Home Office

Humanitarian protection in asylum claims lodged on or after 28 June 2022

Version 9.0

 Published for Home Office staff on 31 July 2023

Contents

About this guidance

Relevance of the date that the asylum claim was made

This guidance is version 9.0. This guidance explains the circumstances in which it would be appropriate for you to grant humanitarian protection. This guidance is for decision-makers considering asylum claims lodged on or after 28 June 2022.

For asylum claims lodged before 28 June 2022 or asylum claims that need to be considered as if they had claimed asylum before 28 June 2022 under transitional arrangements, please see version 6.0 of the Humanitarian protection guidance.

28 June 2022 is the 'commencement date' for the relevant sections of the Nationality and Borders Act 2022 ('2022 Act') and the associated changes to Part 11 of the Immigration Rules.

Transitional arrangements

For the purposes of the transitional arrangements only, individuals who sought to register an asylum claim before the commencement date of 28 June 2022, but were provided with an appointment to attend a designated place to register their asylum application on or after 28 June, will be considered to have 'made an asylum claim' before the commencement date, but only if they attend their scheduled appointment (or, in the event that it is cancelled or rescheduled by the Home Office, the rescheduled appointment). Therefore, for this cohort, this policy does not apply and instead, you should refer to version 6.0 of the humanitarian protection guidance.

However, if the individual does not attend their appointment, but later wishes to register a claim for asylum on or after the commencement date, they will not be considered to have 'made an asylum claim' unless (a) there were circumstances beyond their control that made it impossible for them to attend the appointment scheduled for them, (b) they contacted the Home Office as soon as reasonably practicable to warn/explain of the said circumstances and apply for a new appointment and (c) they provided the Home Office, as soon as reasonably practicable, with evidence to demonstrate their inability to attend the scheduled appointment which they say they were unable to attend. In such cases, this version of the guidance (8.0), will apply to their claim.

Contacts

If you have any questions about the guidance and your line manager, Technical Specialist or Senior Caseworker cannot help you, or you think that the guidance has factual errors, you can email the Asylum Policy team.

If you notice any formatting errors in this guidance (for example broken links or spelling mistakes) or have any comments about the layout or navigability of the guidance, you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **9.0**
- published for Home Office staff on **31 July 2023**

Changes from last version of this guidance

Minor correction in the Settlement section to refer to Settlement protection policy and Settlement guidance.

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Purpose of guidance

Background

Humanitarian protection was introduced in April 2003 to replace the policy on Exceptional Leave to Remain. When the United Kingdom was a member of the European Union, the Immigration Rules and our humanitarian protection policy reflected the subsidiary protection provisions in Articles 15 to 19 of the Qualification Directive (2004/83/EC).

Humanitarian protection is designed to provide international protection where it is needed, to individuals who do not qualify for protection under the Refugee Convention. It covers situations where someone may be at risk of serious harm if they return to their country of origin but they are not recognised as refugees because the risk is not of persecution for a reason covered by the Refugee Convention.

The guidance provides specific sections on:

- Considering humanitarian protection
- Exclusion from humanitarian protection
- Grounds for humanitarian protection

This guidance should be read alongside other key asylum policy guidance, for example:

- Asylum interviews
- Processing children's asylum claims
- Assessing credibility and refugee status post 28 June 2022
- Considering human rights claims
- Permission to stay on a protection route
- Drafting, implementing and serving asylum decisions
- Revocation of protection status

Those recognised as facing a real risk of serious harm in their country of origin are normally granted humanitarian protection and permission to stay in the UK. For more guidance, please see permission to stay on a protection route guidance.

The amended Immigration Rules included the addition of paragraph 339QB which introduces a new form of permission to stay for recipients of humanitarian protection. Individuals who qualify for humanitarian protection will be granted temporary humanitarian permission to stay in the UK. For more guidance, please see permission to stay on a protection route guidance.

When someone with humanitarian protection applies to extend that permission, a safe return review will be carried out. Where they no longer need protection, they will not qualify for a further grant of humanitarian permission to stay and their humanitarian protection will be revoked. In such circumstances, they will need to apply to stay on another basis or leave the UK. All those granted humanitarian

protection may also have their case reviewed in light of any criminality and humanitarian protection may be revoked and permission to stay curtailed or revoked if they are no longer entitled to protection. See Revocation of protection status for more guidance.

