not count as a fresh claim

If the UK Border Agency refuses to accept that the new information you have provided counts as a fresh claim, you remain **liable to removal**. You **may** be able to challenge the UKBA's decision by **judicial review**. You may have to do this quickly,

and you will find it **very difficult** without legal representation from an experienced immigration lawyer with expertise in High Court matters. If you wish to make a fresh claim, you should therefore seek legal advice.

**Not everyone can make a fresh claim.** You may feel very strongly that the decision in your case was wrong, or that a previous legal representative did not prepare your case properly. But in some cases the **negative findings of fact** made by the Immigration Judge cannot be challenged by fresh evidence. For example, where the Judge finds that you are not from the country you claim to be from, and you cannot trace your family, and your country has no registration of your birth, or where the Judge makes a finding of fact of a type that cannot be disproved, such as "you must have been able to ask your family for help". If you have a finding like this it is very unlikely that any new evidence would make a difference.

## 11.6 What if I have other new information?

**Any** new piece of information, or change in your circumstances, must be presented to the UKBA as described at 11.5 above. The only information you can give the UKBA by post is a change of address. So, for example, if you become pregnant, if you have a new baby, if you form a serious relationship with someone, if you pass some important exams, then you will have to explain this to the UKBA and provide supporting evidence at either your reporting event if first claim was made after 5 March 2007 or make an appointment to go to the Further Submissions Unit in Liverpool if your first asylum claim was made before 5 March 2007.

## 11.7 The best interests of the child

The UKBA is now bound by the **UN Convention on the Rights of the Child**<sup>107</sup>. This requires the UKBA to treat the **best interests of a child as a primary consideration** (see *Chapter 1 section 1.8*). This is a relatively new legal duty, which has only recently been considered by the courts, and is already making a big difference to anyone who has a child here in the UK, especially if that child is British or a national of a European Union Member State. The law is still developing on this

<sup>106</sup> Immigration and Asylum Act 1999 section 4: this is support for failed asylum-seekers who are destitute and who fit into at least one of 5 criteria set out in regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-seekers) Regulations 2005. Making a fresh claim for asylum fits into regulation 3(2)(e): "necessary to avoid a breach of a person's ECHR rights".

<sup>107</sup> Borders, Citizenship and Immigration Act 2009, section 55.

issue, which means that it is difficult to say exactly how the UKBA would deal with any particular case. In the most important case decided so far, **ZH Tanzania**<sup>108</sup>, the Supreme Court considered a woman from Tanzania who “had an appalling immigration record” (she had made 3 asylum applications, 2 of them under false names, all refused, and still did not leave the UK) and who the UKBA wanted to remove from the UK. She had met a man who was a British citizen and they had two children, both British. The couple had split up, and she had continued to look after the children, who still saw their father. The Court decided that the best interests of those children was clearly to stay in the UK, and to continue to live with their mother, and so decided that it would be unlawful to remove Ms ZH.

If you have a child here in the UK you are **strongly advised** to seek legal advice.

If you have not been reporting to the Immigration Service for a long time, or if you have not heard from the UKBA for a long time, you may be detained once they find out where you are. You are **strongly advised** to get legal advice before contacting them.

## 11.8 I have no new evidence, but I cannot return to my country

There are many people in the UK who are **failed asylum-seekers** who have exhausted all their appeal rights, but who cannot return home, and who the UKBA cannot remove, because no country will provide travel documents for them or accept them back. For example, people from the West Bank or Gaza of the Occupied Territories of Palestine, people of mixed Eritrean and Ethiopian origin, Eritrean people with no travel document or ID, people from China and people from Iran, and others, may be in this position. **This is a complex issue** which is beyond the scope of this book to discuss in detail, and anyone in this position is **strongly advised** to get legal advice. Here are some **very important** things to note:

- Even if no country will provide you with a travel document, **you may not necessarily be stateless under the law.**

- **Even if you are stateless, the law says you can still be removed** to your last country of habitual residence (where you were last settled).
- To **prove** that no country will accept you back, you **must** show that you have done **everything possible** to obtain documents. These are **only some** of the tasks you would be expected to carry out:
  - asking the Red Cross to trace your relatives;
  - applying for a passport to all potential countries of nationality;
  - applying in writing to the Embassies, by recorded delivery post;
  - making an appointment with the Embassies and visiting with witnesses;
  - asking the Immigration Service to contact your Embassy for you;
  - complying with all attempts by the UKBA to document you;
  - contacting other people in the UK and asking if they will act as witnesses for you in your Embassy. If all your friends in the UK are refugees from your country, you may have to list them and explain why each one cannot go to your Embassy with you;
  - contacting people in your own country who knew you, or who knew your parents; and
  - asking your family or neighbours in your home country to apply for a replacement birth certificate for you.

There may be other things, relevant in your particular case, that you must do, or the UKBA require you to do, and you may need to **repeat some or all of these tasks** after a period of months or years, or the UKBA may say that your country’s government has changed its policy.

Even if you do all these things without success, you may not be granted leave to remain, or it may take many years<sup>109</sup>. In the case of **AR and FW**<sup>110</sup> the Court of Appeal said that it was not unlawful for the UKBA to keep a person on temporary admission for an unlimited time, unless it was “simply impossible” to remove them.

However, if you carry out the tasks suggested above, you should at least establish a continuing claim to financial (section 4) support on the basis that you are **taking all reasonable steps to**

<sup>108</sup> *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4.

<sup>109</sup> UKBA/Policy and law/Enforcement Instructions and Guidance chapter 53.

<sup>110</sup> *AR & FW, R (on the application of) v SSHD* [2009] EWCA Civ 1310 paragraph 27.

**return to your country** (see Chapter 12 section 12.8). You will be able to show that it is not your fault that the UKBA cannot remove you, and you may, eventually, be given leave to remain.

## 11.9 Things to remember

- The Immigration Rules paragraph 353 states that if you have new information that:
  - has not already been considered; and
  - taken together with the previously considered material, creates a realistic prospect of success;
  - then the UKBA will count it as a **fresh claim for asylum**.
- **To submit a fresh claim for asylum**, (or to give any new information apart from a change of address) you cannot post it. **You must hand it in person to the UKBA**. If your first claim was made after **5 March 2007**, you may hand it in when you go to report to the Immigration Service. But if your first claim was made before that date you must make an appointment at the Further Submissions office in Liverpool and go there in person to hand in your fresh claim.
- If the Immigration Judge did not believe you in your first appeal, your new information must be strong enough to challenge **each fact** that the Judge did not believe.
- If the UKBA accepts that your fresh claim counts as a fresh claim in law, they will have to make a **new decision** on your case. If you are refused, you will have a **new right to appeal** against that decision.
- If the UKBA does not accept that your new

information counts as a fresh claim in law, you **may** be able to challenge this by judicial review. But unless you are successful, there is nothing you can do, and you are liable to removal.