Policy objective

The policy objective is to grant humanitarian protection to qualifying individuals who need protection for reasons not covered by the Refugee Convention. The policy is designed to:

- meet our international obligations by providing protection to those at a real risk of serious harm in their country of origin but who do not qualify for refugee status because they do not fall under the Refugee Convention
- prevent serious criminals from benefitting from a generous form of permission to stay by operating an appropriate exclusion framework which is consistent to that which is applied to a consideration of refugee status
- maintain a fair immigration system that requires all migrants, including those granted humanitarian protection, to earn the right to settlement, and all the benefits that come with it, by completing an appropriate period in the UK with permission to stay on a protection route
- make sure that safe return reviews are carried out so that protection is provided for as long as it is needed, but make clear that those who no longer need protection will need to apply to stay on another basis or leave the UK
- review cases in which someone with humanitarian protection commits a criminal offence or evidence emerges that they ought to be excluded from or should not qualify for humanitarian protection so that revocation action is taken where appropriate and the individual is removed or placed on more restrictive permission to stay to facilitate removal as soon as possible

Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to need to safeguard and promote the welfare of children who are in the UK. In dealing with parents and children, you must see the family both as a unit and as individuals. Although a child's best interests are not a factor in assessing whether an asylum claimant qualifies for humanitarian protection, the way that you interact with children and their decisions following your determination must take account of the Section 55 duty.

For further information on the important principles to take into account, see the Section 55 children's duty guidance. See also Processing children's asylum claims. Our statutory duty to children means you must demonstrate:

- fair treatment which meets the same standard a British child would receive
- the child's best interests being a primary, although not the only, consideration
- no discrimination of any kind
- timely processing of asylum claims

- identification of those who might be at risk from harm

Claimants who qualify for humanitarian protection will be granted permission to stay on a protection route under paragraph 339QB of the Immigration Rules. For more information, please refer to the guidance on granting Permission to stay on a protection route.

You must carefully consider any evidence provided by a claimant as to how a child will be affected by a grant of permission to stay rather than being granted immediate indefinite permission to stay / settlement. In the vast majority of cases the impact will not be significant because temporary permission to stay provides appropriate protection in accordance with our international obligations and access to benefits and services that a child may require. It is therefore very unlikely that best interest considerations in an individual case will override the wider policy intention to require all migrants to complete an appropriate period of permission to stay before being able to apply for settlement. Any grant of a longer period of leave would fall under the Discretionary leave policy.

Under a Family Asylum Claim, although the main claimant and any children will each be a claimant in their own right, the claim will be dealt with in a single consideration. This is on the basis that the protection needs of each claimant are the same as those established by the main claimant. However, if it is established that a child has separate (additional or different) protection needs to that of the main claimant, then the child's claim must be considered separately and cannot be part of a Family Asylum Claim. The child's claim must be considered as an accompanied asylum seeking child and the guidance on Processing children's asylum claims applies.

If a child has no protection needs, then the Dependants and former dependants guidance will apply and where the main claimant is granted protection, their dependants should be granted leave in line for same duration (and not protection in line where the dependants have no protection needs).

Although a child's best interests are not a relevant factor in assessing whether their humanitarian protection or that of their parents, should be revoked you must have regard to the Section 55 duty in considering whether other leave may be appropriate following such action. The statutory guidance, 'Every Child Matters – Change for Children', sets out the key principles to take into account in all actions.

Safeguarding

Where you are concerned about child welfare or protection issues that may involve safeguarding issues within the family unit, you must immediately contact the Asylum Safeguarding Hub, who will refer the case to the relevant local authority in accordance with guidance in making safeguarding referrals. In an emergency, you must refer the case to the police. You can ask the Office of the Children's Champion for advice on issues relating to children, including family court proceedings and complex cases.

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Relevant legislation

Domestic legislation

Section 82 of the Nationality Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014) sets out the rights of appeal available against decisions taken in respect of Protection and Human Rights claims. An appeal can only be brought against a decision to refuse a protection or human rights claim, or to revoke protection status.

A protection claim includes an application for asylum and humanitarian protection, therefore any refusal of asylum or humanitarian protection will attract a right of appeal. This includes where refugee status is refused but humanitarian protection is granted.

An individual has 'protection status' if they are granted refugee status or humanitarian protection. Consequently, there is a right of appeal against any decision to revoke refugee status or humanitarian protection.

Immigration Rules

Part 11 of the Immigration Rules sets out the provisions for considering humanitarian protection:

- paragraph 327paragraph 327AC-AE defines a claim for humanitarian protection, whilst also clarifying that a claim for humanitarian protection will first be considered as an asylum claim (even if the claimant does not expressly claim to be a refugee under the Refugee Convention)
- paragraph 339C sets out the criteria that must be met for an individual to be granted humanitarian protection in the UK
- paragraph 339D sets out the circumstances in which a claimant will be excluded from a grant of humanitarian protection
- paragraph 339G-H sets out the circumstances in which humanitarian protection, and any accompanying permission to stay, may be revoked
- paragraph 339QB sets out the conditions for granting permission to stay in the UK to individuals granted humanitarian protection

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Considering humanitarian protection

Paragraph 327EA of the Immigration Rules defines a claim for humanitarian protection as a request for international protection on the basis that they would be subject to serious harm upon return to their country of origin.

Paragraph 327EB of the Immigration Rules clarifies that the validity requirements of an asylum application, as outlined in paragraph 327AB, must be met in order to make a valid claim for humanitarian protection.

Under paragraph 327EC of the Immigration Rules any claim for humanitarian protection is treated first as an application for asylum. You must be familiar with the circumstances in which it may be appropriate to grant humanitarian protection where someone does not qualify for refugee status and you must ensure the asylum interview addresses such matters to ensure there is sufficient evidence on which to reach an informed decision on eligibility for humanitarian protection where appropriate.

Under paragraph 327F of the Immigration Rules, any inadmissible asylum application will also be deemed as an inadmissible claim for humanitarian protection where the claims are based on the same facts.

Standard of proof

Under paragraph 339C of the Immigration Rules, humanitarian protection must be granted to eligible claimants where there are substantial grounds for believing that there is a real risk of serious harm for the claimant on return to their country of origin.

'Real risk' is the same as a 'reasonable degree of likelihood'. It is important that you note that this is a different standard of proof than that which is applied to assessing whether a claimant qualifies for refugee status as a result of Section 32 of the Nationality and Borders Act 2022. You must be clear in your decision letter which standard of proof you have used to make findings on each element of your decision.

For asylum applications made on or after 28 June 2022, a different standard of proof is applied at different points in the determination, creating a two-stage assessment. When considering eligibility for refugee status under paragraph 334 of the Immigration Rules, the first stage of the assessment requires you to consider some elements of the claim to a higher standard of proof, the balance of probabilities. The second stage of the assessment is assessed to a lower standard of proof, a reasonable likelihood. For more guidance, please see Assessing credibility and refugee status post 28 June 2022.

As a result of the lower, 'real risk', standard of proof which is applicable to all elements of considering whether a claimant qualifies for humanitarian protection, you must reconsider all material facts to the lower standard.

You must consider whether you accept the evidence which the claimant has presented to you when taken in the round. In practice, if the claimant provides

evidence that, when considered in the round, indicates that the fact is ‘reasonably likely’, it can be accepted. You do not need to be ‘certain’, ‘convinced’, or even ‘satisfied’ of the truth of the account – that sets too high a standard of proof. It is enough that it can be ‘accepted’.

For example, a claimant does not have to provide medical evidence of past torture for a claim that torture took place to be accepted, if other indicators enable its acceptance. Nor does the claimant have to provide independent evidence of personal participation in political activity if the account of political events is reasonably detailed, consistent, and plausible.

The rejection of one fact does not automatically lead to rejection of other material facts unless they are linked, and it logically follows that those other facts should be rejected. For example, a finding that a claimant’s political beliefs are vague and limited or that they were not genuinely politically active will call into question a claim to have been detained and tortured on that basis. On the other hand, if it is not accepted that a claimant was tortured, it does not necessarily follow that the claimant was not politically active. You must assess each material fact in the round, and then accept or reject them.

You must always assess material facts in the context of the evidence as a whole and not in isolation. You may, because of the weight of adverse evidence in other aspects of the claim, reject in the round a material fact which, when taken in isolation, could be credible; conversely, you can decide to accept an aspect of the claim which at first sight seemed unlikely to be true.

Once you have assessed all material facts, you must go on to consider whether the material facts accepted give rise to a real risk of serious harm upon return to their country of origin. For this aspect of the assessment, you will need to refer to the relevant Country Policy and Information notes which include country specific guidance.

Burden of proof

The burden of substantiating a claim lies with the claimant, who must establish to the relatively low standard of proof required that they qualify for humanitarian protection. Paragraph 339I of the Immigration Rules emphasises the burden is on the claimant to provide evidence and your duty is to assess the information put forward in co-operation with the claimant. You must therefore examine, investigate and research the available evidence and, if appropriate, invite the submission of further evidence, where necessary.

Credibility

In most cases, the same evidence gathered in relation to considering eligibility for refugee status will form the basis of the claim for humanitarian protection. When assessing the credibility of a claim, you must follow the structured approach to assessing credibility as set out in the Assessing credibility and refugee status guidance, in particular see section on ‘credibility indicators’. However, you must note

that your credibility assessment when considering humanitarian protection must be undertaken to the lower standard of proof of a ‘real risk’.