- If you cannot make a fresh claim for asylum, or any further submissions, because you have no new evidence, and there has been no change in your circumstances since the last UKBA decision, you are **strongly advised** to consider returning voluntarily to your country. If you do nothing and wait for the UKBA to remove you, you are likely to become destitute, or face being detained.
- If you have no new information or any fresh claim, but you are from a country or a place which won't accept you back, or won't issue you with any documents, it will not necessarily be accepted that you are stateless, and you will not necessarily be granted leave to remain, even after many years. You will have to show that you have tried every possible way, over months and years, to establish your identity and nationality, and cooperated fully with all UKBA and Immigration Service attempts to document you.

*See page 95 for information about legal advice and support organisations.*



# 12 Asylum support: accommodation and money for asylum-seekers

## 12.1 Introduction

In UK law, anyone who applies for international protection in the UK, whether under the Refugee Convention, Article 3 of the European Convention on Human Rights, and Article 15c of the European Qualification Directive, is referred to as an **asylum-seeker** (see Chapter 2 on how the British government will deal with a claim for international protection).

**Asylum-seekers** may be entitled to financial support called **asylum support**<sup>111</sup> while their application is considered, and during any appeal. Asylum support includes cash payments and accommodation. Asylum support used to be called NASS support.

Some limited financial support is available, in limited circumstances, for people who have exhausted all their appeal rights. The UKBA calls these people **failed asylum-seekers**. Support for failed asylum-seekers is called **section 4 support**<sup>112</sup>.

**Asylum support and asylum are 2 different areas of law.** Many legal advisers who specialise in asylum law are not experts in asylum support law. The rules for legal aid are also different. If you need legal advice on problems with asylum support, you may need to find a second legal adviser. If you already have a legal adviser dealing with your asylum claim under legal aid, they should find someone for you. See page 95 for how to find legal advice.

Your entitlement to asylum support depends on your cooperation with the processing of your asylum claim, and the progress of your asylum claim may be affected if you do not stick to the rules of asylum support. In some areas, both your asylum claim and your asylum support claim may be dealt with in the same UKBA office, but in other areas the 2 processes may be dealt with by different offices. You will be dealing with **two separate processes, and two separate sets of rights, which affect each other.**

You should make sure that you **carefully keep** your asylum support papers with your asylum papers.

## 12.2 Am I entitled to asylum support?

You are entitled to **asylum support** if you meet **all** of the following requirements:

- You are aged 18 or over (asylum-seekers under 18 with no adult to look after them are cared for by local authorities).
- You are an **asylum-seeker** (see also Chapter 2). This means that you have made a claim for international protection which has **not yet been decided** by the UKBA, **or** which has been refused and **your appeal is still continuing**.
- Your asylum claim was made and recorded **at a designated place** (either at the port, airport or international station when you entered the UK, or at the Asylum Screening Unit in Croydon).
- You are **destitute**. You are destitute if you do not have a place to live and/or any money to buy food, or you are likely to be in this position within the next 14 days.
- You made your asylum claim **as soon as reasonably practicable** (Section 55 **Nationality, Immigration and Asylum Act 2002**). This is normally accepted as being within 3 days (72hrs) of arriving in the UK.

### **Making your claim as soon as reasonably practicable (section 55 Nationality, Immigration and Asylum Act 2002)**

If you claimed asylum some time after arriving in the UK, or if you are making a fresh claim for asylum (see Chapter 11) or if you are making a new claim after being dependent on someone else's claim and you now need to claim asylum support, section 55 will be applied to you and you may be prevented from claiming asylum support. You should seek legal advice from a specialist in

<sup>111</sup> Immigration and Asylum Act 1999 sections 94-98.

<sup>112</sup> Immigration and Asylum Act 1999 section 4.

asylum support law if this applies to you. You can read how the UKBA applies section 55 in **Policy Bulletin 75**.<sup>113</sup>

**Section 55 does not apply** if you have children under 18 with you, or if you are **in need of care and attention** (see below). Furthermore, a person who did not claim asylum as soon as reasonably practicable may nevertheless receive support if it is necessary to prevent a breach of their Article 3 ECHR rights.

**“If a woman ...had been expected to live indefinitely in a London car park, without access to the basic sanitary products which any woman of that age needs, and exposed to the risks which any defenceless woman faces on the streets at night, would we have been in any doubt that her suffering would very soon reach the minimum degree of severity required under Article 3? I think not”. – Baroness Hale, in the case of Limbuela<sup>114</sup>**

## What will I get?

Asylum-seekers can apply for:

- **Accommodation only** – you will be given this if you have some money, but not enough to pay rent.
- **Accommodation and cash payments** – this is for people who have no money or anywhere to live.
- **Cash payments only** (sometimes called **subsistence-only support**) – if you have a friend or family who has room in their house for you to stay, you can apply for this.

It is important to note:

- **Accommodation** is offered on a **no-choice basis**. This means you can be sent anywhere in the UK, unless there are exceptional circumstances<sup>115</sup>, and if (without good reason) you refuse to accept the accommodation (called **failure to travel**) you will be refused support. Sending asylum-seekers out of London is called **dispersal**.

If a friend or family member has said you can stay with them, you can apply for subsistence-only support (money only). **However:**

- The cash payments are not big.
- The cash is not intended to cover any rent.
- If your friend or family are receiving Housing Benefit (government help with their rent), they will have some money deducted (taken away from them) if they have someone living with them.

All of this may well place a strain on both you and your friend or family. Therefore, before agreeing to stay with a friend or family member and applying for subsistence-only support, **make sure your friend or family understand this, and will be happy even if this arrangement lasts for several months.**

If your application is successful, you will receive support for **yourself and for any dependants** who are dependent on your asylum claim, such as your husband and any children under 18.

## Can I work?

Asylum-seekers are not permitted to do any work, paid or unpaid, while their application for protection is decided, unless the UKBA has given permission to work. You can apply for **permission to work** if you have been waiting for a first decision on your claim for more than 1 year (including a first decision on a fresh claim). Even with permission to work, asylum-seekers may only look for work in **shortage occupations**<sup>116</sup>. These are very specific jobs requiring highly-trained and experienced people, such as ‘managing director in nuclear power decommissioning and waste management’. However, even if you could not qualify for any job on the list, you can still apply for permission to work because this may then encourage the UKBA to make a decision on your asylum claim.

<sup>113</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylum-support-bulletins/accesstosupport/pb75?view=Binary>

<sup>114</sup> *Limbuela (Adam, R (on the application of) v. Secretary of State for the Home Department* [2005] UKHL 66.