Internal relocation and sufficiency of protection

When you are assessing whether a claimant qualifies for humanitarian protection, you must consider both the possibility of internal relocation and the sufficiency of state protection which may be available to a claimant. These issues are covered in detail in the Assessing credibility and refugee status guidance.

Exclusion from or revocation of humanitarian protection

A claimant will not be eligible for a grant of humanitarian protection if they are excluded under paragraph 339D of the Immigration Rules. See: Exclusion from humanitarian protection. The Secretary of State may also decide to revoke humanitarian protection where the exclusion provisions set out in the Immigration Rules are met. See: Revocation of protection status guidance.

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Exclusion from humanitarian protection

A claimant will not be eligible for a grant of humanitarian protection if they are to be excluded under paragraph 339D of the Immigration Rules for one of the following reasons:

(i) the claimant has committed, instigated or otherwise participated in the commission of a crime against peace, a war crime, a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(ii) the claimant has committed, instigated or otherwise participated in the commission of a serious non-political crime outside the UK prior to their admission to the UK as a person granted humanitarian protection;
(iii) the claimant has been guilty of acts contrary to the purposes and principles of the United Nations;
(iv) that the claimant, having been convicted by a final judgement of a particularly serious crime (as defined in Section 72 of the Nationality, Immigration and Asylum Act 2002 and as amended by Section 38 of the Nationality and Borders Act 2022), constitutes a danger to the community of the UK; or
(v) the person is a danger to the security of the UK.

It is Home Office policy to remove individuals who are excluded from humanitarian protection at the earliest opportunity. However, where a claimant is excluded from humanitarian protection, it may be appropriate to grant Discretionary leave or Restricted leave in the event that removal cannot proceed due to a barrier, such that the claimant continues to face a real risk that their rights under Article 2 and / or 3 of the European Convention on Human Rights will be breached.

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Official – sensitive: end of section

Crimes against peace, war crimes or crimes against humanity

Paragraph 339D(i) requires you to consider whether the claimant has committed, instigated or otherwise participated in the commission of a crime against peace, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes. This provision is broadly similar to Article 1F(a) of the Refugee Convention, therefore you must refer to the relevant section of the

Exclusion under Article 1F and 33(2) of the Refugee Convention guidance when considering paragraph 339D(i).

Serious non-political crimes outside the UK

Paragraph 339D(ii) requires you to consider whether the claimant has committed, instigated or otherwise participated in a serious non-political crime outside the UK prior to their admission to the UK as an individual granted humanitarian protection. This means crimes committed outside the UK at any time up to and including the day on which they are issued with a relevant biometric immigration document (as defined in paragraph 339DB) by the Secretary of State. Reference to a serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective. This provision is broadly similar to Article 1F(b) of the Refugee Convention, therefore you must refer to the relevant section of the Exclusion under Article 1F and 33(2) of the Refugee Convention guidance when considering paragraph 339D(ii).

Acts contrary to the purpose and principles of the United Nations

Paragraph 339D(iii) requires you to consider whether the claimant has committed acts contrary to the purpose and principles of the United Nations. This includes, but is not limited to, acts of terrorism and extremism. This provision is the same as Article 1F(c) of the Refugee Convention, therefore you must refer to the relevant section of the Exclusion under Article 1F and 33(2) of the Refugee Convention guidance when considering paragraph 339D(iii).

Particularly serious crime and danger to the community

Paragraph 339D(iv) requires you to consider whether the claimant has committed a particularly serious crime and therefore constitutes a danger to the community in the UK. Section 72 of the Nationality and Immigration Act 2002 (as amended by Section 38 of the Nationality and Borders Act 2022) defines a 'particularly serious crime' as one which has been punished by 12 months or more imprisonment. Section 72 of the 2002 Act (as amended) also contains a rebuttable presumption that once an individual has committed a particularly serious crime, they therefore constitute a danger to the community of the United Kingdom. This means that claimants may present evidence to rebut the presumption that they constitute a danger to the community as a result of their offending, meaning they would not fall for exclusion.

You must not exclude a claimant from humanitarian protection under paragraph 339D(iv) before providing them with an opportunity to rebut the presumption that they are a danger to the community in the UK, by having committed a particularly serious crime.

This provision follows Article 33(2) of the Refugee Convention, therefore you must refer to the relevant section of the Exclusion under Article 1F and 33(2) of the Refugee Convention guidance when considering the application of paragraph 339D(iv).

Danger to security

Paragraph 339D(v) requires you to consider whether the claimant is a danger to the security of the UK. This is closely linked to paragraph 339D(iii), and as such, may include but is not limited to where the claimant has been involved in extremism or terrorist acts. This provision is identical to Article 33(2) of the Refugee Convention, therefore you must refer to the relevant section of the Exclusion under Article 1F and 33(2) of the Refugee Convention guidance when considering paragraph 339D(v).

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Grounds for humanitarian protection

Paragraphs 339C-CA of the Immigration Rules sets out the basis on which a person will be granted humanitarian protection:

> 339C. An asylum applicant will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:
>
> (i) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;
>
> (ii) they are not a refugee within the meaning of Article 1 of the 1951 Refugee Convention;
>
> (iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of origin would face a real risk of serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country; and
>
> (iv) they are not excluded from a grant of humanitarian protection.
>
> 339CA. For the purposes of paragraph 339C, serious harm consists of:
>
> (i) the death penalty or execution;
>
> (ii) unlawful killing;
>
> (iii) torture or inhuman or degrading treatment or punishment of a person in the country of origin; or
>
> (iv) 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 claimant must not be granted humanitarian protection if they qualify for refugee status under paragraph 334 of the Immigration Rules, even if the claimant specifically requests a consideration of humanitarian protection.

Where a claimant does not qualify for refugee status following the consideration of their asylum claim, you must go on to consider whether they qualify for humanitarian protection under paragraph 339C of the Immigration Rules.

Death penalty or execution

You must consider whether there is a real risk of the claimant being intentionally deprived of their life or that, on the basis of the available evidence, there is a real risk that they would be convicted and face the death penalty in the country of origin. In death penalty cases it will often be necessary to contact the Country Policy and Information Team (CPIT) for advice on whether the death penalty applies to the crime in question and whether it is actually used in practice. You must not make enquiries directly with the authorities in the country of origin (or their representatives in the UK) about the risk to a particular individual facing the death penalty. If specific information is required which cannot be provided via country policy information, then you may liaise with the Foreign Commonwealth and Development Office (FCDO), but any enquiries must be made through the CPIT.

Unlawful killing

This is where there is a real risk that a person would be unlawfully, that is extra-judicially, killed by the state (or agents of the state), or there is a real risk of targeted assassination by non-state agents and there is no effective protection and no feasible internal flight alternative. It relates to a specific threat to an individual (other than by reason of indiscriminate violence in international or internal armed conflict) and which would be contrary to Article 2 of the European Convention on Human Rights (ECHR).

Examples of situations which must not be accepted as creating the real risk of harm under this category are where the alleged threat to the claimant's life arises:

- in defence of any person from unlawful violence
- to effect lawful arrest or to prevent the escape of a person lawfully detained
- in action lawfully taken for the purpose of quelling a riot or insurrection

Torture or inhuman or degrading treatment

This reflects Article 3 of the ECHR which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Humanitarian protection will normally be granted if there is a real risk of treatment contrary to Article 3 where the mistreatment does not amount to persecution for a Refugee Convention reason. See Assessing credibility and refugee status guidance.

Cases where it is claimed that removal would breach Article 3 on medical grounds are not usually eligible for humanitarian protection. In M'Bodj v Kingdom of Belgium (Case C-542/13) [2015] 1 WLR 3059, the Court of Justice of the European Union (CJEU) confirmed that subsidiary protection status requires that the harm from which the claimant seeks protection must emanate from the conduct of a third party, and therefore cannot simply be the result of a naturally occurring illness combined with general shortcomings in the health system of the country of proposed return. As such cases raising medical or mental health issues must usually be considered under the Discretionary leave policy.

Prison conditions

Prison conditions which are systematically inhumane and life-threatening are contrary to Article 3 of the ECHR. However, even if conditions are not severe enough to meet that high threshold, Article 3 may still be breached if, due to the individual's personal circumstances, detention would amount to inhuman or degrading treatment. This will depend on a combination of the following factors:

- the likely length of detention
- the type and conditions of detention facilities
- the individual's age, gender, vulnerability, physical or mental health
- any other relevant factors taking all evidence into account

If the sentence or prison regime, irrespective of its severity, is discriminatory or disproportionately applied for reasons of race, religion, nationality, membership of a particular social group or political opinion, the claimant may qualify for refugee status. CPIT reports will normally provide information about prison conditions in the country of origin and whether they are severe enough to meet the Article 3 threshold. If further information is necessary, caseworkers must complete a country policy information request. The potential breach of Article 3 will not justify the grant of humanitarian protection (or refugee status) if the sole purpose is that the claimant is fleeing justice rather than persecution and/or serious harm, or their criminal conduct brings them within the exclusion criteria.