<sup>115</sup> See *Policy Bulletin 31*, at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylum-support-bulletins/dispersal/pb31?view=Binary>

<sup>116</sup> The official list of **shortage occupations** is here <http://www.ind.homeoffice.gov.uk/sitecontent/documents/workingintheuk/shortageoccupationlistnov11.pdf>

## 12.3 Applying for asylum support<sup>117</sup>

### When can I apply for asylum support?

Most people apply for asylum support **as soon as they claim asylum**. If you claim asylum at the airport, port or station, or if you claim at the Asylum Screening Unit within a few days of arriving in the UK, you may be given emergency accommodation for a few days in Croydon, near the Asylum Screening Unit. This is called **initial accommodation**. You will be expected to make a formal application for asylum support straight away.

You can apply for asylum support **at any time** until your asylum application is finally decided and you have exhausted all your appeal rights. But your application must still meet all the **requirements** set out above, including whether you claimed asylum **as soon as reasonably practicable**, even if your asylum claim was made several months ago.

### How do I apply?

You need to complete an **Asylum Support Form** or **ASF1**<sup>118</sup>. This form asks 91 questions about work, money, land, property, jewellery, cars, art and other valuables you may have, whether in the UK or back in your home country, to prove that you really are **destitute**. You can download a copy of the form and information on how to fill it in correctly from the UK Border Agency website. You must sign section 20 on page 16. There are extra forms for details of your friends or relatives if you are receiving any support from them, or if you need to give more information.

This form is the **same form** for use by people who are failed asylum-seekers who are applying for section 4 support. They have to answer even more questions, numbered 98-112, and sign at the end of the form. You should make sure that you do not complete these questions (98-112) unless you have finally exhausted all your appeal rights and you are applying for section 4 support.

You can get help filling in the form from **One Stop Services**. One Stop Services are run by charities which assist asylum-seekers. The UK Border Agency gives them money to provide this support, but the charities are **not** involved in making asylum decisions. They will **not** tell the UKBA anything about you without your

permission. They can give you information and support. If you want to discuss a problem with someone, contact your local **One Stop Service**. You can find details here: <http://www.ukba.homeoffice.gov.uk/asylum/helpandadvice/onestopservices/>.

### The asylum support agreement

The details of what you are given will be set out for you in an **asylum support agreement**. As well as saying what support you are being given, the agreement also explains on what **conditions** the support is given.

Conditions usually include:

- Travelling to the accommodation given to you, as arranged by the UK Border Agency, and not refusing to travel.
- Living at the address given to you (this means that you cannot live or stay somewhere else, **not even for one night**, unless you have permission).
- Following any rules in the place where you live. These rules usually involve not damaging property, not being noisy, untidy, disruptive or violent to other people.
- **Not letting other people live with you or stay the night with you even for one night without permission**, for example a new partner, or any friends who are failed asylum-seekers.
- Collecting your cash support once a week, on any day from Monday to Friday, from the post office where it has been arranged. You will be told where this is.
- Reporting to the Immigration Service as required by your Temporary Admission (see *Chapter 2 section 2.4*).
- Answering any questions you are asked by the UKBA about your asylum application as quickly as possible and attending any interviews as required.

When you get your asylum support agreement, make sure you understand it. You will be asked to sign it, to say that you understand the conditions given to you. If you have a husband/partner or teenage children who are part of your asylum support, make sure they understand the conditions and comply with (obey) them.

### How will I get to my accommodation?

<sup>117</sup> <http://www.ind.homeoffice.gov.uk/asylum/support/>

<sup>118</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/asylum/asylum-support-form.pdf>

You will receive a letter telling you that your application for asylum support is granted. This letter will tell you to be ready on a certain day at a certain time, to travel to your new accommodation. The letter will not tell you where you are going. Transport will be provided by UKBA. You should be ready to travel, unless you have very serious reasons for not wishing to leave London, which come within UKBA policy on dispersal<sup>119</sup>. You are **strongly advised** to get specialist legal advice before refusing to travel. If you **fail to travel** your asylum support will be terminated and you will become street homeless. Even if you believe that the accommodation will not be adequate for your needs, for example if you are disabled, or receiving complex medical treatment, you are advised to travel to the dispersal accommodation and then apply formally to be moved to adequate accommodation.

Your accommodation should have all the furniture, cooking equipment, bedclothes etc that you need. The electricity, gas and water bills will be paid. If you are a single person you will have to share accommodation with other people. If you are a family with children you may get accommodation which is self-contained (this means not sharing a kitchen, bathroom or toilet with any other people apart from your own family). When you reach your accommodation, you will be given an information pack telling you who is in charge of the accommodation (the **accommodation provider**), how to report any practical problems, how to complain about any serious issues, and where to find your local **one stop service**.

## How much cash will I get, and how will I receive it?

**Cash payments** will be paid to you every week. You will need to go to your local post office to collect your payment. You will need to take your **Application Registration Card** (your ARC card) every time. The amount of money that you get will depend on whether you are a single person or in a couple, and if you have children, how many children and how old they are. The amount for a couple with 2 children over 5 but under 16 is £178.44 per week. A single person gets £36.62 a week. This information is only current on the date of publication, more information will be on the UKBA website<sup>120</sup>.

Cash payments do **not include anything for rent**. The amounts are based on the fact that asylum applicants can apply for accommodation which is fully furnished and rent-free, with utilities (electricity, gas and water) included.

**Pregnant women and families with young children** are entitled to extra money. A baby under the age of 12 months receives an extra £5 a week (at the time of publication). Pregnant women and children aged between one and three years receive an extra £3 a week.

**A woman who is pregnant may apply for a £300 maternity payment**. This money is to help with the costs of having the baby. You can apply for this 8 weeks (or less) before the baby is due to be born, or within 6 weeks after the birth. You are entitled to one payment for each child. Your application must include either an original, full birth certificate or an original MAT B1 form (a form provided by a doctor or midwife as evidence of your baby's birth or expected birth) or other original, formal, evidence of the birth. To get this maternity payment you should write to your UKBA case owner enclosing the above documents. These will be returned to you.

## What if I am in detention?

If you are in immigration detention (and not in the Detained Fast Track), and wish to apply to be released on bail, you will need to have an address for your application to be successful. If you have no accommodation (for example, if your asylum support was cancelled when you were taken into detention, or you do not have any friends or family you can stay with), and you want to apply for bail, **you can apply for asylum support so that you have an address**. You have to use the same form **AST1**.

It is advised that you speak to your legal representative or contact **Bail for Immigration Detainees**. You can find them at [www.biduk.org](http://www.biduk.org) and there will be information in the detention centre.

<sup>119</sup> See Policy Bulletin 31, referred to above.