Paragraph 339D outlines the circumstances in which a claimant will be excluded from humanitarian protection, for example where the claimant is a danger to the security in the UK. If you find that a claimant is excluded from humanitarian protection but nevertheless identify a breach of Article 3, you must consider whether to grant Restricted Leave.

General violence and other severe humanitarian conditions

The Article 3 threshold is a particularly high one. In NA v the UK, the European Court of Human Rights (ECtHR) found that a general situation of violence in the country of return will not normally mean that removing an individual would be a breach of Article 3. It would only be in the most extreme cases of general violence, where there was a real risk of serious harm simply by virtue of exposure to such violence.

There may be exceptional situations where conditions in the country, for example, absence of water, food or basic shelter, are unacceptable to the point that return in itself would constitute inhuman and degrading treatment for the individual concerned. Factors to be taken into account include age, gender, ill-health, the effect on children, other family circumstances, and available support structures. You must consider that if the state is withholding these resources from the individual, whether it constitutes persecution for a Refugee Convention reason as well as a breach of Article 3 ECHR. If it amounts to persecution for a Refugee Convention reason, the claimant is likely to qualify for refugee status.

In Sufi and Elmi v the UK the ECtHR considered how Article 3 applies to the question of generalised violence and a severe humanitarian situation as a result of such violence. It found that following NA v the UK, the sole question for the court to consider is whether, in all the circumstances of the case before it, there were substantial grounds for believing that the person concerned, if returned, would face a real risk of treatment contrary to Article 3. If this is established then their removal will breach Article 3, regardless of whether the risk arises from general violence, a personal characteristic of the individual or combination of both. However, the court found that it is clear that not every situation of general violence will give rise to such a risk and on the contrary, made it clear that general violence would only be of sufficient intensity to create such a risk in the most extreme cases where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.

The ECtHR went on to address the situation where dire humanitarian conditions, widespread displacement and the breakdown of social, political and economic infrastructures were predominantly due to direct or indirect actions of the parties to the conflict, who were using (in the case of Somalia, for example, at the time of the judgment) indiscriminate methods of warfare in densely populated urban areas with no regard to the safety of the civilian population. Following the approach adopted in M.S.S v Belgium and Greece, the court found that decision-makers must consider a claimants' ability to cater for their most basic needs, such as food, hygiene and shelter, their vulnerability to ill-treatment and the prospect of their situation improving within a reasonable timeframe.

Indiscriminate violence

You must only assess whether the claimant would be subject to indiscriminate violence upon return to their country of origin if you find that the claimant would not be subject to the death penalty or execution, unlawful killing or torture or inhuman or degrading treatment. You must refer to CPIT reports and UK court assessments on specific countries, referred to as 'country guidance cases', when considering whether the threshold for engaging the indiscriminate violence threshold is met.

European and domestic case law has established the interpretation of Article 15(c) in the Court of Justice of the European Union (CJEU) in Elgafaji [2009] EUECJC-465-07, and in the UK Court of Appeal in QD (Iraq) v SSHD [2009] EWCA Civ 620. You must also refer to the relevant country guidance cases which can be found in the CPIT guidance pages. 'Indiscriminate violence' entails a lower level of harm than Article 3 ECHR and can be engaged by different types of harm. A claim for protection based on indiscriminate violence must be assessed by applying the test set out in (QD (Iraq) v SSHD [2009] EWCA Civ 620):

"Is there in [country] or a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant would, solely by being present there, face a real risk which threatens their life or person?"

This test comprises of an assessment of the following elements:

Indiscriminate violence arising from armed conflict

This applies in any situation where there is a high level of indiscriminate violence. It does not matter whether the risk of serious harm arises from actions of the state, the parties to the conflict or an insurgency, so long as the threshold of violence in the test is met. To meet this test, the situation will be one where the level of violence is such that, without anything to render them a particular target, civilians are at real risk of random injury or death due to indiscriminate violence. It covers real risks presented, for example, by:

- indiscriminate shelling or bombing of civilian areas
- suicide bombers or car bombs in marketplaces
- snipers firing randomly at people in the street

- violent crime as a result of the breakdown of law and order arising out of the conflict

When conducting an assessment, caseworkers must focus on the level of violence and not the nature of the armed conflict. Not every situation of armed conflict will meet the threshold, the key issue is the level of the violence and the risk to civilians. You must also consider other factors alongside the level of violence which could increase the risk to an individual in the particular country situation. For example, whether the individual may need hospital care in a situation in which hospitals are coming under fire, or they have to travel through military or insurgent checkpoints where the risk of violence is enhanced. You must take account of the risk that may, in particular, impact upon children or on those responsible for their welfare.

Civilians only

The test applies only to civilians. They must be genuine non-combatants and not those who are party to the conflict. However, this could include former combatants who have genuinely and permanently renounced armed activity.

A material part

The reference to a 'material part' in the test is a reference to the claimant's home area or, if appropriate, any potential place of internal relocation, where the fear of serious harm is clearly limited to specific parts of the country. Therefore, paragraph 339O (Internal Relocation) must be applied in the usual way.

Serious threat of real harm

The fear of possible but unlikely risk is insufficient to meet the test as there must be a realistic threat of real harm. In many cases where there is armed conflict in a country, civilians may well be fearful of being caught up in violence. However, paragraph 339CA(iv) is only engaged where an individual can show there is a real risk of serious harm on account of indiscriminate violence. The risk of harm is not only about the threat to life but also the physical or mental integrity of those caught up in violence.

The sliding scale and enhanced risk categories

The tests may also be applied on a sliding scale. The more the claimant is able to show that they are specifically affected due to their personal circumstances, the lower the level of indiscriminate violence required for the test to be met. This may include, but is not limited to, a child or someone of advanced age, disability, gender, ill-health, and ethnicity or, someone who is a perceived collaborator, medical professional, teacher or government official. Consideration of these situations may lead to a finding that an individual in fact meets the Refugee Convention requirements for recognition as a refugee, for example, membership of a particular social group or an imputed political opinion. In those circumstances, refugee status should normally be granted.

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Granting or refusing humanitarian protection

Granting humanitarian protection

When humanitarian protection is granted, you must first provide reasons for the refusal of refugee status in the decision letter. Then, you must briefly set out the reasons for the grant of humanitarian protection and whether this is on the basis of a fear of the state or non-state actors. This is important because if an individual has no fear of the state, they will be expected to apply for a national passport rather than a Home Office travel document should they wish to travel abroad.

You do not need to repeat information set out in the decision letter in the consideration minute and there is no need to consider other ECHR issues in detail, such as Article 8, but if there is something that may be relevant to the future consideration of the claim, for example, a British spouse or child, this should be mentioned briefly.

For more instructions on granting humanitarian protection, including the length and conditions afforded to the grant of permission to stay, see the guidance on Permission to stay on a protection route.

Family members who have been accepted as dependants on the claim will normally be granted permission to stay in line with the main claimant under paragraph 339QC of the Immigration Rules. See Dependants and former dependants.

Refusing humanitarian protection

If a claimant does not meet the requirements for humanitarian protection, you must provide reasons for refusal of both refugee status and humanitarian protection in the decision letter. You may include only brief reasons for refusing humanitarian protection where little or no reliance is being placed on the claimants' statements and the reasons for refusal are essentially the same as those for the refusal of refugee status.

Following consideration of humanitarian protection, you must go on to consider Article 8 elements of the claim in line with the provisions of Appendix FM (family life) and Appendix Private Life (private life).

Should the claimant not qualify for any permission to stay as a result of Article 8, then you must consider whether the claimant qualifies for discretionary leave on any other basis, including on any other ECHR grounds. See the Discretionary leave guidance for more information.

Issuing travel documents

Paragraph 344A of the Immigration Rules sets out the criteria under which a travel document may be issued to an individual who has been granted humanitarian protection. An individual with permission to stay on these grounds should, in many cases, be able to travel on their own national passport.

However, they may be eligible to apply for a Home Office Certificate of Travel (CoT) if they can show that they have been formally and unreasonably refused a national passport by their own authorities. Where it is accepted that they have been granted humanitarian protection as a result of the state (rather than non-state actors), they are not required to approach those authorities for a passport before becoming eligible for a CoT.

A CoT may also be issued where an individual has made reasonable attempts to obtain a national passport or identity document, particularly where there are serious humanitarian reasons for travel. For further information, see the guidance on Applying for travel documents on the Home Office website.

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Settlement

Individuals who were granted humanitarian protection following an asylum application made on or after 28 June 2022 may be eligible to apply for indefinite permission to stay under the settlement protection policy. For more information, please see the guidance on Settlement protection.

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Revocation of humanitarian protection

Humanitarian protection granted under paragraph 339C of the Immigration Rules will be revoked if any of paragraphs 339GA to 339GD apply. If humanitarian protection is revoked, then any remaining permission to stay should usually be curtailed or revoked under paragraph 339QD of the Immigration Rules. An individual will not be eligible for a renewable grant of permission to stay on the protection route if their humanitarian protection is revoked. For more instructions on revoking humanitarian protection, please see guidance on Revocation of protection status.