<sup>120</sup> <http://www.ukba.homeoffice.gov.uk/asylum/support/cashsupport/currentsupportamounts/>

## 12.4 Changes of circumstances and problems with your support

The UKBA publishes **asylum support policy bulletins** which deal with many of the asylum support questions and problems faced by asylum-seekers. These can all be found on the UKBA website<sup>121</sup> in the Policy and Law section under the heading 'asylum support policy bulletins'. You may face practical problems for which you need immediate help. These may be problems with your accommodation, such as a broken toilet or a leaking tap. Or you may face serious problems from other people, either in your family or someone else in the accommodation being violent to you.

If you have a question or problem about your asylum support:

- You can ask your UKBA **case-owner** or, if you don't have a case-owner, you can contact the **Asylum Support Customer Contact Centre** on 0845 602 1739 (open 09.00-21.00 Monday to Friday but not bank holidays).
- You can speak to your **accommodation provider** (this is the company who run accommodation for asylum-seekers in your area). You will find information about how to contact them in your accommodation pack. They will have a telephone number or an office where you can get quick help, including a **24-hr emergency number**.
- You can get help and advice from your nearest **One Stop Service**. *See page 96 for details.*

You should always report any serious problem with your asylum support to the UKBA officer or case owner dealing with your **asylum claim**. This is because having to deal with a serious problem in your asylum support may make it difficult for you to deal with steps in your asylum claim, and if you do not explain this, your asylum application may be refused. Also, note that some of your **asylum support conditions** require you to keep in touch with the UKBA and the Immigration Service.

**Example:** Ms S was an asylum-seeker from Iraq. She had fled to the UK with her 2 sons, who were 14 and 16 years old. At first they stayed in London with her sister, who had married a British man and had lived in the UK for many years. Then she applied for accommodation and support. She was placed in Salford. Unfortunately, one of her sons became seriously mentally ill and attempted suicide. As soon as he was well enough to travel she brought her sons back to London to her sister's house, desperately needing family support to help with her son. She did not think to tell the UKBA that she had left that accommodation. Her asylum support was stopped, and her asylum claim was refused because she had failed to attend an interview. Her legal representative had to make 2 very difficult representations, providing full evidence of her son's condition, including a desperate suicide note, to get her asylum support reinstated, and the asylum decision withdrawn.

### What happens if my circumstances change?

You **must** tell the UK Border Agency of **any change** in your personal or family circumstances that could affect your asylum support. Some of these changes may mean that you can be moved to bigger (or smaller) accommodation. Some may mean that you are entitled to more (or less) cash payments. To stay within the law you should report **any change** in your circumstances, **but especially any of these:**

- If you, or any of your family, change your name.
- If any of your children reach their 18th birthday.
- If you move to a different place.
- If you get married or divorced, or you separate from your partner.
- If you have to go into hospital and stay more than 1 day.
- If you become pregnant or have a baby (*see above for extra money you can claim*).
- If any of your children leave school.

<sup>121</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/asylumsuppbull/>



- If any of your children leave home. It is important to know that any teenage children will be expected to stay with the family until their asylum application is concluded. If a person under 18 forms a relationship and wishes to go and live with that person, or if a child becomes 18 before their asylum application is finally determined, and wishes to live separately from his or her family, they will have to make a separate application of their own for asylum support. They **must** keep in touch with the main asylum applicant (you) and your legal representative.
- If any other family members join you in the UK.
- If any family member living with you in the UK leaves you to live somewhere else.
- If anyone else joins you in your accommodation or leaves you.
- If you are put in prison because you have committed a criminal offence.
- If you get money that you have not already told the UK Border Agency about (for example, if a family member gives you money or if you sell something).
- If you no longer need accommodation provided by the UKBA. This could be because you have started a new relationship and that person has somewhere you can expect to live **permanently**. **Do not** leave your accommodation to stay with someone else unless you think that the new arrangement will last a long time.

## What if I have experienced domestic abuse?

The UK Government defines **domestic violence** as:

“...any incident of threatening behaviour, violence or abuse (**psychological, physical, sexual, financial or emotional**) between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality.”

**If you are threatened with immediate violence, or someone is being violent to you, you or someone else on your behalf can call the police on 999, any time 24 hrs a day 7 days a week.**

If you are experiencing any type of violence, abuse or pressure from your partner/husband or anyone else in your family who is sharing your asylum support accommodation you should inform your accommodation provider immediately.

The UKBA **Policy Bulletin 70 Domestic Violence** requires your accommodation provider to provide a 24hr, 7 day emergency service. This must include providing you somewhere else to stay in an emergency to keep you safe. This can be in different asylum support accommodation or in a women’s refuge. If your asylum support cash payments are usually made to the person who has been violent to you, the UKBA must make sure that you receive any urgent cash you need. This will be done through **interim support tokens** provided direct to you at your new accommodation, for a limited period until you are found new dispersal accommodation. The UKBA should arrange an urgent **case conference**. This means a meeting of UKBA officials **with you** to help you decide what you need to do to be kept safe while you continue your asylum application.

If the person who is abusing you is your husband/partner and you are a dependant on his claim, it is important that you seek legal advice as soon as possible. **You may be advised to make your own, separate, asylum claim** – but, for example, if your claim is based on his political activity, it may be hard to provide evidence to support your claim without cooperation from him. If you already have a legal adviser who is representing you and the person who is violent to you, as part of one case, they will have to discuss with you, and make a legal decision, about which one of you they can continue to represent, because a lawyer cannot represent two people where there is a conflict between them.

## Other help and protection for women experiencing domestic violence

You can get **legal protection from domestic violence from the family courts**, by applying for a domestic violence injunction such as a non-molestation or occupation order under the Family Law Act 1996. A non-molestation order is a court order against the person who is being violent to you which contains written legal directions to your abuser to stop their abusive behaviour. If the abuse continues and your abuser is in breach of the court order this is a criminal offence and you should contact the police. For further information see *Rights of Women’s Guide to Domestic Violence Injunctions* and seek legal advice from a family solicitor or from Rights of Women’s

family law advice line (see *inside front cover for details*). For support services, contact the 24 hour **National Domestic Violence Helpline** on 0808 2000 247.

## Violence or abuse from other people in the asylum support accommodation

You should report any violence or abuse to the accommodation provider. They may find alternative accommodation for you, or they may evict (throw out) the person committing the violence.

## Violence, threats and abuse from anyone else

If you are a victim of any crime, you may well want to report it to the police. If it is an **emergency**, and you are in immediate risk of physical harm, you can telephone **999**. If the crime has already happened, and you are no longer in any danger, you can telephone **101** or go to your nearest police station and ask to report a crime. The police should give you a crime reference number to confirm you have reported a crime, and should inform you what action they will take. Reporting a crime to the police does **not** affect your asylum claim.

If you face **frequent or regular abuse or threats**, for example if there is a group of people who shout abuse at you, you can report this to the police and also to your accommodation provider and your UKBA case owner. The police and the UKBA should discuss this with the local authority (council). The people shouting abuse may be arrested by the police<sup>122</sup>.

If you wish to move to another address in that city, or to another part of the UK, **you must make a formal application to the UKBA. If you are in immediate danger, call the accommodation provider** and ask for an urgent move to new accommodation. **You should not** move away from your address without getting permission. If you do, you will lose your asylum support. The UKBA will **not** accept your fear, or provide you with new accommodation elsewhere, unless you have made formal, detailed reports to the police and the accommodation provider, and you can show that the abuse has been happening over a period of time. The fact that you are being abused cannot be used to persuade the UKBA to provide accommodation for you in London.

## 12.5 Other services

*Some public services in the UK, such as health care, are provided nationally by the Government. Other services, such as education and social care (care for elderly or disabled people), are provided locally. The UK is divided into administrative areas called **local authorities** or councils, which are responsible for the locally-provided public services. **Asylum-seekers** are entitled to most public services. Failed asylum-seekers, who have exhausted all their appeal rights, are only entitled to a very few basic services<sup>123</sup>.*

### Social care

If you are **in need of care and attention** because of health problems (for example, if you are elderly or disabled) you may be entitled to support from the local authority. This support is available under **National Assistance Act 1948** section 21, which allows local authorities to provide accommodation and support to those in need of care and attention. If you (or one of your dependants) need regular care and attention, such as someone to come in every night to help you go to the toilet, you have to make an application to your local authority social services department for a **community care assessment**. This is a formal, legal process. Social services should provide a written assessment of your needs, and a written decision of whether you are entitled to any services from them. Your accommodation provider or One Stop Service will tell you how to contact social services. It is **difficult** to get social services to provide social care unless your needs are very clear (for example if you are in a wheelchair, or you have a serious illness which means that you cannot look after yourself properly). You should seek legal advice, from a specialist in **community care law**, who may need to take a case to the courts for you before you get the care you need. You can ask your One Stop Service for information about community care lawyers.

### Health care

Health care in the UK is provided by the **National Health Service** (called the NHS). **Asylum-seekers** are entitled to use the NHS. You can register with a local doctor (called a GP) and you are also entitled to receive any care you need in hospital.

<sup>122</sup> Asylum support bulletin 81 *Racist incidents*.

<sup>123</sup> See Rights of Women Legal Guide *Domestic Violence, immigration law and 'no recourse to public funds'* at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)

Seeing your doctor, and getting treatment in hospital, is **free of charge**. Other services, such as medicines, dental treatment, eye tests and glasses, cost money. However some people, **including asylum-seekers**, can get these **free of charge or at a reduced price**, by showing your **HC2 certificate**. You will be given an HC2 certificate either when you are in initial accommodation (while you wait for a decision on your application for asylum support to be decided), or when you are given asylum support. You can also use this certificate to get refunds of travel costs to and from hospital for NHS treatment arranged by your GP.

If you are **an asylum-seeker** but do not receive asylum support (for example if you are living with your family and they are fully supporting you) you are still entitled to help with NHS prescriptions, dental care, eye tests and vouchers to help you buy glasses. You can get an **HC1 form**, from a Jobcentre Plus Office or NHS hospital. You can also request a form by telephoning 0845 850 1166.

You can get an NHS leaflet for asylum-seekers here: [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4122698.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4122698.pdf)

## Education

**School:** The children of asylum applicants and children who are applying for asylum have the same right to education as British children. Education for children is organised by your local authority. It is their responsibility to make sure that there are enough places for children to go to school in your area, and that any special educational need your child has is met. Any children aged 5-16 **must** go to school. This means that **you** have a legal responsibility to ensure that your child goes to school every day.

**College and university:**<sup>124</sup> Asylum-seekers are permitted to study in further and higher education, but may find it difficult to get a place on a course, because they cannot show they will be able to remain in the UK during the course. There is **no help** with the fees, although some universities offer help for asylum-seekers. You could contact the Admissions Department of a university to find out its policy.

## 12.6 If your application for support has been refused, or your support has been discontinued (stopped)

### Appeals to the First-Tier Tribunal (Asylum Support) (the Asylum Support Tribunal)

If the UKBA decides that **you are not entitled to asylum support because:**

- they do not accept that you are 'an asylum-seeker'; or
- they believe that you are not destitute; or
- you have failed to comply with reporting requirements; or
- you have breached your asylum or asylum support conditions; or
- you have been found working without permission to work; or
- you are no longer entitled to receive asylum support (for example, because you have broken the rules of your accommodation, or you have left or failed to arrive at your accommodation without good reason),

then you can **appeal** against their decision to the **First-tier Tribunal (Asylum Support)**.

The letter explaining the decision not to give you support, or discontinuing (stopping) your support, should explain your right to appeal and include a form to enable you to do this. You have **five working days from the date of the letter** to appeal against the decision. You can fax your appeal to the Tribunal on **0207 538 6200**.

If your asylum legal representative is unable to assist you with your asylum support appeal, you can contact a **One Stop Service**. Your legal representative, or the One Stop Service, can contact the **Asylum Support Appeals Project** advice line. The number can be found at <http://asaproject.org/web/index.php>. The Asylum Support Appeals Project cannot advise asylum-seekers direct on the phone but they provide legal representation at the Tribunal itself. Therefore if you appeal, and wish to go in person to your appeal, you should find legal advice and representation when you arrive.

<sup>124</sup> Read a useful report here: <http://refugeesupportnetwork.org/sites/all/sites/default/files/files/1%20just%20want%20to%20study.pdf>

## Asylum support decisions which cannot be appealed to the Tribunal

If you are refused support because the UK Border Agency believes that you did not claim asylum as soon **as reasonably practicable** after you arrived in the UK (see *above*), you will have to make an application for judicial review in the High Court to challenge the decision<sup>125</sup>. You are **strongly advised** to get legal advice as soon as possible from a solicitor. Your asylum legal representative, the One Stop Service or the Asylum Support Appeals Project may be able to help you find a solicitor who specialises in this type of case.

## 12.7 What happens when a decision is made on my asylum claim?

### If your asylum claim is successful

If you are successful in your asylum claim you will be granted a type of leave to remain in the UK (such as Refugee Leave, Humanitarian Protection or Discretionary Leave). Your asylum support will stop **after 28 days**. If you are being accommodated by the UKBA, you may have to leave that accommodation within 28 days. (See *Chapter 7 for information about what to do once you have been granted leave to remain*).

### If your asylum claim is refused

**As long as you appeal within the time limit** (see *Chapter 9 for information about appeal time limits*) you will continue to be eligible for asylum support, and you should continue to receive it until your appeal is finally decided. If your appeal is successful, you will be granted leave to remain, and your asylum support will continue until 28 days after you receive the decision letter granting you leave to remain.