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Appeal rights

This section provides details on the appropriate appeal rights when considering humanitarian protection, when to consider curtailing or cancelling permission to stay and considering whether other types of permission to stay should be granted.

Appeals against refusal of humanitarian protection

The Immigration Act 2014 changed the rights of appeal. Section 82 of the Nationality, Immigration and Asylum Act 2002 (as amended), provides a right of appeal against a decision to refuse a protection claim, a human rights claim, or the revocation of protection status. Where humanitarian protection is refused, or where refugee status is refused but humanitarian protection is granted, there is a refusal of a protection claim for the purposes of Section 82.

Allowed appeals

Where the tribunal dismisses an appeal on asylum grounds but allows it for humanitarian protection, humanitarian protection should normally be granted (subject to any appeal against that determination being lodged or exclusion criteria applying). If the tribunal has not addressed the exclusion provisions, or new information has come to light since the determination, you must consider whether any exclusion criteria apply. If they do, a proposal to grant restricted leave or discretionary leave may be appropriate.

Appeals against revocation of humanitarian protection

The Immigration Act 2014 changed the rights of appeal in revocation cases. Section 82 of the Nationality, Immigration and Asylum Act 2002 (as amended), provides a right of appeal against a decision to revoke protection status. An individual has ‘protection status’ for the purpose of Section 82(1)(c), where they are granted humanitarian protection. Therefore, a decision to revoke humanitarian protection attracts a right of appeal under Section 82(1)(c).

This right is subject to the exceptions and limitations of Section 92(5), which sets out that an appeal under Section 82(1)(c) must be brought from within the UK if the decision to revoke was made while the appellant was in the UK and must be brought from outside the UK where the decision to revoke was made whilst the appellant was outside the UK. As such, the revocation process can be initiated and concluded where an individual is not in the UK at the time.

Dependants who do not have humanitarian protection in their own right do not have a right of appeal against any revocation of humanitarian protection, but ordinarily, a dependant would not be removed whilst the main claimant has an outstanding appeal against revocation. However, you must cancel, curtail or revoke any extant permission to stay as appropriate.

Cancelling permission to stay when an individual is not in the UK

If the individual is not in the UK when the decision is taken to revoke humanitarian protection, any right of appeal must be brought from abroad. There is no requirement to allow the individual to return to the UK to exercise their appeal rights. Any leave they have can be cancelled under Article 13(7) of the Immigration (Leave to Enter and Remain) Order 2000 using the grounds in paragraphs 321A-AC of the Immigration Rules or Section 76 of the Nationality, Immigration and Asylum Act 2002.

Section 3D of the Immigration Act 1971

Section 3D provided for permission to stay to be extended during the period where an appeal could be brought against the variation or revocation of an individual's permission to stay. There is no longer a right of appeal against a decision to vary or revoke permission to stay. An individual whose protection status is revoked will have a right of appeal in relation to that decision, but such an appeal is only against the decision to revoke protection status, not against any decision to revoke or curtail permission to stay. Accordingly, Section 3D has no continuing application under the revised appeals regime.

A decision to vary permission to stay so that there is no permission remaining, often referred to as curtailment with immediate effect, or to revoke permission, did carry a right of appeal before 6 April 2015. This means that where there is an in-country appeal outstanding against a variation or revocation (of leave) decision made before that date, then the claimant continues to be on 3D leave.

Considering if other types of permission should be granted

Appendix FM (family life) and Appendix Private Life of the Immigration Rules provide the basis on which an individual, who is not a foreign criminal liable for deportation, can apply for entry clearance or permission to stay in the UK on family life grounds or on private life grounds. Where Article 8 family or private life reasons are raised, decision-makers should consider whether a grant of permission on this basis is appropriate only where humanitarian protection is being revoked. The individual will still have a right of appeal against the decision to revoke their protection status, even where permission to stay on another basis has been granted.

Article 8 in criminal cases

Article 8 claims from foreign criminals are considered under paragraphs 398 to 399A of the Immigration Rules which are underpinned by Sections 117A to 117D of the Nationality, Immigration and Asylum Act 2002 (as amended by Section 19 of the Immigration Act 2014). For further information see Criminality guidance for Article 8 ECHR cases.

Resettlement cases

Those resettled to the UK and granted humanitarian protection under the Syrian Vulnerable Persons Relocation (VPR) Scheme, or the Vulnerable Children's Resettlement Scheme, may be considered for revocation action where appropriate. Such cases must be referred to the Resettlement team and the Asylum Policy team in the first instance.

Further submissions

Further submissions relating to eligibility for humanitarian protection must be considered in line with Further submissions guidance.

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