**If your appeal is not successful and you have no further appeals**, you become **appeal rights exhausted** and your asylum support will continue until **21 days** after you have exhausted (ended) your rights to appeal. Your cash support will then stop and, if you are accommodated by the UK Border Agency, you will have to leave your accommodation **unless you have children who are still under 18**. If you have children under 18 with you, your asylum support will continue until your youngest child reaches 18, or you **or** your child leave the UK.

## 12.8 Support for failed asylum-seekers

If you have been refused asylum and have exhausted your rights to appeal, you are expected to take steps to return to your country. If you are unable to return straight away, you may be entitled to **section 4 support**, under the **Immigration and Asylum Act 1999** section 4. This is still referred to by the Government as **hard cases** support, and was intended to provide support to a small number of people who did not return home but who could not be removed quickly. However, for many years, it has been clear that section 4 support is necessary as a last resort to avoid destitution for thousands of people who could not go back to their country, many of whom had made fresh claims which had not been considered.

**If your asylum claim has been refused and you have no fresh claim, and you do not have children, or any serious illness or disability, and you are not taking active steps to return to your country, you will not be entitled to any kind of support at all.**

### Am I entitled to section 4 support?

There are **strict requirements** for section 4 support. You must be destitute **and** satisfy **one** of the following:

- You are taking **all reasonable steps** to leave the United Kingdom or put yourself in a position to do so. See *below, and Chapter 11 section 11.8 for more detailed information about this*.
- You are unable to leave the UK because of a **physical barrier to travel or for a medical reason**. You would need a letter from a GP or hospital doctor certifying that you are **not fit** to travel, and saying **when you will be fit enough**.
- You have applied for a **judicial review** of a decision relating to your application for asylum **and been given permission from the court to proceed with it**. This may apply if you had made a fresh claim for asylum which the UKBA had decided **did not count as a fresh claim**. Depending on the basis of your judicial review, the UKBA may give you section 4 support even before the court makes a decision to grant permission. You will find it **very difficult** to get section 4 support under this heading without

<sup>125</sup> Nationality, Immigration and Asylum Act 2002 section 55.

the help of an experienced asylum and asylum support solicitor.

- You need accommodation to prevent a breach of your human rights<sup>126</sup>. This can be used in 2 types of cases:
  - If you have **some compelling human rights reason for not leaving the UK**. This can include protection-based reasons, for example if you had appealed against your refusal of asylum and your appeal is continuing, and so it would not be reasonable to expect you to leave the UK, but your appeal was made out of time and you had lost your right to s.95 asylum support. It can also include, for example, the need to stay in the UK with your family under art 8 ECHR, or to pursue child care or contact proceedings in the family courts.
  - If you are sick, or vulnerable in some other way, or if destitution and street homelessness would amount to **inhuman or degrading treatment** by the UKBA **and** you could not return home, for example if you had made a fresh claim for asylum (see Chapter 11).

**If you apply for section 4 because you have made a fresh claim for asylum, the section 4 team itself can make a quick decision on whether your fresh claim is clearly unfounded (very weak), or merely repeats the previous claim or does not disclose any claim for asylum at all, and refuse your section 4 support straight away.**

- You are unable to return to your country (or to your home area in your country) because the UKBA believes there is no safe route available. There are currently no countries to which this applies.

## Taking all reasonable steps to leave the UK

UKBA internal policy is that it will only pay section 4 support on the basis of taking all reasonable steps to leave the UK for **three months**<sup>127</sup>. Once this three-month period has ended, the person's case will be reviewed. The UKBA policy accepts that there are documentation problems for people from certain countries<sup>128</sup> (see Chapter 11 section 11.8). If you are receiving section 4 support on this

ground, and your support is stopped, you should get legal advice. Ask your **One Stop Service** to ask the **Asylum Support Appeals Project** for a referral to an experienced solicitor.

If you get section 4 support because you are pregnant, then the support should continue after the child is born. You will still have to show that you are taking all reasonable steps to leave the UK, see above and Chapter 11 section 11.8. If the father is British or has leave to remain, you should seek legal advice.

## How do I apply for section 4 support?

You must fill in the same **ASF 1** which is used by people applying for asylum support, but you must fill in the **whole form** (118 questions), sign it at the end, and send it to the UKBA. You can get help from a **One Stop Service**.

## What support will I get?

Section 4 support is no-choice self-catering accommodation with £35 per week paid in supermarket vouchers or on a card called **azure**. **You cannot receive any cash**. You can carry over up to £5 each week, to save up for expensive items. Families can save any amount.

You can find out where you can use your azure card, and what you can spend it on here [www.ukba.homeoffice.gov.uk/sitecontent/documents/asylum/vouchers.pdf](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/asylum/vouchers.pdf).

## Additional payments

Section 4 support provides additional payments including a voucher to pregnant women and new mothers to pay for the cost of a birth certificate, extra payments for a new baby and travel costs for medical treatment. The form to apply for these can be found here: [www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/asylum/sec-4-add-serv-app-form](http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/asylum/sec-4-add-serv-app-form).

<sup>126</sup> *R(NS) v Social Entitlement Chamber of the first-Tier Tribunal* [2009]EWHC 3819.

<sup>127</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/section-4-support1.pdf?view=Binary>

<sup>128</sup> People from the Occupied Territories of Palestine (Gaza, West Bank and East Jerusalem) may receive section 4 support for up to 6 months at a time, in recognition of the difficulties of obtaining documentation.

## What other conditions and rules apply to section 4 support?

You will be asked to sign an agreement showing that you understand the **conditions** for receiving section 4 support. These are detailed, and it is **very important** to comply with all of them. You can find a list of conditions on the UKBA website, in the Asylum Process Guidance section of Policy and Law, here: [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/section-4-support1.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/section-4-support1.pdf?view=Binary).

## My section 4 support has been refused or taken away, what can I do?

If you have been refused section 4 support, or you are having your support taken away, you can appeal against this decision to the **First-Tier Tribunal (Asylum Support)**. In the letter refusing or withdrawing your support, the UK Border Agency will explain why they have made their decision. The decision should give you information about your right to appeal and include a form, so that you can do this. You have **five working days from the date of their letter** to appeal the decision.

If you are refused section 4 support, get advice immediately from a **One Stop Service** or seek support from the **Asylum Support Appeals Project**.

## 12.9 Other services available to failed asylum-seekers and others with no recourse to public funds

Failed asylum-seekers, who have exhausted all their appeal rights, are only entitled to **a very few basic services**. The Rights of Women legal guide *Domestic Violence, immigration law and 'no recourse to public funds'* sets out the legal rights of women with no recourse to public funds, including failed asylum-seekers. You can download this from our website [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk) or contact Rights of Women for a hard copy.

## 12.10 Things to remember

- People who have made a claim for international protection under the Refugee Convention, Article 3 ECHR or the European Qualification Directive Article 15c all count in UK law as **asylum-seekers**. **Asylum-seekers** are entitled to apply for **asylum support** under the **Immigration and Asylum Act 1999** section 95 until all their appeal rights have been exhausted **or** until their youngest child reaches 18.
- Asylum support law is **separate from** asylum law, and your asylum support application is separate from your asylum application, **but** decisions about your asylum support can affect your asylum application, and your asylum status determines whether or not you can still get asylum support.
- Asylum support accommodation is **no-choice** accommodation, outside London. Financial support is in cash. You must comply with (obey) all the asylum support **conditions** to continue receiving support. You should ensure your family, especially your teenage children, understand the conditions and comply with them. Even if you have serious problems in your accommodation, you should contact your accommodation provider rather than leave. In an **emergency**, call your accommodation provider or the police. Inform the UKBA of any problems.
- If you are refused support, or your support is taken away, you may be able to appeal to the First Tier Tribunal (Asylum Support), but some types of decision can only be challenged by judicial review in the High Court.
- If your claim for asylum in the UK is not successful, and you have exhausted all your appeal rights, you may be entitled to **section 4 support** under the **Immigration and Asylum Act 1999** section 4. This support is made up of **no-choice** accommodation and **money put on a card** which you can only use in certain shops and only spend on food and other limited items. **This support is intended to be for a short period until you return home to your country** and, unless you have an arguable fresh claim or other strong reason for not leaving the UK, your section 4 support will be stopped.

*See page 95 for information about legal advice and support organisations.*

# Legal advice and support organisations

This section gives the names and contact details of organisations that may be able to help you with particular problems.

## Specialist legal advice and support organisations

### Asylum Aid (includes the Refugee Women's Resource Project)

Provides telephone legal advice, and some representation, to women asylum seekers. Their website provides useful information about claiming asylum in the UK.

**Advice line: 020 7354 9264**

**[www.asylumaid.org.uk](http://www.asylumaid.org.uk)**

### Asylum Support Appeals Project

Campaigns against destitution amongst asylum-seekers and provides legal advice and representation at the Asylum Support Tribunal.

**Advice Line: 0207 729 3042.**

**The Advice Line operates Monday/Wednesday and Friday 2-4pm**

**[www.asaproject.org](http://www.asaproject.org)**

### Bail for Immigration Detainees

Challenges immigration detention in the UK. They work with asylum-seekers and migrants in removal centres and prisons, to secure their release from detention.

BID London office: for all general queries and detainees.

**Tel: 020 7247 3590**

**Fax: 020 7247 3550**

**Email: [enquires@biduk.org](mailto:enquires@biduk.org)**

**[www.biduk.org](http://www.biduk.org)**

### British Red Cross

Helps people in crisis situations in many ways, including tracing lost family members.

**International Tracing (for tracing family members): 0845 053 2004**

**Email Tracing (for tracing family members): [itms2@redcross.org.uk](mailto:itms2@redcross.org.uk)**

### Choices

Provides confidential, independent, information and advice to refugees and asylum-seekers who are considering returning to their country. Choices is run by Refugee Action.

**Te: 0808 800 0007**

**Email: [choices@refugee-action.org.uk](mailto:choices@refugee-action.org.uk)**

**[www.refugee-action.org.uk](http://www.refugee-action.org.uk)**

### Citizens Advice Bureau

Provides advice on a wide range of legal problems, including debt and welfare benefits. Visit their website for information about services in your area.

**[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)**

### Freedom from Torture

Provides specialist support and prepares specialist reports for victims of torture who are claiming asylum. By referral only, through a legal representative.

**[www.freedomfromtorture.org](http://www.freedomfromtorture.org)**

### Helen Bamber Foundation

Provides specialist support and prepares specialist reports for victims of torture who are claiming asylum. By referral only, through a legal representative.

**[www.helenbamber.org](http://www.helenbamber.org)**

### Medical Justice

Medical Justice exposes and challenges inadequate healthcare provision to immigration detainees. By referral only, through a legal representative or other support organisation.

**[www.medicaljustice.org.uk](http://www.medicaljustice.org.uk)**

### National Coalition of Anti-Deportation Campaigns

Provides practical help and advice to people facing deportation on how to launch and run anti-deportation campaigns.

*General Correspondence Address*

NCADC

Praxis Community Projects

Pott Street

London E2 0EF

**Email: [ncadc@ncadc.org.uk](mailto:ncadc@ncadc.org.uk)**

**[www.ncadc.org.uk](http://www.ncadc.org.uk)**

### National Domestic Violence Helpline

**24 hour national domestic violence helpline: 0808 2000 247**

**[www.nationaldomesticviolencehelpline.org.uk](http://www.nationaldomesticviolencehelpline.org.uk)**

**[www.womensaid.org.uk](http://www.womensaid.org.uk)**

**[www.refuge.org.uk](http://www.refuge.org.uk)**

### Rights of Women

Provides women with free, confidential, legal advice by specialist women solicitors and barristers. For times see page 2.

**Advice on family law issues: 020 7490 6577**

**Advice on immigration and asylum law issues: 020 7490 7689**

**Advice on criminal law issues: 020 7251 8887**

**Tel: 020 7251 6577**

**Email: [info@row.org.uk](mailto:info@row.org.uk)**

**[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

## One Stop Services:

### Refugee Action

[www.refugee-action.org.uk](http://www.refugee-action.org.uk)

have services in Bristol, Leicester, Liverpool, London, Manchester, Nottingham and Plymouth.

### Refugee Council

[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

have services in London, the East of England, West Midlands and Yorkshire and Humberside.

240-250 Ferndale Road

London SW9 8BB

Tel: 020 7346 6700

Fax: 020 7346 6701

London advice line: 020 7346 6777

Yorkshire and Humberside advice line: 011 3386 2210

East of England advice line:

014 7329 7900

West Midlands advice line:

012 1234 1971

Children's Panel advice line:

020 7346 1134

[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

### Migrant Helpline

Provides assistance and support for asylum-seekers and refugees entering and living in the south of the UK. Services in Dover, Brighton, Gravesend, St Leonards (near Hastings)

Tel: 01304 203977

Email: [mhl@migrantheplaine.org](mailto:mhl@migrantheplaine.org)

[www.migrantheplaine.org.uk](http://www.migrantheplaine.org.uk)

### North of England Refugee Service

Providing support and information for asylum-seekers and refugees who have arrived or have settled in the North of England. services in Newcastle, Sunderland and Middlesbrough

2 Jesmond Road West

Newcastle Upon Tyne NE2 4PQ

Tel: 019 1245 7311

Fax: 019 1245 7320

Email: [info@refugee.org.uk](mailto:info@refugee.org.uk)

[www.refugee.org.uk/welcome.htm](http://www.refugee.org.uk/welcome.htm)

### Welsh Refugee Council

Provides advice, information and support for asylum-seekers and refugees to rebuild their lives in Wales. Services in Cardiff, Wrexham, Swansea and Newport.

Phoenix House

389 Newport Road

Cardiff CF24 1TP

Tel: 029 2048 9800

Fax: 029 2043 2980

Email: [info@welshrefugeecouncil.org](mailto:info@welshrefugeecouncil.org)

[www.welshrefugeecouncil.org](http://www.welshrefugeecouncil.org)

## Information on legal aid immigration and asylum providers

### Community Legal Advice

For free and confidential legal advice and to find a legal adviser.

Advice line: 0845 345 4345

[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

(this is now part of the Direct Gov website). Log on to [www.direct.gov.uk](http://www.direct.gov.uk) and look down the page for 'find a legal adviser'

## Tribunals

### Asylum Support Tribunal First-tier Tribunal (Asylum Support)

Hears and decides appeals against UKBA decisions to refuse or discontinue asylum support and section 4 support.

2nd Floor, Anchorage House

2 Clove Crescent

East India Dock

London E14 2BE

Tel: 0207 538 6171 (Monday-Friday, 9am-5pm)

Fax: 020 7538 6200

Freephone: 0800 389 7913 (only for appellants who wish to discuss their appeal).

[www.justice.gov.uk/contacts/hmcts/tribunals/asylum-support](http://www.justice.gov.uk/contacts/hmcts/tribunals/asylum-support)

### Asylum Tribunal First-Tier Tribunal (Immigration and Asylum Chamber)

Hears and decides appeals against UKBA asylum and immigration decisions

Customer service centre

PO Box 6987

Leicester LE1 6ZX

Fax: 0116 249 4232

Telephone enquiries: 0300 123 1711

Minicom: 0300 123 1264



## UK Border Agency (UKBA)

### Asylum Screening Unit

Where you must apply for asylum if you are already in the UK.

Lunar House  
40 Wellesley Road  
Croydon CR9 2BY

Telephone for appointment on 020 8196 4524

[www.ukba.homeoffice.gov.uk/aboutus/contact/asylumscreeningunit](http://www.ukba.homeoffice.gov.uk/aboutus/contact/asylumscreeningunit)

### UKBA Case Assurance and Audit Unit

Deals with outstanding cases from before March 2007

Case Assurance and Audit Unit  
Department 87  
PO Box 306  
Liverpool L2 0QN

Email: [CAAU\\_enquiries@ukba.gsi.gov.uk](mailto:CAAU_enquiries@ukba.gsi.gov.uk)

### UKBA Immigration Enquiry Bureau

Provides information about progress of applications for permission to remain or settle in the United Kingdom.

UK Border Agency  
Lunar House  
40 Wellesley Road  
Croydon CR9 2BY

Telephone: 0870 606 7766

Textphone: 0800 389 8289

Email: [UKBApublicenquiries@ukba.gsi.gov.uk](mailto:UKBApublicenquiries@ukba.gsi.gov.uk)

[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

## Other useful organisations

### Office of the Immigration Services Commissioner

Responsible for regulating immigration advisers by ensuring they are fit and competent and act in the best interest of their clients: check here to see if an adviser is registered.

5th Floor, Counting House  
53 Tooley Street  
London SE1 2QN

Tel: 0845 000 0046

Fax: 020 7211 1553

Email: [info@oisc.gov.uk](mailto:info@oisc.gov.uk)

[www.oisc.gov.uk](http://www.oisc.gov.uk)

### Job Centre Plus

Government service dealing with applications for welfare benefits, provides some help with finding work. Find your local Job Centre Plus at [www.jobcentreplus.gov.uk](http://www.jobcentreplus.gov.uk)

## Country of Origin information:

US State Department Human Rights reports:

[www.state.gov/j/drl/rls/hrrpt](http://www.state.gov/j/drl/rls/hrrpt)

Amnesty international  
[www.amnesty.org.uk/content.asp?CategoryID=1996](http://www.amnesty.org.uk/content.asp?CategoryID=1996)

Human Rights Watch

[www.hrw.org](http://www.hrw.org)

UN High Commission on Refugees (UNHCR)

[www.unhcr.org/cgi-bin/texis/vtx/home](http://www.unhcr.org/cgi-bin/texis/vtx/home)

UK Border Agency

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi)

UK Border Agency Country-Specific Asylum Policy: Operational Guidance Notes:

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/csap](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/csap)

## An original publication from Rights of Women

Every year millions of people across the world are forced to flee their homes to escape persecution. Some of those people will seek refuge by making a claim for asylum here in the UK. Many asylum-seeking women arrive in the UK having experienced sexual violence, such as rape, or torture or other forms of violence, such as domestic abuse or forced marriage. Some will have problems getting legal advice or accurate legal information about the asylum process and how cases are decided.

*Seeking Refuge?* is a vital resource for asylum-seeking women. It explains, in clear and accessible language, the law that determines who is entitled to protection in the UK and how the asylum system works. It is essential reading for asylum-seeking women and all those who support them in their struggle to live lives free from violence and abuse.



helping women through the law

### Rights of Women

52-54 Featherstone Street

London EC1Y 8RT

Admin line: 020 7251 6575

Textphone: 020 7490 2562

Fax: 020 7490 5377

Email: [info@row.org.uk](mailto:info@row.org.uk)

Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)

*Seeking Refuge?* is divided into twelve chapters which explain different parts of the process of gaining protection in the UK:

- Chapter 1 explains the law that determines who is entitled to international protection in the UK. It explains the key provisions of the Refugee Convention and the European Convention on Human Rights.
- Chapters 2, 3, 4 and 5 explain how you make an asylum claim, how it is dealt with and the main problems asylum-seekers face in getting their claim accepted.
- Chapter 6 explains the current position on older cases following the closure of the Case Resolution Directorate (which dealt with 'Legacy' cases).
- Chapter 7 explains your rights if your claim is successful, describing what leave to remain you may be granted, and highlighting problems to avoid if you wish to keep your leave to remain.
- Chapters 8 and 9 explain how to understand a negative decision (refusal) and how to appeal, and the main legal problems in presenting your case at your appeal.
- Chapter 10 explains what will happen if you are finally refused and face removal from the UK.
- Chapter 11 explains what a fresh claim is and how it can be made.
- Chapter 12 explains the financial support that asylum-seekers and failed asylum-seekers are entitled to, as well as access to education, health care and social care.
- At the end of the book there is information about legal advice and support organisations, and gives their contact details.

Rights of Women aims to achieve equality, justice and respect for all women.

This publication is part of the Rights of Women Toolkit

Designed and produced by [www.totalcoverage.coop](http://www.totalcoverage.coop)